



Submission to the Finance and Public Administration References Committee

Submitted by:	Victorian Women Lawyers Association Inc (VWL)
Submitted electronically to:	Committee Secretary Finance and Public Administration References Committee PO Box 6100 Parliament House Canberra ACT 2600
Contact:	Bianca Quan, Convenor,



About us

Victorian Women Lawyers (VWL) is a voluntary association that promotes and protects the interests of women in the legal profession. Formed in 1996, VWL now has over 800 members. VWL provides a network for information exchange, social interaction and continuing education and reform within the legal profession and broader community. VWL has undertaken research into work practices affecting women in the legal profession and provides protocols and training to effect positive change.

Since 1996, VWL has advocated for the equal representation of women and promoted the understanding and support of women's legal and human rights by identifying, highlighting and eradicating discrimination against women in the law and in the legal system, and achieving justice and equality for all women.

Details of our publications and submissions are available at www.vwl.asn.au under the 'Publications' tab.

Terms of Reference

On 9 November 2016, the Senate referred the issue of gender segregation in the workplace and its impact on women's economic equality to the Finance and Public Administration References Committee for inquiry and report.

The Committee called for submissions in relation to this topic with particular reference to:

- a. the nature and extent of industrial and occupational gender segregation in Australian workplaces relative to comparable jurisdictions, including gender segregation in tertiary education courses;
- b. factors driving industrial and occupational gender segregation in the Australian context;
- c. economic consequences of gender segregation for women, including the contribution of industrial and occupational gender segregation to the gender pay gap;
- d. approaches to addressing gender segregation as it relates to economic inequality and the gender pay gap in comparable jurisdictions; and
- e. remedies appropriate for Australia, including but not limited to:
 - i. measures to encourage women's participation in male - dominated occupations and industries,
 - ii. measures to professionalise and improve conditions in female - dominated occupations and industries, and
 - iii. measures to promote pay equity.



VWL welcomes the opportunity to make submissions to the Finance and Public Administration References Committee in relation to the gender segregation inquiry and supports government efforts to address gender inequality.

Occupational Gender Segregation – Overview

Gender segregation in the workplace is the separation between men and women in the workforce. The Australian workforce is 'highly gender-segregated by industry and occupation, a pattern that has persisted over the past two decades'.¹

In the legal industry, women represent 61% of graduate solicitors and 80% of clerical staff.² At first blush, the legal industry might not appear to suffer greatly from gender segregation. Whilst it is true that the legal profession may not suffer to the same extent as the smaller proportion of females in the science, technology, engineering and mathematics (STEM) based professions, males occupying senior industry roles remain overrepresented. It is within this context that VWL makes submissions to the Finance and Public Administration References Committee.

VWL submits that, currently, the economic role of women in the legal workplace is demonstrably unequal. The persistent gender pay gap, career breaks and unconscious bias are all factors contributing to gender segregation.

However, VWL submits that there is a causality dilemma in the above proposition. Whilst factors of economic inequality affect gender segregation, gender segregation also affects economic equality. To account for this, VWL proposes a number of remedies, listed below, which can be introduced to alleviate the "chicken and egg" dilemma for gender-effective strategies in the workplace.

Factors driving Gender Segregation

Factors driving gender segregation include but are not limited to the following:

Gender pay gap

The Workplace Gender Equality Agency (WGEA) places the 2015 national gender pay gap of full-time workers at 17.3%, representing a gap of \$277.70 a week of full-time average earnings. Women working full time in Australia are paid 17% less than their male counterparts.³ A woman working full time in the legal sector earns 19% less than her male counterpart.⁴ The pay gap begins at the bottom of the industry pay scale, increases with age and seniority and is usually worse for females working

¹ Workplace Gender Equality Agency, 'Gender segregation in Australia's workforce fact sheet', 2 accessed: https://www.wgea.gov.au/sites/default/files/20160801_Industry_occupational_segregation_factsheet.pdf.

² Workplace Gender Equality Agency, 'Agency reporting data, 2014-15 reporting period; WGEA & BCEC' (2016), available at:

https://www.wgea.gov.au/sites/default/files/BCEC_WGEA_Gender_Pay_Equity_Insights_2016_Report.pdf
Women barristers have not been captured in this data.

³ Ibid.

⁴ Above n 2.



part-time.⁵ While statistics differ depending on the measure being used, VWL submits that the pay gap is real and troubling.

Gender pay gap in the legal sector

Currently, women make up 62.5% of professionals working in law, but the WGEA data, based on 66 law firms, illustrates the pay gap as follows⁶:

- i. For all legal sector workers (full timers 35.6%; part timers 31.9%);
- ii. For professionals (full timers 15.5%; part timers 22.8%);
- iii. For clerical staff 86.0% of whom are women (full timers 3.2%; part timers 18%);
- iv. For senior managers (full timers 13.9%; part timers 31.8%); and
- v. For key management (full timers 18.4%, insufficient data for part timers).

As the data makes clear, the pay gap is significantly wider for part time workers.

Many legal firms are committed to improving gender equality outcomes. There are now 15 law firms which have received the WGEA's Employer of Choice for Gender Equality citation, a useful standard for determining professional commitment to overcome gender discrimination. Firms within the legal industry are also more likely than employers in other sectors to:

- i. adopt a flexible working arrangement policy (74.6% compared to the overall average of 50.0%); and
- ii. conduct a gender pay gap analysis (64.2% compared to 19.1% of employers across all industries).

