

# Do you manage?

flexible: flexi·bili·ty,  
flexi·ble·ness n.

A guide to managing lawyers with  
flexible work arrangements



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# 1 Introduction from VWL convenor



Victorian Women Lawyers (VWL) has over a number of years conducted research and published reports relevant to the issues faced by women lawyers. In November 2005, VWL released a report entitled *A 360° Review: Flexible work arrangements. Confronting myths and realities in the legal profession. (360° Review)*.<sup>1</sup> This report found that flexible work arrangements could be more successful if adequately supported and managed by the partner or manager.

VWL's Work Practices Committee decided that the management of flexible work arrangements was an area that needed further examination and input from the partners and managers themselves. This led to a collaboration of all VWL's sponsor firms in attending three separately targeted workshops and identifying the issues surrounding the management of lawyers with flexible work arrangements.

It was wonderful seeing 10 major law firms work together to find ways to improve flexible work arrangements. It shows both a commitment to and a belief in these arrangements.

As a result of the workshops, VWL has developed two practical tools and this guide. The practical tools deal with the realities of the day to day arrangements and are not dependent on either the type of practice or the size of the firm.

It is very clear that flexible work practices are of significant importance within the legal workplace. There are examples of successful flexible work arrangements in all areas of private practice, including the traditionally difficult areas of transactional work and litigation.

I would like to sincerely thank the VWL Work Practices Committee for coordinating the workshops and this report.

This guide will provide assistance in implementing arrangements that work for all those involved: the lawyer, the partner and the firm. I encourage all partners to embrace the assistance provided in this guide.



**Astrid Haban-Ber**

July 2010

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<sup>1</sup> [http://www.vwl.asn.au/Portals/0/downloads/VWL\\_360DegreeReport\\_web.indd.pdf](http://www.vwl.asn.au/Portals/0/downloads/VWL_360DegreeReport_web.indd.pdf)

## 2 Message from the facilitator – Kriss Will



Kriss Will facilitated all three workshops. She has extensive experience and interest in retention of women and effective management of people in professional service firms.

Kriss is the Managing Director of Kriss Will Consulting Pty Ltd and specialises in management consulting and training and development. She is well known to most of the participants in the workshops and ensured the sessions moved through the issues and provided thought provoking discussions and comments.

When asked to comment on the sessions, Kriss wrote:

*It was refreshing to work with groups of partners and senior HR professionals from competing law firms who were willing to share, discuss and debate the challenges and benefits of making flexible working arrangements successful.*

*The willingness of these people to contribute success stories, frustrations and ideas saw the development of possible approaches and support tools that draw from real life experiences rather than theoretical positions. This is the strength of this publication.*

*I would like to thank the Victorian Women Lawyers for inviting me to facilitate these discussions and particularly thank and commend the participants whose involvement ensured the workshops were more than just another 'flexible work practices' talkfest!*

## 3 Executive summary



### 3.1 Challenges facing partners

The purpose of the 'VWL: Do You Manage?' workshops was to gain a deeper understanding about the challenges facing partners in managing flexible work practices.

The previous research conducted by VWL<sup>2</sup> identified that one of the real barriers to organisations embracing flexible work practices was the attitudes of leaders and the lack of practical support and encouragement from the organisation. The research found that it was the absence of meaningful support from the manager or partner that needed to change.

To find out more about these issues from the partner and manager perspective, the VWL Work Practices Committee held three workshops with those involved in managing flexible work practices. The partners were asked to talk about what worked, the difficulties they faced and the impact on their business of offering (and not offering) flexibility. The participants were open about the challenges they faced in managing flexibility but also recognised that offering flexible work practices is now a reality in law firms.

It was clear from these workshops that partners are willing and capable of managing flexible work practices in their teams, but would like more assistance with both the details in the arrangements and the discussions surrounding the arrangement.

The challenges identified in the workshops arose largely from a failure to anticipate, and provide for, the day to day detail of these arrangements.

### 3.2 Need for detail to be covered

It was surprising to identify that often partners and lawyers did not adequately identify and plan for the changes before entering into flexible work arrangements by partners and the lawyers. It was clear the more successful arrangements were based on a clear understanding of the arrangement and detailed discussions, involving the whole team, of the day to day issues.

With that greater knowledge, VWL has created this guide and two practical tools to assist the partners in both the planning of, and the discussions concerning, the details in any flexible work arrangement. The effective use of these tools will flow through to assisting the lawyers, the team and the firm achieve successful flexible work arrangements. VWL strongly recommends the use of these tools to increase the likelihood of the success of flexible work arrangements. The tools are:

- 1 flexible work proposal/business case (Annexure A) to assess the viability and understand the scope and detail of the changes in work practices;
- 2 individual flexible work plan (Annexure B) to set out the essential day to day practicalities and detail.

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<sup>2</sup> A 360° Review: Flexible work arrangements. Confronting myths and realities in the legal profession. VWL November 2005 (360° Review) [http://www.vwl.asn.au/Portals/0/downloads/VWL\\_360DegreeReport\\_web.indd.pdf](http://www.vwl.asn.au/Portals/0/downloads/VWL_360DegreeReport_web.indd.pdf)

This guide:

- explains the nature of the workshops, who attended and the key outcomes (section 4);
- sets out the challenges and continuing issues (section 5);
- briefly considers the current legal framework and how this impacts on the management of flexible work practices (section 6); and
- provides the practical tools and a guide to their use that will help address some of the challenges (section 7 and Annexures A and B).

