



Flexible Partnership-

Making it work in Law Firms



**Victorian
Women
Lawyers**

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It is my pleasure to introduce "Flexible Partnership - Making it work in law firms".

In 1999 VWL launched the ground breaking report entitled "Taking up the Challenge", which reviewed the most prominent and recent publications in Australia regarding the status of women in the legal profession.

Published literature has identified one of the key issues confronting women in the legal profession as the small number of women in senior positions in law firms, in particular, in the position of partner. Under representation of women in senior positions means there is a lack of mentors and role models for younger women entering the profession. A lack of role models can make it more difficult for women to identify with the position of partner which, in turn, perpetuates these statistics of the under representation of women in senior positions. Instead women may elect to pursue a career in areas other than the private practice of law where structural issues better accommodate women's needs and there are more female role models and mentors.

The aim of this research project was to establish whether there are any barriers to partners in law firms working part-time. If obstacles were identified, the report examines the obstacles and investigates whether they can be overcome. If able to be overcome, the report considers how this might occur.

In Part 1 of the report, Sue Kaufmann reviews Australian and US literature about partnership in law firms. She considers the barriers to partnership and flexible working arrangements that go beyond the traditional partnership arrangements of working full-time and draws interesting conclusions from the U.S. experience.

To identify the particular concerns of Australian law firms, Part 2 of the report sets out the results of Georgina Frost interviewing managing partners and human resources representatives of 10 Melbourne law firms of varying size and structure. Georgina obtained candid reflections on firms' experiences of implementing part-time working arrangements in a law firm partnership. From this investigation Georgina makes recommendations for implementing flexible working arrangements at the partnership level in law firms.

The combination of the two reports provides a broad overview of the experience and current thinking on partnership in law firms. VWL hopes this report will challenge current structures and provide ideas in order to achieve change. Importantly it also provides some of the key tools for the implementation of flexible working arrangement in law firm partnerships.

Glenda Beecher
Convenor
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ABOUT THE AUTHORS

Sue Kaufmann was admitted to practise in 2001, having undertaken a law degree part-time after her two children were born. Previously she worked for many years in policy and research positions in the Commonwealth Public Service in Canberra. Sue is currently Co-ordinator at the Public Interest Law Clearing House (Vic). **Georgina Frost** is a Senior Associate in the Commercial Disputes department of law firm Minter Ellison. Georgina was Convenor of Victorian Women Lawyers in 1998. Georgina has two young children and is participating in Minter Ellisons' first job share arrangement for lawyers.

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VWL acknowledges and thanks Sue Kaufmann and Georgina Frost without whose research and hard work this report would not have been possible. Both have brought their professionalism and legal experience to produce a report of exceptional quality and of which Sue and Georgina should be proud, as is VWL. VWL also thanks Richard Fleming for his assistance reviewing the report and suggestions regarding the commercial aspects of guidelines for flexible working arrangements in a law firm partnership.



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Participants

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Work Practices Committee

VWL thanks the Chair of the Work Practices Committee, Sarah Coffey and the members of the Committee: Glenda Beecher, Georgina Frost, Amie Herdman, Kate Marshall, Jane Moulin, Rosemary Peavey, Sarah Rey, Margaret Ryan, Jane Ward, Kriss Will for their hard work in coordinating the writing and publication of this report.

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Author: Sue Kaufmann

EXECUTIVE SUMMARY

It is already well-established that the use of part-time work schedules by lawyers in the United States of America ('U.S.') falls far short of the scope of the policies offered by U.S. law firms. Preliminary Australian research indicates the same trend in Australian law firms.

Much can be learned from the experience of the U.S. legal profession. The goals and options that are now being canvassed in Australia have to some extent already been tried and tested in the U.S. U.S. literature provides a range of 'best practice' policies on part-time partnership. U.S. experience has shown too, that it will take more than a model policy to bring about the acceptance of part-time partnership. What is needed is a sea change in legal culture.

Australian literature on flexible work practices is patchy by comparison. This survey highlights the lack of longitudinal studies of the employment policies of the local legal profession. Australian researchers rely on the information generated by isolated surveys conducted by Victorian Women Lawyers ('VWL') and a small number of other legal research bodies, to discover the extent to which part-time partnership is available to and accepted by Australian lawyers.

First, it is clear that the stress and staff attrition observed at partnership level in private law firms are part of a long-term and profession-wide trend. Secondly, women lawyers encounter these problems in vastly disproportionate numbers. It is women lawyers who are clustered at the entry and associate levels and are generally leaving law firms without becoming partners.

However, as half of the law school graduates have been women for about 20 years, these problems can no longer be quarantined as the concern of a minority group. Factors that affect the retention and advancement of women lawyers inevitably affect the development of the profession as a whole. If the U.S. experience is mirrored in Australia, lawyers leaving private firms find the advancement and flexibility they seek in government and corporate institutions.

Moreover, in the increasingly competitive legal labour market, employers that are not proactive in addressing problems of staff recruitment and retention will lose their competitive edge. To be proactive involves, for most employers, a radical change of culture. It begins with the realisation that the long-term retention of highly trained, effective lawyers is a more efficient and productive option than short-term burnout and replacement.

INTRODUCTION

This work was the initiative of Victorian Women Lawyers ('VWL') in 2001. VWL wished to pursue the goals and strategies identified in *Taking Up the Challenge*,¹ published by VWL in 1999. *Taking Up the Challenge* surveyed recent Australian literature on job satisfaction within the legal profession, stimulated by evidence of increasing job dissatisfaction amongst lawyers generally, and systemic barriers to the recognition and advancement of women lawyers in particular.²

That report focussed attention on the perceptions that:

- lawyers' expectations on entering the profession were not being fulfilled;
- the quality of lawyers' lives was diminishing; and
- talented and experienced lawyers - especially women - were becoming disenchanted with private legal practice and leaving to take up positions in the corporate and public sectors.³

VWL was not alone in concluding that to retard the burnout and stem the attrition, alternatives to the conventional career path in private legal practice were urgently needed. In addition to the confirmation provided by reports such as the Annual Survey of Legal Practitioners conducted by the Law Institute of Victoria,⁴ recent studies of the careers of women lawyers in other Australian states have consistently indicated the frustration experienced by women challenged with the need to accommodate career and family pressures.

¹ Victorian Women Lawyers, *Taking Up the Challenge*, Gabby Trifiletti, May 1999.

² See for example, New South Wales Attorney General's Department and New South Wales Department for Women, Gender Bias and the Law: Women Working in the Legal Profession, Report of the Implementation Committee, October 1996; Rosemary Hunter and Helen McKelvie, Equality of Opportunity for Women at the Victorian Bar, Victorian Bar Council, July 1998.

³ Victoria Law Foundation (VLF), Career Intentions Survey, VLF, 1996; Victoria Law Foundation, Facing the Future Study, VLF, 1996; Law Institute of Victoria (LIV), LIV Survey Report of Legal Practitioners, LIV, January 1999.

For more than a decade the peak U.S. professional associations and legal research institutes have been documenting lawyers' disenchantment with their careers and lifestyles and recommending a raft of changes to the legal workplace.⁵ Broadly speaking, these studies:

- provide a detailed 10-15 year profile of the private legal profession in the U.S; and
- review the availability and utilisation of 'flexible work practices' ('alternative work schedules') over that period.

In order to appreciate the U.S. alternatives to the conventional partnership arrangements, it is necessary to understand the context in which the U.S. legal profession has developed its range of 'alternative work practices'. This report looks briefly at the background to the development of alternative work schedules.

It then sets out the range of alternatives to partnership working full-time offered at private U.S. law firms and analyses some of the explanations given for the lack of acceptance of these alternatives by the profession.

The report draws some conclusions from the U.S. literature on:

- the advantages and disadvantages of various part-time partnership options;
- the essential elements of workable part-time partnership working arrangements;
- the shift required in the culture of law firms to bring about the acceptance and use of alternative work schedules; and
- strategies adopted in the U.S. to promote a sea change in the existing legal culture.

Set against the background of U.S. research, the report examines the literature on the feasibility of working part-time in partnership in Australian law firms and recommends further steps to establish a profile of the flexible work options available to and used by Australian lawyers.

ALTERNATIVE WORK SCHEDULES IN U.S. LAW FIRMS

BACKGROUND

Only 3.5 per cent of U.S. lawyers are employed to work part-time, compared with approximately 13 per cent in other professions and 11 per cent for U.S. industry as a whole.⁶

Further, the arrangements described as 'reduced-hour' schedules by private law firms would constitute a full-time workload in other professions and industries. At a conservative estimate, more than half the lawyers in U.S. law firms bill more than 2400 hours per annum which represents at least 45 hours per week of billable time.⁷

The high billings targets drive lawyers to work extended hours. A national survey of law firms recently found that 46.8 per cent of all associates were working more than 60 hours per week.⁸

On these figures, a part-time load (80 percent of the full-time schedule) would be 48 hours per week - well above the hours worked in many other occupations.

The Impetus for the Development of Alternative Work Schedules: The Attrition Rate

Generally speaking, nearly 40 per cent of lawyers entering private law firms have left their first employer within three years. By the end of the fifth year, nearly 60 per cent of that intake has left their first employer.

4 See the comprehensive analysis of women at the Victorian Bar in Hunter and McKelvie, *op.cit.* n 2, 57-61.

5 Appendix 7.1 contains a list of the major American bar associations and research institutes involved in research into flexible work practices. See for example the work of the Project for Attorney Retention (PAR), based at the College of Law, American University Washington at its website <http://pardc.org>. Its most recent publication is a landmark in the literature: Joan Williams and Cynthia Thomas Calvert, *Balanced Hours: Effective Part-Time Policies for Washington Law Firms*, PAR, September 2001.

6 Williams and Calvert, *ibid.*, 17. NALP, Press Release, 'Part-Time Schedules Rarely Used by Partners, Associates', 3 December 2001 available at <http://www.nalp.org>. A survey by the American Bureau of Labor Statistics reported on statistics covering all employees aged over 25 and engaged in all industries except agriculture.

7 A survey of 27 of the largest law firms in New York found that all of these firms set explicitly or implicitly a minimum billings target of 2000 hours per annum for associates. See Association of the Bar of the City of the New York, *Report of the Task Force on Lawyers' Quality of Life*, New York, 1999, 2. This bears out the findings of a survey 10 years earlier in Maryland, where 72 per cent of lawyers billed a minimum of 1800 hours per annum, In Association of the Bar of the City of the New York, *Report and Sample Policy on Alternative Work Schedules*, New York, 1995, 3.

8 Deborah L. Rhode, Commission on Women in the Profession, *Balanced Lives: Changing the Culture of Legal Practice*, American Bar Association, September 2001. Cynthia Thomas Calvert, 'Retention and Reduced Hours', Project for Attorney Retention, n 5, at <http://pardc.org>.

Women lawyers are leaving firms at a far high rate than their male counterparts.⁹ A survey of Massachusetts law firms found that the overall attrition rate ranged between 10 and 12 per cent at respondent law firms. The table below compares the rates of attrition for men and women lawyers at Massachusetts law firms.

Table 1. Attrition Rates for Male and Women Lawyers, Massachusetts, 1995-1997.¹⁰

Male lawyers on standard hours	9% attrition rate
Woman lawyers on standard hours	10% attrition rate
Woman lawyers on reduced hours	25% attrition rate
Male lawyers on reduced hours	not applicable

Women comprised about 40 per cent of the departures, and the attrition rate for women was 70 per cent higher than for male lawyers. During the period 1995-1997 the net increase in the number of women lawyers at Massachusetts firms plunged from 12 per cent to 0.8 per cent.¹¹

*'As women lawyers challenge the traditional notion of what constitutes a career in the law, seeking an environment that allows them the flexibility to meet their obligations both at work and at home, more are likely to move from law firms to industry or government settings.'*¹²

Yet less than 4 per cent of those leaving their firms left the legal profession. They moved instead to 'more accommodating workplaces'.¹³ Departure studies have revealed, in the words of one executive: 'We were losing lawyers not to other law firms, but to other schedules.'¹⁴

The destinations of men and women lawyers who left their law firms differed. Over 70 per cent of male lawyers, compared with only 37 per cent of women lawyers, left their law firms to go to other firms.