The outcomes for gender equality are varied. Whilst there are significant developments within the legal profession to tackle the problem, industry-wide gender pay gap statistics indicate there is still much work to be done.

Unconscious Bias

VWL also recognises that the gender pay gap is influenced by social factors and discriminatory attitudes, including the challenge of unconscious bias. Gender bias can be conscious or unconscious, but it has the same negative impact on women's career prospects. Unconscious bias can be understood as implicit thinking, drawn from stereotypes and associations, that constrains one's ability to make fair decisions.

Applied to the legal industry, unconscious bias means that employers tend to reward a more assertive "male way" of working with career advancement, salary increases and bonuses. Women do not usually negotiate salary in this style and routinely receive less successful pay outcomes than men. Despite this professional hurdle, when women do ask for improved pay, the problem remains: when women act more assertively, against the image of a "female way", they are typically perceived as less competent and more disagreeable. This can lead to poor performance ratings and a perception of less worth which flows into decisions around salary increases and professional

⁵ Above n 2.

⁶ Ibid.



advancement. As a result, the pervasive nature of unconscious bias in the workplace is a double bind.

Pay transparency

VWL considers that the substantial gender pay gap in the legal industry can be partly attributed to the current lack of transparency within the private sector. When pay scales are more transparent in a sector, the resulting pay gap for women is significantly less. For example, in Australia the gap is much smaller in the public sector (12.3%) where pay banding is published for each seniority level, compared to the private sector (22.4%).⁷

Businesses and government agencies around the world have relied on pay transparency as a strategy to successfully reduce the pay gap.⁸ It is also crucial for employees to be aware of the right to negotiate their pay.⁹

There are additional reasons to consider the introduction of pay transparency. People with more information about what they earn in relation to their colleagues are less likely to quit and more likely to be satisfied with their job. Even when employees know they are being paid below the market rate, if they at least know why they are being paid less, they are more likely to be satisfied with their job and plan for the long term. Pay transparency fosters trust and integrity between employees and employers, as employees can be surer of fair treatment. This must be compared against the impact of workplace gossip and misinformation about pay levels, which can erode employee confidence and engagement. Pay secrecy also obscures the relationship between pay and performance. If good performers know they are being paid more, they are less likely to quit. For those who are being paid less, they can ask why and attempt to redress the problem.

Approaches and Remedies in addressing Gender Segregation

VWL proposes several strategies that can be imposed within the legal industry and in STEM professions.

Pay transparency

Employers can do the following:

- i. Remove pay confidentiality clauses from new employment contracts and enterprise bargaining agreements. Further, they can inform workplace staff that existing clauses will not be enforced;
- ii. Audit pay to check whether there is a gap in base salary, bonus and other discretionary payments. Report the results to the Board and staff and commit to an action plan to address any gaps they discover;

⁷ Above n 2.

⁸ See VWL's online hub at vwl.asn.au for local case studies from ANZ, Telstra, BP Australia and law firms Maddocks and Herbert Smith Freehills, to international examples in American states and European nations.

⁹ I Bohnet, 'What Works: Gender Equality by Design' Harvard University Press, 2016, 68.



- iii. Address unconscious bias in performance reviews and reward systems. Put staff who make pay and performance decisions through bias training and implement design strategies to reduce the potential for bias;
- iv. Give employees negotiation skills training;
- v. Improve transparency in reward systems, including criteria for promotions; and
- vi. Publish pay band or median pay data for each role at firms for employees to access before performance reviews and salary negotiations.

Employees can ask employers to:

- i. conduct a gender pay gap review and inform employees of the results;
- ii. disclose how pay and performance criteria are related;
- iii. publish pay bands or median pay and bonuses so that employees may compare their situation;
- iv. mandate unconscious bias training for pay and performance decision-makers; and
- v. provide pay negotiation skills sessions for employees. In the annual pay review, employees may ask where their pay and bonus sits compared to their peers. For example, an employee may say:

"I have seen Workplace Gender Equality Agency data that reports a gender pay gap in the legal industry. I would like to make sure that pay and bonuses are equal across my peer group, women and men, and across the team and the firm. Is this the case?"

Flexible Work Arrangements and Career Advancement

VWL submits that flexible work arrangements can help to alleviate the economic divide in gender-segregated professions. Workplaces can address gender equality by providing flexible working arrangements to women and men. The business community must also instil an organisational culture that encourages staff to take up flexible work opportunities and clearly provides career pathways for those who do work flexibly. Presently, women are more likely to take up the option of working flexibly. As a result, female employees tend to be 'penalised' through diminished professional development and career progression. The availability of flexible work arrangements is only of substantial value to an industry if they are attractive to both men and women. If men feel they can also take up opportunities to work flexibly, this will normalise the practice of flexible work. The business community must take a leading role in encouraging greater numbers of men to take advantage of flexible work arrangements. Normalising flexible work in organisations, and increased take-up of such arrangements, will ensure that parents of both sexes share child rearing and domestic responsibilities.

In 2015 VWL published a flyer '*Flexible Work Protocols*' which is annexed to this submission. The *Flexible Work Protocols* provide a best-practice guide for productive and engaged legal workplaces, however these protocols can be used outside the legal sector. The protocols address ways to encourage parental leave, part time work, job sharing, flexible working hours and remote working. Combining these different elements will contribute to greater opportunities for women in the Australian workforce, breaking the cycle of gender segregation and economic inequality over time.