The evidence from our workshops suggests that flexible work arrangements can be successful in all practice areas in all workplaces, and that partners and managers are willing to make this happen.

**Quote from a participant  
of the Transactional  
Practice Workshop:**

*"I require a business case to support part time work and discussions around the arrangements. Some partners don't know what to say or how other arrangements work. Not one size fits all. Each arrangement needs an individual review. There must also be protocols on communications, client contact, out of messages and email copies."*

## 4 About the workshops



### 4.1 What were the 'Do you manage?' workshops?

VWL's Work Practices Committee held three workshops for the law firms which sponsor or support VWL,<sup>3</sup> one in 2008 and two in 2009. The three workshops were for:

- partners in transactional practices;
- partners in litigation practices;
- HR managers.

The workshops were facilitated by Kriss Will and were designed to get input from the partners who were managing, or who had experienced working with, a lawyer on a flexible work arrangement.

Traditionally, transactional practices and litigation practices are the most difficult areas in which to find successful long-term flexible work arrangements. These two practice areas were chosen in order to gain an insight into the barriers and difficulties and to identify any success factors.

The workshops covered:

- the types of flexible work arrangements;
- the challenges and difficulties of managing flexible work arrangements;
- critical success factors;
- the benefits of offering flexible work arrangements.

### 4.2 Why did VWL conduct the workshops?

The *360° Review* found that flexible work arrangements could be more successful if adequately supported and managed by the partner or manager. Partners reported that a higher degree of management skills was required when managing a lawyer on a flexible work arrangement. One of the key findings from the *360° Review* was that:

*Lawyers using flexible work arrangements perceive a gap between managerial support for flexible work arrangements and managerial skills. 78% of lawyers using flexible work arrangements 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 arrangements.*

The *360° Review* concluded that the real barriers to successful flexible work arrangements included:

- the one-size-fits-all approach to evaluating partnership potential;
- a misunderstanding by partners about career aspirations of lawyers using flexible work arrangements; and

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<sup>3</sup> Allens Arthur Robinson, Blake Dawson, Clayton Utz, Corrs, DLA Phillips Fox, Maddocks, Mallesons, Middletons, Minter Ellison, Freehills (as a supporter firm) and the LIV (at the HR managers' workshop)

- a lack of management of a flexible work arrangement which allows negative attitudes or practices to interfere with the smooth operation of the arrangement.

The workshops were designed to obtain a greater understanding, from the partners' and managers' perspective, of what is working well and what are the barriers to successfully managing flexible work arrangements. The outcomes made it clear that practical tools and guidance for flexible work arrangements are needed to assist the partners and managers with the day to day details of the arrangements.

### 4.3 What information did the workshops provide?

#### **Types of flexible work arrangements used in law firms**

Part time work (fewer hours per week or fewer weeks per period) and working from home/remotely were the main types of flexible work arrangements undertaken in law firms, though the following types of flexible work arrangements were also used:

- job-share;
- flexible start/finish times;
- casual project workers on hourly rate;
- additional leave arrangements;
- phased retirement or phased return to work;
- career breaks/leave of absence.

#### **Reasons for providing flexible work options**

The key reasons for providing flexibility were consistent across the workshops:

- retention – keeping people you might otherwise lose;
- firm culture – creating loyalty;
- recruitment advantage – potential employees more attracted to firms which are seen as flexible;
- firm reputation – adverse impact on reputation of firm if seen as inflexible; and
- efficiency – lawyers with flexible work arrangements are often extremely efficient and effective and can model valuable skills to the team on prioritisation and organisation.

#### **Critical success factors**

For a successful flexible work arrangement, the critical requirements are:

- clarity of the detail and terms of the arrangement;
- support and involvement of the team;
- appreciation of the value of the arrangement.

A successful flexible work arrangement is where:

- the lawyer is fully utilised (not over stretched all the time);
- the work quality and quantity is as discussed and expected;
- the lawyer is valued and respected by the team and the clients;
- the other team members are supportive and accepting of the arrangement;
- the partners can see the value of the contribution of the lawyer to the team and to the clients; and
- any issues are openly and promptly discussed.



## Challenges

The challenges raised are discussed in more detail in section 5 of this guide. The key challenges identified at the workshops were:

- what you can say 'No' to, and discussions on restrictions on days, hours or work type;
- detailed planning when putting in place the arrangements;
- managing work flows and overflow;
- managing the impact on the team;
- managing expectations and impact on career aspirations;
- how to reward or recognise work done above and beyond expectations.

Client impact was not listed as a major challenge. Most partners are aware their clients are facing the same issues. Clients are generally accommodating, provided there is good communication and client service.

## 4.4 Development of two practical tools

WVL has developed two practical tools from the information provided at the workshops:

- 1 flexible work proposal/business case (Annexure A); and
- 2 individual flexible work plan (Annexure B).

These practical tools can be useful to any partner in any practice or firm (large or small). Section 7 includes a guide on the use of these tools.

