



A 360° Review: Flexible Work Practices

Confronting myths
and realities in the
legal profession



**Victorian
Women
Lawyers**

Acknowledgements

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Work Practices Committee

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1. Convenor's introduction



It is my pleasure to introduce the report "A 360° Review: Flexible Work Practices. Confronting myths and realities in the legal profession".

Victorian Women Lawyers (VWL) is a not-for-profit membership based organisation comprising primarily women solicitors within Victoria. Its objectives include the advancement of women in the legal profession, promoting law reform and understanding and supporting women's legal and human rights. It also operates as a network for information exchange, social interaction and continuing education and reform within the legal profession by various means, including publishing reports that attempt to identify and explore issues faced by women lawyers¹. We hope that research by VWL will set a benchmark and encourage similar research in other professions and the wider community.

In 1999 VWL published a report entitled "Taking up the Challenge" that reviewed the most significant and recent publications in Australia concerning the status of women in the legal profession. Breaking new ground, that report identified that women were under-represented in senior positions in law firms, particularly at partnership level. In 2002, VWL commissioned a follow-up report, "Flexible Partnership – Making it work in law firms", which examined the barriers to partnership in law firms for lawyers working part-time or under other flexible working arrangements. So this *360° Review* is a natural progression for VWL. It provides insight into what those working within the legal profession *actually* think about flexible work practices. Accordingly, its results could have important ramifications for the way other professions and the wider community think about flexible work practices.

The issue of being able to work flexibly in today's society is not just a woman's issue. It affects a large proportion of our community and will increasingly become a more significant issue as demographics and expectations continue to change.

The main aim of this report is to identify key myths operating in the legal profession concerning flexible work practices, particularly where those clash with reality, as well as factors which encourage or inhibit flexibility in the workplace. The report explores the perceptions of those dealing with lawyers who work flexibly (that is, their clients, co-workers and support workers, as well as their managers) and the impact of flexible work practices on the career progression of those who work in that way.

It is clear from this research that the implementation of flexible work practices is more acceptable in government and in-house legal positions than in private law firms. But there is no reason why such practices could not work within law firms. The report finds that flexible work practices work best in a legal environment where there tends to be a team-based approach and management are supportive and knowledgeable about such practices. Most importantly, the report finds that clients are not deterred by lawyers who engage in flexible work practices.

The report clearly sets out thoughts and beliefs about flexible work practices and then identifies key findings. I hope you find this publication not only informative but also useful in assisting you in implementing flexible work practices in your work place.

Rosemary Peavey

Convenor

Victorian Women Lawyers

November 2005

2. Executive summary

Stimulated by research which shows that flexible work practices² are of benefit to organisational and employee performance (eg by helping to attract and retain talent, and increasing levels of satisfaction and engagement)³, in 2004 VWL engaged Aequus Partners to prepare this report. The aims of the study were to examine four related issues:

- the nature of flexible work practices used in the legal profession;
- the successors, inhibitors and perceptions surrounding those practices;
- the perception of clients, legal co-workers, support staff and supervisors; and
- the impact on career progression of those using flexible work practices.

In particular the study examined the extent to which attitudinal barriers to flexible work practices attributed to key stakeholders (ie (i) lawyers using flexible work practices; (ii) partners/managers; (iii) clients; (iv) support workers; and (v) co-workers) were real or perceived. The study methodology included a survey of 60 key stakeholders and the conduct of six focus groups.

In essence the study found that the attitudinal barriers attributed to clients, co-workers and support staff were more in the nature of myth than reality, and that where those attitudinal barriers did exist detractors had overplayed them. The study found that the focus on these attributed attitudes diverted attention away from the “real” barriers to legal organisations embracing flexible work practices, namely the culture of legal organisations and the attitudes/mindsets of leaders. The study found that clients, co-workers and support staff were personally supportive of a lawyer using flexible work practices, but perceived that there was a lack of practical support and encouragement from their organisation.

The study found that lawyers using flexible work practices perceived working flexibly as personally rewarding but difficult in practice (particularly in private firms). Lawyers using flexible work practices attributed their difficulties to workplace cultures and practices in which working flexibly is the exception rather than the rule, and an absence of meaningful practical support from their immediate manager or partner.

In relation to partners and managers, the study did not find a uniform high or low level of support for lawyers using flexible work practices. Partners and managers expressed a diverse range of opinions about the merit of flexible work practices, nevertheless they were united in viewing managing such practices as a challenge, albeit a necessary and desirable challenge.

Finally the study found that lawyers using flexible work practices, co-workers and partners all perceived that working flexibly negatively impacts career progression. In part this is because using flexible work practices is assumed by decision-makers to manifest a lack of ambition, but also because the status quo rewards lawyers who prioritise work over family.

The study acknowledges that implementing flexible work practices is a challenge, but found that all of the key stakeholders viewed it as a challenge worthy of meeting head-on.

3. Key Findings

THE NATURE OF FLEXIBLE WORK PRACTICES IN THE LEGAL PROFESSION

1: Part-time work is the dominant type of flexible work practice used by lawyers, with minimal use of variable hours, tele-working and job-sharing. Most arrangements are permanent, rather than temporary in nature.

2: There is a perceived barrier for lawyers requesting flexible work practices for reasons other than child-care responsibilities. The dominant reason (89%) for women lawyers using flexible work practices is to accommodate child-care responsibilities and this reason is perceived by study respondents to be more acceptable to their organisation than using flexible work practices to accommodate personal interests outside work.

3: Examples of different flexible work practices (eg part-time work and working from home) exist in all types of legal practices (eg advice, litigation and transactional work), although there is a perception that certain types of flexible work practices are more difficult to implement in certain areas of work (eg working three days per week on a time critical transaction).

4: Adopting a flexible approach to matching a flexible work arrangement and an area of practice is desirable to successfully meet business and personal needs (eg job redesign and chunking work into discrete tasks may enable a transactional lawyer to work part-time).

5: Lawyers in the government and corporate sectors have access to a broader range of flexible work practices than lawyers in private practice.

LAWYERS USING FLEXIBLE WORK PRACTICES

6: Lawyers using flexible work practices in the government and corporate sectors are more positive about their experiences than lawyers working in private practice. Reducing environmental static⁴ (eg by ensuring support from support staff and enhancing managerial skills) is key to improving the satisfaction levels of lawyers using flexible work practices.

7: There is a gap between organisational policy (which is ostensibly supportive of flexible work practices) and the application of the policy in practice. Lawyers using flexible work practices perceive that the integration of flexible work practices could be enhanced if there was active management of the arrangement and the background environment – eg by fostering a team-based approach.

8: Lawyers using flexible work practices perceive a gap between managerial support for flexible work practices and managerial skills. 78% of lawyers using flexible work practices agreed that their immediate manager is supportive of them working flexibly, however only 63% agreed that their manager has the necessary skills. This gap can be reduced by providing managers with specific training on managing flexible work practices.

SUPPORT WORKERS AND CO-WORKERS

9: Creating a supportive work group (eg a team-based approach) plays a critical role in enhancing the effectiveness of flexible work practices.

10: The workload of support staff is likely to increase if they work for lawyers who use flexible work practices. The view taken by support staff as to whether this is a negative, neutral or a positive change is affected by whether or not their additional support is recognised and valued by their workplace, and/or whether it provides an additional benefit (eg a career development opportunity).

11: Support staff are dissatisfied with an expectation that they should hide from a client the lawyer's flexible work arrangement, and provide a false impression and message as to the lawyer's availability on a non-scheduled workday.

12: Co-workers perceive themselves as providing a high level of emotional and practical support to lawyers using flexible work practices when required. However co-workers also perceive that their organisations do not actively encourage them to support lawyers using flexible work practices, and may in fact create a negative climate by failing to redress unsupportive comments.

CLIENTS

13: Clients reject the general assumption that they are opposed to, or dislike per se working with a lawyer using flexible work practices. The client focus is on the quality of the legal service provider, the cost and the overall result, rather than the employment arrangement of the lawyer providing the service. Clients suggest that the actual/real barriers to flexible work practices are lawyers themselves and the culture of law firms.

14: Clients consider the responsibility for managing workflows and communicating points of contact is with the practice group and prefer that organisations actively communicate that a lawyer is using a flexible work practice and the nature of that arrangement.

15: Clients view the fact that a lawyer is using a flexible work practice as a neutral (eg "irrelevant") or a positive factor in terms of their service provision. Clients attribute their positive experience to the skills and commitment of the lawyer using the flexible work practice.

PARTNERS/MANAGERS

16: Partners and managers perceive that managing a lawyer using a flexible work practice is challenging and requires a higher level of managerial skill and commitment than managing a full-time lawyer. Nevertheless partners and managers view managing such practices as a business imperative which will create positive long term outcomes (eg a return on investment).

17: Partners and managers view flexible work practices as working most successfully when both the lawyer who is working flexibly and the organisation demonstrate flexibility – ie there is give and take on both sides.

18: There is a diversity of perceptions by partners and managers about lawyers using flexible work practices. Views range from being highly supportive of lawyers using flexible work practices to highly unsupportive, and are seemingly unrelated to gender (of the partner/manager) or organisation size.

THE IMPACT ON CAREER PROGRESSION OF LAWYERS USING FLEXIBLE WORK PRACTICES

19: Only 44% of lawyers using flexible work practices agree that it is possible to work flexibly and have a career in their organisation, and 67% of lawyers using flexible work practices are dissatisfied with the negative impact that working flexibly has on their career prospects.

20: Lawyers in government and corporate roles are more likely to perceive career progression broadly (eg in terms of moving into a business or management role) in comparison to private practitioners who view career progression as becoming a partner and perceive a lack of realistic alternative career paths. Nevertheless lawyers using flexible work practices in government, for a corporation or a firm agree (irrespective of the location of their workplace) that senior roles are more likely to be available to a person working full-time than a person using flexible work practices.

21: 74% of lawyers using flexible work practices perceive that the type or quality of work changed after they started working flexibly, and 67% of this group view the change as negative and unwanted.

22: Co-workers observe that the nature of work given to lawyers using flexible work practices is of lower value than that given to full-time employees. Co-workers unanimously observe that using flexible work practices limits career progression, and this reduces co-workers' own levels of commitment to their organisation.

23: Whilst 100% of partners and managers surveyed stated that using flexible work practices and having a career is possible in theory, the majority view working flexibly as limiting career progression in practice. Nevertheless partners and managers are still more optimistic about the possibility of working flexibly and having a career than are lawyers using flexible work practices themselves.

24: Partners and managers are uncertain about the career aspirations of lawyers using flexible work practices and are more likely to assume that lawyers using such practices are less ambitious than lawyers working full-time.

25: Partners and managers acknowledge that the current structure of work and decisions about career progression are weighted towards rewarding lawyers who prioritise work over family responsibilities by working full-time. It appears that partners and managers are not fully aware of the business implications of ineffectively implementing flexible work practices.

CONCLUSION

26: Lawyers using flexible work practices, partners/managers, co-workers, support staff and clients agree that developing and implementing changes to improve the integration of flexible work practices into the legal profession is both desirable and achievable, albeit challenging.

4. Recommendations

Policies:

1. Formal policies on flexible work practices should be inclusive of a broad range of reasons for seeking flexible work practices and the full range of flexible work options available.
2. The workplace should ensure that technical supports are available (eg a laptop with broadband access) to enable seamless communication between the lawyer working flexibly, their immediate work group and clients.

Partners and managers:

3. Partners and managers should be more open with clients about a lawyer's flexible work practice; encourage a team-based approach to managing work; and actively refer work to lawyers using flexible work practices.
4. Partners and managers should demonstrate a can-do attitude to working with a lawyer using a flexible work practice and provide effective role modelling (eg by making positive comments about working flexibly and calling to account negative comments).
5. Partners and managers should actively manage and monitor flexible work practices (eg by speaking with co-workers, clients and support staff about an arrangement when it is established, and on an on-going basis).