Women lawyers generally left for other sectors of the profession, notably the public sector and corporate counsel positions.¹⁵

*'A major correlation with professional satisfaction was the lawyers' perceived ability to control their own time.'*¹⁶

Lawyers - and particularly women lawyers - consistently cited factors relating to their work arrangements as reasons for leaving private practice. Almost 40 per cent of lawyers surveyed in Massachusetts law firms indicated that their firm's approach to part-time employment had affected their decision to leave.¹⁷ Interestingly, the existence or absence of a part-time policy was not in itself a crucial factor: it was implementation of the policy that mattered most.¹⁸

Law firms pay a price for staff attrition. The cost of the training and expertise lost to the firm, and the recruitment and retraining of a replacement lawyer is conservatively estimated at 150 percent of the departing lawyer's annual salary.¹⁹ As one respondent observed:

*'We are spending substantial amounts to recruit [associates], keeping them here and training them for the first two or three years in which they are not profitable, and then we see them begin to leave at about the time they become profitable.'*²⁰

It is therefore in the interests of law firms to understand the causes of staff attrition and to take steps to retain staff in whom they have already invested some years' of training.

⁹ NALP, *Perceptions of Partnership: The Allure and Accessibility of the Brass Ring*, Executive Summary, 1998. Executive Summary and Press Release available at <http://www.nalp.org>.

¹⁰ Women's Bar Association of Massachusetts (WBA), *More Than Part-Time: The Effect of Reduced-Hours Arrangements on the Success, Retention, and Recruitment of Women Attorneys in Law Firms*, WBA, 2000, 17-18. Williams and Calvert, *Balanced Hours*, *op.cit.* n 5, 19.

¹¹ *Ibid.*, 17-18.

¹² Linda Bray Chanow, (Spring 2000) 'The Business Case for Reduced House', *Raising the Bar* 7, available at http://www.pardc.org/business_case.htm.

¹³ Rhode, *op.cit.* n 8, 10.

¹⁴ Boston Bar Association (BBA), *Task Force on Professional Fulfillment, Expectations, Reality and Recommendations for Change*, Boston, August 1997, 26-27. NALP also published a study of attrition rates in 1998 using surveys and focus groups to explore the reasons for the early exodus of young lawyers from private legal practice. NALP, *Keeping the Keepers: Associate Retention in Times of Attrition*, NALP Foundation for Research & Education, 1998; NALP, *Beyond the Bidding Wars: A Survey of Associate Attrition, Departure Destinations, and Workplace Incentives*, NALP Foundation for Research & Education, 2000

¹⁵ Boston Bar Association (BBA), *ibid.*, 27.

¹⁶ *Ibid.*, (vi).

¹⁷ WBA, *op.cit.*, n 10, 4.

¹⁸ *Ibid.*, 46.

¹⁹ Rhode, *Balanced Lives*, *op.cit.* n 7, 10-11; Williams and Calvert, *op.cit.* n 5, 42. This estimate was based on the findings of an internal review conducted by Deloitte and Touche in an effort to understand and combat high attrition amongst its professional staff.

²⁰ Williams and Calvert, *ibid.*, 51.

The Attrition Rate as a Gender Issue: The Participation of Women Lawyers at Partnership Level in U.S. Law Firms

'[W]omen are not attaining partnership in any close proximity to that of men and are not adequately represented in positions of power within the partnership structure'.²¹

The lack of representation and influence of women at partnership level is all the more noticeable because of the increasing presence of women at entry and associate levels.²² There has been a steady and significant increase in the proportion of women enrolling at law school and then entering the profession over the last forty years. Women and men are now entering U.S. law schools in roughly equal numbers,²³ and women comprise one-third of the lawyers entering the U.S. legal profession. In 1964 3 percent of lawyers were women.²⁴ In 1996 23 per cent of lawyers were women, By 2010 women are expected to comprise 40 per cent of the profession.²⁵

Further, the proportion of women at partnership level in U.S. law firms is steadily increasing. During the 1990s the proportion of women at partnership level increased by almost half - from about 11 per cent in 1991 to 14.5 per cent in 1998.²⁶

Table 2. Percentage of Women Partners in U.S. Law Firms 1991-1998

Year	1991	1992	1993	1994	1995	1996	1997	1998
% of women partners	10.96	11.5	12.1	12.7	12.9	13.7	14.2	14.5

Source: NALP, *Perceptions of Partnership: The Allure and Accessibility of the Brass Ring*, 1996.

This increase is, however, not in proportion to the number of women entering the profession; the proportion of women partners and women in management positions still remains disproportionately low. Women comprise less than 15 per cent of law firm partners,²⁷ and approximately 11 per cent of management committee members. Men are still more than twice as likely to be made partners as women of similar backgrounds, and whereas about 5 per cent of male lawyers serve on management committees, only 0.6 per cent of women lawyers do so.²⁸

Those women who make partnership are more likely to be single than their male lawyers at the same level, and are likely to be found concentrated in a relatively small number of firms, rather than spread evenly throughout private practice. A recent report estimates that almost half the women in private legal practice are unmarried, compared with only about 15 per cent of male lawyers.²⁹ This figure graphically reveals the impact of the departure of married women from law firms. It bears out the observation that *'the profile of a successful woman has typically been a woman without children'*.³⁰

There is a noticeable absence of women lawyers at the mid-career range in private law firms. This is the level from which partners are selected and the high attrition rate amongst married women is creating a 'hole' in the law firm demographics.

While the number and proportion of women partners increased, they were clustered in a dwindling number of firms. A 1994 survey found that the percentage of firms with women partners actually declined between 1991 and 1994. In 1991, 26 per cent of firms with women attorneys had female partners; by 1994 the proportion of firms with female partners had halved to 13 per cent.³¹

Those few women partners lack the numbers to influence policies across the board, and their impact is confined, in the main, to a relatively small number of firms.

21 *Boston Bar Association (BBA)*, *op.cit.* n 14, 27.

22 For a study of the 'glass ceiling' see Cynthia Fuchs Epstein et al, 'Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession - A Report to the Committee on Women in the Profession' (1995) 64 *Fordham Law Review* 291.

23 NALP, *Perceptions of Partnership*, *op. cit.* n 9.

24 See for example the Commission on Women in the Profession, *Lawyers and Balanced Lives: A Guide to Drafting and Implementing Workplace Policies for Lawyers*, ABA, 1st ed., 1990.

25 See Kelly Lucas, 'Women in the law: coming of age', (August 1996) *Res gestae*, available through www.state.in.us/isba/resgestae/women.html.

26 NALP, *Perceptions of Partnership*, *op.cit.* n 9. Overall, during the same period, there was a 33 per cent increase in the number of women partners, more than keeping pace with a 21.8 per cent increase in the total number of partners.

27 Calvert, 'Retention and Reduced Hours', *op.cit.* n 8, quoting Arthur Hayes, 'Color-Coded Hurdle', (28 January 1999) *Women Lawyers* available at <http://parc.org>.

28 Rhode, *Balanced Lives*, *op.cit.* n 7, 17.

29 *Ibid.*, 17.

30 BBA, *op. cit.* n 14, 29.

31 Barbara A Curran (ed.), *Women in the Law: A Look at the Numbers*, ABA, December 1995.

The Availability and Use of Alternative Work Schedules

There has been a conspicuous reluctance on the part of U.S. lawyers in private law firms to take up alternative work schedules.

By 2001 about 96 per cent of U.S. law firms had policies providing for alternative work schedules, but only 3.5 of all lawyers and 2 per cent of partners employed at these firms actually worked part-time.³² This situation had not substantially changed since 1994,³³ when the National Association of Law Placement ('NALP') found that 4 per cent of associates and 1.2 per cent of partners were working part-time.³⁴

The fact that a firm has a policy on part-time employment does not mean that this option is available to all lawyers on staff. Only 6 per cent of firms surveyed in 2001 by the American Bar Association (ABA) Commission on Women in the Profession ('the ABA Commission') allowed lawyers at any level to take on a part-time schedule.³⁵ Policies frequently distinguish between entry-level lawyers, associates and partners.

Table 3. Availability and Use of Part-time Provisions in Law Firms, 1999-2001

U.S. Law Firms - Nationwide Survey	1999	2000	2001
% of firms where part-time schedule is available	93.8	94.5	95.9
% of firms where part-time schedule is not available	57.3	56.6	58.8
% of part-time partners	1.6	1.9	2.0
% of part-time associates	4.1	4.4	4.8
Total % of employee lawyers working part-time	2.9	3.2	3.5

Source: NALP, *Part-Time Schedules in Law Firms, 1999, 2000 and 2001*.³⁶

As Table 3 indicates, about half the firms offering alternative work schedules specifically exclude entry-level lawyers. It is common for alternative work schedules to be made available only to associates who have already been employed at the firm for several years.

While there were no reports of partners being explicitly denied part-time employment, it is clear from the statistics that partners rarely took up this option. The proportion of part-time lawyers is twice as high for associates as it is for partners.

Underpinning the restrictions on the use of part-time options is the view that part-time employment is a short-term, 'off-track' option - a deviation from the conventional career path. Law firms make alternative work schedules available if required, so as to retain existing staff until they are in a position to return to full-time employment.³⁷

A survey conducted by the Washington-based Project for Attorney Retention (PAR) noted that even where policies did not explicitly restrict eligibility for part-time schedules, firms sometimes limited the opportunities for flexible working hours to those with child-care responsibilities or health-related problems.³⁸ Surveys of law firms in Massachusetts and New York reported the same practices.³⁹

The ABA Commission found that almost half the men in law firms thought it unacceptable to request part-time work. Consistent with this finding is the fact that less than 5 per cent of male lawyers have taken up reduced schedules.⁴⁰ While there has been some attempt to remove the gender issues from the debate around flexible work practices, it is still widely regarded as a women's issue. The part-time career path is dubbed the 'mommy track'. '[T]he vast majority of part-time workers are women.... Part-time work is clearly gendered'.⁴¹

32 Williams and Calvert, *op. cit.* n 5, 16-17.

33 Lucas, *op.cit.* n 25, 1.

34 *Ibid.*, 2. NALP Press Release, 'Part-Time Schedules Rarely Used by Partners, Associates', 3 December 2001; 'Easier to work part-time in Bay Area', (February 1996) California Bar Journal at www.calbar.org/wcbj/96feb/2cbj.15.htm. The NALP annual surveys indicate that the percentage working on an alternative work schedule has increased from 1.3 per cent in 1995 to 3.5 per cent in 2001.

35 Williams and Calvert, *op. cit.* n 5, 16-17.

36 NALP, *Availability and Use of Part-Time Provisions in Law Firms 1999-2001*, available through the NALP website at www.nalpresearch/pt99summ.htm; www.nalpresearch/pt00summ.htm; and www.nalpresearch/pt01summ.htm.

37 WBA, *More Than Part-Time*, *op. cit.* n 9, 13.

38 Calvert, 'Retention and Reduced Hours' *op.cit.*, n 8.

39 Task Force on Lawyers' Quality of Life, *op. cit.* n 7, 1.

40 Rhode, *Balanced Lives*, *op. cit.* n 7, 18.

41 Cynthia Fuchs Epstein, 'The Part-time Solution and the Part-time Problem', (Spring 1999) *Dissent* 46 (2) available at <http://www.dissentmagazine.org/archive/sp99/epstein.html>.

PART-TIME PARTNERSHIP: A REVIEW OF U.S. OPTIONS

To establish whether alternative work schedules are feasible at partnership level, it is necessary to understand:

- why the policies provide by U.S. law firms have not been utilised; and
- in those cases where part-time partnership arrangements have been accepted, why they have proved feasible.

It will then be possible to identify the conditions needed, and some pitfalls to avoid, in implementing workable arrangements that offer alternatives to full-time partnership.

These recommendations - drawn largely from U.S. experience - are canvassed in the sections below, and used to inform a discussion of the strategies needed to promote flexible work practices for partners and lawyers on the partnership track in Victorian law firms.

Part-time Schedules

There are a number of different part-time schedules available at U.S. law firms ⁴²:

- flextime - worked in a combination of core and flexible hours;
- flexplace - worked in a combination of office and non-office locations;
- a compressed schedule - a full-time load worked under a reduced-hours arrangement;
- caseload sharing - where two lawyers share a full-time load according to an agreed division of responsibilities;
- a reduced caseload - reduced hours and reduced workload.

Flextime and flexplace are examples of flexible work arrangements which do not entail a reduction in either hours or workload.

A 'compressed' schedule involves reduced hours, but not necessarily a reduced workload. With a compressed schedule, the lawyer works the equivalent of a five-day week in, for example, four days. The billings target generally remains unchanged, and the pressure is on the part-time lawyer to achieve the target.