Conclusion

Whilst gender segregation feeds into gender and economic inequality, VWL submits to the Committee that there are number of approaches to tackle these challenges in the workplace. Approaches such as pay transparency, flexible work protocols and the promotion of career advancement can accelerate trends in gender-equal pay which in turn will close the economic inequality gap across the Australian workforce.

Annexures:

1. VWL Flexible Work Protocols

 **Bianca Quan**

Convenor, Victorian Women Lawyers

Jasmina Davis

Co-Chair, VWL Law Reform Committee



VICTORIAN
WOMEN
LAWYERS

Flexible Work Protocols

A best practice
guide for productive
and engaged legal
workplaces

Parental Leave

How to navigate parental leave and return-to-work arrangements

Why best practice parental leave works – in a nutshell

Employers retain valued and experienced employees leading to lower staff turnover and less money spent on hiring and training. With an effective parental leave program in place, employers can attract new employees and increase their pool of talent.

Employees feel appreciated and accommodated, boosting morale and loyalty. Given ample parental leave, employees are able to return to work with increased life experience, enhanced wellbeing, a renewed interest in professional work and increased ability to manage multiple tasks.

What the Fair Work Act 2009 says

- All employees, including long term casuals, can take unpaid parental leave on completing at least 12 months' continuous service with an employer. Employees can request a further 12 months, provided a couple's combined period of leave does not exceed 24 months. An employer can only refuse the request on reasonable business grounds.
- It is unlawful for employers to discriminate or take adverse action against employees by reason of pregnancy or the taking of leave.
- Employers and employees can negotiate paid keeping-in-touch days during the leave period (see also the *Paid Leave Act 2010*).
- Employees are entitled to return to their pre-leave position, and employers must inform them of decisions significantly affecting their pre-leave status, pay or work location. If the pre-leave position no longer exists, the employee can be transferred to a job nearest in status and pay to their pre-leave position. Employees, including long term casuals, with at least 12 months' continuous service can make a formal flexible work request if they require flexibility because they are caring for a child.
- Check any employer-specific industrial instruments, as well as policies or procedures applicable to the workplace, for further information on parental leave and return-to-work entitlements.

Details of 'Dad and Partner Pay' are available on the Department of Human Services website. Specific legislation may apply in cases of adoption, pregnancy related illness, still birth or infant death, or where a pregnancy ends.

The above overview is not intended to, and does not, constitute legal advice that may be relied upon. Parties should make their own enquiries.

Tips for managers and employees

This is the optimal time for an employer and an employee to tailor a practical, flexible parental leave plan and establish a shared commitment to a positive, ongoing work relationship based on excellent communication.

Preparing for leave

- Begin discussion of possible return-to-work options prior to the leave commencing.
- The employee and management should agree on and arrange for file management and handover for the period of leave, whether by delegation to other lawyers or appointment of a temporary replacement.
- The employee taking leave will need to be given adequate time to provide detailed memoranda to the lawyer who will manage their files in their absence.
- Clients of an employee taking leave should be informed well beforehand of the arrangements that will apply to their matters.
- The employee and management should discuss important upcoming dates and milestones in relation to existing client matters.
- The employee and management should arrange contact times to review the leave arrangements.
- Employees should set up an out of office email notification advising of leave, the anticipated return date and an alternative point of contact.
- Employees should inform any relevant professional bodies they will be on leave – see below.

Practising certificate and LIV membership

- Employees should contact the Law Institute of Victoria before commencing leave. Keep the LIV informed of any changes to the leave start and end dates – employees may be eligible for reduced membership fees or a different category of membership during leave.
- Employees should ensure they renew their practising certificate while on leave. Concession rates may apply.
- Employees should seek pro-rata relief from Continuing Professional Development (CPD)

requirements for the year(s) they will be on leave. Applications should be sent to the Delegate of the Legal Services Board, CPD Regulation & Compliance at the LIV.

Accredited specialists

- Currently accredited specialists must write to the LIV Accreditation Board requesting a leave of absence, provide their expected leave start and end dates, and keep the Board updated of any change.
- Accredited specialists should ensure their annual CPD requirements are met and if possible, complete the requirements for the relevant year before taking leave to minimise compliance difficulties. A CPD report must be provided to the Board upon return from leave.
- If required to re-apply for accreditation during leave, complete all necessary forms to do so and arrange referees.
- If possible, write to the Board prior to the last Board meeting before returning to work, requesting permission to return, reinstatement on the register of accredited specialists and inclusion in the next LIV directory.

Keeping in touch

- Employers should facilitate keeping-in-touch arrangements for employees on leave, including providing employees with professional development and other important workplace updates, and inviting them to work events.
- Employees on leave should try to stay in touch with the employer and other contacts via periodic emails, telephone calls, office visits (where possible) etc.
- Employers should arrange a meeting with the employee towards the end of the leave period to clarify arrangements and expectations for their return to work.

Returning to work after leave

- For employers flexibility is key – recognise that employees may be unable to predict their return date with absolute certainty due to reasons outside their control. Time spent on parental leave will also vary depending on an employee's particular wishes, needs and circumstances.
- Ideally, employers should provide a private room with fridge to assist new parents to continue to breast feed, bottle feed or express milk upon return to work.
- As far as possible, employees and management should mutually agree on a suitable number of work days/hours to accommodate the employee's parenting and work duties. New parents may wish to gradually increase their work hours as their confidence to leave a child in care increases.