Employers:

6. Employers should recognise and value the supportive role played by co-workers and support staff in assisting a lawyer using flexible work practices (eg by including an assessment in their performance review).
7. Employers should provide staff with training on flexible work practices. For partners and managers such training should provide practical skills on managing flexible work practices as well as information to dispel myths about the attitudes of clients, support workers, and co-workers, and myths about the career ambitions of lawyers using flexible work practices.
8. Employers should demonstrate leadership and commitment to lawyers using flexible work practices (eg by building flexible work practices and leadership into the partnership agreement; appointing a flexible work practices champion to mentor people pre and post parental leave; and appointing lawyers using flexible work practices to senior roles); and create greater partner/manager accountability (eg by ensuring the referral of quality work to a lawyer working flexibly, and the active use of flexible work practices to attract and retain lawyers).

Co-workers and support staff

9. Support staff and co-workers should meet with the lawyer working flexibly at the beginning of the arrangement to discuss expectations and work strategies.
10. Support and co-workers should actively communicate with lawyers using flexible work practices and partners/managers (eg about structure, process and protocols for managing workloads), and cultivate an understanding attitude.

Further research:

11. VWL should develop practical guidelines on lawyers establishing and maintaining a job-sharing arrangement.
12. VWL should conduct a return on investment analysis on the impact of lawyers using flexible work practices on the business bottom line, and in particular measure the impact on the attrition/retention of lawyers using flexible work practices on lawyers using flexible work practices, co-workers and clients, as well as infrastructure costs and overheads.

5. Background

Women continue to be under-represented at senior levels of the legal profession, notwithstanding their now equal representation in the profession as a whole⁵. A series of national and international studies over the last fifteen years has identified one of the key barriers to women's equitable participation in the legal profession as the conflict between work and family.⁶ Whilst the focus of these studies has been on the disparate impact of work/family conflict on women, some of these studies have also highlighted the difficulties experienced by male lawyers in managing their work and family commitments. In particular, a recent American study sagely observed that:

*"women appear to be the harbingers of undercurrents in the profession that transcend gender. Legal employers should listen closely to what women have to say, because women are voicing the concerns of a growing number of men"*⁷.

One of the key manifestations of work/family conflict in the legal profession is the limited availability, and marginalised use, of flexible work practices to enable lawyers to accommodate their caring responsibilities. This is particularly evident at senior levels with the minimal usage by partners, for example, of part-time or job-sharing arrangements⁸. Investigative research on the perceived and actual barriers to the wider use of flexible work practices has provided arguments in support of flexibility in the legal profession (eg the attraction and retention of talented lawyers)⁹, recommended the development of formal policies¹⁰, and provided practical guidelines on implementing flexible work arrangements¹¹. This research has provided a platform of information to enable individual lawyers and organisations to equitably and successfully implement flexible work practices.

Notwithstanding the availability of such information, the take-up of flexible work practices in the legal profession remains very low (the 2005 Mahlab Recruitment annual survey of the legal profession reported that 38 per cent of surveyed private practice lawyers had been offered the benefit of flexible work arrangements and 11 per cent had been offered part-time partnership). The gap between official policy and practice suggests that the culture of the legal workplace and the attitudes and mindsets of key stakeholders may be affecting usage rates. In 2002 Victorian Women Lawyers (VWL), published a report entitled *Flexible Partnership: Making it work in law firms*¹² which identified the nature of the barriers to partners in law firms working part-time, and the effect on career prospects where flexible work practices were used. The study participants (namely managing partners and human resources representatives in ten Melbourne law firms) nominated a range of barriers to flexible work practices at senior levels, including perceptions about:

- *Clients*: flexible work practices will lead to lower service levels and disgruntled clients (ultimately leading to client loss);
- *Commitment*: flexible work practices connote a lack of commitment on the part of the lawyer using the flexible work practice;
- *Colleagues (ie co-workers and support staff)*: colleagues are unsupportive of flexible work practices because they lead to having a higher workload; and
- *Costs*: the partnership/organisation views flexible work practices as an inefficient use of resources.

These attributed perceptions help to maintain the status quo (ie the limited use of flexible work practices in the legal profession and particularly at senior levels) because they suggest that flexible work practices are neither feasible nor desirable for the firm/organisation. Notably, however, there is an absence of empirical research testing:

1. whether the views attributed to clients, colleagues and partners are in fact held by those to whom they have been attributed;
2. if these attributed views do exist whether they are plausible or accurate when tested against the experience of others in the same category who work with lawyers using flexible work practices; and
3. whether lawyers using flexible work practices perceive that they hold a lower level of commitment to their careers than lawyers not working flexibly.

In 2004 VWL (with funding assistance from the Victorian Law Foundation) engaged Aequis Partners to prepare this report: *A 360° Review: Flexible Work Practices: Confronting myths and realities*. The aim of this report was to examine:

- (i) the nature of flexible work practices which are currently being used in the legal profession;
- (ii) the successors, inhibitors and perceptions surrounding those work practices;
- (iii) the perception of clients, legal co-workers, support staff and supervisors; and
- (iv) the impact on career progression of those using flexible work practices.

In particular this report examines the accuracy and the level of acceptance of the attributed attitudinal barriers to flexible work practices by analysing survey and focus group data from key stakeholders, namely clients, lawyers, co-workers, partners/managers and support staff. The inclusion of co-workers, clients and support staff in this study provides a point of unique difference to previous research which has commonly focussed on the experiences of the lawyer using the flexible work practice or the lawyer and the partner/manager relationship, rather than taking a 360-degree or whole-of-workplace approach. As far as VWL is aware, no other study on flexible work practices in the legal profession has included an empirical analysis of the views of clients, co-workers and support staff.

Consistent with US research on lawyers working part-time¹³, this study found that lawyers using flexible work practices were generally satisfied with their work arrangement, but were less satisfied with their opportunities for career progression and the “environmental static”¹⁴, or background interference, that accompanied their arrangements – ie the level of practical support provided by managers, co-workers and support staff.

The study also found that the attitudes attributed to clients, co-workers and support staff have been overplayed (where they were real) and have been relied upon by decision-makers to justify and externalise a personal reluctance to change. This reluctance is evident in the reactive (rather than proactive) implementation of flexible work practices where they do exist, a continuing preference for a one-size-fits-all approach to career progression, and the lack of meaningful support and management of flexible work practices (eg managing workloads and creating a team-based environment).

Notwithstanding these difficulties, this study found recognition by decision-makers that change is inevitable given the current and projected talent shortage¹⁵, expectations that younger lawyers have a keen interest in achieving work/life balance¹⁶, and the increasing number of women entering the legal profession¹⁷. These pressures have led law firms, corporations and the government to experiment with flexible work practices for lawyers, especially at the levels below partnership and senior management. This study examined these experiences and makes recommendations to assist in successfully implementing flexible work practices and providing meaningful careers.

6. Methodology

In 2004 and early 2005 VWL invited all Law Institute of Victoria members, its own VWL members, and their respective contacts (eg clients and support staff), to participate in a study to examine the feasibility of flexible work practices and alternative career paths in the legal profession.

The email invitation to key stakeholders to participate in a survey and subsequent focus group was extended to members and contacts in private, government and the corporate sector, namely:

1. Lawyers using flexible work practices (including solicitors, senior associates, special counsel and partners/managers);
2. Partners/managers of lawyers using flexible work practices;
3. Legal co-workers of lawyers using flexible work practices;
4. Clients of lawyers using flexible work practices; and
5. Support staff of lawyers using flexible work practices.

Over 150 people from the key stakeholder groups accepted VWL's invitation to participate in the *360 degree* research project. VWL then selected the final group of focus group participants for each of the stakeholder categories on the basis that they were representative of the diversity within these categories (eg city, suburban and country practices).

The surveys for each stakeholder group included core questions for lawyers using flexible work practices, partners, co-workers and support staff on the perceptions of organisational, managerial, collegial and support staff support for using flexible work practices, as well as whether it is possible to have a career if a lawyer works flexibly. In addition the surveys asked differentiated questions for each stakeholder group:

1. *Lawyers using flexible work practices*: eg the nature of the arrangement, reasons and changes over time;
2. *Partners/managers*: eg role of organisational policies and change in work allocation to lawyers using flexible work practices;
3. *Co-workers and support staff*: eg nature of organisational support provided and change in workload; and
4. *Clients*: eg awareness of flexible practice and regularity of contact outside work hours.

Focus group participants were asked to comment on the survey data, and to identify their experiences of key barriers and success strategies to using flexible work practices.

In total 60 surveys were received and 58 of those respondents participated in a total of six focus groups (two focus groups were conducted with lawyers using flexible work practices: the first focussing on government and corporate lawyers and the second focussing on private sector lawyers; one focus group was conducted with support staff, one focus group was conducted with co-workers, one focus group was conducted with clients and one focus group was conducted with partners and managers). The focus groups were conducted in late 2004 and early 2005 in Melbourne, Australia. The survey and focus group data were collected and analysed by Aequus Partners (an independent management consultancy). Finally three one-on-one 30 minute interviews were conducted by Aequus Partners (two with lawyers using flexible work practices and one with a client) in order to clarify information the person had provided in the focus group or to collect information from a person unable to attend the focus group. This interview information was collated with the focus group data.

A strength of the present study is its methodology (ie the conduct of a survey and a subsequent focus group with each stakeholder group), and the inclusion of clients, co-workers and support staff as three of the key stakeholder groups (commonly the views of these groups are assumed). In terms of the reliability of the data it is of note that the survey and focus group participants were not selected randomly and so the sample may be open to bias. It is

acknowledged that participants who attended the focus groups did so because of an interest in the topic, however the wide range of views expressed by participants suggests that they were interested because they were either supportive or unsupportive of flexible work practices, not because they were only supportive. Finally as sample size of the key stakeholder groups (with the exception of the lawyers using flexible work practices) was small, care has been taken to interpret the data as indicative and not definitive.

7. Findings

THE NATURE OF FLEXIBLE WORK PRACTICES IN THE LEGAL PROFESSION

Drawing principally on the data provided by the lawyers using flexible work practices, this section identifies the nature of flexible work arrangements used by lawyers working flexibly as well as the reasons for wanting to work this way, areas of practice, the length/permanency of the arrangement and key differences between the government and private sector in terms of the options available. Where comment was made by one of the other stakeholder groups it is included.

Types of flexible work practices

The range of possible flexible work practices includes (i) working part-time; (ii) job-share arrangements; (iii) tele-working from home, (iv) variable or condensed hours or (v) variable leave arrangements.

FLEXIBLE WORK PRACTICE	CHARACTERISTICS
(i) Part-time work	This involves working for fewer hours than the standard full-time weekly hours. Arrangements include for example: working (i) 2 or 3 days per week; (ii) 2 days one week and three days every second week; (iii) each morning for four hours; or (iv) 10 days worked over a four-week period.
(ii) Job-share arrangement	This usually involves two lawyers sharing the roles and responsibilities for one full-time equivalent job on an agreed basis. This could be arranged for example on a 2/3 day split or working 2.5 days each. To enhance the effectiveness of the arrangement the two lawyers may overlap for a regular period each week (eg Wednesdays).
(iii) Tele-working/Working from home	This involves working at a different location to the regular workplace (eg at home or a remote site). The most common situations involve either working from home for a specified period each week, eg one day per week, or working from home on an occasional basis.
(iv) Flexible working hours	This usually involves varying daily start and finish times, eg working 8am to 4pm, instead of 9am to 5pm. Workplaces commonly require lawyers who vary their hours to be at work for specified core hours (eg 10am to 3pm). Another variation involves working condensed hours (eg working full-time hours in a shorter number of days, say 4 days for 10 hours each).
(v) Variable leave arrangements	This is sometimes referred to as 48/52 during which a lawyer takes an additional 4 weeks leave without pay (eg during school holidays) and averages their residual pay over the full 52 week year.