This was an arrangement used by some of the lawyers surveyed at Massachusetts law firms surveyed during 2000. Part-time lawyers most commonly worked an 80 per cent schedule, but *'still typically found they just crammed 5 days of work into four days'*.⁴³

Caseload sharing or job-sharing is not a common arrangement and is generally not discussed in the U.S. literature.

Another model of part-time work is one where the workload is reduced in proportion to the hours worked. If, for example, a lawyer takes on an 80 per cent schedule, both the hours of work and the billings target would be reduced by 20 per cent. This is a common model, most frequently based on a minimum requirement that the lawyer achieve 60 percent of hours and billings of a full-time employee.⁴⁴

This type of part-time schedule can be arranged in a number of different ways. Some part-time U.S. lawyers have reported that their hours and billings target were reduced on a weekly or monthly basis.⁴⁵ They devised a schedule of work calculated on a pro-rata reduction in billings for that period. Lawyers commonly worked towards monthly target billings, providing more flexibility on a day-to-day basis.

A litigation lawyer, whose workload was often extreme, operated on an annual billings target. If, after some months, the lawyer perceived that she would meet her annual targets without difficulty, she was able to scale down her work commitments for the remainder of the year. U.S. surveys reveal that part-time litigation partners on a 60 per cent schedule were billing 1,422 hours per annum - a target comparable to full-time lawyers in other departments.⁴⁶

It has been noted that, while women lawyers required specially negotiated arrangements to obtain regular time off to attend to family commitments, some activities traditionally enjoyed by male lawyers, such as golf afternoons, had no effect on their schedules or salaries.⁴⁷

42 Association of the Bar of the City of New York, *A Report and Sample Policy on Alternative Work Schedules*, New York 1995, 5.

43 WBA, *More Than Part-Time*, op. cit. n 10, 42.

44 *Ibid.*, 9.

45 Williams and Calvert, op. cit. n 5, 28.

Problems Encountered With Alternative Work Schedules

The U.S. research points to a 'huge gap between what [part-time] policies say on paper and what people are free to use'.⁴⁶ There is a general perception that taking up an alternative work schedule is, in career terms, 'the kiss of death'.⁴⁷ Part-time partnership is less remunerative than full-time partnership, might not necessarily reduce the pressure on the individual lawyer and could divert the lawyer into a legal backwater.

'The Haircut' - Financial Penalties

During the 1980s and early 1990s, part-time lawyers suffered a financial penalty for choosing to work part-time. The firm would add a 'haircut' to a part-time lawyer's salary: if the lawyer worked a 60 per cent schedule, they would be paid for 55 per cent. The 5 per cent 'haircut' was the firm's compensation for the overheads incurred. The charge, while 'mostly symbolic',⁴⁸ was designed to 'let others know that part-time work was not a great thing'.⁴⁹

Schedule Creep - Full-time Expectations on Part-time Hours

Lawyers on part-time schedules frequently complained that, not only did they suffer 'cuts in both compensation and benefits', but they actually still 'ended up working far more than they originally agreed to work'.⁵⁰ This tendency is known as 'schedule creep'.

Some lawyers negotiated a lower minimum workload in the expectation that by committing to 60 per cent of a full-time load, they would actually be contributing 80 per cent of the hours. Other firms provide for lawyers working hours well in excess of their agreed schedule to take time in lieu for the additional hours worked.

Lawyers working from home found the problem of schedule creep exacerbated because of the 'invisibility' of their work. Lawyers working flexible hours on a compressed or flextime schedule reported working the same, if not longer hours than their colleagues on a standard schedule. However, because they worked at home their dedication was not recognised. They reported feeling that their commitment went unnoticed and they did not receive financial or peer recognition for their work.⁵¹

'Marginalisation'

A common concern about part-time employment was that the range and quality of work offered to part-time lawyers was limited. This operated as a disincentive to lawyers to consider part-time employment and a reason for part-time lawyers to return to full-time work or leave the firm.

More than 40 per cent of part-time lawyers surveyed in Massachusetts law firms believed that their work assignments had suffered since taking up a part-time schedule.⁵² Similarly, Washington lawyers experienced more limited opportunities for client contact and felt themselves and their skills devalued while on part-time schedules.⁵³

Experienced lawyers on alternative work schedules believed they were 'marginalised' in other, less explicit ways. One recurring complaint was that part-time employees did not receive the same recognition as full-time lawyers. They were not given titles appropriate to their position; their firms refused to issue them with business cards; important meetings were scheduled for times when they were not expected to be able to attend; and when staff were retrenched, the part-time staff lost seniority or were fired.⁵⁴

Some firms that have promoted part-time employment have conducted reviews of the work allocated to part-time employees. Ernst and Young and Deloitte and Touche both monitor the work of part-time staff to compare the range and quality of their work with that of full-time colleagues.⁵⁵ Through these reviews, cases where part-time staff are consistently allocated work a more limited range, or lower level of work are identified and remedied.

46 Ibid., 10.

47 BBA, Task Force on Professional Fulfillment, op. cit. n 14, 29-31.

48 Jill Chanen Schachner, 'Daddy's Home', (November 2000) ABA Journal 90, quoted in Rhode, Balanced Lives, op.cit., n 7, 16.

49 See Catalyst, Women in Law: Making the Case, 2001, 10, available through its website at <http://www.catalystwomen.org/research/work/htm> and quoted in Williams and Calvert, op. cit. n 5, 13.

50 Torri Still, 'Juggling Kids and the Law', (1 June 1999) Law News Network.com; http://www.lawnewsnetwork.com/stories/A1918-1999_May28.html.

51 Ibid., comment of Susan Diamond, employed at Park and Brobeck.

52 Williams and Calvert, op. cit. n 5, 18.

53 Ibid., 18.

54 WBA, op. cit. n 10, 2.

55 Williams and Calvert, op. cit. n 5, 18.

56 Association of the Bar of the City of New York, A Report on the Need for, Availability and Viability of Flexible Work Arrangements in the New York Legal Community, New York, 1995. Cynthia Fuchs Epstein, Carroll Seron, Bonnie Oglensky and Robert Saute, The Part-Time Paradox: Time Norms, Professional Lives, Family and Gender, New York, Routledge, 1999.

57 Williams and Calvert, op. cit., n 5, 14.

Staff working reduced hours reported difficulties making time for the networking and socialising that are crucial to job satisfaction and career progression. Thirty to forty per cent of part-time lawyers at Washington law firms believed that their relationships with colleagues had suffered after going part-time.⁵⁸

A Massachusetts survey noted:

*'A large number of part-time attorneys felt that their relationships with their colleagues deteriorated as a result of working a part-time schedule. In many cases, colleagues with whom an attorney had worked for years suddenly questioned her commitment to the firms because she chose to reduce her hours to balance work and family.'*⁵⁹

Career Limbo

The financial disincentive, the continued pressure on part-time lawyers, and the risk of being marginalised professionally and socially have caused U.S. lawyers to conclude that a long-term experience of part-time employment leads into career limbo.⁶⁰

The prevailing belief is that *'firms will not make partners from the ranks of part-time or flex-time associates'*.⁶¹ *'There is a sense that the barriers to partnership in a law firm cannot be surmounted by hard work and dedication'*.⁶² The vast majority of lawyers surveyed at New York law firms believed that lawyers who took leave or accepted part-time status would be somewhat likely (35 per cent) or very likely (46 per cent) to be adversely affected in their career advancement. These attitudes were corroborated by qualitative reports in other states.⁶³

U.S. lawyers have consistently indicated their firms would be unlikely to consider them eligible for partnership while on a part-time schedule; in some cases the firm had expected a partner to relinquish partnership on taking up a part-time schedule.⁶⁴ Lawyers seeking part-time arrangements generally wanted to remain partners or on track to partnership. They did not wish to reduce their commitment to the firm or to relinquish their career ambitions. Therefore, lawyers have been generally reluctant to seek alternative work schedules, perceiving that by doing so they would jeopardise their chances for advancement.⁶⁵

'Off-Track' Positions

There seems to be consensus amongst U.S. researchers and lawyers that part-time partnership, though not yet generally accepted by law firms, is preferable to the creation of 'off-track' positions.

In order to retain and accommodate senior lawyers some U.S. firms have developed 'off-track' positions such as Special Counsel, or Salaried Partners, or appointment to a Management Committee. A Salaried Partner enjoys the advancement in rank, but does not receive an equity interest in the firm. Special Counsel designates a senior rank, without entitling the incumbent to an equity interest in the firm or to participation in the management of the practice.

In the U.S. these positions are regarded as more appropriate for senior lawyers contemplating the end of their careers, rather than for mid-career lawyers. The Boston Bar Association,⁶⁶ for example, found that lawyers regarded off track positions as having second class status and attracting less complex and sophisticated work. Similarly, New York lawyers felt that these positions were 'reserved' for staff who had not met the criteria for partnership but who were retained because they would be difficult to replace.⁶⁷

58 Ibid., 14.

59 Ibid.

60 Committee on Women in the Profession, Association of the Bar of the City of New York, *Flexible Work Arrangements in the New York Legal Community*, 2000. Cynthia Fuchs Epstein describes how lawyers working part-time in New York law firms believed they fell into a 'career limbo'.

61 Williams and Calvert, *op. cit.* n 5, 14.

62 Ibid., 14.

63 WBA, *op. cit.* n 10, 22.

64 Ibid., 22.

65 Ibid., 2.

66 Boston Bar Association, *op. cit.* n 14, 9.

67 Association of the Bar of the City of New York, *Quality of Life*, *op. cit.* n 7, 14.

CONCLUSIONS: ESTABLISHING WORKABLE PART-TIME PARTNERSHIP ARRANGEMENTS

Not all experiences of part-time employment, including part-time partnership, have been negative. Profiles of senior women lawyers who have negotiated successful part-time or flexible arrangements after making partnership are available.⁶⁸ In some cases, women lawyers have established their own practices and developed partnership options that met their particular requirements.⁶⁹

A Sea Change in the Culture of Legal Practice

*'Large law firms should confront the tension between increasing revenues and attorneys "having a life" and attempt to encourage partners to manage expectations.'*⁷⁰

There is mounting evidence that the provision of policies covering alternative work schedules has to be accompanied by a determination, on the part of the firms, to make these alternative schedules work.⁷¹ For lawyers in private practice to take up flexible working arrangements there will need to be a sea change in legal culture. Specifically, law firms need to reassess:

- the economic assumptions underpinning law firms' recruitment policies, salary levels and promotion processes; and
- the culture of commitment, that makes self-sacrifice a pre-requisite for advancement to partnership.

A change of culture involves recognising that flexible work schedules which minimise staff attrition and replacement costs are commercially viable, and even desirable.⁷² It will also involve accepting that an imbalance between work and family life can have a detrimental effect on the productivity and efficiency of the firm even when, at least in the short term, the imbalance favours the firm.

Long hours are viewed as evidence of the dedication and endurance expected of lawyers on the partnership track.⁷³ Within U.S. law firms the willingness to work long hours is viewed '*as a proxy for harder to measure qualities such as commitment, ambition and reliability under pressure*'.⁷⁴ As long as billable hours are used as a key performance indicator, this view will be hard to dislodge.

Law firms have demanded commitment and sacrifice from their lawyers in return for high salary packages. They have invested significant training and development, expecting to recoup their investment after the first few years.

Increasingly, however, it is becoming clear to U.S. law firms that this strategy is escalating labour costs, pushing up the salary levels of senior associates and partners, without achieving its goal: the retention of high quality staff.⁷⁵ It is therefore in the best commercial interests of U.S. law firms to review their current recruitment and remuneration policies.

'Best Practice' Policies and Guidelines

It is now understood that effective policies on part-time employment must:

- be endorsed and advocated by partners;
- apply equally to all staff at all levels;
- provide for fair and transparent processes for approving and reviewing part-time arrangements.

A number of U.S. bar associations have developed 'best practice' guidelines.⁷⁶ The table below has been derived from a selection of sample policies provided by key professional associations. It sets out in summary the essential elements of a part-time policy applicable to partners at private law firms. A table setting out the features of nine model U.S. policies is included in the Appendix.⁸¹

68 Amy Gage, 'Law firms raising sticky issue with part-time partners', (15 April 1997) *The News-Times*.

69 Wendell LaGrand, 'Building Their Own Ladder', (September 2000) *ABA Journal*, 50, 52.

70 BBA, *op. cit.* n 14, viii.

71 See for example, Rhode, *Balanced Lives*, *op. cit.* n 8, and Williams and Calvert, *Balanced Hours*, *op. cit.* n 18, for evidence of the failure of policies that are not supported by day-to-day commitment to the schedules.