Part Time Work

How to navigate part time work arrangements

Why part time works – in a nutshell

Part time work is work performed on a permanent basis and usually expressed as a percentage of full time hours and paid on a 'pro rata' basis of the full time equivalent (FTE) role.

Part time work suits employees who wish to work a set number of reduced hours per week in exchange for reduced (or pro rated) remuneration. It can suit parents who have a set but limited number of child-care days, or are available during school hours only.

Employers can more easily tailor part time roles to suit jobs with limited budgets and that do not require a full time work commitment.

How to make it work

Part time work can take a number of different forms and meet a variety employer and employee needs.

- Two part-time employees can be employed to meet the requirements of one position in a job-sharing arrangement.
- One part-timer can be employed for positions or tasks not requiring a dedicated full time role.
- A part time role may complement a large team working on a particular project.
- A part time position may be able to be performed within set hours or flexibly, in the office or remotely, as negotiated.

The manager and employee should discuss their expectations of the part time role, especially when a full timer is transitioning to part time. In that case, the role should be redesigned to fit the part time arrangement and the parties should ensure it can be sustained on that basis.

Points to consider:

- How should the part-timer's budget be structured?
- Who will manage incoming tasks – urgent or otherwise – when the part-time worker is off duty?
- What level of flexibility can be built into the arrangement; for example, will the lawyer be able to swap workdays according to demand?

- How will extra hours worked be treated with respect to payment or time in lieu?
- How much of the part-timer's role will be dedicated to billable/file work, and how much to non-billable work, such as mentoring, business development, and staff meetings?
- How will the part time worker be supported by administrative staff?
- How will the part time nature of the role be communicated to clients and colleagues (e.g. via an automated email message)?
- Is the employee receiving correct benefits and entitlements (eg superannuation, long service leave, etc)?
- What are the part-timer's professional development needs? A part-timer will continue to have Continuing Professional Development (CPD) obligations.

Tips for part time employees

Lawyers wanting to transition to part time should reflect on their role and whether, or how, it can be redesigned to be sustainably performed on a part-time basis.

They should also reflect on their work style. Part timers should be comfortable to delegate and refrain from working on non-work days. Part time work may therefore not suit supervisors with a high need for control.

Tips for employers

- Begin as early as possible in redesigning roles for employees transitioning to part time. For instance, discussions can be had with employees taking parental leave before their leave period begins.
- Keep in mind that part-timers are usually as loyal and committed as full time employees, and have not given up on their career ambitions.
- The status of part time employees should be maintained, ensuring they are offered or exposed to quality work, continued professional development and business development opportunities.
- Part time arrangements should be available to be negotiated across the organisation, if possible
- It is important to stay abreast of relevant laws, such as the Fair Work Act 2009, which regulate part-time work entitlements.
- Ensure important meetings or in-house CPD activities are held at times that suit part-timers.
- Provide tools to support part- time arrangements such as:
 - administrative staff access to the part-timer's emails and calendar when the part timer is not in the office

- use of 'out of office' automated email reply, telephone message-bank options and other mechanisms to communicate availability and alternative contacts for urgent matters
- devices and technology to enable part-timers to handle urgent tasks or queries remotely
- training in skills that support a sustainable part time practice, such as efficient and effective time management, email management and self-management skills.

Benefits of part time arrangements

- Part time staff may be less likely to experience burn-out, leading to increased productivity, morale and well-being.
- Part-timers can benefit from having well-rounded lives, which in turn can translate to employer benefits such as low staff turnover, higher productivity and transferable skills developed in other interests outside of work.
- Offering the option of part-time work allows organisations to retain experienced, skilled and dedicated professionals. It also helps in promoting the organisation as a model employer.
- They promote a culture of loyalty within an organisation.

And some of the challenges ...

- Not all full time roles can be redesigned to be performed sustainably on a part-time basis (e.g. roles requiring regular or frequent court attendance). If a part-time arrangement does not meet the business's needs, a different arrangement – such as job share – should be considered.
- There may be a tendency for part-timers to prioritise core responsibilities – such as fee earning work – at the expense of career-enhancing work such as business and professional development. This can be detrimental to business growth and the employee's career, and should be monitored, so that an appropriate amount of time is available for a broad range of work opportunities.
- The risk of 'work creep' – where a part-timer ends up effectively working full time but is not properly remunerated, leading to pay parity issues, burnout and resentment.
- Part timers can suffer from a lack of visibility, and thus opportunities for promotion. Employees and employers need to make an effort to ensure they remain visible as part of the team and deserving of recognition.

Job Sharing

How to navigate job sharing arrangements

Why job share works – in a nutshell

Job sharing arrangements can provide many benefits to employers and employees, including:

- allowing employees to meet family or personal responsibilities while providing continuity of service to clients and their matters
- providing two minds for the price of one – two employees can offer a wider base of skills, expertise and effort than one
- employees can learn from their job-sharing partners and gain mutual support and encouragement on the job.

When job share works best

A job sharing arrangement requires a good fit between two like-minded, committed employees who are willing to co-operate and share the workload equally. There are at least two combinations that work well.