The most common flexible work arrangement used by the lawyers in this study was part-time work (88%), with some limited use of variable leave arrangements to enable lawyers to take leave/work reduced hours over school holidays (16%), tele-working and job-sharing. No examples were found of a formal “condensed hours” arrangement and it was suggested that this was because long hours are endemic in the profession and the expectation is that lawyers will work long hours each day as part of the normal course of practice.

Lawyers using flexible work practices were asked to comment on the permanency of their flexible work arrangement and the number of years they had worked flexibly. Recent Victorian research has defined “quality” part-time work as associated with permanency (which provides security), rather than being temporary in nature¹⁸ and 74% of the lawyers using flexible work practices described their arrangement as permanent. It is a concern however that 19% of lawyers using flexible work practices described their arrangement as temporary (eg requiring a re-application every 12 months) and 7% were unsure about whether the arrangement was temporary or permanent.

As to the longevity of arrangements, 41% of respondents had been using flexible work practices for between 3-6 years, and 30% for over seven years, suggesting that flexible work practices are a long-term strategy for women, rather than a short-term strategy. Having said this, the majority of respondents (93%) had used flexible work practices for less than 10 years, suggesting that the use of flexible work practices has a “use by date” for women with children. This accords with ABS research suggesting that women return to the workforce on a full-time basis when their youngest child enters school¹⁹.

Key finding 1: Part-time work is the dominant type of flexible work practice used in the legal profession, with minimal use of variable hours, tele-working and job-sharing. Most arrangements are permanent, rather than temporary in nature.

Reasons for using flexible work practices

The dominant reason for women lawyers using flexible work practices was to accommodate their child-care responsibilities (89%), and only 7% cited personal interests/volunteering as their motivator. As to whether the reasons for using flexible work practices changed over time, two-thirds of the lawyers using flexible work practices said that there was no change for them, whilst one third said their reasons had changed (eg whilst the original motivator had been the birth of a child, some of the respondents suggested that they now worked this way to enable them to have a higher level of participation in school and home responsibilities).

Does the reason for wanting to work flexibly make a difference to gaining access to the desired flexible work practice, and acceptance by other workplace participants (eg peers)? The study respondents (including partners and managers) agreed that in practice reasons do make a difference to the firm, namely that family responsibilities is perceived as a more “legitimate reason” than pet care, study, exhaustion or other life interests. A number of participants though questioned whether this ought to be the case. Further a number of lawyers using flexible work practices suggested that the “acceptable” reason for using such practices (ie so that a woman could accommodate her child-care responsibilities) acts as a disincentive to men taking up child-care responsibilities, older partners reducing their hours for semi-retirement activities, and creating broad acceptance for flexible work practices.

Key finding 2: There is a perceived barrier to lawyers requesting flexible work practices for reasons other than child-care responsibilities. The dominant reason (89%) for women lawyers using flexible work practices is to accommodate child-care responsibilities, and this reason is perceived by study respondents to be more acceptable to their organisation than using flexible work practices to accommodate personal interests outside work.

Areas of practice

It is commonly suggested that certain areas of practice are “off-limits” to flexible work practices, because it is perceived that the demands of that particular area of practice are incompatible with working flexibly. The view about which areas of practice are off-limits appears to depend more on the location of the commentator (and a philosophy of “not in my backyard”) than the actual experiences of those using flexible work practices. In common with other studies²⁰, the 360 degrees’ focus group participants provided examples of lawyers using flexible work practices in all areas of practice (eg in litigation, policy/advice and transactional work), and the lawyers using flexible work practices who participated in the focus groups were not congregated in a discrete area of practice. A recent US based study of 37 private legal firms found that “most law firms stated that part-time work was neither more nor less suitable for any particular practice area ... many emphasized that the individual attorney’s flexibility was more important than the practice area”²¹.

Respondents in the current study agreed a lawyer’s preparedness to be flexible was critical to successfully working flexibly in any area of practice, and this applied whether the lawyer was working flexibly or on a full-time basis. Whilst rejecting the view that certain areas of practice were irreconcilable with flexible work practices per se, respondents suggested that different forms of flexible work practices may be more or less suitable to different areas of practice (eg it may be more difficult to work fixed part-time days in transactional work and litigation). Overwhelmingly the lawyers using flexible work practices indicated that they were prepared to, and did, demonstrate flexibility towards their work commitments in order to ensure that work demands were met.

Lawyers using flexible work practices suggested that a flexible approach should be adopted to match the type of flexible arrangement with the area of practice and that job redesign (eg chunking work into discrete tasks) and supportive work groups (eg team-based) play a critical role in making flexible work practices successful. A common theme amongst all stakeholder groups was that they accepted and managed the absence of full-timers (eg because they were involved in another matter or on leave), and that the periodic absence of a part-timer could also be managed.

Key finding 3: Examples of flexible work practices (eg part-time work and working from home) exist in all types of legal practices (eg advice, litigation and transactional work), although there is a perception that certain types of flexible work practices are more difficult to implement in certain areas of work (eg working three days whilst managing a time critical transaction).

Key finding 4: Adopting a flexible approach to matching a flexible work arrangement and an area of practice is desirable to successfully meet business and personal needs (eg job redesign and chunking work into discrete tasks may enable a transactional lawyer to work part-time).

Different options

In relation to the nature of flexible work practices, the range of options available to, and taken up by, lawyers in private practice was more restricted than for those in government and corporate practice. Government and corporate lawyers made mention of their use of variable leave arrangements such as 48/52 and daily variability of work hours through flexi-leave, whilst lawyers in private practice indicated that they did not know of, and did not have access to, such a wide range of options. Lawyers in private practice expressed an interest in having a broader range of flexible work practices available to them, both in theory and in practice. Lawyers using flexible work practices were unable to explain the variation between the sectors.

Key finding 5: Lawyers in the government and corporate sectors have access to a broader range of flexible work practices than lawyers in the private sector.

PERCEPTIONS REGARDING FLEXIBLE WORK PRACTICES: 360° REVIEW

This section covers the perceptions of lawyers using flexible work practices, support and co-workers, clients and partners/managers on what creates or inhibits the successful use of flexible work practices in the legal profession. These perceptions are important because the take up of flexible work practices is impacted not only by the availability of such arrangements, but also by how they are perceived by the organisation as a whole (as expressed in policies and practical support) and by decision-makers in particular (eg partners and managers). Decision-makers act as gatekeepers to lawyers accessing flexible work practices per se, and once a lawyer is working flexibly they act as gatekeepers to their career development (eg via the allocation of work), career progression and integration into a practice group. The views of decision-makers also have the capacity to influence the perceptions and attitudes of a broader group of workplace participants (eg co-workers and support staff) as to whether lawyers using flexible work practices are valued staff members. The views of decision-makers are made evident by their words and actions, and hence the perceptions of workplace participants also take into account whether there is congruence between thought and deed.

Survey and focus group participants were asked to indicate their level of agreement (eg strongly disagree, disagree, agree, strongly agree) to a series of questions about the perceived level of support for flexible work practices within their organisation. The questions related to whether there was support for flexible work practices at different levels, that is (i) organisationally (eg in terms of policies); (ii) managerially, (iii) amongst co-workers and (iv) amongst support staff. Participants were also asked to rate whether (i) they were personally supportive of a lawyer using flexible work practices and (ii) working flexibly had an impact on career progression.

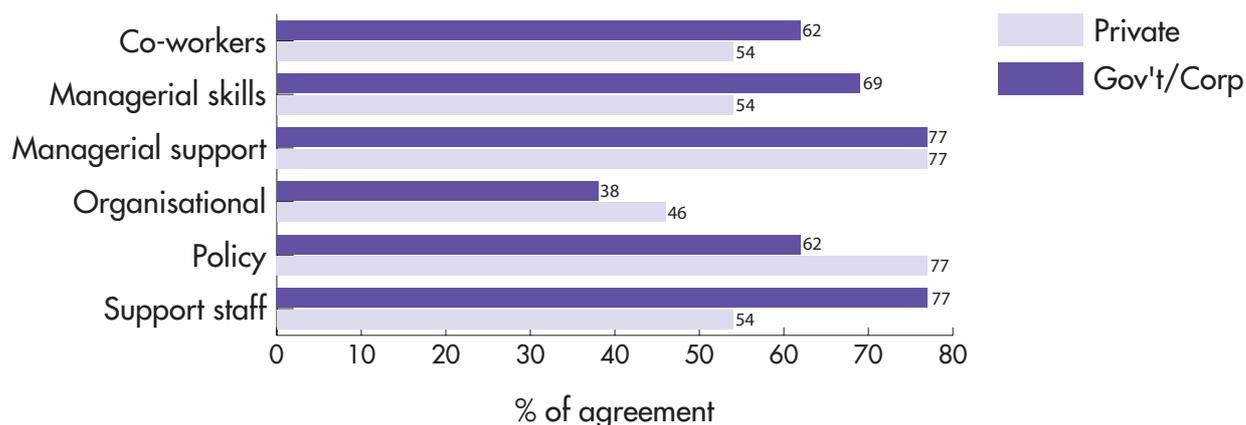
Survey responses are summarised in the graphs below in terms of the percentages who agreed with each question. Comparisons are then made between sectors (ie government/corporations and private firms) and between stakeholder groups (ie (i) lawyers using flexible work practices, (ii) partners/managers (note, this group is very small) and (iii) colleagues (ie including both support staff and legal co-workers)).

Lawyers using flexible work practices

In relation to perceptions of support for flexible work practices, comparisons were made of lawyers using flexible work practices who were employed in private firms with those who worked in the public sector or for corporations. The total sample size of 26 was divided evenly between lawyers working (i) in the government sector or for a corporation; and those working (ii) for a private law firm. Whilst the sample size is small, the trends provide important insights into making flexible work practices more effective. The data indicate few real differences between the groups about the perceived levels of support for using flexible work practices at an organisational level, amongst colleagues and from managers. The significant differences between the views of lawyers using flexible work practices in (i) a private firm and those who work in (ii) the public sector/or for a corporation, relate to policies, managerial skills and collegial support. Lawyers using flexible work practices in the private sector are more likely to view their organisation's policies as supportive of flexible work practices than lawyers working in the government sector or for a corporation. This finding is apparently inconsistent with Key finding 5 above in that lawyers in private practice have access to a more limited range of flexible work options than their counterparts in the public sector or in a corporation. This inconsistency may be explained by an assumption on the part of lawyers using flexible work practices in private firms that their workplace policies are best practice, which has not been reality checked.

Lawyers using flexible work practices in the government sector or in a corporation were more likely (than lawyers working in private firms) to view their immediate manager as having the necessary skills to work effectively with lawyers who work flexibly, and that support staff were supportive of lawyers using flexible work practices. A lack of managerial skill and unsupportive support staff are examples of "environmental static". The differences between the sectors (as described below) may provide a key to understanding why lawyers using flexible work practices in firms felt more negatively about their experience of working flexibly than lawyers working flexibly in corporations and the government sector.

Graph 1: Views about the level of support for flexibility



When asked to provide a key word to describe their experiences of using flexible work practices, the majority of lawyers in the government and corporate sector were positive. These lawyers described their experiences as “ideal”, “satisfying”, “life saving”, “fantastic”, “positive”, “control of life”, “preferable”, “balancing act” and providing the “ability to manage”. This is not to say that their experiences were uniformly rosy as some of these lawyers also described themselves as “working harder (sometimes alone)”, “the lone guy (you’re on your own)”, “frustrating” and having an “impact on my partner and children”. Nevertheless overall these responses were palpably different to the majority of negative responses from lawyers in private practice. Lawyers working in private practice described their experience using flexible work practices as “a juggle”, “chaos”, “tough”, “torn”, “frustrating”, “endless”, “guilt”, “compromise”, “less responsibility”, “less hours but same number of files” and “career limiting”. A minority of lawyers in private practice described their experience as “balance”, “relief”, “the best of both worlds”, and “could do it more easily at a senior level”.

