

Flexibility in Practice



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WIN-WIN FOR EMPLOYERS AND EMPLOYEES

FLEXIBILITY PROTOCOL

Members may be aware that in 2011, the Law Society adopted the Flexibility Protocol Guide for Flexible Workplace Arrangements (Flexibility Protocol). The adoption of the Flexibility Protocol was the result of an investigation by the Joint Law Society – Women Lawyers Committee into flexible workplace arrangements currently available in law practices in Western Australia and in other jurisdictions. The Flexibility Protocol consists of two documents: Flexible Work Proposal/Business Case document; and Individual Flexible Work Plan document.¹ Both documents are available for members and their employers/employees to use to assist in requesting and organising a flexible work arrangement. Further information on the Protocol and a copy of both documents is available on the Law Society's website at www.lawsocietywa.asn.au/flexibility-protocol

THE NEED FOR FLEXIBILITY

Flexible work practices include flexibility with respect to working hours as well as in terms of working locations and methods. This may involve working outside normal business hours or outside the office in either a full-time or part-time/reduced hours capacity.² The ability to work flexibly can have extremely positive and rewarding effects on staff performance and job satisfaction, particularly for those juggling work with family responsibilities. This is especially true in the legal profession, where an alarmingly large number of lawyers suffer from depression, express general dissatisfaction with their jobs and lifestyle, and are choosing to leave the profession entirely at increasing rates.³

Whilst there are many reasons behind these trends, it is certainly the case that the provision of a family-friendly work environment and flexible options are of enormous benefit to workers with family care responsibilities, along with those keen to strike a meaningful work-life balance or engage in other passions in addition to their legal career. Flexibility within the practice of the law can aid in the retention of lawyers, particularly women and young lawyers; encourage lawyers to achieve a work-life balance; and assist them to reach their full potential. In many cases, such arrangements allow practitioners to continue in their chosen profession whilst at the same time being able to deal with life and family pressures. What is sometimes overlooked is just how beneficial flexible work arrangements can be for employers and the profession more broadly, and how easily they can be implemented.

FLEXIBILITY IN PRACTICE

No one is more aware of the success of flexible work arrangements and the potential benefits that can flow to employers and employees than Catriona Macleod, Director at Cullen Babington Hughes (CBH). As an employee, Catriona's first request for flexibility came early in her career, when she saw an advertisement for a three-month position as a research assistant to the then new Chief Justice Wayne Martin. She approached her supervisor Rick Cullen, who she had been articled to at Dwyer Durack, to discuss the opportunity.

"The position was very open and covered a number of different aspects including research to give the Chief Justice time to hire a long-term research assistant and Associate, At that stage I was one of only two solicitors and three partners at the firm. But they were willing to accommodate me to do that role for three months. It was a fantastic learning experience ..."

A few years later, Catriona decided to go part time for a while:

"I was getting too stressed and wanted to work four days a week. That was unheard of at the time. I did four days a week for 18 months. I took a 20 per cent pay cut, had 20 per cent more time, was much happier and I believe I functioned far better at work – so it worked well both for me and my employer."

The arrangement made total sense, as the firm wanted to retain her talent. "When I made the request, my direct boss, Rick Cullen, said to me 'Having you four days per week is better than having you no days per week.'" The flexibility afforded to Catriona meant that the firm retained her expertise and eventually gained a new director of the firm in January 2010. "I came back to full time six months prior to becoming a director, to be in the office a bit more." However, she still enjoys flexibility as a director. "For me to work somewhere, I need to be surrounded by people I like and respect and have flexibility in how and when I work ..."

Now employing staff herself, Catriona is a strong advocate for flexibility in the workplace. She notes, "If you are trusting people to manage your clients' lives, you can surely trust them to manage their work lives ... We recruit people we think can do the job and we let them do the job."

The flexibility afforded to staff was the key reason that drew family law solicitor Melissa Rizzo to the firm. Whilst it was a difficult decision to move away from her small firm, which had become like her family, Melissa admits:

"In the end, what made me move was the incentive of paid maternity leave and CBH's attitude to having children while working; it was openly discussed in my job interview including the

paid maternity leave. My partner said you can't turn that down – paid maternity leave, the option to come back part-time, share with a practitioner who has the same values ..."

Melissa had discussed the concept of job-sharing at the interview and then once she had started work, with another family lawyer at CBH, as it was likely that they would both be working part-time in the future due to family commitments. Her colleague was the first person to take paid maternity leave under the firm's new maternity leave policy and intended to return part-time. However, due to her husband's work commitments she recently resigned to go overseas. When discussing the arrangement they had considered for when they both returned to work part-time, Melissa explained how it worked:

"There will be one day crossover as we will both do three days. The firm is happy for us to work from home, which I do now when I need to. They are also really great about holidays – we can take a few months at a time, and they also always try to accommodate unpaid leave if we don't have enough accrued."