Though the workshops tackled the practice groups considered by some as the most difficult to engage successful flexible work practices (litigation and transactional matters), the information gained can be applied across all practice types.

The tools will need tailoring for the individual lawyer's practice, practice group and firm but can and should be the starting point for reviewing both new proposals and existing flexible work arrangements.

## 5 Challenges

### 5.1 Can flexible work arrangements be successful in law firms?

The outcomes from the workshops made it clear that successful flexible work arrangements can exist in traditionally difficult areas such as transactional and litigation sections.

The key success factors include:

- team involvement;
- clarity of the detail of the arrangements; and
- appreciation of value.

It is clear there are already many successful flexible work arrangements and that partners and managers want more flexible work arrangements to be successful.

#### Key Finding No. 16 from VWL's 360° Review

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).

### 5.2 Challenges

The following are some of the difficult issues identified at the forums, which are covered in the practical tools in these guidelines – see section 7 of this guide.

#### Operational and sustainability issues

The issues that were identified from an operational or sustainability perspective were similar to those identified in the 360° Review:

- Defining billable and non-billable targets (especially business development) – are they realistic compared to full time hours? Is it just a matter of prorating?
- Considering the days in the office and the effect on clients and the team, as well as on the lawyer – is it better to have consecutive days in the office for client and matter continuity?
- Considering the minimum amount of billable hours needed, given the lawyer's practice area and team, for the flexible work arrangement to be effective – should there be a minimum number of working days?
- Identifying if there is any day when the lawyer should be at work – are Fridays difficult to have off in a litigation practice, given directions hearings are scheduled on Fridays?
- Understanding and discussing, partner to partner and partner to lawyers within the team, a range of issues in detail including:
  - work type and quality and any potential difficulties in doing certain types of work such as the closing of a deal in transactional practices;

**Key Finding No. 21** from VWL's 360° Review

21. 74% of lawyers using flexible work arrangements 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.

- what happens with unfinished work – do co-workers pick this up?
- level of availability, and flexibility to manage varying work loads;
- managing the team, recognising extra work undertaken.

**Key Finding No. 12** from VWL's 360° Review

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 arrangements, and may in fact create a negative climate by failing to redress unsupportive comments.

- Explaining any different applications of policies across the firm – do different sections with different work pressures require different flexible work arrangements?
- Considering the number of lawyers working with flexible work arrangements that a group can maintain – is there a ceiling?

**Key Finding No. 9** from VWL's 360° Review

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

### **Career aspirations and rewards**

The key issues identified that are relevant to the lawyer's career and remuneration are:

- Addressing the impact that flexible work may have on a lawyer's career path and on the quality of work allocated to them.
- Developing reward structures for lawyers with flexible work arrangements, eg extra pay for extra hours worked, time in lieu, entitlement to bonuses, participation in conferences.
- Rewarding or recognising a lawyer on reduced hours who goes 'above and beyond' agreed requirements.
- Planning for performance reviews and understanding that not everything can be prorated, eg business development, mentoring, CLE.

**Key Finding No. 24** from VWL's 360° Review

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

**Key Finding No. 22** from VWL's *360° Review*

22. Co-workers unanimously observe that using flexible work arrangements limits career progression, and this reduces the co-workers' own levels of commitment to their organisation.

### **Clients are not a major challenge**

Consistent with the earlier research in the VWL's *360° Review*, client relationships did not feature as a major challenge in managing flexible work practices, provided the lawyer ensures there is good communication with the client, the work is being done within the timeframe and the client knows who they can contact.

**Key Finding No. 13** from VWL's *360° Review*

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.

**Quote:**

I have never experienced any negativity from clients about our part-timers. So long as the clients' work was done in the agreed timeframe and they always had a contact person to speak to about their matter, then they are happy. I actually think the major difficulty is for the part-timer and the supervisor, rather than for clients.

## **5.3 Need for assistance in the detail**

The major challenges identified above largely arise due to lack of adequate detailed planning and discussions at the outset of the arrangement. Partners felt they needed more assistance in:

- negotiating
- managing and
- maintaining

flexible work arrangements. Those partners who planned the management of flexible work arrangements with the involvement of the whole team seemed to have more success.

Partners at the workshops expressed a need for practical tools to help them have the 'difficult conversations'.

## **5.4 Difficult conversations – how to plan**

A common theme in all three workshops was the partners' need for assistance on how to deal with the 'difficult' issues. The need for a full and frank discussion involving the partner, the team and the lawyer at the outset and is essential for on-going success. This discussion must cover the day to day details of the arrangement.

The workshops identified there are some partners who say 'No' outright, and some who say 'Yes' outright because they think they have to. This is done without adequate (or any) review or analysis of the proposed arrangement by the partner, generally because the partner feels unable to adequately identify the issues the proposed arrangement may give rise to.

Section 7 of this guide contains two practical tools to provide this assistance.

If the arrangement starts with a full and frank discussion and plan, then this increases the likelihood of being able to accommodate:

- on-going review of and adjustments to the arrangement; and
- open dialogue about any issues arising during the term of the arrangement.