72 Linda Bray Chanow, 'The Business Case for Reduced Hours', (Spring 2000) *Raising the Bar* at www.wbadc.org.

73 Rhode, *Balanced Lives*, *op. cit.* n 8, 15.

74 See Renee M. Landers, James B. Rebitzer and Lowell J Taylor, 'Rat Race Redux: The Adverse Selection in the Determination of Work Hours in Law Firms', (1996) *86 American Economic Review* 329, quoted in *Balanced Lives*, *op. cit.* n 7, 16.

75 For a detailed analysis of the economic implications of high staff attrition rates see Williams and Calvert, *Balanced Hours*, *op. cit.* n 18, 7-11.

76 See Appendix 7.3 for a table extracted from Commission on Women in the Profession, *Balanced Lives*, *op. cit.* n 8, showing features of nine model policies on alternative work schedules.

Table 4. Essential Elements of a Policy on Part-time Partnership

Written Policies	Firms should adopt written guidelines. The guidelines should clearly articulate the eligibility and availability of such programs. ⁷⁷
Eligibility	All staff - at all levels - should be eligible for alternative work schedules. Policies may, however, need to differentiate between junior lawyers and partners in some respects.
Purposes	The purposes for which such schedules are approved should not be limited to child care/family responsibilities. The purpose of the arrangement should not be a factor determining whether the arrangement is approved.
Salaries & Allowances	Part-time partners should be entitled to salaries, entitlements and bonuses, calculated on a pro rata basis. Part-time partners should not incur any financial penalty or disincentive as a result of their reduced-hour schedule.
Supervision and Allocation of Work	Assignment of work should be appropriate to the skills and experience of the lawyer. Workloads should be monitored to limit the amount of 'dead end' or low quality assignments allocated to staff on alternative work schedules.
Opportunities for Advancement	Acceptance of an alternative work schedule should not entail being taken off the partnership track or diverted into a non-partnership position. ⁷⁸ Staff on alternative work schedules should remain eligible for partnership. ⁷⁹ Time spent on an alternative schedule should be counted towards service for partnership. Reduced hours arrangements may provide for pro-rata recognition for partnership purposes.
Partnership Arrangements	Voting rights should not be affected by any alternative work arrangements. Partners on alternative work schedules should be eligible for/retain equity status.
Duration of Alternative Work Schedules	The duration of the schedule should be determined on a case-by-case basis.
Approval Procedures	Procedures and criteria to be used for the approval of part-time arrangements should be transparent and consistent.
Monitoring and Review Provisions	The schedule should be reviewed periodically to determine its continued feasibility and to make any adjustments required.

Underpinning many of these guidelines is the principle of proportionality.⁸⁰ Applying the principle of proportionality means that:

- employees on part-time schedules remain eligible for partnership, but may be required to delay their nomination for partnership by a period proportionate to the hours worked during the pre-partnership period;
- salary is calculated in proportion to the hours worked/billings target, with the removal of the penalties sometimes imposed on part-time employees for 'over head' costs;
- bonuses, benefits etc would be paid on a pro rata basis.

Although law firms are generally becoming more willing to offer some part-time arrangements, there is still some debate within the profession as to whether part-time arrangements should be available to partners. Two common misgivings about the feasibility of part-time partnership are:

- that the workload and responsibilities of partners cannot be managed on a part-time basis; and
- that certain areas of practice are intrinsically incompatible with part-time arrangements.

⁷⁷ Association of the Bar of the City of New York, *Quality of Life*, op. cit. n 7, 6, 22.

⁷⁸ *Ibid.*, 22.

⁷⁹ See for example, Sample Guidelines of the American Bar Association at Appendix 7.3, the Report to the Association of the New York Bar on Flexible Work Arrangements, op.cit. n 58, and the Boston Bar Association's report, *Task Force on Professional Fulfillment, Expectations, Reality and Recommendations for Change*, op.cit. n 40.

⁸⁰ See for example Rhode, *Balanced Lives*, op.cit. n 8, and the report by the Women's Bar Association of Massachusetts, *More than Part-time*, op.cit. n 9.

⁸¹ Extracted from Rhode, *op. cit.* n 8, 46.

U.S. researchers have dispelled both these doubts. It is now possible to identify successful part-time partnership arrangements in a variety of law firms. The benefits of retaining loyal, diverse and experienced partners (and clients) outweigh the cost of the initial investment of time and energy in setting up the arrangements.

Part-time partnership arrangements have been adopted in every area of legal practice, including departments generally regarded to be most demanding: litigation, mergers and acquisitions.⁸² Some firms have found that clients accept their lawyers' part-time arrangements in return for the assurance of staff loyalty and stability. Partners have also found that well-supported arrangements will succeed, even where the partner is required to manage a heavy or unpredictable workload. U.S. experience highlights the fact that it is the level of endorsement and commitment to part-time arrangements which determines their feasibility.⁸³

Lessons from U.S. Experience

It is clear that a radical change in the culture of law firms will be needed before the goals and needs of women lawyers are addressed at the senior levels of the profession. Very significant changes have been brought about by the influx of women lawyers at entry level. However, despite the widespread introduction of policies for part-time employment, the profession is still structured and managed in a way that stalls the advancement of women to partnership.

A recent ABA survey of lawyers found that women lawyers are less optimistic about their career opportunities now than they were in 1983.⁸⁴ The telephone survey conducted in 2000 revealed that whereas the prospects of women lawyers entering the profession had improved significantly, the respondents believed that opportunities for women to reach senior positions in law firms had not improved. In fact, the percentage of women lawyers who believe that they are not treated equally with men has risen since 1983.⁸⁵

Quite plainly, women are finding alternatives to private practice to pursue their careers without sacrificing their family life. The effect on U.S. law firms is already noticeable. The departure of experienced women lawyers mid-career is leaving a gap in law firms that is beginning to affect law firms' capacity to retain the next generation of partners.

Despite the difficulty of bringing about this change in culture, there are indications that change is, nevertheless, inevitable. There is mounting external pressure on law firms to implement workable part-time arrangements. The higher salaries offered by law firms are demonstrably not effective in retaining experienced women lawyers. As corporations and the public sector compete with law firms for experienced staff, the firms will be forced to offer more competitive employment conditions.

Clients are also changing. U.S. clients are beginning to demand a stable staffing arrangement from law firms. Law firms that cannot offer clients a stable team of legal advisers face losing clientele to more management-conscious competitors. Leading firms such as Ernst and Young and Deloitte and Touche are setting the benchmark for innovative and flexible staffing arrangements. They are also able to demonstrate the commercial benefit of their investment in their own staff. U.S. law firms are beginning to use their record on staff retention as a selling point to prospective clients.

TOWARDS PART-TIME PARTNERSHIP IN AUSTRALIA

CURRENT RESEARCH AND FUTURE DIRECTIONS

There is as yet no profile of the availability and use of part-time partnership arrangements in Australian law firms comparable to the data available on the U.S. legal profession.

⁸² Williams and Calvert, *op. cit.* n 5, 43-45.

⁸³ *Ibid.*, 45.

⁸⁴ Hope Viner Samborn, 'Higher Hurdles for Women', (September 2000) *ABA Journal*, 30-31.

⁸⁵ *Ibid.*, 31.

⁸⁶ Raman P, 'Towards a 21st Century Legal System' (Autumn 2000) *76 Reform*, 19-24, 101; John Gray et al, 'Facing up to Change - Report of Study on How Law Firms are Adapting to Change', (March 1998) *36 Law Society Journal* 2, 44-49; Paul Boreham et al, 'Labour Flexibility and Gender in the Service Sector: A Study of Employment Practices in Law and Accounting Firms', (August 1996) *32 Australia and New Zealand Journal of Sociology* 2, 20-37; Gray John, Philip King & Robin H Woellner, 'Facing up to Change - Report of study on how law firms are adapting to change' (March 1998) *36 Law Society Journal* 2, 44-49; 'Seeking Flexible Workplaces', (February 2000) *Australian Lawyer*, 3-4; Ann Janssen, 'A Decade of Change', (8 September 2000) *1 Lawyers Weekly* 12, 14-15.

However, the recent Australian literature is similarly focussed on the need for the legal profession to adapt to a changing workplace.⁸⁶ Competition from allied professions, such as accountancy, is prompting law firms to diversify their services, but within the profession the practice of law is becoming increasingly specialised.⁸⁷ The development of multidisciplinary practices and the impact of new technologies on the profession are forcing the legal profession to take stock of its resources and services.⁸⁸

There is a growing body of literature extolling the advantages of a family friendly workplace⁸⁹ and highlighting their effect on staff retention rates.⁹⁰ Women's organisations, such as the Women's Electoral Lobby (WEL),⁹¹ and institutes devoted to social research, such as the Institute for Family Studies,⁹² are addressing the work-family relationship.⁹³

The New South Wales Law Society established the Gender and Industrial Issues Task Force to examine the steps taken by law firms in that state to reconcile the competing pressures of work and family life. The Task Force conducted a study of Family Responsibilities, surveying over 700 solicitors in New South Wales.⁹⁴ Respondents were asked to describe their views and experiences of reduced-hours schedules as part of a study of the availability and use of part-time policies.⁹⁵

The Task Force found that part-time employment was not generally regarded as a viable career option. Respondents indicated that in their experience, part-time arrangements did not resolve the conflicting pressures of work and family. On the contrary, the need to compress a full working week into a part-time schedule was found to create pressure, rather than to reduce it. Possibly for this reason, the Task Force also found that working at home was thought by respondents to be preferable to work-based childcare or a reduced-hours schedule.⁹⁶

As in the U.S., balancing the competing pressures of work and family has been generally regarded primarily as a women's issue. Articles have tended to focus on the effect on women's careers of their efforts to juggle work and family commitments⁹⁷ and on the relative scarcity of senior women lawyers in senior positions.⁹⁸

There has been some discussion of the 'glass ceiling' experienced by women lawyers, especially in the major private firms.⁹⁹ The more recent studies have tended to confirm the general impression that there are intangible barriers to the appointment of women partners, and little opportunity for women to advance to partnership if they take up flexible work arrangements.

Recently, however, attention has been focussed on attrition rates among lawyers in private practice.¹⁰⁰ Departure studies, such as those published by the Law Institute of Victoria¹⁰¹ and the Victoria Law Foundation¹⁰² are crucial in determining the cause of the attrition rate. There seems to be a growing concern with the heavy workload of lawyers in private practice.¹⁰³ There also appears to be a desire on the part of younger lawyers to obtain a wide experience base and a balanced lifestyle rather than to pursue a career path that leads exclusively to partnership.

87 See Dominique Hogan-Doran, 'New Practices Create New Opportunities for Women in the Law', (March 1999) 37 *Law Society Journal* 2, 71-72; Robert Cornall, 'A Question of Survival for Law Firms', (December 1995) 15 *Practor* 11, 21-24.

88 For a discussion of the impact on women lawyers of changes in the profession see Dr Sharyn Roach Anleu, 'The Legal Profession in the United States and Australia: Deprofessionalization or Reorganization?', (May 1992) 19 *Work and Occupations* 2, 184; and by the same author, *Women in the Legal Profession: Theory and Research*, available at the following website: www.aic.gov.au/publications/proceedings/16/Anleu.pdf.

89 Lyn Boxall, 'Fixing the Organisation ... Not Fixing Women', (June 2000) 74 *Law Institute Journal* 5, 62-65; Kriss Will, 'Part-time hours and fully committed lawyers', (December 1999) *Australian Legal Practice* 13-17.

90 Robert Davidson, 'Staff Retention Strategies', (July 2000) 20 *Practor* 6, 18-19.

91 A bibliography on Gender Equity compiled by Burton is available through the WEL website at www.wel.org.au/burton/bibliog.2.html.

92 The Australian Institute of Family Studies convened its 6th Annual Conference on Families at Work, Melbourne, November 1998. Papers presented at that conference included: S. Biggs, 'Flexible work practices: the reality versus the rhetoric', *Families At Work*, Sydney 1998 and P. Warrilow, 'Learning to Think Flexibly? The reality versus the rhetoric of flexible work practices', presented at the 7th Annual Conference, *Families at Work* Sydney, 2000.

