

Flexible Work Practices

Kate Pedersen

Solicitor, State Solicitor's
Office

Cathryn Greville

Senior Associate,
Hammond Legal

The need to support and expand the level of flexibility afforded to legal practitioners in the workplace has been widely acknowledged around Australia. As the Joint Law Society/Women Lawyers Committee launches the Flexibility Protocol, committee members Kate Pedersen and Cathryn Greville examine flexible work practices and how they can be applied in the Western Australian legal profession.

FLEXIBLE WORK PRACTICES IN THE WESTERN AUSTRALIAN LEGAL PROFESSION

Flexible work practices (FWP) in the legal profession are practices designed to ensure that work-life balance can become a reality rather than an elusive slogan. Implementation of FWP benefits employers, employees, and the wider community. FWP can benefit men and women who require such arrangements in order to juggle legal practice and other commitments, employers who are able to retain experienced and dedicated legal practitioners and the legal profession in that such arrangements go some way towards the goal of higher retention rates for practitioners. The availability and support of flexibility in the workplace also benefits the wider community because parents and carers are able to balance a legal career and their family or personal commitments.

Flexibility in the workplace is an issue which has been examined in the past. In July 2004, Anette Schoombie, Ros Fogliani and Megan Jessup co-authored an article in *Brief* entitled "Flexible work practices: alive and well and here to stay."¹ The Joint Law Society/Women Lawyers Committee (the Committee) has now sought to investigate the continuing role of FWP in practice in the profession in Western Australia (WA). This article aims to empower members of the legal profession, both male and female, with information about flexible work arrangements in place in the local environment. We aim to provide support to practitioners who are considering such arrangements, or who may otherwise feel that they cannot balance a legal career with other commitments, to raise and openly discuss the issue with their employers.

THE CASE FOR FLEXIBILITY

Craig Donaldson in his article "Companies suffer because of female unfriendly cultures,"² noted that:

"... [d]espite the move away from all consuming career focus in favour of a better work/life balance by men and women across all income, education and lifestyle groups, workplaces are still not providing the level of flexibility required."

Donaldson's comments were supported by a survey conducted by the Equal Opportunity for Women in the Workplace Agency (EOWA) involving more than 1,600 respondents. The report found that 83 per cent of women consider organisational support of

work-life balance to be important, yet 42 per cent feel that they do not have access to flexible work conditions, 12 per cent of women were motivated to resign from their previous job in search of greater work-life balance, and 10 per cent resigned because they sought a more flexible role.

In terms of providing a family-friendly work environment, the legal profession in particular has long been found to be wanting. Those leaving the law commonly cite a lack of flexibility and support for external responsibilities and life outside the office as reasons contributing to their decision to exit the profession.

The 1999 *Report on the Retention of Legal Practitioners*³, a joint initiative of the Law Society and the Committee, provided the first study of the exiting trends of the Western Australian legal profession. The report found that many respondents did not see themselves as able to manage the level of job stress and pressure with work and family responsibilities. Those with young families found the long hours commonly expected in the profession to be particularly stressful. The report provided the profession with a number of proposals to improve the retention rate of legal practitioners. The strategies for improvement included various proposals to ensure that legal firms better address the needs of its practitioners, in particular women and junior lawyers, and to implement change to the organisational culture, in an attempt to increase retention rates.

Whilst the report provides the most recent research conducted on the issue in WA, the results still resound with practitioners in a variety of organisations. Many of these trends were reflected in the recent Law Society's *Report on Psychological Distress and Depression in the Legal Profession*, produced in March this year.⁴

The personal and organisational benefits gained from flexibility in the workplace are the subject of a considerable body of academic and industry research.⁵ Whilst the legal profession has a long way to go to address issues of retention of practitioners and under-representation of women at senior levels, it is encouraging that the community is generally becoming more aware of the desire for, and examples of the successful implementation of, FWP in firms of all sizes, government and in-house.⁶

FEASIBILITY

FWP include flexibility with working hours as well as flexibility in terms of working locations and methods. With the aid of technology, it is entirely feasible for practitioners to work effectively outside business hours, as well as outside the office. Regular office hours and attendance in the office are not necessarily required in order for a practitioner to effectively manage their workload.

In December 2003, the Law Society of NSW Legal Workplace Committee (LW Committee) identified a need for research on flexibility and a practical dimension to the discussion surrounding FWP. The LW Committee commissioned the study, "The case for flexibility"⁷ to assist legal practitioners and firms to develop and implement FWP successfully. The LW Committee identified the key objectives of the study as being to:

- raise awareness of the benefits of implementing flexible work practices (particularly in private practice)
- build commitment to implementing flexibility in the legal profession
- provide practical advice on implementing flexibility in the legal profession
- increase the use of flexibility in the legal profession
- attract and retain talent in the legal profession
- increase productivity and profitability
- improve client service in the legal profession.