Taking the survey and focus group data as a whole suggests that there are more commonalities between the experiences of lawyers using flexible work practices than differences, irrespective of their location – ie lawyers were generally satisfied with their flexible work arrangement per se. However the differences between the experiences of lawyers in the government/corporate sectors and in the private sector (in terms of the levels of perceived support provided by support staff and the level of managerial skill) provide important insights into how to improve the morale of lawyers using flexible work practices. These data suggest that the immediate workgroup of the lawyer working flexibly (ie the manager and the support staff) is critical to the effectiveness of the arrangement and the lawyer’s level of satisfaction/contentment. In particular, the skill of managers is vital to creating a supportive work environment.

Key finding 6: Lawyers using flexible work practices in the government and corporate sectors are more positive about their experiences than those working in private practice. Reducing environmental static (eg by ensuring support from support staff and enhancing managerial skills) is key to improving the satisfaction levels of lawyers using flexible work practices.

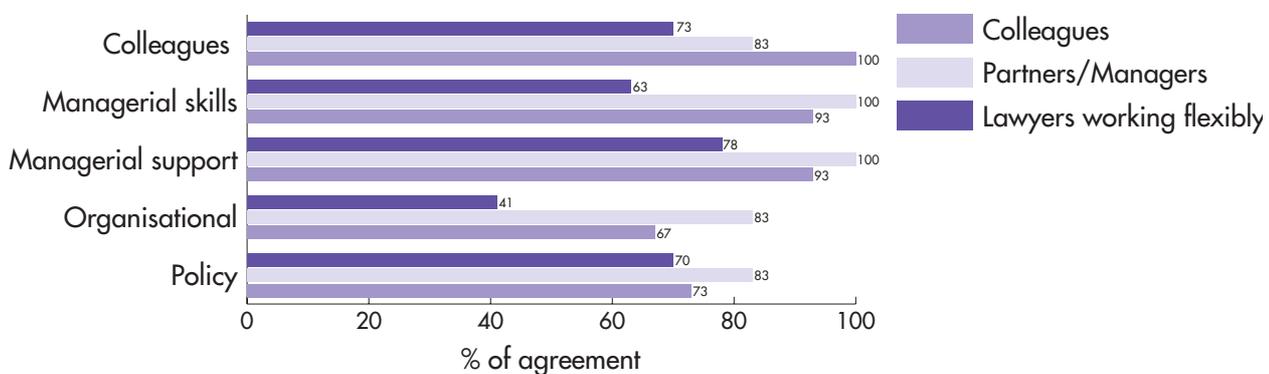
Levels of support

Comparisons were made between the survey data available for lawyers using flexible work practices (as a total group) and the survey data for partners/managers and colleagues (ie an aggregate group of support staff and legal co-workers) in terms of perceptions about levels of support for flexible work practices. Survey responses were summarised in terms of the percentages who agreed with each question. As can be seen from graph 2 below, there were very different perspectives on the level of support for lawyers using flexible work practices at each of the levels (organisational, managerial, and collegial), with partners/manager being the most positive of all, and those using flexible work practices being the least positive. The biggest gaps in perspectives are evident for the following questions:

- *Policies:* “My organisation’s policies are supportive of lawyers working flexibly”;
- *Organisational:* “There is a high level of organisational support for lawyers who work flexibly”;
- *Managerial support:* “My immediate manager has the necessary skills to work effectively with lawyers working flexibly” (or for managers “I have the necessary skills to work effectively with lawyers working flexibly”); and
- *Collegial support:* “Co-workers/support staff are supportive of lawyers working flexibly” (or for co-workers and support staff “I am supportive of lawyers working flexibly”).

During the focus group the lawyers using flexible work practices were asked to comment on the survey data. The survey data show that lawyers using flexible work practices were not very positive about their organisation providing a high level of organisational support (41%). This perception by lawyers using flexible work practices stands in contrast to the higher level of organisational support perceived by colleagues (67%) and partners/managers (83%). During the focus groups these latter stakeholders suggested that lawyers using flexible work practices may have a more accurate perception than their narrow and untested framework of reference (eg partners and managers assume there is a high level of organisational support, but have usually not tested that assumption by using flexible work practices themselves).

Graph 2: Views about level of support for flexibility



Notably all survey participants rated the level of organisational policy support as relatively high (ie ranging from 70% for lawyers using flexible work practices to 83% by partners/managers). However, both colleagues and lawyers using flexible work practices suggested that there is a gap between organisational policy and organisational support in practice. For lawyers this gap was highly significant with the 70% level of agreement for organisational policy support dropping to 41% for organisational support in practice.

In terms of the perceived lower levels of organisational support, lawyers using flexible work practices suggested that they were provided with minimal guidance on how the flexible work arrangement should work in practice, their workload was not necessarily (or appropriately) adjusted to take into account the reduced hours being worked, there were technological barriers (eg slow modems) and a team-based approach was not fostered. Lawyers using flexible work practices perceived that each of these environmental issues effected the smooth operation of the flexible work arrangement.

Key finding 7: There is a gap between organisational policy (which is ostensibly supportive of flexible work practices) and the application of the policy in practice. Lawyers using flexible work practices perceive that the integration of flexible work practices could be enhanced if there was active management of the arrangement and the background environment – eg by fostering a team-based approach.

Whilst 78% of lawyers using flexible work practices agreed that their immediate manager is supportive of them working flexibly, only 63% agreed that their manager has the necessary skills. During the focus groups the lawyers using flexible work practices explained the difference in this way: “Often managers support flexible work practices in theory but have difficulty with implementation” and “are not equipped with the relevant skills”. Lawyers using flexible work practices suggested that part and parcel of being a good manager was an ability to manage flexible work practices and “if the manager is good then the arrangement will work, regardless of policies and (lack of) training”.

In contrast to the perceptions of lawyers using flexible work practices, 100% of the partners and managers surveyed stated that they were supportive of lawyers using flexible work practices and had the relevant skills. This difference may be explained as a difference in awareness (ie partners/managers over-rated their skills), or it may be that the framework of reference was broader for lawyers using flexible work practices (ie they were thinking of their own managers), and narrower for partner/managers (ie the sample was skewed towards a positive response). Given the size of the sample of the lawyers using flexible work practices and their sensitivity to the issues, as well as the comments made by the support workers and co-workers who participated in the focus groups, there is sufficient evidence to establish that there is a gap between managers’ intentions and skills.

Key finding 8: Lawyers using flexible work practices perceive a gap between managerial support for flexible work practices and managerial skills. 78% of lawyers using flexible work practices agreed that their immediate manager is supportive of them working flexibly, however only 63% agreed that their manager has the necessary skills. This gap can be reduced by providing managers with specific training on managing flexible work practices.

Support workers and co-workers

Anecdotal reports suggest that partners and managers perceive colleagues (ie support staff and co-workers²²) to be resistant to accommodating a lawyer who is using flexible work practices, and this leads to their own (the partner’s/ manager’s) opposition or ambivalence about flexible work practices. In particular partners/managers perceive that the workload of support staff and co-workers will be increased when they work with a lawyer using flexible work practises, eg because they will be required to undertake work on the days and times that the lawyer working flexibly is not in the office. The underlying assumption is that the increase in workload (if it does exist) will have a negative effect on colleagues, and in particular it will create resistance and resentment. These anecdotal reports were confirmed by the comments made by the partners and managers during the focus group eg that support and co-workers have to “pick up the slack” for a lawyer using flexible work practices.

The surveys and focus groups with co-workers and support staff tested these assumptions, as well as what creates (or inhibits) a successful working arrangement. At the heart of the issue for co-workers and support staff was not that their workload had changed after working with a lawyer using flexible work practices, but that management did not manage or recognise the changes. Colleagues agreed with lawyers using flexible work practices that they were provided with minimal guidance about the nature of the flexible work arrangement, active encouragement from management was missing (just the “absence of a negative” message, as one co-worker described the level of encouragement), and little consideration was given to managing the differing work patterns of lawyers, support staff and co-workers. Support staff and co-workers described their experience in terms of an expectation that they will “just get on with it”, and suggested that more could be done by the organisation to support the lawyer using flexible work practices (eg promote an attitude of give and take, foster team work, and manage start and finish times of the team) and demonstrate that the necessary adjustments were valued.

Key finding 9: Creating a supportive work group (eg a team-based approach) plays a critical role in enhancing the effectiveness of flexible work practices.

1. Support staff

Nine out of ten support staff who attended the focus group agreed that their workload had increased since working with a lawyer who is using a flexible work practice. When asked whether the change in workload was of concern, the responses were mixed. Some of the support staff suggested that the change in workload was a positive experience because it provided them with more responsibility and involvement in the lawyer's work. Others observed that they experienced increased stress levels arising from deadlines and administration (eg assisting the lawyer to take files home, taking additional telephone calls, checking emails, "running around", and liaising between the lawyer working flexibly and other staff). These latter support staff commented that the additional levels of stress and administration were "not a major concern as long as it is recognised" and they are not given additional work: "The expectation is that if the lawyer is working part-time it is less work for (us) but this is not the case because the lawyer is often working on their day off and things come up".

Key finding 10: The workload of support staff is likely to increase if they work for lawyers using flexible work practices. The view taken by support staff as to whether this is a negative, neutral or a positive change is affected by whether or not their additional support is recognised and valued by their workplace, and/or whether it provides an additional benefit (eg a career development opportunity).

Support staff perceived that the most critical negative impact of working with lawyers using flexible work practices was less about increased workloads (as suggested by partners/managers), and more about the firm's requirement that they hide a lawyer's flexible work arrangement from the client by communicating a "false" message about a part-time lawyer's limited availability (ie if the client calls on a lawyer's non-scheduled work day). Support staff suggested that because "lawyers are concerned about the possible stigma with the client that they are working flexibly" they (and the firm) ask the support worker to "lie to the client about the lawyer's availability", ie to give the impression that the lawyer is working but just "not available at the moment". The support workers then act as a "go-between" and telephone the lawyer to report the client's call, and request that the lawyer call the client back. Some of the partners and managers who participated in the focus groups acknowledged that they "don't communicate that the part-timer is 'not in'", instead they "hide it from the client and don't argue about the time frame" because they are concerned about "backlash". Support workers uniformly voiced their displeasure about being asked to effectively "lie" and suggested "clients are more accepting than they are given credit for".

Key finding 11: Support staff are dissatisfied with an expectation that they should hide from a client the lawyer's flexible work arrangement, and provide a false impression and message as to the lawyer's availability on a non-scheduled workday.

2. Co-workers

Some of the lawyers using flexible work practices who participated in the focus groups commented that the support of their co-workers was critical (especially to cover those times when the lawyer using flexible work practices was not in the office) and perceived that they had encountered passive resistance from co-workers to working flexibly (eg repetitively asking the lawyer using flexible work practices the days on which they were working, or scheduling team meetings on non-scheduled work days).

70% of lawyers using flexible work practices perceived their colleagues to be supportive of them working flexibly. This perception stands in contrast to the finding from the survey that 100% of colleagues (including co-workers) viewed themselves as supportive of a lawyer using flexible work practices. The disparity may be explained by the composition of the colleague sample group (ie it may have been comprised of people with a

bias in favour of lawyers using flexible work practices) or it may reflect a difference between self perception by co-workers and the external perceptions of the lawyer working flexibly.