93 See also Joanne Painter, 'Flexible Work Practices and Family Life', (February 1999) 4 *Employment Law Bulletin* 10, 100.

94 Gray, King & Woellner, *op cit.*; Solicitors' work undermines families and personal life more than other work', (May 1999) 37 *Law Society Journal* 4, 69-71.

95 'Solicitors' work undermines families and personal life more than other work', *ibid.*, 69-71.

96 *Ibid.*

97 Jane Grant, 'Tensions Between Practice and Parenthood', (June 1997) 17 *Practor* 5, 24-27.

98 Felicity Hampel, 'Women in the Legal Profession', (May 1999) 73 *Law Institute Journal* 5, 19-21.

99 Elena Campbell, 'Achieving Real Equality', (February 2000) 74 *Law Institute Journal* 1, 27-29; Susan F Israel & Katy McDonald, 'Gender Issues for the Legal Profession: A Report on the Keys Young Survey', (May 1999) 37 *Law Society Journal* 4, 60-62.

100 Davidson, *op. cit.* n 64, 18-19.

101 See VLF and LIV reports cited *op. cit.* n 3.

102 L. Schmidt, 'The Future of Work: Finding a Balance', (11 June 1999) 73 *Law Institute Journal* 1, 58-50; 'Solicitors' work undermines families and personal life more than other work', *op. cit.* n 88, 69-71.

103 Kriss Will, 'Part-time Hours and Fully Committed Lawyers', (December 1999) *Australian Legal Practice*, 13-17.

However, the Australian legal profession lacks both comprehensive quantitative research into the availability of part-time partnership arrangements and the qualitative research into the career prospects of those who opt for flexible work arrangements.

In practical terms, the acceptance of part-time partnership as a feasible option requires a five-pronged program of research and promotion:

1. Research and regular surveys on staff attrition, changes in the legal profession, law firm policies and practice, the participation of women at partnership level, and the impact of flexible work practices on the retention and job satisfaction of partners;
2. The dissemination of information, advice and support to law students and lawyers interested in flexible work practices through websites, newsletters and professional associations;
3. Media coverage of initiatives taken to implement flexible work practices, especially at senior levels of the profession;
4. Monitoring and promoting part-time arrangements used in government and corporate legal bodies; and
5. Networking and mentoring, through conferences, websites and professional associations, to develop a supportive environment for the promotion of flexible work practices at all levels of the profession.

Alternative Work Schedules for Partners

Alternative work schedules should be an option open to senior as well as junior lawyers. In many organizations, the absence of such options often contributes to disproportionate attrition rates of women in upper-level positions. Lateral movement among lawyers is a fact of life, and alternative schedule policies are often a factor for lawyers considering whether to change jobs. Since organizations have a greater investment in senior than junior lawyers, offering alternative work arrangements to both groups is generally a cost-effective retention strategy in today's competitive legal market. Experience at many organizations has demonstrated that lawyers on alternative schedules can be effective in all of the supervisory, managerial, and business development functions that senior positions require.

Although most of the considerations discussed earlier regarding alternative work schedules are as relevant for senior as well as junior lawyers, this does not mean that a single policy for both groups is always appropriate. Organizational needs vary, and the important point is not whether policies are separate or the same, but whether they speak effectively to concerns that may affect lawyers at different levels in different ways.

Compensation and Voting Rights

Decisions concerning partners' compensation generally involve a complex process that also varies considerably across firms. Although the merits of particular compensation formulas are beyond the scope of this Manual, a review of prevailing approaches suggest some general issues that a policy should address. One involves the points or percentage shares that may affect compensation above a certain base level. Some firms maintain alternative schedule partners at their full-time point levels, but adjust compensation pro rata based on hours worked.

Another issue involves voting. The right to vote on firm matters on which other partners vote should not be affected by an alternative work arrangement. Neither should equity partners be relegated to non-participating, non-equity status because of their alternative schedule.

Nonbillable Work

Policies for partners on alternative schedules should specify the firm's expectations regarding nonbillable work. The consequences of not meeting these expectations should be the same for full-time partners as for those working part-time. A multitude of nonbillable contributions can influence partners compensation, including business development, committee work, pro bono service, and bar activities, the same benefits should be available on a pro rata basis for partners on alternative schedules. Conversely, if the firm does not penalize full-time partners for failing to participate in some of these activities, it should not hold lawyers with alternative work arrangements to higher standards.

Supervision

Concerns are often raised about the availability of partners on alternative schedules to supervise associates. Effective supervision involves monitoring work and providing appropriate guidance and feedback. The adequacy of performance depends more on lawyers' skills and commitment than time in the office. Many full-time partners are not sufficiently available, even when in the office, to answer questions or review work. By contrast, many part-time partners are accessible even at home. Indeed, as the Introduction notes, attorneys on reduced schedules may be more available than colleagues who are constantly traveling, in court, or tied up in meetings. With organization and planning, lawyers on alternative schedules can provide effective supervision.

Benefits

Alternative schedule policies for partners and lawyers in supervisory positions should also address benefit issues that may be affected by their status, such as those involving retirement and sabbaticals. Organizations that adopt a single policy for all attorneys should clearly specify any benefit provisions that vary for particular groups.

Revisions of the Partnership Agreement

Firms should review their partnership agreements to determine if they require partners to engage in full-time practice. If so the agreement should be amended to permit alternative work schedules and to explain the process for approval of such arrangements. This approval process can track the process for handling associate requests.

Extracted from American Bar Association, Commission on Women in the Profession, *Balanced Lives: Changing the Culture of Legal Practice*, Deborah L. Rhode, 2001, 39. Reprinted by permission

Alternative Work Schedules: A Comparison of U.S. Model Policy Provisions

Extracted from American Bar Association, Commission on Women in the Profession, *Balanced Lives: Changing the Culture of Legal Practice*, Deborah L. Rhode, 2001, 46. Reprinted by permission

Key Provisions	Philadelphia Bar (adopted 1999)	NY State Bar (prepared by NY SBA Comm. on Women in the Law 1995)	DC - WBA (published 1990)	Indiana State Bar (adopted 1994)	Equity Committee of the Law Society (published 1999)	SF Bar (adopted in 1990)	Minnesota Women Lawyers - Small / Medium Att. Work Policies (Published Fall 2000)	Minnesota Women Lawyers - Large Firm Att. Work Policies (Published Fall 2000)	ABA Commission on Women Policy (published 1990)
Who is Covered	Any attorney is good standing	Any attorney	Any attorney, including managers	Any attorney employed at firm for ___ years. (firm to fill in blank)	Any attorney	Any attorney	Attorney who has worked with firm for at least 2 years full-time	Attorney who has worked with firm for at least 2 years full-time	Any attorney, but associate must have been employed by the firm for 1 year before becoming eligible
Written Proposal Required?	Yes	Yes	Yes	Yes	Yes - at least 2 mos. before alt. schedule begins	As much in advance as possible	Yes - at least 2 mos. in advance	Yes - at least 2 mos. in advance	Yes - 2 mos. in advance
Suggested Contents of Alternative Work Proposal	Proposal must be practical, workable by the firm as a whole and individual practice groups	Proposal must include reason for request	N/A	Firm will designate liaison to help attorney and firm decide arrangement	Should be as specific as possible and incl. hrs/days to be allocated as office time	N/A	Duration of arrangement, estimate of hours to be billed, hours in office	Duration of arrangement, estimate of hours to be billed, hours in office	Advisor to work with attorney seeking approval or renewal of schedule
Factors considered in granting request, reviewing schedule	Attorney must be in good standing	Attorney is good standing; client demand; attorney's practice area and present cases	Attorney must meet work responsibilities successfully	Schedule must serve attorney and client; must not burden other lawyers; must be economically feasible	General workability of proposal; workload coverage; situation in attorney's dept. Attorney must have predictable office hrs., and reasonable contact with office	Attorneys in good standing and if request can be reasonably handled by practice groups affected	Attorney's history with firm; firm needs; firm finances; transferability of attorney's work	Attorney's history with firm; firm needs; firm finances; transferability of attorney's work	Attorney works at least 50 percent of his/her prior annual hrs.; Attorney holds regular predictable office hrs; is flexible and remains in contact with office
Attorney Required to Maintain Non-billable Duties?	Yes	Yes but responsibilities reduced proportionally with the reduction in billable hours	Yes - quantity to be agreed upon in advance	Yes at a percentage of the goal expected of all lawyers	Yes	Yes	Yes	Yes	Yes but reduced proportionate to reduced hours
Effect on Partnership Prospects?	No effect on partnership eligibility	May affect timing of partnership determination	May affect timing of partnership determination	Delays career progression	Affects timing of partnership determination but not eligibility	Affects timing of partnership determination but not actual determination	None unless arrangement exceeds 6 months	None unless arrangement exceeds 6 months	No effect unless part-time associate works for more than equivalent of 1 curial day yr. on alternate schedule
Effect on Salary increases?	Salary prorated	Associate's salary prorated	Salary prorated with additional compensation for hours beyond schedule	Salary prorated	Salary prorated	Salary prorated	Salary prorated	Salary prorated	Salary prorated

Author: Georgina Frost

INTRODUCTION

Executive Summary

This report aims to identify the inhibitors to working part-time as a partner in a law firm in Victoria. Most of the firms interviewed had or have had lawyers working on a permanent part-time basis subject to regular review. Four out of ten firms interviewed had partners working part-time. The response from interviewees in relation to part-time work was mostly positive with only a few examples of a negative experience cited. Where there were no partners working part-time in a participant's firm, the indication was that there were no likely candidates for participation in a part-time partnership arrangement.

The majority of participants considered offering part-time working conditions at partnership level and below as necessary for retaining experienced and valuable staff. Questions were posed as to the commitment of part-time staff to the firm and its clients.

The major inhibitors to such work arrangements identified by firms without partners working part-time were:

- the perceived impact on client service because a partner with a part-time or flexible work arrangement would be unable to meet client demands within a short time frame resulting in disgruntled clients; and
- the partner's perceived lack of commitment to the firm because he/she would be unable to meet both administrative responsibilities and client service objectives.

Measured planning and communication which are basic management principles provide a solution to these issues. Flexible work arrangements for both partners and employees are sustainable as they have been demonstrated to work well where there is proper planning including a firm policy and/or guidelines which provides a procedure to ensure equal opportunity and treatment of applicants. Communicating the arrangement internally within the firm and externally with clients is integral to success. Monitoring and adjusting the flexible work arrangement must be ongoing to ensure it is working for all participants.

Aim

One of the recommendations for future research arising from Victorian Women Lawyers' report 'Taking up the Challenge'¹⁰⁴ was:

'Examine which alternative organisational structures could effectively be adopted for legal firms, eg part time partnership and alternative lateral career path to partnership such as senior counsel, consultant. This could be followed up with an educational seminar program to encourage firms to consider such options'.

The primary aim of this project is to identify and quantify the inhibitors to part-time partnership in law firms within Victoria.

This report should be read in conjunction with Part 1 of this report, a literature review undertaken by SueKaufmann.

Method

Within a limited timeframe and budget, confidential interviews were conducted with Managing Partners and Human Resources Managers of Melbourne law firms. Approximately 55% of practising Victorian lawyers practice in the city. As a result ten interviewees from the CBD area were randomly selected on the basis that they were representative by size of large, medium and small Victorian law firms and included large (30 plus partners), medium (15-29 partners) and small (1-14 partners) sized firms. The interviewees also represented firms with and without part-time partners currently and in the past.

¹⁰⁴ Victorian Women Lawyers, 'Taking up the Challenge', Gabby Trifilette, May 1999, p.22.

Issues Considered

Annexure A sets out the issues canvassed during each interview. Annexure B sets out background information regarding remuneration structures for legal partnerships.

Use of the phrase "part-time partner"

There is no such thing as "part-time partnership" as partnership is a status or business arrangement. Use of this phrase in this report refers to part-time working arrangements of a person who is a partner.

FIRMS WITHOUT PART-TIME PARTNERS

All firms interviewed that had no part-time partners, recognised that the concept of a partner working part-time was feasible and would possibly become a practice for their firm in the future.

A number of these firms already offered ad-hoc flexible work arrangements stopping short of part-time arrangements. Reasons for such an arrangement included illness, carer duties, directorships and commitment to other organisations. An example cited was a partner commencing work later or leaving early, particularly when child care was an issue, eg transporting children to or from school.