## 5.5 The challenge of value and what constitutes high performance

What is it about that lawyer that is valuable to the organisation and how is that affected by the flexible arrangement? If a full time lawyer is valued if they achieve on average 7 chargeable hours plus an amount of time on business development, improving legal skills and mentoring other staff, how does this translate for a lawyer working 3 days per week? When will that lawyer be considered to be a high performer? If a full time lawyer is expected to work from time to time on weekends without additional pay, how does this impact on a lawyer working less than full time who is required to work an additional day? These are not simple issues to address.

The outstanding issues which relate to valuing performance are:

- If the expectations about working hours are set on a pro rata basis, the issue is: pro rata of what? To answer this there needs to be an understanding of what is a full time hourly expectation – billable and non-billable.
- What entitlements will a part time lawyer have for working additional days? Will there be a right to time in lieu? What about if a full time lawyer has no right to time in lieu for working on the weekend?
- When should lawyers working less than full time receive 'overtime' or additional pay for extra hours? Is this appropriate if the full time lawyers have no such right for working on the weekend?
- What constitutes a strong performance? This is a challenge when measured against a full time lawyer. When would a bonus or other reward be given to a lawyer on a flexible work arrangement? How does the firm reward or recognise a lawyer with a flexible working arrangement who goes 'above and beyond' agreed requirements? Is it going above and beyond to work additional days when needed or is this just meeting expectations?
- How do you manage career progression – to partnership or alternative career path? Should a lawyer working 3 days per week still progress at a similar rate to a full time lawyer of equivalent skill level?

These issues do need to be discussed and addressed when planning for a flexible working arrangement. VWL also intends to consider the issue of billable hours and the expectations on lawyers in a further project.

## 6 Key legal issues relevant to flexible work practices

### 6.1 Legal requirements

Many partners at the workshops felt inadequately prepared to deal with requests from a lawyer to work on a flexible work arrangement. One area was uncertainty as to the applicable legal requirements – do you have to say ‘Yes’? When, and to what, can you say ‘No’?

Legal responsibilities are captured under a comprehensive state and federal framework incorporating:

- *Equal Opportunity Act* 1995 (Vic) [after 1 August 2011 *Equal Opportunity Act* 2010 (Vic)]
- *Sex Discrimination Act* 1984 (Cth)
- National Employment Standards and General Protections under the *Fair Work Act* 2009 (Cth)
- Modern Awards (individual flexibility agreements can be made between parties to accommodate the genuine individual needs of the individual).

The current legal regulation under state and federal law prevents employers from discriminating against employees for requesting or requiring flexible work arrangements or on the grounds of gender, pregnancy or for being a parent or carer. In particular, the Fair Work Act gives employees the right to *request* flexible work arrangements.

### 6.2 What must be considered?

Importantly for partners facing a request for flexible work arrangements relating to parental or carer responsibility, employers have a positive legal duty to *consider* an employee’s request for such arrangements.

The employer or principal must take into consideration all relevant factors and circumstances when considering a request for flexible work arrangements, including:

- 1 the person’s circumstances, including the nature of his or her responsibilities as a parent or carer;
- 2 the nature of the person’s role;
- 3 the nature of the arrangements required to accommodate those responsibilities;
- 4 the financial circumstances of the employer, principal or firm;
- 5 the size and nature of the workplace and the employer’s, principal’s or firm’s business;
- 6 the effect on the workplace and the employer’s, principal’s or firm’s business of accommodating those responsibilities, including –
  - the financial impact of doing so;
  - the number of persons who would benefit from or be disadvantaged by doing so;
  - the impact on efficiency and productivity and, if applicable, on customer service of doing so;
  - the consequences for the employer, principal, or firm of making such accommodation; and
  - the consequences for the individual of not making such accommodation.

The guide in section 7, and the Flexible Work Proposal/Business Case and Individual Flexible Work Plan in Annexures A and B, provide a reasonable basis for partners to consider a flexible work arrangement request in accordance with the law.

It is also important to note that when firms comprising five or more partners are considering the work arrangements of a person invited to become a partner or who is already a partner, they must not unreasonably refuse to accommodate the responsibilities that person has as a parent or carer.

Significantly, there is no automatic right to flexible work arrangements for parents and carers under the Fair Work Act. An employer can refuse a request on reasonable business grounds, if it has properly considered all the relevant factors and circumstances referred to above. However, an employee can make an application to the Victorian Equal Opportunity & Human Rights Commission under the Victorian equal opportunity legislation when a request for flexible working arrangements is refused.

The Fair Work Act also provides that an employer cannot take adverse action (such as dismissing the employee, altering the position of the employee or discriminating against the employee) because of the employee's gender, pregnancy, age or family and carer's responsibilities. Employees who believe they have been discriminated against can apply to the Fair Work Ombudsman to have the matter investigated, or they can lodge a claim of adverse action with Fair Work Australia. The Fair Work Ombudsman can take action against the employer and any particular employees involved. Where the allegations have been proven, the court can order that both the employer and the relevant managers pay heavy penalties.

## 7 Use of the practical tools

### 7.1 Guide to putting in place a flexible work arrangement

The *360° Review* showed the importance of effective management to the success of a flexible work arrangement. But it was also clear that more needed to be done to ensure that managers have the requisite skills to manage these arrangements. Based on the outcomes of the workshops, VWL has developed two practical tools intended to assist partners to consider and manage successful flexible working arrangements.