Co-workers gave a mixed response to the question of whether their workload had changed as a result of working with lawyers using flexible work practices. Some co-workers said that the intensity of their work and their working relationship were “just the same”, and there wasn’t a “lot of difference overall because the flexible worker was very contactable”. Others suggested that “some days are busier” and there is a “loading on work on the last day of the week for the part-timer (eg Wednesday) and no-one is in on Fridays”. As to whether the impact of the increased workload was negative (where it did exist), co-workers were either neutral (“I do things for the lawyer because they are not around, but I would do that for full-timers anyway), or positive “it has made us closer – I get to talk to her kids”. In summary, whilst co-workers were less likely than support staff to agree that their workload had increased as a result of working with a lawyer using a flexible work practice, if an increase did occur it was viewed neutrally (ie as part and parcel of being a colleague) or positively if a collateral benefit arose (eg a career development opportunity). The critical finding is that co-workers did not evince an antipathy to working with a lawyer because they were working flexibly (as one co-worker said “It’s hard to separate the personality from the work arrangement”), and in fact displayed greater support than attributed by partners/managers.

It appears that the perspective of the co-workers who participated in the focus group was mitigated by the close personal relationship they had developed with the lawyer working flexibly. Co-workers described their emotional reaction to working with a lawyer using flexible work practices as “sympathy for their chaotic lifestyles”, “respect”, “admiration”, “jealousy, but not resentment, because they have a reason to leave and they do. I wish I had a reason to leave (work)”. Where the co-worker perceived that the organisation or a manager/manager was not supportive of lawyers using flexible work practices they felt it was “inequitable – because the budget is for four out of five days (and they work longer than that)” and “torn – I work for an older boss who pays lip service (to flexibility). He says I should do the (part-time) lawyer’s work when she is not here, and I know the (part-time) lawyer would really want to do it”.

In common with support staff, co-workers suggested that their organisations, and in particular their managers, do not provide a high level of guidance and support about the flexible work arrangement. Co-workers noted the absence of positive support for working with a lawyer using flexible work practices (“there’s no active encouragement”; “it’s expected you will pick up the short-fall”; and “there’s no recognition that the relationship is more difficult”) and some co-workers observed a more overt negative culture (“negative comments are made”; and “the firm has a sense that they can’t refuse part-timers, but there is a negative culture and it is perceived differently”). Co-workers perceived the firm’s negative attitude towards a lawyer using flexible work practices because of comments made in relation to clients – and in particular a fear that the firm will lose clients as a result of the arrangement (“It’s fear. There’s a competitive market and people don’t want to give away a competitive advantage (of constant availability)”; “there’s fear and the potential to miss a deadline” and “firms take a conservative view – they want to see if it impacts clients”). Co-workers juxtaposed the organisation’s fears about the impact on clients with their own more positive perspective that “clients are very understanding – it’s more acceptable in the real world” and suggested that partners and managers have an opportunity to create a positive and progressive public image by embracing flexible work practices.

The clear message from co-workers was that partners and managers should take a more active and positive role in managing flexible work practices and the immediate work environment. This could be done by refraining from making unjustified negative comments about lawyers using flexible work practices, calling to account negative comments made by others, and managing unfair work practices (eg “schedule creep” - ie when a lawyer working flexibly receives too much work and is required to work on their days off work). Co-workers suggested that a reality check on the partner’s/manager’s fears, coupled with the creation of a team environment and openness with the client about the flexible work arrangement was a more suitable response to working with lawyers using flexible work practices.

Key finding 12: Co-workers perceive themselves as providing a high level of emotional and practical support to lawyers using flexible work practices when required. However co-workers also perceive that their organisations do not actively encourage them to support lawyers using flexible work practices, and may in fact create a negative climate by failing to redress unsupportive comments.

Clients

Studies on flexible work practices have noted comments by partners and managers that their opposition to (or at least ambivalence about) flexible work practices arises because of perceived client resistance²³. The perception is that clients would prefer to work with lawyers who are constantly and immediately available, and an assumption that only full-time workers fit this criterion.

Contrary to this perception, clients who participated in the focus group spoke very positively, or at a minimum neutrally, about their experience of flexible work practices as a result of working with a lawyer using such practices. Only 1 of the 6 surveyed clients agreed that a lawyer working flexibly had a negative impact on the level of service they had received.

From a positive perspective clients spoke of the importance of “retaining qualified staff, who are productive and happy” and retention of staff as being helpful to “maintaining the client relationship”. Further, clients spoke of the added value they received in working with a lawyer using flexible work practices: “they are remarkably flexible and have a range of creative ways of being flexible (organisational, mental, problem solving)”, “people working flexibly are very organised and don’t impose their flexible work practices on others”, “they will over compensate” and “it is unusual to have crisis points”. Clients also observed “rigidity doesn’t work for me as a client, and it is rare to find rigidity in a lawyer working flexibly” and “the quality of work can be improved with a lawyer working flexibly because their judgement isn’t clouded”. Clients did not suggest that every lawyer using flexible work practices gave a better level of service, but did argue that when there was a better level of service the added benefits went unnoticed by the lawyer’s employer.

From a neutral perspective clients used the following words to describe their experience of flexible work practices arising from working with a lawyer using such practices, “in practice it doesn’t matter that much”, “irrelevant”, “fine”, “neutral”, and “not negative”.

From a negative perspective clients suggested that the level of service would be affected if the lawyer was not contactable on their day off, that the “time frame may blow out” if the lawyer is working part-time, and “if not fully informed of activities of the file it is difficult to action things in the absence of the operator”. In summary, clients were aware of a “perception that service won’t be as good and the commitment of the lawyer working flexibly is low”, but suggested that that was not their “reality”. Whilst acknowledging that “it is hard to isolate the individual from the service provider in general”, on balance clients viewed their experience of working with a lawyer using flexible work practices in neutral to positive terms, and attributed this experience to the skills and commitment of the lawyer.

Following on from the perception that clients may dislike working with a lawyer using flexible work practices, some partners/managers suggested that firms might in fact lose clients if the client is compelled to work with a lawyer who is working flexibly. Clients did not share this perspective and felt that it was simplistic and misunderstood the factors they took into account when deciding who to purchase legal services from, “(it is about) quality of choice ... the person, cost and overall result”, “I want the best person for the job” and “the capability and knowledge can sit anywhere” (ie in a full-time or flexible lawyer). Having said this, the clients who participated in the focus groups acknowledged that “some clients expect service with snappiness and have unreasonable demands”, and therefore may not be supportive of flexible work practices, but suggested that this was not the majority perspective.

When asked whether clients agreed with the view attributed to them (namely that they were opposed to working with lawyers using flexible work practices per se), clients were adamant that “lawyers are the barriers to flexibility”, and “the culture of the firm is the barrier”, “not the clients”, and suggested that “firms are risk averse and scared”.

Clients who participated in the focus group were quick to locate the issue of managing flexible work practices with the lawyer's employer, "the responsibility for managing work flows is with the practice group. As a client I wouldn't take their flexibility into account, but I would be upfront with turnaround times", firms should "make it seamless for the client. I don't care if there are two points of contact (as long as there is communication flow and no duplication charge with the billing)".

To enhance client service when working with a lawyer using flexible work practices, clients suggested that employers should implement communication protocols (eg "put in place systems so (clients) can contact others"), "manage resources and build up a pool of talent", partners should "delegate more", and firms should use teams of lawyers which comprise a "balance of full-timers and part-timers").

As to the issue of whether firms would lose clients as a result of a lawyer using flexible work practices, the view of clients was that flexible work practices are not the deciding factor. For clients the motivators were "knowledge of the business and requirements", "I want the best person for the job, the lawyer who wants to know my business". Clients also rejected the idea that they would terminate their relationship with a lawyer because their service provider worked flexibly: "There is a fear of flexibility but I wouldn't leave because the lawyer was working flexibly, especially if the matter was time critical", "If it was just an issue of flexibility we would accommodate the lawyer's needs, we wouldn't terminate their services unless there was a conflict or we wanted to get a different opinion", and "urgency is not a reason to terminate a lawyer – because you are just building in another delay briefing a new lawyer".

On a different note some lawyers using flexible work practices, as well as some partners/managers, suggested that clients might be attracted to their organisation because of "matching" between a lawyer using flexible work practices and a client using flexible work practices. Clients agreed that children may provide a "linking factor between the client and the service provider" and that they were sympathetic to the issue of flexible work practices because "we are facing the same problems with our women of the same age and even some men". However clients placed much less weight on flexible work practices as a deciding factor in whom they would chose to work with than legal service providers attributed to them. Some clients even stated, "I don't care who the lawyer is – it is the service (I want)".

Finally, clients suggested that their experience of working with a lawyer using flexible work practices could be enhanced if employers were "upfront" and there was "proactive communication" about the lawyer's flexible work arrangement. As one client said "I'd prefer to know if the lawyer is working flexibly, it's no different to the person not being available because they are in court". Some of the partners/managers who participated in the focus groups indicated that they do already "tell the client about the arrangements at the beginning of the matter", and this had not created a negative outcome for the client or firm.

Key finding 13: Clients reject the general assumption that they are opposed to, or dislike per se working with a lawyer using flexible work practices. The client focus is on the quality of the legal service provider, the cost and the overall result, rather than the employment arrangement of the lawyer providing the service. Clients suggest that the actual/real barriers to flexible work practices are lawyers themselves and the culture of law firms.

Key finding 14: Clients consider the responsibility for managing workflows and communicating points of contact is with the practice group and prefer that organisations actively communicate that a lawyer is using a flexible work practice and the nature of that arrangement.

Key finding 15: Clients view the fact that a lawyer is using a flexible work practice as a neutral (eg "irrelevant") or a positive factor in terms of their service provision. Clients attribute their positive experience to the skills and commitment of the lawyer using the flexible work practice.

Partners and managers

Lawyers using flexible work practices, support staff and co-workers identified the attitudes and practices of the partners and managers towards flexible work practices as setting the tone about whether such practices were valued or tolerated (as one co-worker stated “the feeling that it is OK to work flexibly in a group comes from the partner”). It is of note that lawyers using flexible work practices identified a disconnect between higher levels of perceived managerial support (78%), and lower levels of managerial skills (63%) to provide support in practice. As also noted above a high level of managerial skill to actively manage a flexible work arrangement is critical to creating a supportive workplace (and reducing interference from environmental static).

Partners and managers described their range of experiences of working with a lawyer using flexible work practices in the following ways “challenging in the short term, rewarding in the long term”, “positive”, “satisfied”, and “neutral” to “resentful – I have to pick up their flexibility”, “I fret and am anxious that nothing will fall between the cracks”, and it’s “not easy – you have to refresh the relationship every time you see them and it is time intense”. Some partners also observed that the experience was “not easy from the lawyer’s perspective” and that there was “less fluff time”.

Partners and managers also expressed the view that managing a lawyer who is using flexible work practices required more of them as managers, “there is a heightened awareness that you need to make the relationship work compared with a full-timer”, you need to “communicate more effectively”, create a “team-based approach”, and “organise work around them”. On a cost benefit analysis, the partners and managers who participated in the focus groups suggested that the overall experience whilst demanding in the short term was positive in the long term, the “efficiency is extraordinary ... they perform tasks differently and get better at prioritising”.

Finally, partners and managers were asked to comment on their commitment to addressing the challenges of managing a lawyer using flexible work practices, and the priority flexible work practices should be given by their organisations. The partners and managers opined that “flexibility is a burning issue (and not just for women)”, and directly impacts upon the “economics of the firm because the majority of senior associates are female”.

Key finding 16: Partners and managers perceive that managing a lawyer who is using a flexible work practice is challenging and requires a higher level of managerial skill and commitment than managing a full-time lawyer. Nevertheless partners and managers view managing such practices as a business imperative which will create positive long terms outcomes (eg a return on investment)

When asked to explain the difference in the perceptions between lawyers who use flexible work practices and partners/managers in relation to organisational support, partners/managers accepted that lawyers who worked flexibly might have a more realistic view of how supportive the organisation is as a whole than they do. Hence partners and managers agreed that there are opportunities to demonstrate a higher level of organisational support, eg by nominating a partner as a contact point for lawyers approaching parenthood, appointing a flexible work practices champion, and building flexible work practices and leadership into the partnership agreement.