ENSURING EFFECTIVE FWP

FWP can only succeed where there is transparency between practitioners making use of FWP and their employers. The NSW *Case for Flexibility* report suggests that there are eight key steps required in order to successfully ensure flexibility within law firms:

- articulate and promote the value of flexibility
- demonstrate leadership
- provide support for supervisors
- grow effective behaviours and attitudes in the employee working flexibly
- develop a communication plan
- identify barriers to flexibility and develop creative solutions
- develop flexibility principles
- create the pathway for implementation.⁸

Flexibility has also been a key concern of women lawyers in Victoria. In 2008, the Law Institute of Victoria published an article entitled "Flexibility: does it work?"⁹ The article refers to the ongoing research into FWP, which has revealed that corporate law firms remain resistant to the idea of work-life balance, and that the work culture in corporate law firms can create a "... feminised underclass of lawyering," as women working part-time can be assigned lesser quality work.¹⁰ If this is the case, such a trend is extremely worrying to legal practitioners and the profession as a whole. On the other hand, then convenor of the Victorian Women Lawyers, Christine Melis, referred to a genuine acknowledgement by managing partners of law firms that FWP could be achieved in a better way, which would positively affect retention rates and the economic viability of law firms. Melis also argues that FWP are a societal rather than a gender issue, given that FWP can, and should, benefit men as well as women.

FWP remain a desirable mechanism to address problems stemming from a culture of long working hours and poor work-life balance in the profession. While FWP should not be treated as a solution to all of the issues faced by lawyers, particularly by women lawyers, such practices are accepted with growing support as a desirable tool in maintaining a productive and diverse profession.

THE FLEXIBILITY PROTOCOL

In 2010, Victorian Women Lawyers published its guide entitled *Do you Manage? A guide to managing lawyers with flexible work arrangements*¹¹ (Guide). The Guide arose as a result of a series of workshops held to explore flexible work arrangements and obtain direct input from law firm partners and managers themselves. It also followed on from Victorian Women Lawyers' 2008 protocols which dealt with part-time work,¹² flexible working hours¹³ and working from home.¹⁴

In considering flexibility within the legal profession, 10 major law firms participated in a series of three workshops, facilitated by a management consultant with experience in the retention of women and effective management of people in professional services firms. Victorian Women Lawyers then developed the



MELBOURNE LAW SCHOOL
Australia's first, Australia's global

Consider
the evidence

The Melbourne Law Masters.
Enrolling now.

www.masters.law.unimelb.edu.au

Guide and two practical tools to assist lawyers, partners and firms to implement FWP in all areas of practice. These tools are the:

- Flexible Work Proposal/Business Case (Business Case)
- Individual Flexible Work Plan (Work Plan).

With Victorian Women Lawyers' permission, the Law Society has formally adopted the Business Case and Work Plan as its Flexibility Protocol to assist in the implementation and maintenance of effective FWP in WA. The Business Case and Work Plan draw on the experiences of others in encouraging FWP in the legal profession. The documents also recognise the advantages of FWP to both organisations and legal practitioners. The Law Society promotes the Business Case and Work Plan on the basis that FWP can:

- allow work to be performed outside normal working hours
- provide flexibility to workers who are unable to attend an office full-time, allowing the worked to accommodate other responsibilities and interests
- increase productivity
- provide an attraction strategy in terms of recruitment
- assist in retaining an experienced and skilled workforce.

The Business Case and Work Plan include information relevant to working from home, working part-time and working flexible hours. The documents are designed to ensure transparency between employers and employees in determining whether a working from home arrangement would be suitable in a particular circumstance and in evaluating the effectiveness and appropriateness of policies already in existence or currently in development in legal practices. The documents will also assist organisations and legal practitioners in negotiating a written FWP policy.

Whilst not intended to be exhaustive and recognising the challenges most commonly faced with respect to FWP, the Business Case and Work Plan provide practical tools for commencing discussion about and implementing FWP within an organisation.

The Guide, Business Case and Work Plan can be found in their entirety at the Law Society of WA's website (www.lawsocietywa.asn.au), or directly through Victorian Women Lawyers at: www.vwl.asn.au/downloads/do_you_manage_report.pdf

The Law Society and the Committee are grateful for Victorian Women Lawyers' permission to promote these documents as a reference for lawyers and the profession in WA.

The Committee encourages the profession to consider the Guide, Business Case and Work Plan and use them to facilitate the growing need for FWP in legal practice.

For more information on the Flexibility Protocol or to discuss the matters raised in this article further, please contact the Society on (08) 9322 7877.