The success of these arrangements will depend on proper consideration of the issues and good communication between the partner and the lawyer. This needs to start when the arrangement is first considered and continue throughout the life of that arrangement. These tools will help facilitate the conversations that are an important part of that communication.

#### **Step 1: lawyer to consider appropriate arrangement**

The lawyer should consider the nature of the flexible working arrangement that would suit that person and consider any expected challenges for the lawyer and the firm. It can be helpful for the lawyer to discuss this with other colleagues who have successfully transitioned to a flexible working arrangement.

#### **Step 2: lawyer to approach the partner/manager**

The lawyer should tell the partner/manager that he or she is considering requesting a flexible working arrangement and arrange a time to discuss this.

#### **Step 3: partner to review the issues and lead the discussion**

The partner and the lawyer should consider the issues arising from the proposed arrangement prior to the discussion. The template Flexible Work Proposal/Business Case (Annexure A) is designed to encourage all those involved (lawyers and partners) to realistically consider the implications of adopting the arrangement and meet the legal requirements (see section 6).

The Flexible Work Practices Proposal/Business Case should be used as a prompt at this stage to check that both the lawyer and the partner are considering and raising the issues that may arise from the change in work practices. This will include the benefits for both the lawyer and the organisation and the challenges that may need to be addressed before the arrangement can be approved.

The Flexible Work Practices Proposal/Business Case provides a platform to have the 'difficult' conversations to ensure the arrangement can work successfully for the lawyer, the partner and the firm.

Not all proposals will be acceptable to the firm on business grounds; however, all proposals need to be properly considered in accordance with the legal requirements summarised in section 6.

#### **Step 4: documenting the proposal**

The Flexible Work Proposal/Business Case should be completed by the partner with input and agreement from the lawyer.



### **Step 5: approval or rejection**

The lawyer should be informed whether the proposal is accepted or rejected within 21 days of the request. If steps 3 and 4 have been conducted properly, this should be relatively clear at the conclusion of step 4. If rejected on reasonable business grounds, reasons for the refusal should be included in the written response.

### **Step 6: flexible work plan**

If the arrangement has been approved, in addition to modifying the employment contract, it can be useful to document the expectations of those involved in the form of a detailed Flexible Work Plan which is tailored for each lawyer and team. A sample Flexible Work Plan is set out in Annexure B.

### **Step 7: regular review**

The arrangement should be regularly reviewed and modified if necessary.

## **7.2 Flexible Work Proposal/Business Case**

Careful consideration of a proposed flexible working arrangement is essential, not only for effective management but also for legal compliance (see sections 5 and 6).

The aim of the Proposal/Business Case (Annexure A referred to in steps 3 and 4 of the guide in section 7.1) is to ensure that the flexible work arrangement is effectively planned and considered. Preparing detailed responses to the issues raised in this review will prepare partners, the lawyer and the team for the flexible work arrangement. It should be used to encourage and ensure that any potential issues (whether perceived or real) are aired and discussed before the arrangement is in place.

Further details about the practicalities of the arrangement are covered in the Flexible Work Plan in Annexure B.

## **7.3 Individual Flexible Work Plan**

Once a proposal for a flexible work arrangement has been discussed and agreed, the practical detail of how this will work should be discussed and documented (template of a plan is in Annexure B and referred to in step 6 of the guide in section 7.1).

The Individual Flexible Work Plan can help avoid misunderstandings within the team and set common expectations about the arrangement. For example, a partner may expect that the lawyer is available to undertake urgent tasks on the day the lawyer is not in the office. This may not be achievable if the lawyer is at home with two small children on that day. However, responding by phone may be possible. Understanding what is expected on both sides will assist in creating a successful arrangement.

Covering the detail of day to day practice will greatly increase the likelihood of success, but bear in mind that compromise and adjustment may be necessary once the arrangement is in place.

An example of a template Flexible Work Plan is set out at Annexure B.

# Annexure A: Flexible Work Proposal/Business Case

## 1. Current work/hours – billable/non-billable

- i. What are the main areas/types of work the lawyer does?
- ii. What non-billable activities does the lawyer do?
- iii. What are the lawyer's hours on average in the office?  
*[check past 12 to 24 months figures and cover billable and non-billable]*
- iv. What is the lawyer's average utilisation or performance against budget?
- v. What are the lawyer's career goals and timeframe?
- vi. Add any other comments relevant to the review of the current position, ie goals, specialisation, areas needing work or experience.

## 2. Current team

- i. How many partners, senior associates, solicitors are in the current team?  
Note any already on flexible work arrangements.
- ii. What are the hours and utilisation/performance levels of the team?  
*[For partner completion/review]*

## 3. Current clients

- i. Who are the lawyer's/team's major clients?
- ii. What other lawyers know and are familiar with these clients?