Employees with same levels of experience

Both employees are at the same level of seniority and remuneration, and clients do not differentiate between them. They may share a desire and the ability to build a legal practice together, following an agreed practice development strategy. They may also share similar goals in relation to career progression and work/life balance.

Employees with different levels of experience

A senior employee is the lead lawyer and a more junior employee acts under their guidance. The senior lawyer is accountable for all matters, however matters are allocated between the senior and junior lawyer according to client preference and their respective expertise and capacity. Each may run their own matters as well as some joint matters, or all matters may be handled jointly.

How to make it work

Managers and employees need to work together to create a mutually beneficial arrangement. Some models and options to consider include:

Shared responsibilities

Two employees share the responsibilities of one full-time equivalent (FTE) role or 1.2 FTE (i.e. both employees work 0.6 FTE). There is no division of duties. The employees are interchangeable and each employee picks up where the other left off.

Divided responsibilities

Two employees share one full-time position or 1.2 FTE (both employees work 0.6) and divide responsibilities between them according to expertise and specialised knowledge.

Unrelated responsibilities

Two part-timers work autonomously on their own matters but share resources, office space and support staff as if they were one employee.

Other keys to success include:

- ensuring firm-wide support of job share arrangements by having a written policy and guidelines for those wishing to implement it
- being transparent by notifying clients of the arrangement in introductory letters and retainer agreements
- providing ample administrative time for job sharers to communicate in relation to handover aspects, and budgetary relief where required
- ensuring each employee has their own performance appraisal
- putting in place a management plan that sets out consequences of a job-sharing employee departing the organisation, resuming full time employment or otherwise exiting the arrangement.

Tips for job sharing employees

Good communication in relation to matter management is essential. This can be assisted by:

- having some specified time in the office together
- maintaining a status report of tasks completed and outstanding on each file
- access to each other's work email, and emails copied to each employee and their support staff
- a shared calendar, or critical dates to be entered in both employees' calendars
- shared electronic folders, with each employee using the same email filing system and protocols
- up-to-date filing, including file notes typed for legibility and immediately put on file

- an agreement as to the sharing and allocation of resources such as office or telephone, including when both employees are in the office
- employees being available to discuss matters when they are not in the office
- review of client invoices to address any duplication of time or costs.

Benefits of job sharing

In addition to those noted above, other benefits include:

- the full utilisation of firm resources, e.g. office space, equipment, secretary
- greater potential for practitioners to build a legal practice or specialisation than via a traditional part-time arrangement
- while standard personal leave and annual leave entitlements will apply, the nature of job sharing means there will usually be someone available to meet the client's and the firm's needs
- retention of staff, particularly senior trained staff, translating to reduced turnover costs
- increased staff loyalty from participants in well-supported job share arrangements
- employees achieve a balance between work and family or other responsibilities, boosting morale and productivity
- offering a point of differentiation for marketing purposes and can help meet requirements for government tenders
- enables the lateral recruitment of senior employees
- provides additional marketing opportunities as both employees can profile themselves to clients.

And some of the challenges ...

- Job share participants require good communication and organisation skills, and a willingness to delegate tasks.
- Care needs to be taken to avoid possible duplication of work (resulting in increased costs to the client).
- Servicing job sharing arrangements can require extra administration, however this is usually offset by other time and resource-saving benefits.
- Clients, colleagues and/or managers may favour one employee over the other, leading to uneven workloads and career progression opportunities. This needs to be carefully guarded against with measures put in place to pre-empt it, where possible.

Flexible Working Hours

How to navigate flexible working arrangements

Why flexible working hours work – in a nutshell

Flexible working hours recognise that work can be performed at times and places outside standard office hours.

- They allow employees to meet personal or family responsibilities and commitments that occur during work hours.
- They are a way for employers to demonstrate support for their staff, adding to organisational morale and lowering attrition rates.
- They can work in favour of clients' needs for more flexible service delivery, rather than a set-hours approach.

What the Fair Work Act 2009 says

All employees who have completed at least 12 months' continuous service with their employer (including long-term casuals) may request a change in their working arrangements if they require flexibility because:

- they are a parent, or have responsibility for the care of a child of school age or younger; or
- other circumstances such as being a carer or having a disability.

The employer may refuse the request only on reasonable business grounds.

How to make it work

Flexible working hours can be arranged in many different ways such as:

- increasing the span of working hours each day, starting earlier and finishing later, to enable the employee to work a four-day week
- flexibility across an employee's lifetime such as early retirement programs and grandparent's leave
- accrual of working hours to be taken as leave at other times for personal or family matters – an 'hours bank'

- 48/52 – allowing the employee to take an additional annual four weeks' unpaid leave on an as-needed basis, by adjusting their salary to 48 weeks paid over 52 weeks.

Tips for employees requesting flexibility

- Review your role to understand how it may need to be redesigned to ensure your particular flexible arrangement meets the needs of your clients and employer.
- Understand your working style to make sure the arrangement plays to your strengths.
- Identify ways in which a flexible hours arrangement can benefit both your employer and you.
- Try to negotiate your working hours to suit the realistic needs of your clients.
- Find out how technology can help and use it to support your case – for example, using teleconferencing to participate in important meetings when you are away from the office.