SOURCES

- ABC Radio National, "Law Report – Women in corporate law firms", transcript, 3 June 2008.
- Donaldson, Craig, "Companies suffer because of female unfriendly cultures" *Human Resources*, 24 April 2008.
- Elvery, Lisbeth, "Making the case for telecommuting," *Lawyers Weekly*, 27 June 2008.

Law Institute of Victoria and Victorian Women Lawyers, *Bendable or Expendable? Practices and attitudes towards work flexibility in Victoria's biggest legal employers*, 2006.

Law Institute of Victoria, "Flexibility: does it work?" (2008) 82(9) *Law Institute Journal*, p.18

Lyon, Zoe, "Firms fight to retain women in global talent war", *Lawyers Weekly*, 14 March 2008.

Schoombee, Anette, Ros Fogliani and Megan Jessup, "Flexible work practices: alive and well and here to stay", Law Society of Western Australia, *Brief*, July 2004, p.6.

The Law Society of NSW, *The Case for Flexibility: Delivering best practice in integrating work and life in the legal profession: A guide to implementing a flexible workplace*, 17 February 2005.

The Law Society of Western Australia and Women Lawyers of Western Australia, *Report on the Retention of Legal Practitioners*, Final Report, March 1999.

The Law Society of Western Australia, prepared by Dr Christopher Kendall, *Report on Psychological Distress and Depression in the Legal Profession*, March 2011, available at <http://www.lawsocietywa.asn.au/client/multimedia/News/Report%20of%20PDD%20Ad%20Hoc%20Ctee%20FINAL%20Public%20Release%2016%20May%202011.pdf>.

"The Gender Trap: Flexible work in corporate legal practice", March 2009 in the *Canadian Osgoode Hall Law Journal*, available online at <http://ohlj.ca/english/documents/03thorntonafterproduction.pdf>

Victorian Women Lawyers, *Do you Manage? A guide to managing lawyers with flexible work arrangements*, July 2010, http://www.vwl.asn.au/downloads/do_you_manage_report.pdf

Victorian Women Lawyers, *Protocol – Flexible Working Hours*, 2008, <http://www.vwl.asn.au/downloads/VWL-Flex%20Working%20Hours.pdf>

Victorian Women Lawyers, *Protocol – Part-time Work*, 2008, <http://www.vwl.asn.au/downloads/VWL-Part%20Time%20Work.pdf>

Victorian Women Lawyers, *Protocol – Working from Home*, 2008, <http://www.vwl.asn.au/downloads/VWL-Working%20Home.pdf>

NOTES

1. Anette Schoombee, Ros Fogliani and Megan Jessup. "Flexible work practices: alive and well and here to stay", in Law Society of Western Australia, *Brief*, July 2004, p.6.
2. Craig Donaldson. "Companies suffer because of female unfriendly cultures", *Human Resources*, 24 April 2008.
3. The Law Society of Western Australia and Women Lawyers of Western Australia. *Report on the Retention of Legal Practitioners*. Final Report, March 1999.
4. *The Report*, Prepared by Dr Christopher Kendall, Convenor and Senior Vice-President of the Law Society, for the Council of the Law Society, was the result of the work of the Ad Hoc Committee on Psychological Distress and Depression in the Legal Profession.
5. The Law Society of NSW. *The Case for Flexibility: Delivering best practice in integrating work and life in the legal profession: A guide to implementing a flexible workplace*, 17 February 2005.
6. Anette Schoombee, Ros Fogliani and Megan Jessup, *op. cit.*
7. The Law Society of NSW, *op. cit.*
8. *ibid.*, p.8.
9. "Flexibility: does it work?" *Law Institute Journal*, 2008; 82(9), p.18
10. *ibid.*, p.18, citing "The Gender Trap: Flexible work in corporate legal practice", March 2009 in the *Canadian Osgoode Hall Law Journal*, <http://ohlj.ca/english/documents/03thorntonafterproduction.pdf>
11. Victorian Women Lawyers. *Do you Manage? A guide to managing lawyers with flexible work arrangements*, July 2010, http://www.vwl.asn.au/downloads/do_you_manage_report.pdf
12. Victorian Women Lawyers. *Protocol – Part-time Work*, 2008, <http://www.vwl.asn.au/downloads/VWL-Part%20Time%20Work.pdf>
13. Victorian Women Lawyers. *Protocol – Flexible Working Hours*, 2008, <http://www.vwl.asn.au/downloads/VWL-Flex%20Working%20Hours.pdf>
14. Victorian Women Lawyers. *Protocol – Working from Home*, 2008, <http://www.vwl.asn.au/downloads/VWL-Working%20Home.pdf>