## 4. Proposed changes to hours/location

- i. What are the proposed changes to days in the office, hours or location?  
*[Discuss any concerns or consequences of these arrangements, eg it may help with servicing clients if days in the office are consecutive. Is there a need to be in the office on a particular day, such as Fridays in litigation practices?]*
- ii. What are the reasons for the requested arrangement?  
*[eg only days with child care available, days lectures are held on, etc.]*
- iii. Are there days where the lawyer must finish at a particular hour with no flexibility?  
Which days and why?  
*[eg child care centre closes and no one else can pick up, training starts at x time, etc.]*
- iv. When not in the office, when will the lawyer be contactable?
- v. If extra hours are worked, what arrangements will apply?  
*[Insert proposed arrangement, eg will the lawyer be paid or get time in lieu? Does there need to be approval before working extra hours? Is extra pay only available on conditions, ie an extra full day in the office?]*

## 5. Proposed type of work – billable

- i. Are there any parts of the lawyer's current work mix which may be affected by the flexible arrangement?
- ii. How could the affected parts be handled?  
*[eg not include this in the work mix, ensure there is always a full timer across that aspect of the work, resource matters to minimise involvement in that work or to cover the lawyer when they cannot be there, change hours/days so the lawyer can still do this type of work when it arises.]*
- iii. What will be the lawyer's utilisation or budget?
- iv. What types of work will the lawyer be able to do to meet the utilisation/budget performance?
- v. Will the lawyer need other types of work to meet utilisation? If so, what types of work could the lawyer pick up?
- vi. What are the lawyer's career goals and how can the firm assist with meeting these?

## 6. Proposed non-billable activities

- i. Will there be any change in the lawyer's business development activities?  
*[List intended activities and note whether the lawyer will still be asked to events and included in client teams and meetings.]*
- ii. CPD points still need to be met in full as there is no pro rating. How will the lawyer achieve this?
- iii. Will the lawyer be able/expected to attend team meetings and firm social events?
- iv. What conferences or other external events will the lawyer be entitled/expected to attend?
- v. Will there be any change to other non-billable activities: volunteering, knowledge management, external or internal committees?

## 7. Proposed team

- i. Will more lawyers need to be added to the team? If so, at what level and why?
- ii. When new work comes in, how will it be allocated? *[If possible, the team should meet and discuss how to apportion the tasks.]* Has the lawyer or partner discussed with anyone in the team the need to share the lawyer's tasks?
- iii. Who does the lawyer currently delegate to or supervise? How will those arrangements be affected?
- iv. Will there need to be any change to the way the lawyer is supervised?
- v. Has a template been prepared of work types and who the lawyer would work with for that work type (if applicable)? *[See also Annexure B.]*
- vi. What will be the effect on the workload of the secretarial support? How can this be covered?

## 8. Proposed clients

- i. Which clients will be told, and how?
- ii. How will the clients continue to be serviced? Is it possible to match clients or work type with an alternative lawyer who can handle the issue when the lawyer is not in the office?
- iii. What will happen with phone, email on current and new matters while the lawyer is not in the office? *[See draft work plan at Annexure B.]*

## 9. Proposed technology, pay and bonus entitlements

- i. What technological aids does the lawyer need to manage the change in hours?  
*[ie laptop, broadband, Blackberry, phone, etc.]*
- ii. Will the lawyer's salary be changed and if so, how?
- iii. What bonus entitlements will the lawyer have?
- iv. What arrangements will apply if extra hours are worked?

## 10. Review

- i. What arrangements should be set up to review the arrangement? This should cover how it is working for the lawyer (including the lawyer's performance), the partner, the firm and clients. *[Best to do this every 3 months. Suggest and diarise the appropriate dates with a prompt a week before to email the team and request any feedback.]*

## 11. Check of key issues

Consider whether the key issues have been considered. The key legal issues to consider are all relevant factors and circumstances, including:

- i. the lawyer's circumstances, including nature of the responsibilities if the lawyer is a parent or carer (covered in Q4ii)
- ii. the nature of the lawyer's role (covered in Q1–3)
- iii. the nature of the arrangements required to accommodate the responsibilities (covered in Q4–9)
- iv. the financial circumstances of the firm (to be considered by the partners)
- v. the size and nature of the workplace and firm (consider Q2 and 7 and overall practice group and firm)
- vi. the effect of the changes on:
  - finances (consider Q1 and 5, costs of replacement, costs of staffing);
  - persons who benefit or who are disadvantaged (consider Q2, 5, 6, 7);
  - efficiency and productivity and client service (consider Q1, 5, 6, 8, 9);
  - the firm (all questions plus consideration of reputation, morale, recruitment, profitability, service levels etc);
  - the lawyer if the changes are not introduced (consider Q4).

# Annexure B: Individual Flexible Work Plan



## 1. Purpose and core aims

The purpose of this Flexible Work Plan is to document working arrangements and proposed work procedures and protocols for *[lawyer's name]*.

In particular, the purpose of this Flexible Work Plan is to ensure that *[lawyer's name]*'s work flows are evenly spread and that clients/matters are appropriately managed so that:

- circumstances where it is necessary for *[lawyer's name]* to be contacted on the days the lawyer is out of the office are kept to a minimum;
- *[lawyer's name]*'s workload on those days that the lawyer is in the office is kept at a manageable level and in keeping with working part time;
- clients/matters are appropriately and seamlessly dealt with by other Team members when *[lawyer's name]* is not in the office;
- *[lawyer's name]*' is able to continue to develop a practice, client base and career goals.