Tips for employers

- Keep in mind that employees requesting flexible hours may only need to do so at certain times during their careers.
- Develop clear policies that include the organisation's position on flexible working hours and the decision-making criteria that will apply to requests.
- Provide organisation-wide support for flexible working hours so that, as a practice, it is accepted as part of workplace culture.
- Ensure flexible roles are redesigned where necessary to ensure clients' needs can continue to be properly met.
- Include flexible-working employees in training and professional development programs and ensure they have the same promotion opportunities as other employees.
- Schedule and plan meetings so that flexible-working employees are able to contribute or attend if practicable.
- Set some core times for flexible-working employees to be at work, and allow them to choose their starting and finishing times to suit life and family commitments.

Benefits of flexible working hours

- Employees who are encouraged to work flexibly are likely to remain loyal to their employers and motivated to make the arrangement work.
- Organisations with good flexible working arrangements are likely to retain employees for the long-haul, and therefore valuable organisational knowledge and mentors for up-coming employees.
- Promoting a culture of flexible work practices is a powerful recruitment strategy for attracting talented and skilled employees.
- Research shows a positive culture of work/life balance leads to improved organisational productivity and morale.
- It allows employees to meet obligations and pursue commitments outside of work, leading to well-rounded, happy, healthy and productive employees.

And some of the challenges . . .

- Flexibility is a two-way relationship. Both employers and employees need to have a flexible approach to the way work is performed.
- Sometimes managers can lack the will to encourage flexible working hours – it can all seem too hard. Often, all that is needed to overcome this, is an investment of time by managers and employees in education and training on making it work. Information is available to help in this regard, and the payoff in terms of staff retention and satisfaction is well worth the effort.
- Flexible arrangements can lead to managers expecting employees who work 'flexibly' to be available all or any hours. Flexible work arrangements should provide actual benefits for employees. Managers can ensure it works for them too but they need to make a conscious effort to provide realistic workloads.
- There can be an assumption that some clients and colleagues prefer dealing with employees who work standard hours. This can be addressed via management of client expectations, education of employees and clear communication and transparency about flexible arrangements. Clients work in the real world too, and are likely making similar arrangements with their own employees.

Working Remotely

How to navigate remote working arrangements

Why working remotely works – in a nutshell

Working remotely is a flexible work practice that enables employees to work a certain number of days or hours per week from a location other than the workplace. In most cases this means working from home.

Working remotely can form part of a formal flexible work plan, whereby an employee has set working-from-home days, or it can be offered to all staff on an ad hoc basis according to need; for example, to attend an appointment or care for children.

Benefits of working remotely include:

- the potential to be offered as an alternative or additional flexible work option to allow employees to meet family and other non-work commitments, helping organisations attract and retain quality staff
- supporting employees to respond professionally and flexibly to client needs out of the office, and to accommodate tasks that occur at irregular hours (eg. international phone calls)
- cost and environmental benefits to the employee and the organisation
- the potential to boost productivity by enabling employees to perform intellectually taxing work without workplace distraction
- a possible reduction in absenteeism, by allowing employees – who may otherwise be absent due to caring responsibilities or other life issues – to continue to work
- fostering a culture of loyalty and trust
- enabling organisations to meet work/life balance targets, lowering staff burn-out and turnover.

How to implement good remote working practices

Employees and management need to be committed to flexible working practices and have a clear understanding of mutual expectations and outcomes. Ideally, management should provide all employees with integrated remote access technologies, to ensure that employees can work effectively and efficiently wherever they are.

Working remotely can include:

- where suitable to the job, allowing employees to work from home on set days as agreed
- equipping all employees to work from home and other remote locations on an ad hoc basis
- enabling employees to attend meetings using teleconferencing facilities.

The employer and employee should agree on the following points as part of a remote working plan, regularly reviewing the arrangement.

- Will the arrangement be temporary or ongoing?
- Should it be formalised as part of the employment contract/partnership agreement or be allowed at the discretion of the employer? If formalised, the agreement should acknowledge that the employee may occasionally be required to be present in the office on remote working days (eg. for important face-to-face meetings).
- How many days per week will the employee work remotely? Should the arrangement be limited to certain kinds of work only? Should there be a set time/day that the employee is in the office?
- How will completion of tasks and achievement of responsibilities be recorded? This will vary depending upon the employee's level of seniority.
- What sort of equipment, technology and training (including OH&S) should be provided to facilitate working from a remote office?
- Who will meet the expenses of working remotely (eg. equipment, consumables, energy)? Liability for any company property should also be considered.
- How will information security and confidentiality be protected when working remotely?

Tips for employees working remotely

Employees who work remotely must perform the inherent requirements of the job and meet employer, client and colleague expectations.

Before requesting to work remotely, employees should think about the type of work they can confidently perform away from the workplace. If it will meet the needs of the employee, clients and the employer, the employee should consider including that type of work as part of a flexible work proposal.

Additionally employees should:

- think about how working remotely best fits their working style. Do work habits need to be adapted to support remote working?
- use communication skills to remain visible and earn trust
- create a dedicated work area at home, free from distraction
- remember that working at home costs money. Employees should ensure they include in their annual tax statement working from home expenses

– such as home office expenses and power costs.

Costs of working at home are offset by money saved on transport, lunches and other work-related expenses.

Tips for employers

Employers should have a written flexible work policy that supports all employees in working remotely on an as-needs basis, and sets guidelines for ad hoc arrangements. This may include providing a pool of laptops, specialised assistance and other tools that staff can access as required.

The policy should also include guidelines for working remotely on a more formal or regular basis.