How Part-Time Partnership May Arise

When asked under what circumstances part-time partnership would be considered, for example if a partner became ill, interviewees acknowledged that their firm needed to consider a succession plan for partnership management in order to cater for a current partner becoming ill and/or older and wishing to work fewer hours. In a number of cases the issue had not been contemplated until this question was asked. The issue of an aging partnership had not been properly addressed by any of the firms interviewed.

Any application for part-time partnership would be considered on a case by case basis and would only be accommodated if the needs of the firm, clients and the practitioner were adequately met.

The comment was often made that flexible work arrangements would be offered to an outstanding/exceptional practitioner if that was the difference between retaining them or losing them from the firm. One interviewee from a firm without part-time partners said, **'Our partners will support certain people part-time. It will be judged on a case by case basis. Then that person has to prove themselves'**. Another interviewee said **'a change of firm culture and attitudes will come as new partners with more 'flexible' attitudes to past partners are appointed.'**

Perceived Inhibitors

Set out below are the inhibitors to part-time partnership identified by interviewees from firms that **did not have part-time partners**.

Disgruntled clients

All firms, other than large firms, tended to have a majority of practitioners who were the sole operator on files. As a result it was perceived that clients, particularly private clients, would not be satisfied dealing with a partner with a part-time partnership arrangements as the operator would not be able to meet their demands. One interviewee made the comment that in circumstances where the client only wanted to deal with one person on their matter and that person was at times hard to contact, the client would move to another practitioner. The same interviewee cited his/her firm's experience of an unsuccessful part-time arrangement for two employee solicitors practicing in family law who had been unable to meet their client's demands for immediate service. This experience can be contrasted with that of another firm which currently has a part-time partner successfully operating a family law practice. The issue to be explored here is how the firm and lawyer meet those client demands successfully.

In a small firm where there were insufficient practitioners to provide back-up of equal quality and expertise as the part-time partner, there is a perception that if a client becomes disgruntled the client may move to another operator or firm.

Detailed planning and communication is required for partners/lawyers to successfully work part-time. Clients must be introduced to other people working on their file. The same situation is faced by firms when practitioners take leave with the only difference being that the files are handed back when the original operator returns.

Lack of commitment

It was perceived that part-time partners would have less time available to devote to and meet their target billings, administrative and client responsibilities, which ultimately was seen as a lack of commitment to the firm. One interviewee cited the example of a female partner who worked part-time in 1993-94 being pressured by her partners to sell out her equity, which she ultimately did. When she was asked some years later to rejoin the partnership, she declined. It appears that the commitment to the partnership, existing when she was a part-time partner in 1993-94, had been lost.

Share in capital

One interviewee expressed concern about partners working part-time and sharing in the capital return of the firm without making the same level of contribution. One solution to this would be pro rata sharing of capital.

Disgruntled colleagues

There was a suggestion that colleagues of partners working part-time would become disgruntled having to cover for the part-time partner and/or part-time lawyers.¹⁰⁵ Low staff morale and productivity could be the ultimate result. One example given was of a partner having to take on an increased supervisory role to cover for the part-time partner.

Resources

A firm will still have the same overheads for a part-time as for a full time partner resulting in under-utilisation of resources. For example, an office, office equipment, support staff and professional indemnity insurance is the same for partners whether they are working full or part-time.

Reluctance to seek part-time work arrangements

Because of the perceived ramifications, current partners were reluctant to ask for part-time/flexible work arrangements from their partners.

Structural - lack of role models

Interviewees suggested that they could not identify any structural inhibitors to part-time partnership. A number however recognised that women generally faced structural/cultural inhibitors.

One interviewee noted that his/her firm had an annual intake of over 50% female lawyers for articles with promotion to senior associate level in equal proportions of males and females. Promotion to partnership was approximately 25-30% female and as a result women were seen to be leaving this firm to go to corporate practice and for lifestyle reasons. Under representation of women at partnership level is a long-standing issue. There is no support for the theory that sufficient numbers and the passage of time will eventually bring about equity in women and men's status in private law firms.¹⁰⁶

Perceived Benefits of Flexible Work Practices

All interviewees believed that by offering flexible work arrangements they were more likely to attract and retain senior lawyers, particularly where it was almost impossible to replace senior lawyers if they left their firm. Added to the cost of finding a replacement lawyer, if one can be found, is specific training for the replacement lawyer while still covering for the lawyer who has left. Smaller firms in particular, believed they found it hard to compete on a salary basis but were already in a position to offer flexibility in relation to hours worked. One interviewee said his/her firm offered late starting times and working back late or working on the weekends was rare. One interviewee identified a hidden cost of a senior lawyer leaving a firm as being the additional pressure placed on that lawyer's supervising partner. When a lawyer leaves a firm another cost is the decrease in morale and ultimately productivity of those affected within the firm.

¹⁰⁵ Sue Kaufmann, Part 1 of this Report, p.12 records the finding in a Massachusetts survey that "A large number of part-time attorneys felt that their relationships with their colleagues deteriorated as a result of working a part-time schedule."

¹⁰⁶ Keys Young, *Research on Gender Bias and Women Working in the Legal System: Report Prepared for NSW Department for Women*, 6 March 1995.

FIRMS WITH PART-TIME PARTNERS

How Part-time Partnership Currently Works

In large Melbourne law firms there appears to be general acceptance of the concept of part-time partnership. Of the four firms interviewed that currently have equity partners working part-time, three were large law firms and had had part-time partners for at least the past five years. One was a small firm.

Set out below are the elements identified by the interviewees as necessary to establish flexible work arrangements for partners.

Policy/Guidelines

All the large law firms interviewed had a policy or guidelines in relation to partners working part-time or adopting flexible work arrangements. One interviewee described his/her firm's policy as 'reactive' having been implemented to accommodate the requirements of specific partners. These policies were published and made available only to partners. Many of these policies had only been introduced to firms in the last couple of years. The policies were seen as:

- necessary to establish a process to treat all partners fairly;
- providing consideration of all possible effects of the flexible work arrangement; and
- assisting in the education of existing partners who are opposed to part-time partnership.

Neither the smaller nor the medium sized firms with equity and salaried partners working part-time had formal written policy/guidelines setting out their part-time flexible work arrangements. In most cases there was some written evidence of the arrangement, ie an internal memorandum or a letter recording the work arrangement.

The most effective way to manage applications for and the practice of flexible work arrangements is to have a formal policy. A policy should include consideration of:

- how the partner will contribute to his/her practice development;
- administration responsibilities and how they will be met;
- mentoring role - for the part-time partner or someone to mentor them;
- supervision of staff;
- availability of the partner;
- communication between the firm, clients and the partner;
- review process;
- revenue targets and/or budgets;
- distribution of earnings;
- contribution to equity;
- leave and other entitlements;
- management of client relationships; and
- facilities to be made available to the partner.

The policy should set out availability of work arrangements, who is eligible and what needs to be done to achieve a workable arrangement for the firm, the lawyer and clients.¹⁰⁷ The apportionment of targets and benefits must be considered. If these are not going to be apportioned on a pro rata basis then the method for calculation should be specified. One firm noted that since each business case for a flexible work arrangement is different, a degree of flexibility within any policy is imperative.

Balance

There is a need to balance the interest and/or needs of the partner, and the partnership. All the policies reviewed for this report included a reference to the need for any part-time partner to remain committed to the firm. One policy emphasised the expectation of a total commitment to client service, which the firm expects and explains how extremely difficult this is to achieve if a partner is not devoting his or her full time and attention to the business of the partnership. This arguably creates an imbalance of expectation in favour of the law firm. As it has been found that women are more concerned with maintaining a balanced life in which work, career and other factors have proportionate weight¹⁰⁸ a balance that favours the firm may act as a disincentive for senior women lawyers in joining and or staying in a partnership.

¹⁰⁷ Sue Kaufmann, Part 1 of this Report, p.13-14.

¹⁰⁸ Victorian Law Foundation, 'Facing the Future: Gender, Employment and Best Practice Issues for Law Firms', Mark Herron, Annie Woodger and George Beaton, 1996.

Partnership is widely considered to be a full time commitment. *'If you are a partner in a law firm you could not accurately be described as a part-time partner, you are a partner who is working part-time.'*

Transparency with Clients

The fact that partners worked part-time was in all examples cited as transparent as far as clients were concerned. Only one firm reported receiving any client complaints. If a client still has access to their preferred legal adviser and receives advice there should be no client complaint. ***Clients need to know roughly what your hours are and how to get hold of you. If the job always gets done and you bend over backward to give service the client won't be disadvantaged.'***

It was one large firm's belief that clients expect their professional service providers to demonstrate 'leading edge' business policies and practices, eg a firm's management policies are a consideration for some clients during a tender.

Management

There is a need to manage part-time arrangements carefully, particularly when the partner has his/her own client base which is likely to lead to other personnel becoming involved in files to overcome continuity issues and meet client demands in a timely manner. A good assistant is required to assist with communication between the partner and client and file management. An ability to be contactable is essential. A flexible backup domestic team, ie life partner/family is also needed to enable the partner to attend to urgent matters. Clients supported the concept of partners working part-time if all their needs were being met. Another necessity is flexibility in scheduling client development and administrative responsibilities including partnership meetings.

In the larger firms the use of teams to meet client demands is normal. In small firms this is exceptional. The only small firm interviewed with a part-time partner, when asked what happens if the part-time partners was unable to meet client demands, said that back up was available from another lawyer with a flexible work arrangement practising in the same area of law.

Maintaining control of client relationships could become increasingly difficult while a partner is working part-time, particularly if another partner assumes control of a client for 'continuity' or for 'the good of the firm'. Ideally there should be confirmation beforehand that a part-time partner will remain the primary responsible partner for the relevant client, or agreement that responsibility will be shared with another partner acceptable to the partnership and the part-time partner.

Assessment

In all cases when there was a request from an existing partner for them to take up flexible work arrangements (reduce hours worked to meet a reduced budget for a reduced remuneration) each application was considered on its merits. Assessment was on a case by case basis by the practice group, partnership and/or the board of partners.

Not all applications in the past have been accepted. One interviewee cited the example of an application by a partner to change from a full time to a part-time work arrangement being rejected on the basis that there was already an issue in relation to that partner's low level of performance when working full time.

One interviewee from a large firm said that part-time/flexible work arrangements at their firm would only be offered where the applicant could demonstrate it was a necessity, eg for health, child care or cultural reasons so that the need was driven by practical circumstances not from a lifestyle choice.¹⁰⁹

Permanent Part-time

All examples of part-time partnership positions cited were regarded as permanent, subject to periodic review. The question of whether the part-time partnership is sustainable for the practice/practice group must continue to be addressed. One interviewee from a large law firm said that in his/her firm's experience, part-time partners come back to full time practice eventually (although there was no set time frame).

Numbers of Female Partners

In all large firms where flexible work arrangements were available to all partners there was a greater number of male partners to female partners and more female partners with flexible work arrangements than male.¹¹⁰

¹⁰⁹ Sue Kaufmann, Part 1 of this Report, p.9. This reflects the position found to exist in US firms.

¹¹⁰ *loc.cit.* Similarly in the US, the vast majority of those opting for flexible work practices are women which tends to make this a women's issue.

The most commonly cited reason for adopting flexible work arrangements was family responsibilities. This finding is consistent with the assumption made in this report that many women lawyers are or will become parents during their careers. There were however examples cited by interviewees of academic pursuits, business activities (university professor), artistic and religious pursuits being the reason for the flexible arrangement.

Practical Assistance

Current technology enables firms to deliver legal services regardless of where their lawyer is geographically located. Facilities made available to partners being (both part-time and full time), working from home, or travelling included all or some of the following:

- home office
- computer
- phone line
- phone - mobile phone
- palm pilots
- OH&S checks of home office
- facsimile machine
- voice mail

Other Arrangements

One large firm, in addition to part-time partnership, offered '*reinvigoration leave*', ie extended leave or double amount of annual leave for partners, subject to a profit adjustment.

A number of large firms offer female partners some paid maternity leave. One interviewee made the comment that a lot of female lawyers now take less than 12 months maternity leave.

If women continue to take less than their 12 month maternity leave entitlement a precedent that 12 months maternity leave is not necessary, may be established. This situation suggests that women lawyers feel pressure to return to work quickly after having a baby. It raises the question: Is there a culture within some private law firms that makes it unacceptable to take maternity leave for an extended period of up to 12 months? The reason for this belief may be a perception and the experience of some women that an extended period away from the office will have a detrimental effect on the lawyer's practice, the firm's clients and ultimately the lawyer's career. The reality is that there are often no systems in place to manage these issues. This problem is then compounded by the fact that the lawyer is a woman commonly being managed by a man with no experience in taking maternity leave or any extended period of leave and the effect it will have on his career.