At a personal level, partners and managers suggested that in order to make the flexible arrangement work there must be give and take from both the supervisor and the lawyer using flexibly work practices (eg “rigidity – for example ‘I can’t work on Friday’ - will not make it work” and “the mindset must be positive on both sides”). Partners and managers also agreed that they play a role in actively managing the nature of the flexible work arrangement, eg by providing back-up and mentoring for the lawyer using flexible work practices, “dealing with expressed resentment”, and explaining the arrangement to clients (eg “there will be no duplication of fees with job-sharers”).

Key finding 17: Partners and managers view flexible work practices as working most successfully when both the lawyer who is working flexibly and the organisation demonstrate flexibility – ie there is give and take on both sides.

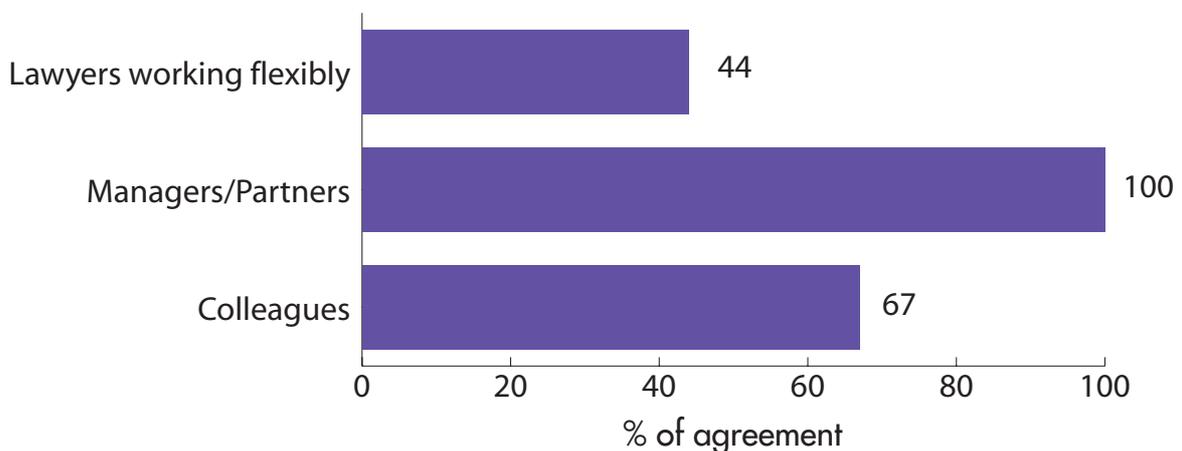
Finally, it would be untrue to say that the partners/managers who attended the focus group presented a uniform view about flexible work practices. In fact the focus group participants presented a diverse range of views on flexible work practices: from highly supportive, to ambivalent to unsupportive (eg “I am a strong believer that you chose work or child-care”). These views were seemingly unrelated to the gender of the partner/manager or the size of the organisation. These views fed into strategies adopted by the partners/managers to manage the flexible work practice – eg a partner with a positive perspective volunteered that they would “tell the client about the arrangements at the beginning of the matter”, whereas a partner with a more ambivalent or negative perspective would “hide it from the client and not argue the time frame”. It appeared that those partners or managers who were ambivalent or negative about flexible work arrangements tried to manage their concerns by limiting the ambit of flexible work practices in terms of time (eg “4 days may be OK but not 3), areas of practice (“advice work is easier”) and size of practice (“if you are a sole operator its harder to deal with”). Partners and managers suggested that education programmes and putting in place more team-based structures to manage work loads may help build a supervisor’s confidence in the feasibility of flexible work practices.

Key finding 18: There is a diversity of perceptions by partners and managers about lawyers using flexible work practices. Views range from being highly supportive of lawyers using flexible work practices to highly unsupportive, and are seemingly unrelated to gender (of the partner/manager) or organisation size.

THE IMPACT ON CAREER PROGRESSION OF LAWYERS USING FLEXIBLE WORK PRACTICES

As indicated in graph 3 below – there are very different perspectives on whether or not it is possible to work flexibly and have a career. Only 44% of the lawyers currently using flexible work practices agreed with this statement (and the response did not vary according to whether the lawyer was in a private firm, in government or in a corporation), whereas 100% of partners/managers and 67% of work colleagues (ie co-workers and support staff) agreed. This section discusses these seemingly diverse perspectives, and in particular the comments made by the focus group participants about the survey data.

Graph 3: Possible to work flexibly and have a career



Lawyers using flexible work practices

The survey of lawyers using flexible work practices were asked whether working flexibly had had an impact on their career fulfilment/progression. 74% of respondents indicated that there had been an impact. There was a diversity of views, however, on the nature of that impact, and on feelings about the impact. There were three major categories of responses by lawyers using flexible work practices:

1. Using flexible work practices had had an impact on actual or expected career outcomes. Examples of comments for those who felt this way were:

“I am a fixed income partner (earning less than other fixed income partners) and have been told by management that there is no possibility of progression to equity as a part-time partner”.

“It affected me gaining partnership”.

“If I had been working full-time I expect that I would have been a partner. I doubt I will be made a partner whilst working part-time.”

“I am almost always overlooked (out of a team of 5 people) for the job of acting as the (legal) Branch Manager while the Branch manager (my immediate supervisor) is on leave, as this is seen as a job that can only be performed by a full-time employee. By not being given the high profile or ‘important’ projects or ‘acting’ in a more senior position, I have very few opportunities to be exposed to challenging work, engage in negotiations with external stakeholders and to demonstrate my capabilities to senior officers.”
2. Using flexible work practices has had an impact on the nature of work and opportunities necessary for career progression. Examples of comments for those who felt this way were:

“To an extent, possibly perceived to be not as dedicated. At times, less involvement on ‘larger’ client matters. To compensate for this, I usually work beyond my official 4 days a week.”

“Given that I am not in the office every day I don’t have the same opportunities to get involved in all of things other lawyers might be involved in (e.g. certain training courses and other extra curricular professional activities). I think being part-time/casual had slowed things down somewhat but otherwise I don’t think it otherwise adversely affects my progression.”

“As a relatively junior lawyer I would assume that my knowledge and experience are not growing at the same rate as a full-time worker. Fortunately the quality of work I undertake offsets this somewhat. My need or choice to work part-time means that I cannot find other employment easily (or at all in mainstream practice?), and hence I am “tethered” to my current role. My career progression is impacted by my inability to consider a diverse range of roles.”
3. Using flexible work practices has had an impact on my career, however, I am comfortable with this at this time. Examples of comments for those who felt this way were:

“It probably does impact but I do not see pursuing my career in the law as a high priority.”

“I will never be promoted but I don’t care about this as I am in a senior position and I don’t want to go higher in this organisation.”

“In terms of fulfilment, I actually find it more fulfilling – I’m not sure why. Perhaps because it is a challenge to fit what is probably close to a full-time workload into three days – I think I actually get more work done when I am in the office than I previously did as a full time worker and I am more focussed for the time I am in the office – I don’t have the luxury of being bored! Also because I am working in a way that I really wanted to – I didn’t want to work traditional office hours and miss out on time with my baby – I wanted a fairly ideal situation in being able to work at home and I was lucky enough to get it. I could see how working at home could work, if I had the right sort of work to do so it is good to see that it can be done.”

“I would currently only take jobs that would allow me the same flexibility.”

The weight of survey responses fell into the first and second categories, namely that lawyers using flexible work practices felt that their career progression and work opportunities had been negatively impacted and they were dissatisfied with that outcome²⁴. In relation to the third category of responses (namely a level of comfort in the lawyer's lack of career progression), it was difficult to identify the extent to which this view was formed in reaction to, or predated, the perceived lack of career opportunities.

Key finding 19: Only 44% of lawyers using flexible work practices agree that it is possible to work flexibly and have a career in their organisation, and 67% of lawyers using flexible work practices are dissatisfied with the negative impact that working flexibly has on their career prospects.

During the focus groups the lawyers using flexible work practices suggested that the definition of "career progression" is not uniform, and subject to the available options. For lawyers using flexible work practices in government and corporate roles "career progression" meant "increasing earning power and status", "more autonomy", "recognised (legal/business) expertise" and "continuous challenge", whereas for private practitioners "career progression" was more narrowly defined as being a partner with the full range of management responsibilities. In part the views of the lawyers using flexible work practices in private practice were informed by the lack of valued alternative career paths. The focus group participants suggested that these roles (eg special counsel) were not "real" alternatives to partnership as they were not readily understood internally or by clients or associated with additional managerial responsibilities and neither did they provide an indirect pathway to partnership (but appeared to be a "parking bay").

Notwithstanding the broader range of career paths available to lawyers working in the government sector and for corporations, there was no significant difference between the groups on the question of whether it is possible to have a career whilst working flexibly. In government practice and in corporations, as in private practice, senior roles are perceived to be much more readily available to a lawyer working on a full-time basis, than a lawyer using flexible work practices.

Further as an indicator of the low value placed on using flexible work practices, and the opportunities for working flexibly at senior levels, the lawyers who participated in the focus groups indicated that accessing flexible work practices was a reactive (rather than a proactive) response by their employer. The lawyers commented that it is very difficult to be laterally recruited into an organisation on a part-time basis, and it is more usual for a lawyer to have been in a full-time role before they commence working part-time.

Key finding 20: Lawyers in government and corporate roles are more likely to perceive career progression broadly (eg in terms of moving into a business or management role) in comparison to private practitioners who view career progression as becoming a partner and perceive a lack of realistic alternative career paths. Nevertheless lawyers using flexible work practices in government, for a corporation or a firm agree (irrespective of the location of their workplace) that senior roles are more likely to be available to a person working full-time than a person using flexible work practices.

Type and quality of work

Lawyers who were using flexible work practices were asked, "Has your work type or quality changed since you started working flexibly?" 74% of this group indicated that there had been a change in the nature of their work. As with the impact on career progression, a range of views were expressed in terms of the feelings and outcomes for the lawyers using flexible work practices. Responses ranged from having a negative impact, to being neutral and finally, to having a positive impact. Examples of responses are provided below:

"I am not given work that might require my input on days on which I do not attend the office. This means that I am generally not given high profile work or work where the CEO might expect an immediate response or assistance on the matter. Where I have been given high profile work, another lawyer has been asked to run the matter for me – sometimes until I am back in the office and sometimes I don't get the matter back."

"I have twice raised with my employer the option of job-sharing with another lawyer to alleviate this problem (of poor quality work). The employer advised it did not want to embark on this option."

"I have been used most of the time as someone who can fill gaps when there is a crisis or to work on specific projects. However, now I have a job which belonged to someone who worked full-time! Tend not to be in charge of things but rather a 'helper'."

"I joined the organisation on a flexible basis so there was no change from a previous role with the organisation. Compared with my previous work, however, I was doing more discrete projects which were less transaction based and more related to ongoing corporate governance issues. As time has gone on I have been involved in more transactions and general commercial work which is fairly similar to what I was doing before, but probably smaller matters."

"At times, less workload than previously as a "full-time" employee. However, when involved in large litigious files during extremely busy periods such as preparation for trials, I have had to readjust to full-time hours which has only been possible due to family support and flexibility of my husband's family-friendly employer."

"I was previously in Corporate and moved to CE & I. Over the last two years I have principally been doing project work which can make flexible work practices more difficult."

"Originally I was in the private sector, I am now in public sector legal policy. The change has not been affected by the flexibility. I have been very lucky in how well accommodated I have been, although I am not extremely well accommodated at present."

"The quality has (surprisingly) improved as I now undertake mostly higher level advisory work, and much less litigation comprised of proceedings commenced by writ. I am not in a position to manage a great number of ongoing files, and consequently undertake discreet pieces of work which are frequently more enjoyable."

Whilst some lawyers using flexible work practices experienced a positive outcome arising from the change in the type and quality of their work since they started working flexibly, on balance the comments from lawyers using flexible work practices indicated that the change was negative and unwanted.