Additionally employers should:

- promote remote working arrangements and provide equipment and training to facilitate working out of the office
- support administrative staff to maintain communication with remote employees
- promote transparency with clients and colleagues regarding a remote employee's work arrangements
- understand their occupational health and safety obligations in respect of employees who work remotely
- schedule meetings when the employee can attend or arrange teleconferencing
- maintain the status of employees who work remotely, ensuring they are offered quality work, promotion and business development opportunities, and continual professional development.

Benefits of working remotely

A 2012 University of Melbourne study found that:

- employees who work from home up to three days per week are more productive than those who don't - working remotely is particularly suited to time costed models of work, as productivity can be tracked by simply recording hours worked, rather than hours in the office
- [employees working remotely reported feeling more 'in control' of their work, and less work-related stress, and in supporting working from home arrangements employers could confidently invest in employee wellbeing

And some of the challenges ...

- Employers and employees need to take steps to ensure working remotely does not lead to a sense of isolation from office culture or the work team, or loss of organisational identity. Employees who work remotely need to remain 'visible' and included.
- The home environment can have its own distractions. Employees working from home need to be disciplined and keep track of hours worked.
- There is a risk that employees working remotely may end up working longer hours than they would if they worked in the office. This needs to be carefully managed.
- Working remotely can lead to an expectation that employees should be able to complete all tasks out of office hours. Expectations should be realistic and workloads monitored.

Sponsors and Mentors

How to use sponsorship and mentoring to support women's careers

Sponsorship versus mentoring

There is a big difference between mentoring and sponsorship. However, both have their place and can assist women and their employers in promoting career progression.

- Mentoring is a one-on-one relationship designed to help equip a mentee with the tools, skills and confidence to develop and become more effective in her career. A mentor does not need to be in the same field or network as the mentee.
- Sponsorship involves more active support whereby the sponsor facilitates introductions and assists the sponsored party to make connections and improve her visibility in a work environment or network.

There are three things sponsors do that mentors do not:

- they go out on a limb for the 'protégé' in vouching for them (if appropriate)
- they advocate and intervene for the protégé
- they provide cover and stand by the protégé so they can take risks.¹

Why sponsorship and mentoring works – in a nutshell

A number of recent studies have found that women's access to mentors and sponsors can be a determining factor in their career progression prospects.

For example, access to mentoring and networking opportunities has been found to have a significant impact on increasing gender diversity within the top management of corporations.²

Women are increasingly finding that career sponsors are more important than mentors in improving prospects for promotion and increasing spheres of influence in the workplace.

Ambitious women have been found to underestimate the role sponsorship plays in their advancement – not just within their current firm, but throughout their career and across their industry.³ The same study found that women struggle to effectively cultivate their 'relationship capital'.

In another study, of gender balancing initiatives, sponsorship was rated as most effective by firms with active programs – over and above flexible work practices and mentoring.⁴

Further, active sponsorship programs have been seen as helping to overcome subtle forms of unconscious bias such as:

- men's reluctance to give women tough feedback
- men's reluctance to develop mentoring relationships with women
- a tendency by male managers to promote people that are like them.⁵

However, it seems work needs to be done to improve women's opportunities to access mentors and sponsors. Almost 30% of the women surveyed in the Law Council of Australia's National Attrition and Re-engagement Study⁶ expressed dissatisfaction with opportunities to access mentors and sponsors.

How to make it work

It is recommended that employers wishing to facilitate sponsorship and mentoring relationships consider active programs that include:

- encouraging lawyers to participate in informal and formal sponsoring and mentoring
- providing support and toolkits for senior leaders to mentor and sponsor others
- tailoring training programs to different stages of a lawyer's career
- developing lawyers' skills in establishing mentoring and sponsorship relationships.⁷

How to establish a mentoring relationship

In order to build an effective partnership the mentor and mentee must each have a clear understanding of expectations and goals. At the outset they should set a timeframe within which to review the relationship. Confidentiality is crucial. Key aspects of the roles are as follows.

Mentors:

- provide a sounding board to help solve work-related problems or issues
- advise about potential career decisions, helping to assess relative pros and cons
- offer advice based on their own experience
- help review the mentee's development goals and plans
- need to be good active listeners, honest and open
- need to communicate effectively and be willing to give time
- need to be able to give effective, specific and balanced feedback.

Mentees:

- need to take the lead in arranging meetings
- must take responsibility for following through agreed actions
- should be open to feedback and ideas
- at the outset of relationship, should work with the mentor to set goals for the sessions
- should come to each meeting with a topic for discussion, e.g. leadership development, relating to managers, dealing with change, managing staff
- should not expect the mentor to be responsible for their career development.

How to establish sponsorship arrangement

Because sponsoring is targeted towards achieving the specific goal of advancement, sponsors and protégés need to be carefully matched – the relationship cannot be forced. Key aspects of the roles are as follows.

Protégés:

- in selecting a sponsor, need to consider someone who has the power and influence to change and improve their career prospects
- need to be proactive – eg. by organising a meeting with a would-be sponsor to seek career advice
- need to establish how the sponsor will benefit – e.g. a collaborative project, a concrete way to assist the sponsor with a current challenge, help with technology
- must be willing to deliver and go beyond their job description in order to be 'attractive' to a sponsor and earn their support.