The desire to work flexibly is well known to Michelle Hearty, who in 2008 began Hearty and Tam Family Lawyers with business partner Judy Tam to find that flexibility. "I wasn't getting it where I was. Now, both of us go off on holidays, we are serious about achieving balance, and we prioritise." Hearty and Tam has grown from two to five staff out of need. As Michelle explains, "Neither partner has ever had children, we just don't want to work that hard to be honest. We want a life!" She considers that working flexibly has made an enormous difference to her life, "There is a huge happiness factor". Michelle and Judy give themselves five weeks' annual leave and a day off each month. They have no hesitation in heading off to appointments as they need to, and encourage solicitors to manage their workload around commitments and social engagements. "We are in this to do our job and get home; we don't want this to be our life!" she explains.

Shayla Strapps and Amanda Goodier, both Joint General Managers/Principal Solicitors at CASE for Refugees have job-shared their position for almost five years. Joint winners of the 2011 Lawyer of the Year Award,⁴ Shayla looks after the more of the operational side and Amanda the case work side of the practice. Shayla's children are now six and two years old:

"The experience for us has been excellent as it has allowed us to fit our family life around a rewarding and challenging role. We have also managed to implement flexible work practices into the workplace generally and offer those to our employees. I feel quite strongly about ensuring that women have these flexible arrangements available to them."

For Shayla, having a flexible work environment has meant she has been able to continue working where she couldn't have been able to otherwise. "It has been very productive for me – I'm happier when I'm working and a better wife and mum. It has also worked out really well for my employers, they've got a lot out of me!"

STARTING THE DISCUSSION

So, just how does a lawyer broach the issue of flexible work arrangements with their employer? Both employers and employees agree about the need to be upfront about what you want. Michelle considers it important to:

"Decide whether your employer is up for it or not first. Include the discussion as part of recruitment process. If someone is open to it, they will engage in discussion with you."

Melissa was up-front in her interview about her plans for the next few years and agrees that this is the best way to communicate your needs.

"I told them I had a big overseas trip planned that year, and the year after that my wedding. It was discussed from the beginning that I would eventually job-share."

Shayla and Amanda took a similar approach when the position came up at CASE. Having job-shared previously at the Women's Law Centre when neither wanted to work full time, Shayla says:

"We both applied for it and said we'd like to job-share. We also said we'd do two days each and I wanted to do one at home. I said I had worked some time at home whilst at the Women's Law Centre and that had worked really well. They were a bit concerned about us job sharing but they took comfort in the fact we'd done it before."

MAKING FLEXIBILITY WORK

For flexibility to work, both employers and employees must be on the same page. This includes acknowledging that there are a myriad of possible flexible work arrangements and that different arrangements may suit different people. It is not a case of one size fits all. For example, some may prefer to start early and leave early, whilst others need to come in after attending to early morning sporting commitments or dropping the kids off at school. Those working flexibly need to be prepared to be flexible themselves, be available to colleagues, and be committed to making the arrangement work for their employers. Shayla advises:

"At first, be prepared, you have to prove yourself more than ordinary hours. Your employer is likely expecting it may fail, so be prepared to work hard. You'll likely do more hours than you are meant to when you start, but after a while you'll get more done in a short time frame."

From an employer's point of view, they want to see that the work is going to get done, and it is going to work for them. To this end, those who work flexibly need to be incredibly self-controlled to ensure the arrangement does not become an empty promise, and ensure they are in a supportive environment. Lawyers should seek support and advice from practitioners outside their organisation, and draw from those who have done it before. In this regard, Shayla recommends getting to know those around you: "Talk to as many people as possible – find out where they're at, those who are going down same path." This may involve the use of mentoring programs offered through the Law Society, Women Lawyers of Western Australia or informal mentoring opportunities through personal networks.

It is also essential to strictly monitor your own time and assess each week whether the arrangement is working or, for example, whether you are really doing full-time work in part-time hours. "I worked harder but not longer", says Catriona. "Everyone said you'd work five days but get paid for four days; I was determined not to do that. I became better at time managing." Employees and employers should sit down regularly to discuss how the

arrangement is going, and not be afraid to be honest about what is working and what is not so that it can be improved for everyone.

Learning to say no and sticking to your plan is also key to successfully implementing a flexible arrangement. Catriona considers that many junior lawyers fall into the trap that she did.

“When really junior, I worked too hard and was too anally retentive. So I spent too much time on things. More experienced people around me told me I didn’t have to be perfect and clients couldn’t afford for it to be perfect.”