Key finding 21: 74% of lawyers using flexible work practices perceive that the type or quality of work changed after they started working flexibly, and 67% of this group view the change as negative and unwanted.

Co-workers

In relation to the survey data, as noted on page 26 in graph 3, 67% of colleagues agreed that it was possible to use flexible work practices and have a career. It is of note that because of the small sample size for the surveys submitted by co-workers and support workers, the survey data was aggregated into a group called "colleagues", however the focus groups dealt with each of these sub-groups separately to identify any differences. When the co-workers were asked to comment on this survey result in the focus group in fact 100% agreed that there was a negative impact on career progression when a lawyer uses flexible work practices. In contrast support workers perceived that they were more distanced from the issue of a lawyer's career prospects and volunteered that they had merely assumed there would have been no impact because the lawyer was using flexible work practices.

Co-workers said that they observed the impact on the career prospects of a lawyer using flexible work practices both directly (ie lawyers using flexible work practices were not promoted) and indirectly (ie lawyers using flexible work practices were not provided with sufficient quality work once they worked flexibly, such as being involved in large transactions). The co-workers commented that lawyers using flexible work practices were “not given good work”, or “not given work at all” (ie there was a low rate of internal referrals). Further in their experience “if you go part-time then you can forget about partnership” and using an alternative career path was not a viable option because “becoming a ‘consultant’ or a ‘special counsel’ is a strange position between partner and senior associate”, “clients don’t understand what those terms mean” and they had not witnessed a female special counsel being promoted to partnership.

Co-workers also commented that their perception that using flexible work practices negatively impacts a lawyer’s career prospects reduced their own level of commitment to their employer (in terms of retention) and levels of satisfaction, and influenced their decisions about having children. Co-workers identified that there are a lack of role models balancing work and family at senior levels and this impacts a co-worker’s own ability to imagine their own careers as having balance. As one co-worker put it “(organisations) need to recognise the demotivating impact on lawyers coming through who look up and see ‘can’t do’; you can’t become a partner as a part-timer or a woman with children”. It is sometimes assumed that the negative impact of limited career prospects is localised to the lawyer using flexible work practices, however the evidence from the co-workers suggests that the linkages have a broader impact on the retention and engagement of other lawyers in the workplace.

Key finding 22: Co-workers observe that the nature of work given to lawyers using flexible work practices is of lower value than that given to full-time employees. Co-workers unanimously observe that using flexible work practices limits career progression, and this reduces co-workers’ own levels of commitment to their organisation.

Partners and managers

As noted on page 26 in graph 3, 100% of the partners and managers surveyed were of the view that it is possible to use flexible work practices and have a career in their organisation. Their comments during the focus groups suggested that they had answered the question from a theoretical point of view, rather than a practical outcome. From a more practical perspective partners and managers agreed that (in general) using flexible work practices limits a lawyer’s career prospects and suggested “the preference of partners is to take on full-timers”. By way of evidence in support of their assessment they noted the low numbers of part-time partners/executives and that “it’s hard to find an example of a woman who has gone on maternity leave and become a partner. They become a partner before maternity leave”.

Partners and managers explained the preference for lawyers working full-time in terms of the focus on billings, and the difficulty a lawyer who is working part-time has when competing for a partnership position against a lawyer who can generate more income for the partnership. They commented “budget is the only issue” and “if you are a part-time lawyer you could get there if you had the billings and generated a volume of work to lead a team”.

The bottom line is that partners and managers express a higher level of optimism about a lawyer using flexible work practices maintaining a career and taking on a senior role whilst working flexibly, than lawyers using flexible work practices themselves. The assessment by 44% of lawyers using flexible work practices that it is possible to have a career whilst working flexibly is echoed in a US survey of firms and lawyers working part-time. The US survey found that only 57% of private law firm respondents categorically stated that a lawyer working part-time was not on the same partnership track as a lawyer working full-time²⁵.

Key finding 23: Whilst 100% of partners and managers surveyed stated that using flexible work practices and having a career is possible in theory, the majority viewed working flexibly as limiting career progression in practice. Nevertheless partners and managers are still more optimistic about the possibility of working flexibly and having a career than lawyers using flexible work practices themselves.

Partners and managers also explained the preference for lawyers working full-time in terms of the similarity with their own experience and demonstration of commitment to their career and the firm. Critically, partners and managers found it difficult to reconcile a lawyer using flexible work practices with their assumptions about ambition, and in essence a view that partnership demanded a prioritisation of work over family: “there is a perception that people working part-time don’t really know what they want to do with their career: do they want to work or have a life?”; “I don’t know if lawyers working flexibly care about career progression – maybe they want work/life balance?”; and “If you have children, of course you want to work part-time. There is a perception that their loyalties are divided”.

Key finding 24: Partners and managers are uncertain about the career aspirations of lawyers using flexible work practices and are more likely to assume that lawyers using such practices are less ambitious than lawyers working full-time.

Some of the partners and managers observed improved employment practices in lawyers using flexible work practices, such as increased efficiency and productivity. These observations were echoed by one of the lawyers interviewed who worked in a job-share arrangement who stated, “I work long and hard when I’m here, then I take a break. I don’t burn out”. As a whole however, partners and managers who participated in the focus groups demonstrated little recognition of the relationship between dual centric practices (in which staff give the same priority to their work and family/life commitments) and sustainable personal and business outcomes (eg reduced feelings of stress and increased ability to manage competing demands, and retention of talent). In terms of career progression partners and managers appeared to operate within, and favour a model of, work centrality (in which work is prioritised over family/life commitments)²⁶.

In summary there appeared to be limited awareness that “a more flexible workplace, when developed with attention to both employer and employee needs, can improve business performance and bottom-line business outcomes, while also improving business performance and quality of life for employees and their families – a potential win-win situation”²⁷. This conclusion is based on research which found that employees with a high level of flexibility are (i) more engaged and committed to their companies; (ii) more likely to plan on staying with their employer; and (iii) more satisfied in their jobs, than employees with a low level of flexibility²⁸. In terms of a cost/benefit analysis, those partners/managers who were ambivalent or negative about flexible work practices emphasised the short-term costs of managing lawyers using flexible work practices (eg managing competing work schedules) and failed to recognise (or downplayed) the overall bottom-line business benefits. In essence partners and managers accepted without challenge that the current structure of work is weighted towards rewarding lawyers who prioritise work over family.

Finally, partners and managers suggested a note of caution for lawyers using flexible work practices assuming that the fact that they worked flexibly represented the sum total of the reason why their career had not progressed. Partners and managers suggested that “they think that the grass is greener, that exciting things are happening and they are missing out”, and it is becoming increasingly difficult for everyone to become a partner in a private law firm.

Key finding 25: Partners and managers acknowledge that the current structure of work and decisions about career progression are weighted towards rewarding lawyers who prioritise work over family responsibilities by working full-time. It appears that partners and managers are not fully aware of the business implications of ineffectively implementing flexible work practices.

8. Strategies for change and recommendations

Focus group participants were asked to identify the key principles and strategies to successfully implement flexible work practices in the legal profession, and recommendations for change. In particular the participants were asked to identify what they (and their peers) could do to improve the integration of flexible work practices in legal practice. This question was intended to prompt self-reflection and commitment, rather than focussing on changing externalities. The high level of engagement around this question in all of the focus groups suggests that change is both desirable and achievable, albeit challenging.

Key finding 26: Lawyers using flexible work practices, partners/managers, co-workers, support staff and clients agree that developing and implementing changes to improve the integration of flexible work practices into the legal profession is both desirable and achievable, albeit challenging.

In 2004 the Law Society of New South Wales published a guide to firms wishing to implement a flexible workplace²⁹. This guide (entitled *The case for flexibility*) suggests that the firms embrace the following eight strategies/actions:

1. Articulate and promote the value of flexible work practices;
2. Demonstrate leadership;
3. Provide support for supervisors;
4. Grow effective behaviours and attitudes in the employee working flexibly;
5. Develop a communication plan;
6. Identify barriers to flexible work practices and create effective solutions;
7. Develop Flexibility Principles³⁰;
8. Create the pathway for implementation.

These recommended strategies and actions were reflected in comments made by participants in the *360 degree* study. Drawing upon the strategies for change suggested by the focus group participants, the recommendations below build on, rather than reiterate *The case for flexibility*. These recommendations target key areas for change: (i) formal policies; (ii) the practices of partners and managers; (iii) strategies for employers; (iv) tips for co-workers and support staff; and suggest (v) areas for future research.

Policies

1. Formal policies on flexible work practices should be inclusive of a broad range of reasons for seeking flexible work practices and the full range of flexible work options available.
2. The workplace should ensure that technical supports are available (eg a laptop with broadband access) to enable seamless communication between the lawyer working flexibly, their immediate work group and clients.

Partners and managers

3. Partners and managers should be more open with clients about a lawyer's flexible work practice; encourage a team-based approach to managing work; and actively refer work to lawyers using flexible work practices.
4. Partners and managers should demonstrate a can-do attitude to working with a lawyer using a flexible work practice and provide effective role modelling (eg by making positive comments about working flexibly and calling to account negative comments).
5. Partners and managers should actively manage and monitor flexible work practices (eg by speaking with co-workers, clients and support staff about an arrangement when it is established, and on an on-going basis).

Employers

6. Employers should recognise and value the supportive role played by co-workers and support staff in assisting a lawyer using flexible work practices (eg by including an assessment in their performance review).
7. Employers should provide staff with training on flexible work practices. For partners and managers such training should provide practical skills on managing flexible work practices as well as information to dispel myths about the attitudes of clients, support workers, and co-worker, and myths about the career ambitions of lawyers using flexible work practices.
8. Employers should demonstrate leadership and commitment to lawyers using flexible work practices (eg by building flexible work practices and leadership into the partnership agreement; appointing a flexible work practices champion to mentor people pre and post parental leave; and appointing lawyers using flexible work practices to senior roles); and create greater partner/manager accountability (eg by ensuring the referral of quality work to a lawyer working flexibly, and the active use of flexible work practices to attract and retain lawyers).

Co-workers and support staff

9. Support staff and co-workers should meet with the lawyer working flexibly at the beginning of the arrangement to discuss expectations and work strategies.
10. Support and co-workers should actively communicate with lawyers using flexible work practices and partners/managers (eg about structure, process and protocols for managing workloads), and cultivate an understanding attitude.

Further research

11. VWL should develop practical guidelines on lawyers establishing and maintaining a job-sharing arrangement.
12. VWL should conduct a return on investment analysis on the impact of lawyers using flexible work practices on the business bottom line, and in particular measure the impact on the attrition/retention of lawyers using flexible work practices on lawyers using flexible work practices, co-workers and clients, as well as infrastructure costs and overheads ³¹.

9. Conclusion

The case for flexible work practices in the Australian legal profession is based on a growing body of national and international research which has examined the existence of gender bias in the legal profession³²; the difficulties reconciling work and family responsibilities³³; the challenge of creating change³⁴; and practical strategies for implementing change³⁵. These reports have also put a positive business case for creating family friendly workplaces, including the attraction and retention of talent, and building employee commitment and engagement³⁶. Each piece of research has chipped away at the barriers to advancing women in the legal profession and integrating flexible work practices in particular. In this way the case for flexible work practices (and alternative careers) has been spearheaded by women with children, but the current study (as well as previous research) suggests that these issues have resonance for a broader group of legal professionals, including younger practitioners seeking to balance their work and life expectations, older practitioners seeking to phase into retirement and men wanting to have greater engagement with their families.

If the case for flexible work practices is so widespread, what is keeping the status quo in place (ie workplaces in which flexible work practices are difficult to obtain, and progress under)? The VWL study of partners and HR managers in 2002 revealed that these stakeholders attribute the reluctance to change to “others” – ie clients and colleagues who may become disgruntled, partnerships which view lawyers using flexible work practices as lacking commitment and an inefficient use of resources. Hence notwithstanding the existence of policies which support flexible work practices in theory, the practice is less than optimal as these attitudinal barriers mitigate successful implementation.