Earnings

The issue of earnings needs to be considered in light of the structure of the partnership in each instance. Set out in Annexure B to this report is a brief consideration of the different remuneration structures adopted by Victorian legal partnerships. In relation to earnings with fixed share partners, or partners in a lock-step structure, only one large firm and the one small firm with partners working part-time said that they would pro-rata reduce earnings, leave and benefits on the basis of proportion of hours worked. One firm also had a bonus scheme that applied equally to part-time partners.

This concept of pro rata treatment may be difficult to apply within a performance-based partnership. In those partnerships the part-time partner is remunerated on the basis of actual performance (which would inevitably reduce on account of less time being available). There would, however, be some difficulty associated with the application of the averaging mechanism described in Annexure B. Without adjusting on some basis to allow for part-time partnership, this would result in the part-time partner initially arguably being 'overpaid' while working part-time (due to higher performance in the previous few years while working full time), but subsequently being 'underpaid' when he or she returns to work (due to lower performance during the new period of part-time partnership).

Two of the large firms with partners in a lock-step structure included a further deduction, discount or '*haircut*' in earnings for any partners working part-time which was justified on the following basis:

- it was difficult for a part-time partner to meet all partnership commitments and requirements such as practice development, administration, mentoring, supervision of staff and chasing debtors; and
- part-time partnership raised the question of the commitment of the partner to the partnership.

It was interesting to note that the amount of the 'discount' was negotiated on a case by case basis. These firms appear to be lagging behind their US counterparts who have generally phased out 'haircuts'¹¹¹.

One medium size firm paid its salaried partners working part-time more than their salary on a pro rata basis of hours worked. This was in recognition of the fact that as he/she built up their practice, part-time partners would normally put in more time than the designated hours. In effect the firm recognised its part-time partners in fact worked a 'compressed' rather than reduced workload. The issue of whether this created additional pressure on these partners was not discussed but may be a topic for future study. Payment on this basis was also seen to foster loyalty even when a salaried partner is working part-time on a permanent basis.

Entitlement to Bonuses

Partners working part-time should not 'automatically' be precluded from earning bonuses. If a part-time partner's performance is exceptional, *taking into account the reduced working hours available*, then the partner should be considered for a pro rata bonus. To allow meaningful comparison with other partners (at least of the financial component of performance), it should be possible to 'gross up' financial results to a full time equivalent figure.

Capital Contribution

The issue of contribution to and sharing in the capital of the firm was raised with interviewees. In the large firms with a lock-step based partnership, the purchase of equity in the partnership is unlikely to be an issue. The progressive increase in profit entitlement acts an effective purchase of equity. If a partner was a 100% equity partner and then reached agreement with his/her partners to work part-time, their position vis a vis his/her equity was not affected. The only thing affected was the amount of their profit share. If a part-time partner was not a 100% equity partner when he/she commenced working on a part-time basis and that partner contributed to capital at the same percentage rate as his/her profit share (ie a 50% equity partner only contributes 50% of the capital contributed by a 100% equity partner), the reduction in his/her profit share means his/her contribution to the equity of the firm should be less. It follows that his/her progression to 100% equity would be slower. In large firms, capital contributions are generally not an acquisition of equity, they act as a contribution to working capital arrangements.

In a small firm, if a partner is not a full equity partner and he/she reaches agreement with his/her partners to work part-time then contribution to capital has to be considered. If the part-time partner has to buy into the equity of the firm and has to borrow money to do so, then his/her lower profit share would impact on the size of any loan, amount of each repayment and time it takes to repay, although presumably the cost of the equity carrying an entitlement to a lower profit share would be proportionately lower. Ultimately this could act as an inhibitor to part-time partnership.

Firm's Culture

In general, within firms that already offer flexible work arrangements to partners, there is strong support for part-time partners and the concept of part-time partnership. There appears to be no prospect that these policies will be rolled back in the future.

Partners regarded as the most powerful in some partnerships were those partners who worked long hours between 60 and 70 hours a week and had done so for a considerable time. Generally, there was a perception that equity partners were reluctant to take up flexible work arrangements. This mirrors the position in the U.S.¹¹²

One large firm interviewee commented that the adoption of flexible work arrangements by partners in his/her firm was as a result of a strong cultural change in their Sydney office where there was proportionally more female to male partners as opposed to their other offices, ie Melbourne. One interviewee also acknowledged that there was a need to re-educate some long standing partners with the attitude ***'I had a hard time. That is the price you pay.'*** Hand in hand with this is the acknowledged culture of needing to be in the office from 9:00am to 5:00pm or considerably later, five days per week.

¹¹¹ Ibid., p.11.

¹¹² Ibid., p.9.

Benefits

All interviewees believed that by offering flexible work arrangements firms were more likely to retain senior lawyers, particularly females.¹¹³ Firms see growing numbers of senior lawyers of both genders looking for a work/life balance, and it was generally acknowledged that increasingly they would want flexible work arrangements at some stage during their careers.

Amongst the firms interviewed there were only three examples of part-time senior associates being appointed as partners working part-time. In two cases the senior associates worked with large law firms (one of whom has now returned to full time practice) and the third at a small firm. The normal process was for a full-time partner to make an application to reduce their hours worked and if successful, move to a part-time working arrangements. A number of interviewees said that they believed their current senior associates and/or salaried partners working part-time would be asked to join their firm's partnership as equity partners within the next 12 months.

One interviewee emphasised the need for role models and said **'we need part-time partners to encourage part-time practices leading to the retention of senior lawyers'**.

One interviewee commented that they had received favourable feedback from their clients who worked with partners using flexible work arrangements and as a result believed that their clients saw them as being progressive. One firm demonstrated its forward thinking and included *'respecting each other's needs outside work'* as part of their firm values.

Negatives

A number of the negative factors identified by interviewees to current part-time partnership arrangements were still the same perceived inhibitors identified earlier in this report.

Lack of commitment

Some partners will question the commitment of their partners working fewer hours. One interviewee, a part-time partner when responding to this comment from her male partner said, **'I have already established my commitment to the partnership by buying into the equity, this is what I want to do for the next 10 years.'**

Performance markers

In lock-step based partnerships where financial performance is judged primarily on the basis of personal or supervised billings, a part-time partner may have difficulty keeping up even with a pro rata billings performance because 'management overhead' does not reduce just because a partner is working part-time. For example, during a five day week (assuming 10 hours work per day) a typical partner might perform 35 hours of billable work and 15 hours of work related to firm management, marketing, etc. If that partner cuts back to four days a week but the amount of management/marketing work does not reduce, for example if the partner is still required to undertake close to 15 hours of management and marketing, this would leave 25 hours for billable work and ultimately affect the partner's financial performance. Thus a partner reducing to an 80% basis may find that time available for billable work reduces to something closer to 70% of previous levels (and a 60% part time partner finds it closer to 40%). Anything below 60% part-time is unlikely to be workable. The consequence is that financial performance targets should be reduced by more than a pro rata share.

Disgruntled clients

One interviewee from a large law firm noted that four out of five of their firm's part-time partnership arrangements were viewed by their colleagues as working. The fifth part-time partnership arrangement was viewed as not working because of a recent problem with a client which arose as a result of the partner not fully disclosing their part-time work arrangement to the client.

Career advancement

Interviewees recognised that going part-time as a senior lawyer could mean that you were going 'off track'¹¹⁴ or jeopardising his/her chances for advancement. This arguably could lead to the same result found in the U.S. where the majority of female lawyers with flexible work arrangements responding to an American Bar Association survey believed that by adopting flexible work arrangements they were likely to adversely affect their career advancement.¹¹⁵

¹¹³ Ibid., p.6-7, this mirrors the US findings.

¹¹⁴ Ibid., p.12.

¹¹⁵ Ibid., p.12.

Law firms are businesses in which contribution and potential contribution (financial and otherwise) to the firm are largely responsible for advancement to partnership. Any arrangement which reduces (or has the potential to reduce) that contribution will make advancement to partnership more difficult.

In the context of lock-step based partnerships, there is an issue regarding what effect moving to part-time should have on the usual 'lock-step' process (eg gradually moving from 40% to 100% profit share). Part time partners should still progress. It has been suggested that this progression be at a reduced rate, such as 8 points per year rather than 10 points for a part-time partner.

No decrease in liability

Partnership liability issues are the same whether a partner is working part-time or full time. In a legal sense, burdens are shared equally and not shared pro rata depending on hours worked. An example of this is equally shared liability, although this can be managed through appropriate indemnity arrangements in the partnership agreements.

Lack of permanence

There is a perception that the firm does not get value out of part-time partners because some partners believe they have to take on a greater supervisory role to cover for their part-time partners. This perception has sometimes resulted in part-time partners feeling the need to go back to working full time.

Working a compressed schedule

Despite the perceived lack of commitment of part-time partners, as a general rule interviewees believed that all part-time workers, work more than their scheduled hours. One interviewee said that to protect work arrangements, part-time workers are generous with their time. Clearly the implication is that a flexible work arrangement is regarded as a privilege, and that if problems arise that person can simply work five days a week like everyone else.

Disgruntled partners

The demands on most partners are significant. Most work longer hours than they would otherwise choose, although they are prepared to do so for the financial and other rewards of partnership. One interviewee stated: ***'Given a choice, most partners would take a 20% decrease in profit share in return for an extra day off per week.'***

However, many believe this is either not possible or desirable. Accordingly, while recognising the need for part-time partnerships, there is a degree of resentment that it is not available (or seen as available) to them.

Firm's culture

Even within firms that have part-time partners there is still a mindset that these working arrangements are the exception and not the rule. Most firms did not consider part-time partnership to be a matter of choice for partners it was an option available only if required, by the partners particular circumstances. The status of part-time partnership was also reflected in the discount on earnings for part-time partners in two firms. Coupled with this is the lack of significant numbers of part-time partners in all Melbourne law firms.

'We do have female partners who try to do it all... work full time after having children... this leads to a reluctance among partners to take up flexible work arrangements.'

The emphasis which firms have on commitment to the firm also acts as a deterrent. One interviewee from a large law firm commented ***'we couldn't maintain our market position if everyone worked part-time.'***

PART-TIME EMPLOYEES

Nearly all firms interviewed for this report had or accepted the concept of part-time lawyers. Flexible work arrangements were usually viewed as a positive experience for the firm and the part-time lawyer, provided they were well organised and managed. All interviewees saw part-time/flexible work arrangements as working conditions of the future and on a permanent basis. There was recognition by management in the firms with partners working part-time that there was a big difference between lawyers and partners working part-time.

Definition of 'Part-Time'

The definition of 'part-time' was generally a practitioner working less than full time hours to achieve a full time budget. In smaller firms practitioners need to bill between 5 to 6.5 hours a day. In larger firms it was reported to be 7 to 7.5 hours per day.

There are numerous part-time models. Examples cited included reduced number of weekdays worked (usually a minimum of two per week) and/or reduced hours per day (eg five days per week on reduced hours 9:30am to 2:30pm). Some firms have also established job share arrangements.

Examples were given where partners and employees with part-time status achieved good outcomes; a reduction in hours did not lead to un-met targets and/or a reduction of billable units. One interviewee from a large firm commented **'a lot more lawyers now work on-line, as a result spending time in the office is not essential, it is a question of results.'**

A number of small law firms commented that they believed any part-time arrangement needed the practitioners to be working more than three days per week otherwise it would be too difficult to sustain a viable practice. One solution to this perceived problem would be to establish a job share arrangement.

Retention

All firms believed that adopting flexible work arrangements was one answer to the problem of retaining lawyers (in particular senior female lawyers). Retention of these staff members resulted in almost irreplaceable knowledge, experience and client relationships being kept within the firm while simultaneously fostering a strong sense of loyalty and motivation among those staff members.

Tied in with this is the cost to the firm of replacing the lawyer, the loss of investment (in 1998 the estimated cost of replacing a fourth year lawyer ranged from \$61,400 for a small firm, \$71,600 for a medium firm to \$145,000 for a large firm¹¹⁶) and the cost to other practitioner's practices in having to cover for their departed colleague.

By offering flexible work arrangements not only is there the prospect of retaining staff but also, increased productivity, morale, loyalty, ability to attract and recruit new staff, coupled with reduced stress and absenteeism.