She now understands this is very true. Whilst learning to say no comes with experience, Catriona suggests that if this is happening, you should speak to people more experienced about why you are feeling the need to spend longer hours or take on more work:

“It is the director’s job to be more stressed than you. I tell my juniors that it is my job to take your stress. That’s reflected in the pay structure. After all, we buy people’s time, we don’t buy their life.”

If the arrangement is not working, however, it is critical to work out why – are you getting the same amount of work as you were full time? Catriona suggests:

“Ultimately if the environment you are in is not conducive to it, assess whether you want to go back to five days. If you don’t want to, look around at other firms where it can be done.”

JOB-SHARE ARRANGEMENTS

Job-sharing with another colleague can be a very successful way to ensure that clients are well serviced whilst at the same time allowing a practitioner the flexibility required to fit in other commitments. To make a job-share arrangement work, Melissa considers it essential to have a partner in your job who works the same way as you do. “You must get along well, work in the same way with a similar style, and be willing to compromise. One person must take the lead on each matter”, she says. This involves plenty of communication.

“On Monday mornings we have morning tea, which the office provides, where we all get to catch up informally. On Monday afternoons, the litigation team have a formal meeting where we go through who has capacity, sharing of files etc. ... It is an awesome place to work.”

Michelle also ensures she keeps the lines of communication open with colleagues. “Judy and I work closely together, we are very familiar with each other’s files, and we speak every day.” Similarly, making communication a priority and being willing to assist each other has been integral to the success of the job-share arrangement for Amanda and Shayla at CASE. As CASE has grown, Shayla and Amanda have both taken on more of each other’s role in addition to the general agreed split. Whilst commencing the arrangement working two days each, including some days from home, they now do four days each, so there is crossover between their roles. Shayla explains:

“There is the same sort of split as when we began, although now I also do the judicial review asylum seeker project two days per week. The other two days I’m technically general manager, although the roles overlap. We are trying to get funding for the

judicial review project, which will give me more time for the strategic operational matters.”

Finally, to work flexibly, it is important to be flexible yourself and have a plan in place to deal with emergencies. “You can’t choose when a problem occurs, when a client urgently wants to speak to you”, says Melissa. There may be times when a clash is unavoidable, and the plan must account for everyone’s commitments. For example, the Court may list a matter on a day off. Michelle notes “We are of the view that if this happens on Tuesday afternoon (when the other solicitor is not in the office) we will have to do it.”

OVERCOMING THE SCEPTICS

Michelle Hearty is well aware of the issues that can pose a challenge to lawyers looking to implement a flexible work arrangement, particularly in workplaces where it hasn’t been done before. “You may have difficulty negotiating a flexible arrangement if you are dealing with a traditionalist, as you need the principals on board with the concept to start with.” Shayla also notes that it is more difficult in environments where there is a culture of overwork and a focus on billing. “If you have an employer that is really sceptical, be prepared to rally against that for whatever period of time” she advises.

There are several tips for raising the issue with employers who may be less open to the idea. Firstly, research examples of where flexibility has worked and studies to show how and why it worked, in support of your case. There are plenty of businesses, both within and outside of the legal profession that have successfully employed flexible work practices in the workplace. “Get the employer to call people they may know who have done it, someone like me”, says Catriona. She adds, “Statistics and research shows that employees won’t drop efficiency, they just don’t procrastinate as much and become better at time management.” When Catriona dropped to four days per week, she recalls, “Although I was paid 80% and did 80% of full time hours (no more), I think I performed at 85–90% billings wise.” Many lawyers involved in flexible work arrangements (both as employers and employees) are willing to talk to others about their experiences. “That’s useful because firms can see others are doing it and its working”, says Shayla.

Secondly, ask for a trial period which allows your employer to look at the outcome and statistics to see that your workload has not dropped. That trial period may be for three months. “You will probably be performing at a slightly better level because you are more satisfied” says Catriona. Shayla agrees that employers can benefit greatly:

“Generally employers get better value out of part-time employees than full-time, as they invariably end up working harder. You tend not to get caught up in the time-consuming stuff – you drive things to get things done.”

Email and technology now makes it easy to deal with urgent matters outside of the office, and it encourages staff to consider what is urgent and what is not. Shayla adds “I think people are also far more productive when they’re at home without distractions. If employers are willing to do a trial period, they will see it can work very well.”

BENEFITS TO BE SHARED

Whilst employers may find flexible arrangements a bit unusual to begin with, particularly if they have a conservative background, Catriona believes that from an employer's perspective, the outcome speaks volumes:

"You have relaxed happy employees who work in a high-stress job who are meeting client commitments and billing targets, whether they start at 10 am or 7 am ... this is an optimum way of working."