360 degrees challenges the assumed negative views of co-workers, clients and support staff of lawyers using flexible work practices. The report suggests that more often than not these assumed views provide convenient excuses for partners and managers to justify and externalise their reluctance to (and perhaps fear of) change. Moreover the report argues that where these negative views do exist they should be confronted as it is not in the best interests of the organisation to under-utilise talented lawyers in the short term, and is a less than strategic approach to addressing the talent shortage in the long term.

It is in the best interests of the legal profession to address real barriers to implementing flexible work practices. These barriers include the one-size-fits-all approach to evaluating partnership potential/participation, a misunderstanding by partners and managers about the career aspirations of lawyers using flexible work practices, and a lack of management of a flexible work arrangement which allows “environmental static” to interfere with the smooth operation of the arrangement. Identifying real as opposed to assumed or overplayed external barriers places the ball back into the court of partners and managers to identify, challenge and change their own attitudinal barriers, and to take steps to create a supportive workplace.

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11. About Aequus Partners

Aequus Partners is a highly respected management consultancy on workplace flexibility, diversity and well-being. Established in 1999, Aequus Partners' reputation is driven by its:

- expertise in research, law, policy, management and organisational change;
- foundation of academic and industry research; and
- global networks of knowledge.

The aim of Aequus Partners is to enhance individual and business performance by providing the following services:

- (i) organisational change advice (eg research, evaluation, policy and strategy development and implementation, and return on investment analyses);
- (ii) investigation and mediation of workplace conflicts (eg discrimination and harassment, bullying and conduct breaches);
- (iii) learning and development (eg managing and leading flexibility and diversity, discrimination, harassment, grievance handling, and bullying); and
- (iv) e-newsletter on Diversity and Flexibility (a complimentary monthly news service on cutting-edge research and international developments).

Aequus Partners' partners and Associates are all tertiary qualified, and bring to clients their diverse expertise in human resources, law, psychology and management. The two partners are Juliet Bourke and Dr Graeme Russell.

Juliet Bourke, BA, LLB, LLM (Hons)

Using her expertise as an employment lawyer, Juliet works with leading organisations to: develop and implement organisational change strategies which promote equity and diversity; deliver training programs; and conduct workplace investigations and mediations. Juliet is also a part-time chairperson with the Government and Related Employees Appeals Tribunal, in which capacity she conciliates and determines workplace disputes.

Juliet's current key appointments include: Chair of the Equal Employment Opportunity Network of Australia (EEONA), President of the NSW EEO Practitioners' Association (NEEOPA), and Chair of the Taskforce on Care Costs. Juliet was a judge of the 2004 Law Society of New South Wales EEO Awards.

Juliet has lectured in discrimination law at Sydney University (Faculty of Law) and in management at the University of NSW (School of Industrial Relations and Organisational Behaviour), and has published widely on employment related issues. She is recognised nationally and internationally as an expert author and speaker on diversity, flexibility and gender equity. Juliet is the author of *Corporate Women, Children, careers and Workplace Culture* (2000) and co-author of *Age Discrimination: Mitigating Risk in the Workplace* (2005).

Dr Graeme Russell, BA, PhD

Graeme is an Associate Professor in Psychology at Macquarie University. He is an internationally recognised researcher, writer and consultant on work and family strategies (including the impact that work and family/life conflict has on work performance and personal well-being), equal employment opportunities, organisational change, diversity, workplace flexibility and fatherhood.

Graeme's current appointments include: foundation member of the National Diversity Think Tank and judge of the Annual Equal Opportunity for Women in the Workplace Agency Business Achievement Awards.

Graeme was the principal researcher for the annual EOWA Census' on Women in Leadership, and works with leading national and international organisations to develop, implement and evaluate work and family/life, and flexibility/diversity strategies.

Graeme is the co-editor of *Organisational Change and Gender Equity: International Perspectives on Fathers and Mothers at the Workplace* (2000, Sage, USA).

12. Endnotes

¹ *Living and working together: Looking to the future*, 1998 (Revised edition of guidelines published by LIV Young Lawyers Section and the Office of Women's Affairs *Working together in the 90's: How to do it better*; *Taking up the challenge – Women in the legal profession*, 1999, Trifiletti G; *Flexible Partnership – Making it work in law firms*, 2001, Kaufman S, Frost G;

² In this report the terms “flexible work practice” and “working flexibly” refer to arrangements in which the standard hours and place of work is changed, eg part-time work, teleworking and job-sharing.

³ Research conducted by the Families and Work Institute demonstrates that employees with a high level of workplace flexibility are (i) more engaged and committed to their companies; (ii) more likely to plan on staying with their employer; and (iii) more satisfied in their jobs, than employees with a low level of flexibility: Families and Work Institute (2004) *When work works* www.familiesandwork.org

⁴ “Environmental static” refers to negative attitudes or practices which interfere with the effective implementation of flexible work practices. The term was coined by the Herman, L. V., Adam, L. M., and Measell, E. H in (2004) *It's about time. Part-time Policies and Practices in Atlanta Law Firms* Georgia Association for Women Lawyers, Atlanta Bar Association, Georgia Commission on women, p 30.

⁵ Information provided by the Law Institute of Victoria of practicing certificate holders shows that of practitioners who hold the title ‘partner’ (excluding sole practitioners) 86 percent are males compared with 14 per cent females.

⁶ For a summary of Australian research up to 1999 see VWL (1999) *Taking up the Challenge: Women in the legal profession*. For a summary of American research on women in the legal profession visit the Keck Centre Clearinghouse at Stanford Law School: <http://womenlaw.stanford.edu/model.policies.html>

⁷ Catalyst (2001) *Women in Law: Making the Case*, www.catalystwomen.org , p 8.

⁸ *Howdy Partner*. The Australian Financial Review Partnership Survey June 2005, AFR 24 June 2005 p 50.

⁹ Williams, J., and Calvert, C., (2001) *Balanced Hours: Effective part-time policies for Washington Law Firms*, American University, Washington College of Law.

¹⁰ For example the Commission on Women in the Profession (2001) *Balanced Lives: Changing the culture of legal practice* <http://womenlaw.stanford.edu/balanced.lives.pdf>

¹¹ For example the NSW Attorney General's Department (1999) *Advancing Flexibility – a case study in implementing flexible work practices in the NSW Attorney General's Department*, NSW Attorney General's Department; and the Law Society of New South Wales (2005) *The Case for Flexibility: A guide to implementing a flexible work place*, Law Society of New South Wales.

¹² VWL *Flexible Partnership – Making it work in law firms*, 2001, Kaufman S, Frost G.

¹³ Herman, L. V., et al (ibid).

¹⁴ As noted above this term was coined by Herman, L. V., et al (2004) *ibid* and refers to negative attitudes or practices which interfere with the effective implementation of flexible work practices, eg declining to work with a lawyer who is using a flexible work practice, making disparaging comments about the nature of the arrangement, setting meeting times for non-scheduled work days and failing to communicate relevant information to the lawyer using the flexible work practice.

¹⁵ “The Retirement Income Modelling Group in the Australian Federal Treasury has estimated that whereas the working age population currently grows by 170,000 persons per year, the estimated growth for the entire decade 2020 to 2030 will be no more than 125,000”: Encel, S (2003) “Age Can Work: The Case for older Australians staying in the workforce”, A report to the Australian Council of Trade Unions and Business Council of Australia. Social Policy Research Centre, University of NSW.

¹⁶ Nexus Strategic Solutions (1999) *Report on the retention of legal practitioners*, The Law Society of Western Australia and Women Lawyers of Western Australia.

¹⁷ Given current trends it is estimated that in New South Wales by 2015 women will constitute the majority of solicitors (52.2%): Urbis Keys Young (2004) *The Solicitors of NSW In 2015*, Law Society of New South Wales, 4.

¹⁸ Work and Family, Industrial Relations Victoria (2005) *Quality Part-time Work – working better for everyone*, Industrial Relations Victoria.

- ¹⁹ Kilmartin, C., (1998) Mothers with 1+children aged 0-4: their labour force status and labour force status of partners (if in a couple), Australia, 1989 – 1997, Australian Institute of Family Studies, Melbourne. See also data on Actual vs Preferred Working Hours of Australian Women by age of child cited in *Family Provisions Decision* AIRC Print PRO82005, handed down on 8 August 2005 p 24.
- ²⁰ Law Society of NSW (2005) *ibid* and Williams, J., and Calvert, C., (2001) *ibid*.
- ²¹ Herman L et al (2004) *ibid* p 16.
- ²² Such an assumption (ie resistance by co-workers to a person working flexibly) was noted by the Tribunal in *Schou v Victoria* (2002) 375 VCAT.
- ²³ Law Society of NSW (2005) *ibid* p 25.
- ²⁴ This finding is consistent with US based research on career aspirations of male and female senior executives in Fortune 1000 companies, namely that “women and men have equal desires for the CEO job”: Catalyst (2004) “Women and men in US Corporate Leadership: Same workplace, different realities” www.catalystwomen.org.
- ²⁵ Herman, V. L., et al (2004) *ibid* 14
- ²⁶ Galinsky, E., (2004) “Dual Centric: A new concept in work life”, Families and Work Institute, NY, USA, www.familiesandwork.org.
- ²⁷ Families and Work Institute (2004) *ibid* p 4.
- ²⁸ The US research (based on national survey data) found that employees with more access to flexibility were (i) *more engaged and committed to their current employer* (where there was a low level of flexibility 56% of employees reported high levels of job engagement, in comparison to 66% of employees with a high level of flexibility); (ii) *more satisfied* (where there was a low level of flexibility 23% of employees reported high levels of job satisfaction, in comparison to 67% of employees with a high level of flexibility); (iii) *more likely to remain with their employer* (where there was a low level of flexibility 49% of employees reported a high level of likelihood that they would remain with their employer for the next year, in comparison with 72% of employees with a high level of flexibility); and (iv) *mentally healthier* (where there was a low level of flexibility 17% of employees exhibited very good mental health in comparison with 33% of employees with a high level of flexibility): Families and Work Institute (2004) *ibid*.
- ²⁹ Law Society of New South Wales (2005) *ibid*.
- ³⁰ The Law Society’s *Flexibility Principles* include: (i) Flexibility is a management tool that can help get the job done, not an employee perk or accommodation; (ii) Employees’ reasons for wanting flexibility should not matter to accessing a flexible work arrangements; (iii) Not everyone wants flexible arrangements; (iv) Not everyone can have flexible work arrangements; (v) Flexibility must be applied consistently and fairly, although their may be tailored arrangements to suit different circumstances; (vi) Flexibility works best when the work team and the clients are involved: Law Society of New South Wales (2005) *ibid* p21.
- ³¹ See Herman L. V., et al (2004) for guidance on such research.
- ³² Keys Young (1995) “Research on Gender bias and women working in the legal profession: Report prepared for NSW Department for Women”.
- ³³ Law Society of NSW (1998) “Family Responsibilities Study”. Bourke, J., (2000) “Corporate Women, Children, Careers and Workplace Culture: Integrating flexible work practices in the legal and finance professions”, Industrial Relations Research Centres, University of New South Wales.
- ³⁴ VWL (1999) *Taking up the challenge*.
- ³⁵ Law Society of NSW (2005) *ibid*. See also Williams, J., et al (2004) *ibid*, Herman L. V., et al (2004) *ibid*; *Equity Committee of the Law Society, Canada* (undated) *Guidelines and Model Policy on Alternative Work Schedules* <http://www.lawsociety.mb.ca/equity.htm>; and Commission on Women (2001) *ibid*.
- ³⁶ Families and Work Institute (2004) *ibid*.