Sponsors:

- need to have respect for the protégé and believe they can succeed – a sponsor ties his or her reputation to their protégé's success
- must be willing to promote the protégé's achievements in order to increase exposure and improve their reputation
- need to identify opportunities for the protégé to connect with decision-makers.

¹ SA Hewlett (2013) *(Forget a Mentor) Find a Sponsor – The new way to fast track your career* (Harvard Press).

² McKinsey & Company (2010). *Women Matter: Women at the top of corporations: Making it happen* (London: McKinsey & Company).

³ Hewlett et al (2010) *The Sponsor Effect: Breaking through the Last Glass Ceiling* (Harvard Business School Publishing).

⁴ Winmark and Reed Smith (2011) *Gender Balancing: It's good business* (Pittsburgh: Winmark and Reed Smith).

⁵ McKinsey & Company (2012) *Women Matter: making the Breakthrough* (London: McKinsey & Company); McKinsey & Company (2012) *Unlocking the full potential of women at work* (London: McKinsey & Company).

⁶ The Law Council of Australia (2014), *National Attrition and Re-engagement Study (NARS) Report* (Urbis).

⁷ Ibid.

Flexible Work Proposal

How to develop a business case for working flexibly

Proposed flexible work arrangement

Select one or more from the following:

- ☐ Part-time ☐ Job-share ☐ Flexible hours
☐ Working from home ☐ Graduated return from parental leave

Current areas of focus (client and other work)

- What are the main types of work you currently perform?
- What are your areas of specialist expertise?
- What non-billable activities do you currently undertake?
- What are your current career goals and timeframes?
- Add any other comments relevant to your current position, eg interest in developing additional or alternative specialisations and expertise, expectations for career development and whether they are currently being met or not.

Current team composition

- Note the composition of your team, including any existing flexible work arrangements enjoyed by team members.
- What areas of expertise exist within the team currently?
- What are the team's current strengths and weaknesses ? (To be discussed with your partner/manager.)

Proposed changes to hours/location

- What changes are proposed to your days in the office, hours or work location? (Discuss with your partner/manager any concerns arising from, or consequences of, these arrangements, e.g. it may help with servicing clients if days in the office are consecutive. Is there a need to be in the office on a particular day, such as Fridays in litigation practices?)
- What are the reasons for the requested arrangement? (e.g. only days childcare is available, days lectures are held, etc.)

- Are there days when you will need to leave the office by a particular time? Which days and why? (e.g. childcare finishes, training starts etc.)
- When not in the office, when and how will you be contactable?

Potential impact on client work

- Are there any aspects of your current mix of work or any particular clients who may be affected by the flexible arrangement?
- How could those aspects be handled? (To be discussed with your partner/manager, e.g. ensure there is always a full timer across that aspect of the work; resource matters to minimise your involvement or cover you in your absence; adjust working days or times to enable you to be available for the work.)
- Will any adjustment be required to be made to your utilisation budget? (To be discussed with your partner/manager.)
- What types of work will you be able to undertake to meet your utilisation budget?
- Will you need additional or alternative types of work in order to meet your utilisation budget? If so, what types of work could you pick up?
- How can your employer assist you to achieve your career goals under the new flexible arrangement?

Potential impact on other work

- Will there be any change in your business development activities? (Discuss with your partner/manager ways in which you can continue to participate in business development teams, events and meetings.)
- CPD requirements still need to be met in full (no pro rating applies to part-time arrangements). How will your employer help you achieve this?
- Arrangements for team meetings and work social events?
- Arrangements for conferences or other external events?
- Will there be any change to other non-billable activities, e.g. volunteering, knowledge management, external or internal committees?

Potential team impact

- Will the current composition of your team remain the same? Or are changes anticipated?
- When new work comes in, how will it be allocated? Has sharing the allocation of tasks been discussed? (Discuss with your partner/manager possibilities for your team meeting; including how to apportion tasks.)

- Who do you currently delegate to or supervise? How will those arrangements be affected?
- Will there need to be any change to the way you are supervised?
- Does administrative support need to be altered? If so, how?
- How will the arrangement be communicated to the team?

Approach to clients and service delivery

- Consider current client mix. How will the flexible arrangement impact current clients?
- Should any clients be told of the new arrangement, and how will it be communicated?
- How will clients continue to be serviced? Can clients or work types be matched to other employees to handle if needed during your non-working times?
- How will telephone calls and emails be handled during your non-working times?

Technology and support requirements

- What technology devices do you need to help manage your proposed flexible working arrangement? (e.g. laptop, broadband, smartphone, teleconference facility, etc.)
- What other support might you require? (e.g. training in remote access, teleconferencing, organisational tools, home office OHS check, training to enhance skills and discipline to work flexibly.)

Remuneration and leave entitlements

(To be discussed with your partner/manager.)

- Will your salary be adjusted to reflect your new arrangement, and if so, how?
- How will leave accrual and other benefits be affected; e.g. pro rata leave entitlements, salary increases, bonuses, insurance cover?
- If extra hours are worked additional to the flexible arrangement, what consequences will follow? (e.g. payment for extra hours or time in lieu? Will approval be required beforehand?)

Review process

- How and when will the arrangement be reviewed? Review should consider how it is working for you, the team (invite their feedback), manager/partner, business, and clients, plus any difficulties and how these could be overcome.
- Is a trial period necessary?
- How is it proposed to resolve any problems (eg. with others involved) that may arise?