Allowance for flexible arrangements can see low staff turnover, which means not only does an organisation retain talent and expertise, but also considerable time and cost savings with respect to recruitment. Catriona believes that those in flexible work arrangements are happy people. She notes that those practitioners, "love the days they are at home, and love the days they are at work. They give their all the days that they work. It makes total sense to me." Shayla agrees the benefits of flexibility for both the organisation and employee satisfaction speak for themselves:

"The idea of doing flexible hours, doing them where you can, has been really good for our organisation. At CASE we don't pay big bucks but we can offer flexibility to fit around your life. As long as you do the hours at some time during the day/week, we are happy."

Offering flexible work practices can also be a key way to recruit talented lawyers to an organisation. According to Michelle, "Firms must recognise that to retain good staff these are the type of conditions that they need to and should be offering". And the need for flexible work arrangements will likely increase, particularly given the higher percentage of female graduates from law schools around the country.

The benefits a suitably qualified person on a flexible arrangement can add to an organisation will often extend well beyond hours and billings. Hearty and Tam Family Lawyers look not only at what a solicitor can bring in financially, but other benefits to the firm more broadly. And they are keen to offer flexibility to lawyers in the practice, to work around other commitments. Michelle and Judy explain:

"In the past we've employed a lawyer who already had a part-time job in dispute resolution when he started. This meant that he couldn't work full time, but we wanted to encourage that skill. He was also an accredited dispute resolution practitioner, which added something to what the firm could offer."

Michelle warns that flexibility must be available regardless of why a person is requesting the arrangement.

"Just because someone has kids and someone doesn't should not mean the person with no kids is penalised. If someone wants to go to surf lifesaving training, for example, and come in afterwards around 9.30 am, they should be able to do that ... The reason shouldn't have to be a good reason – it's a personal choice that you want to work flexibly, and you shouldn't have to justify that you may want a day for you."

She warns that mixed messages from an employer are not helpful. "If you offer flexibility, you must offer it 100% – follow through with it." Paying lip service to the notion of flexibility does not

benefit anyone, least of all the employer when employees vote with their feet.

LIFE LESSONS

The stories of those who have sought flexibility at some stage in their career are not just relevant to those who may be in the same boat themselves – there is a lesson in balance that resonates with all of us in the legal profession. Reflecting on our priorities is important to keep us happy and healthy lawyers, as is keeping in mind what law is all about for you. According to Shayla, "As a lawyer, I solve other people's problems. I think lawyers need to keep this in sight so practice doesn't become about the billing rather than what help they can offer people." Catriona also notes the need to keep one's work in perspective:

"Law is something I enjoy and I do, but it's a job. On my death bed, I probably wouldn't wish I'd drafted a more perfect affidavit, I would probably wish I'd spent more time with friends and family."

Working flexibly for a period of time to suit your life may give you a fresh perspective and perhaps even a renewed sense of purpose and passion for the practice of law.

CONCLUDING COMMENTS

This article has sought to provide a small sample of flexible work arrangements in Western Australia. There are countless other examples of practitioners working flexibly to suit their personal and lifestyle needs. The stories of those who have successfully implemented flexibility in their practice, both as employers and employees, give a refreshing and practical perspective to the flexibility debate. They also provide further food for thought on the possibilities for lawyers in all areas of legal practice.

I encourage you to start a dialogue with your friends and colleagues about flexible work arrangements. Honest discussion around real stories, including how to overcome practical problems associated with working flexibly or part time, is important to raise awareness of the options available for practitioners. It is also vital to ensure that lawyers, particularly young lawyers and women, have a support network of people around them to draw from should they seek to implement a flexible work arrangement themselves.

NOTES

1. These documents were annexed to the Victorian Women Lawyers report "Do You Manage? A guide to managing lawyers with flexible work arrangements". With the approval of Victorian Women Lawyers, the documents have been adopted as the Flexibility Protocol.
2. Pedersen, K & Greville, C, "Flexible Work Practices", *Brief*, Vol 38, No. 8, September 2011.
3. See, for example, The Law Society of Western Australia and Women Lawyers of Western Australia, *Report on the Retention of Legal Practitioners*, Final Report, March 1999; and The Law Society of Western Australia, *Report on Psychological Distress and Depression in the Legal Profession*, prepared by Dr Christopher Kendall, Convenor and Senior Vice-President of the Law Society, for the Council of the Law Society, 2011. Both reports are available to members at the Law Society's website www.lawsocietywa.asn.au.
4. For further information on the award, see article by Briana Everett, "Joint venture: Lawyers prove the case for part-time practice", *Lawyers Weekly*, online at <http://www.lawyersweekly.com.au/careers/joint-venture-lawyers-prove-the-case-for-part-time>.