It is anticipated that a copy of this Plan will be distributed to Team members so that they are aware of *[lawyer's name]*'s flexible work plans. Team member feedback will be sought in relation to the arrangements set out below.

It is acknowledged that it is hard to anticipate all of the 'challenges' that may be experienced when working less than full time and that the arrangements documented in this Flexible Work Plan may need to be adjusted as needed.

## 2. Flexible work – overview of core parameters

### 2.1 Key dates

Date	Event
	Return to work on a part time basis, working x days/week <i>[insert days in office]</i>
	Review part time basis and work arrangements – consider whether to maintain current arrangement

### 2.2 Core work restraints

*[Note: the following is an example for a lawyer who has child care responsibilities, although this section can be adapted for other commitments such as elderly parents, sick family member, study, sporting commitments. The purpose of this section is to create a realistic understanding about what the lawyer is capable of doing. Some lawyers may be happy to be contacted at any time and have the capacity to undertake extra work, some may not be able to even take a call and others may not be able to do any work until late at night on a day they are not in the office. Knowing these constraints is valuable.]*

To facilitate *[lawyer's name]*'s return to work, child care has been arranged as follows:

*[insert child care arrangements and days and times, eg]*

- 1 day of care (Wednesdays) at XYZ Child Care Centre

- *[lawyer's name]*'s husband will care for *[name of child]* 2 days/week (Mondays and Thursdays)
- *[lawyer's name]* will care for *[name of child]* 2 days/week (Tuesdays and Fridays)

In order to implement these arrangements:

- Mondays, Wednesdays and Thursdays – *[lawyer's name]* will need to leave work by no later than 5.30pm each day
- Wednesdays – *[lawyer's name]* will generally not be able to be in the office until approximately 9.30am, but on Mondays and Thursdays *[lawyer's name]* will endeavour to be in the office by approximately 8.30am
- Tuesdays and Fridays – it will be difficult for *[lawyer's name]* to undertake work other than after 8.00pm if really necessary

*[Note: it is useful here to discuss what will occur when the child has a routine illness that impacts on child care arrangements. Can the lawyer realistically work from home? Does the lawyer have access to family support? What are the lawyer's and the partner's expectations?]*

### **2.3 Work flow and utilisation**

It is acknowledged that it is important that *[lawyer's name]*'s utilisation is consistent with the other members of the Team. Where *[lawyer's name]* has concerns about under or over utilisation, the lawyer will raise these with Team partners (as appropriate).

## **3. Type of work**

### **3.1 Billable work and clients**

- [lawyer's name]* will continue the following areas of work:
- [lawyer's name]* will continue relationships with the following clients:

### **3.2 Non-billable work**

- [lawyer's name]* will continue to:
  - attend CPD events;
  - attend team meetings;
  - attend client entertainment and events, where possible;
  - be involved in *[any committee?]*;
  - participate in *[any precedent work?]*;
  - [other?]*.

### **3.3 Team**

- [lawyer's name]* will continue work for *[name]* and *[name]*, with reporting priority to *[name/position]*.
- [lawyer's name]* will continue to supervise and delegate to *[name/position]*.

## **4. Flexible work procedures**

### **4.1 Procedures for days in the office**

- Communication
  - *[lawyer's name]* to arrange regular debriefs and updates with appropriate team members and partners when in the office as to status of matters and work flows.

(b) Unfinished work

- *[lawyer's name]* will ensure that there is at least one other solicitor/Team member involved and across each matter so that this person is appropriately briefed and able to deal with any queries arising while *[lawyer's name]* is not in the office and is able to continue unfinished work that must be completed that day when *[lawyer's name]* has to leave the office and is unable to complete this at home.
- *[lawyer's name]* will ensure partner or client as appropriate is informed of any delays.
- *[lawyer's name]* will ensure person who will have to pick up unfinished work is aware as soon as possible of this likelihood, to minimise inconvenience and ensure their work flow is appropriate.

(c) Meetings

- Team meetings will be scheduled at times and days *[lawyer's name]* can attend.
- Client meetings relevant to a matter or client involving *[lawyer's name]* will be scheduled where possible on days and at times *[lawyer's name]* can attend  
*[Note: it is helpful to specify if there are times on working days that are difficult.]*

(d) Supervision and review of work

*[Note: agree how work will generally be allocated and supervised – this will vary depending on the seniority of the lawyer and the particular arrangement.]*

- Work must be given by *[lawyer's name]* to a partner or supervising solicitor for review by lunchtime on any day where *[lawyer's name]* is not in the office the following day, to give time to review and correct. Times for delivery of work for review should be flagged or diarised with the partner or supervising solicitor.
- *[lawyer's name]* must monitor and schedule the timing for any work the lawyer delegates to juniors to enable juniors to learn from the input from *[lawyer's name]* on their work.

## 4.2 Procedures for days out of the office

*[Note: this is again an example for a lawyer working less than full time who is being open to all clients about the arrangement. These items may need to be adapted]*

(a) Communication

- *[lawyer's name]* will ensure effective and clear communication to clients and Team members of work hours and arrangements for days the lawyer is not in the office (eg other persons on the file who can be contacted).
- Secretaries will be provided with an updated list of clients/Team members so that queries can be appropriately referred when the lawyer is not in the office.
- *[lawyer's name]* will check Blackberry  
*[Note: agree what is reasonable so that there is a clear understanding on this]*
- *[lawyer's name]* will be contactable on mobile to deal with [.....]  
*[Note: this should be discussed and an acceptable level of contact agreed, eg only in an emergency, or when there is a development on a particular matter]*

(b) Phone

- *[lawyer's name]* will set voice message so that it clearly states which days the lawyer is in the office and which days the lawyer is out of the office.
- *[lawyer's name]* will divert phone to the secretaries on days the lawyer is out of the office.
- The secretaries are to 'screen' calls and regularly check voicemail; they will refer calls to appropriate person (see below) or let clients know when *[lawyer's name]*

*name]* will be in the office and tell them that the lawyer will call them back when next in. This procedure will apply in instances where it is not possible to refer the matter or if matter is not urgent and client is happy to wait until *[lawyer's name]* is next in the office. These instances should be minimised so that *[lawyer's name]* does not have a 'backlog' of calls to return on days in the office. Some clients may be happy to leave voicemail message and the secretaries are to offer this as appropriate in situations where the matter cannot be referred (as detailed below).

(c) Outlook – email and calendar

- *[lawyer's name]* will set 'out of office' auto message for days out of the office.
- *[lawyer's name]* will include details of days in/out of the office as part of email signature (to appear automatically at the end of each email).
- *[lawyer's name]* will arrange with the secretaries that lawyer's calendar is 'blacked out' for days out of the office.
- Secretaries are to check emails regularly during lawyer's days out of the office. Emails are to be referred to appropriate person (see below) or 'holding' email is to be sent to client (in the event that it is not possible to refer the query).

(d) Current matters

- Existing clients/matters are to be referred to designated Team member. *[lawyer's name]* is to provide appropriate details of client/Team member to the secretaries.
- In the event that it is not possible to refer to a designated Team member, the matter is to be referred to Team partners (depending on availability) if it is urgent, or the secretaries are to check whether client is happy to 'hold' until *[lawyer's name]* is back in the office.

(e) New matters

- New instructions coming in from existing clients are to be referred to designated Team member who works with *[lawyer's name]* for that client. *[lawyer's name]* is to provide details of client/Team member to the secretaries.
- In the event that it is not possible to refer to a designated Team member, the secretaries are to refer the matter to Team partners (depending on availability) if it is urgent, or check whether client is happy to 'hold' until *[lawyer's name]* is back in the office.

(f) Urgent issues

*[Note: you should discuss and agree what level of contact and manner of contact is appropriate for urgent matters. Does the lawyer want to be asked if he or she can assist, or does the lawyer not want to be contacted unless there is no other option?]*

(g) Team communication and supervision

- *[lawyer's name]* is to seek updates from Team members regarding current matters at the beginning of each day the lawyer is in the office. Team members are encouraged to provide email updates (if this is appropriate) or to give a verbal update to *[lawyer's name]* when the lawyer is in the office (they should come and see *[lawyer's name]* if the lawyer has not touched base with them by 10.30am).
- Team partners are to brief *[lawyer's name]* on any new matters coming in (as appropriate).

(h) Extra hours

*[This needs to be tailored to meet the firm's policy.]*

- *[lawyer's name]* will be compensated for any extra hours worked in the following manner:



- *[lawyer's name]* will complete and submit time sheets to the Team partner for approval where at least a full day's extra work has been required on a day *[lawyer's name]* is not meant to be in the office or showing [10% extra hours].
  - *[lawyer's name]* and partner can determine whether to request time in lieu or payment for extra hours worked.
  - The approved time sheet will be submitted by *[lawyer's name]* to accounts/HR to facilitate payment or arrange additional leave time.
- (i) Business development
- *[lawyer's name]* will be invited to and will try to attend all client events and meetings. Any events being organised should be notified to lawyer as soon as possible to enable suitable arrangements to be put in place to enable attendance.
  - Any new client strategies should include the lawyer, though the lawyer may decline participation if it will disrupt the flexible work arrangements.
- (j) Professional development
- *[lawyer's name]* will continue to supervise the following team members: *[insert names]*
  - *[lawyer's name]* will continue to attend and deliver the CPD sessions on ..... provided they are on the scheduled days in the office.
  - *[lawyer's name]* will continue to contribute to precedent reviews and content.
- (k) Other firm events
- *[lawyer's name]* will be invited to all social or other team and firm events, though there is no obligation to attend on days and times lawyer is not scheduled to be in the office.

## 5. Review of arrangements

Approximately one month following *[lawyer's name]*'s commencement of this arrangement, feedback will be sought from relevant Team members (including lawyer's secretary) regarding the above arrangements with a view to a meeting being held in the week commencing *[insert date]* with Team partners to review progress, discuss what is working well and any potential improvements to be made to arrangements.

Thereafter, the above arrangements will be reviewed on a *[preferably quarterly]* basis. Team members will be encouraged to provide feedback regarding the 'workability' of the above arrangements either directly to *[lawyer's name]* or to Team partners. In particular, it is acknowledged that it would be preferable that any problems with the above arrangements are communicated 'sooner rather than later' and Team members will be advised of this and encouraged to raise issues early.