Effect on Progression

All interviewees agreed that part-time lawyer status should as a general rule not affect partnership prospects nor be detrimental to careers. In the larger firms interviewees then admitted that part-time work arrangements might slow down the progress of practitioners to partnership. It was ultimately dependant on the individual, their ability and the desire of the firm to retain them.

It was recognised that it would be harder and take considerably longer for junior lawyers working part-time to progress and build up the knowledge, experience, client base, etc necessary to join the partnership.

The comment was also made that a part-time employee may not have the same presence as a full time employee. When part-time workers are in the office they focus on work and do not take part in activities which lead to that practitioner's presence being felt.

Transparent Arrangement

All interviewees agreed it was most important to be transparent with clients in relation to work arrangements. Three interviewees said **'Clients understand the needs of practitioners'**. With the exception of two firms, all the firms with part-time/flexible working arrangements for lawyers had not received any client complaints. Clients naturally expect transparency. The ease of facilitating the flexible work arrangement and its benefits should be communicated to clients. Of equal importance is communication with colleagues to facilitate awareness, understanding and ultimately acceptance of any flexible work arrangement.

Firm Culture

An interviewee of one large firm noted that a recent staff survey indicated that there was a perception within their firm that the firm's rhetoric in the staff policy with regard to flexible work practices underpinning their public attitude of work/life balance distanced itself from their practices.

A failure to provide flexible work arrangements may also constitute indirect sex discrimination.¹¹⁷ In *Hickie* the Commission held that the requirement to work full time is a requirement with which a substantially higher proportion of men are able to comply. Women, due to their family responsibilities, are more likely to be unable to work full time.¹¹⁸

Negative Experience

Examples were given by three interviewees of part-time work arrangements not being successful. The reasons given for this were:

- the lawyer was unable to meet client demands;
- an inability of the lawyer to work long hours if required; and
- lack of organisation by the lawyer.

PRACTICE AREAS

There appeared to be part-time lawyers in all practice areas, although some areas were viewed as misogynistic, for example, international capital markets and resources. One large firm already had part-time senior lawyers with partnership prospects working in the area of mergers & acquisitions.

There was a perception that part-time practice was suited to areas where there were fewer clients and longer matters. Litigation practices were perceived to be unsuitable to part-time practices because those practices tended to be high volume and demanding clients. Areas such as corporate and property were viewed as more suited to part-time practices.

As a rule, flexible work arrangements were successful when the lawyer had an established practice. Examples cited of practice areas of practitioners and/or partners working part-time included:

- Intellectual property
- Industrial relations
- Telecommunications
- Commercial litigation
- Criminal (not sophisticated but very demanding clients)
- Family law (very demanding clients)
- Precedents
- Property/Planning
- Taxation
- Wills and estates
- Competition law

ALTERNATIVES TO EQUITY PARTNERSHIP

All the large firms interviewed, said that they did not have an 'up or out' policy and it was valid for lawyers to go 'off track'. These firms and a number of medium sized firms all offered equity partnership to candidates on a lock-step based structure.

The small to medium firm interviewees said that as yet there was only one path to follow and most employees of those firms acknowledged that equity partnership was his/her goal. The reality however is that most of these firms offered permanent senior associate positions.

The issue of alternative career paths was raised with interviewees. Examples of alternative structures included:

- *long serving/permanent senior associate*: where the firm and practitioner have recognised that the practitioner has chosen not to go on to become a partner or may never be asked to become a partner;

¹¹⁷ *Hickie v Hunt* (unreported) Human Rights and Equal Opportunity Commission H96/185, 7 March 1998.

¹¹⁸ Judith Maude, Proctor on Line, Issue 1 1999. The Commission found Ms Hickie had been indirectly discriminated against by Hunt & Hunt by removing part of her practice while she was on maternity leave and by failing to renew her contract as a partner. According to the Commission those decisions were made on the basis of a requirement that Ms Hickie work full-time to maintain both her practice and position, p.25.

- *special counsel*: a senior lawyer with a high professional standing and expertise without the additional expectation/responsibility of being a partner. This position is sometimes also used as a stepping stone (trial run) for a senior lawyer moving from industry to partnership;
- *consultant*: a position usually held by a retiring partner or senior lawyer scaling down his/her legal practice;
- *retiring partner*: most large firms have a retirement program on a reverse lock-step basis. The medium to small firms which took part in this project did not, as a general rule, have a program in place to deal with retiring partners. There was one example given of a retiring senior equity partner in a medium size firm selling down his equity in the partnership over three years and reducing his earnings/draw on a pro rata basis until he reached 50% when he would be required to retire completely. The partner maintained the title and status of a partner while aiding knowledge and client retention within the firm; and
- *salaried partner*: or permanent non-equity partner. This position may include consultative opportunities with equity partners through participation at some partners meetings to discuss for example admission to senior associateship and salaried partnership with the firm. In one firm, written criteria for partnership existed for salaried partnership but not for equity. Salaried partnership was usually seen as a stepping stone to equity partnership and as a result only candidates who were expected to progress to equity partnership were appointed as salaried partners. A couple of interviewees said that some salaried partners within their firms declined an offer to become equity partners. This model has been criticised on the basis that it reasserts the partnership model and can create a hierarchy within the partnership.¹¹⁹

One interviewee made the comment ***‘Clients don't have a problem with job titles. It's partners who have an over inflated view of how partnership is perceived by clients.’***

There was some recognition by interviewees that a salary ceiling may be reached with the positions of permanent senior associate and special counsel and that it was necessary to distinguish these practitioners from a partner. This raises the question of how to continue to reward these practitioners.

There was no suggestion that these positions offered a reduced workload or less sophisticated tasks. Arguably, if partnership were still regarded as the pinnacle within a law firm these positions would by definition be regarded as lower in status. There was also no suggestion that part-time partnership, though not yet generally accepted by law firms, was preferable to the creation of 'off-track' positions as suggested in the U.S.¹²⁰ However, this proposition warrants further investigation at a time when the role of 'special counsel', for example, is relatively new to the Melbourne legal market.

PARTNERSHIP CRITERIA

Large and some medium sized firms had formal written partnership criteria. For most medium to small firms there were no formal criteria but the expectation expounded was: Does the practitioner have:

- legal expertise/knowledge;
- his/her own practice/client base;
- a certain level of billing including supervised billings;
- administrative skills;
- supervision of staff including mentoring skills; and
- marketing skills.

A number of subjective criteria were mentioned. One interviewee admitted a potential candidate needed the 'X' factor, ie the current partners must like the candidate and recognise the individual's potential. Another interviewee said *'the candidate needs to fit in with the rest of the firm'*.

WOMEN IN MANAGEMENT

As the proportion of current women equity partners was low, or non-existent, in all firms interviewed, it is not surprising that the proportion of women in management positions within partnerships is also low, particularly on critical committees such as the board of partners of a large partnership. There was a perception by some interviewees that if they kept appointing female partners this situation would change over time.

Female partners including part-time female (and male partners) hold positions on a number of management committees within large law firms that were regarded by the interviewees as powerful committees. Examples cited included:

- partner selection/evaluation committee
- e-commerce task force*
- staff selection committee
- grievance officer
- marketing committee
- practice group head**
- partner evaluation committee
- work-life balance committee
- client services partner/account manager
- centre staff partner*
- head of Sydney office*

* includes part-time female partner

** includes part-time male partner

It was interesting to note that when one small partnership engaged consultants to review the firm's management practises, one of the issues identified was a lack of leadership (this is not uncommon in small firms with partners effectively operating as sole practitioners). It was the part-time female partner who the consultants had recommended to take up the required leadership position. Of course, this then raised the issue for the part-time partner as to how much more time she could commit to the partnership. Although she would have more scope to improve the firm's practices if she returned to full time practice, she was not prepared or in a position to do so.

One approach to adopt to ensure all partners whether male or female, full or part-time continue to be involved in firm management is to have staggered rotating positions on management committees, eg 12 month appointments with a rotation of half the positions every 6 months.

SUMMARY OF FINDINGS

Perceived Inhibitors

The perceived inhibitors to part-time partnership/ flexible work arrangements identified in this report were:

- lower service levels resulting in **disgruntled clients** and ultimately leading to a loss of the client from the firm;
- demonstrable **lack of commitment** to the firm and its interests;
- **sharing in capital** without an equal contribution;
- **disgruntled colleagues** leading to low staff morale and productivity;
- inefficient or **under utilisation of resources**;
- **reluctance** to seek part-time arrangements; and
- **lack of female role models**.

Solutions to Inhibitors

The solutions to these inhibitors identified in this report by firms with successful part-time partnership arrangements were:

- a **policy/guidelines** to establish an equitable open process for setting up a flexible work arrangement;
- recognition of the **balance between the interests and needs** of the partnership and the partner;
- being open and **transparent with clients and colleagues** about the work arrangement;
- proper **management** of the arrangement by both the partner and the firm;
- method of **assessment**;
- part-time partnership regarded as a **permanent** arrangement;
- **female role models** by increasing the number of female partners and women in a firm's management; and
- **practical assistance** to facilitate timely delivery of client service.

119 Victorian Women Lawyers, "Taking up the Challenge", Gabby Trifiletti, May 1999.
120 Ibid. p.17.

GENERAL COMMENTS - SUMMARY

All firms interviewed had male dominated partnerships. It was apparent that female partners and employees were more likely to seek and therefore be allowed to work with a part-time or flexible work arrangement. The majority of part-time flexible work arrangements were to accommodate childcare responsibilities (leading to a perception that this is an acceptable reason to adopt flexible work arrangements). These part-time arrangements were as a general rule regarded as permanent.

Senior women lawyers will continue to leave private law firms until there is recognition and an acceptance of the following facts:

- senior women lawyers are a valuable asset to private law firms;
- women often bear children and assume primary care of those children within the family at an otherwise crucial and productive time in their career;
- a number of well regarded female practitioners working as part-time employees in firms chose not to take up equity partnerships when offered; and
- the level of job satisfaction is highest among females who are partners and lowest among females who are employees in private legal practice.¹²¹

To assist retention of all lawyers, male and female, firms should establish a system and policies to equitably deal with the private needs of all lawyers seeking flexible work arrangements, which address the issues of status and career advancement. It must be preferable for firms to retain a satisfied and therefore productive partner working part-time than to lose a valuable asset.

Without senior women lawyers progressing to partnership or management positions within private law firms there will continue to be a lack of role models and mentors for junior lawyers, particularly women, looking for a future in private legal practice which offers balance between the needs of the firm and the individual. Even in the larger firms, there was a greater uptake of part-time partnership arrangements in the Sydney offices of those firms than in the Melbourne offices. One firm identified the reason for this as being a stronger cultural change in their Sydney office because that office had a larger number of female partners.

Retention of senior lawyers was an important issue with all firms. Interviewees recognised the desire of lawyers to have a balanced life. Many lawyers are questioning whether they want to join their firm's partnership (as an equity partner) as they see so many of their firm's current partners as having 'no life'. This is not an issue that only faces women in the legal profession. Research has demonstrated that young male lawyers are leaving the profession in ever-increasing numbers.

There were only a few examples of part-time and flexible work arrangements leading to a client problem. Generally these problems were solvable with better management of the flexible work arrangement, particularly transparent and up-front communication of the arrangement with the client and colleagues.

The real issue or inhibitor to part-time partnership is more a cultural/social problem raising a question of the practitioner's commitment to the firm. If to be a successful partner in a firm means working long hours five to seven days a week, there is little or no room to accommodate a life/responsibilities outside the office, particularly when there is no 'wife' running the home and raising the children as has been past tradition. For women trying to juggle work and family, flexible working conditions become essential.

¹²¹ Victorian Law Foundation, 'Facing the Future: Gender, Employment and Best Practice Issues for Law Firms' Mark Herron, Annie Woodger & George Beaton 1996.

RECOMMENDATIONS

Formal Partnership Deeds

All firms regardless of size should have a written partnership deed. The deed should deal with all aspects of the partnership including succession planning, steps to take in the event of illness or other change in circumstance leading to the prolonged absence of a partner from work and participation in the partnership.

Formal Policy and/or Guidelines

To address the possibility of a partial absence of a partner because of illness, and the retention of senior women lawyers within private law firms, there must be clear written policy/guidelines for part-time and flexible work arrangements including partners working part-time. This includes a policy that enables part-time associates to be eligible for partnership consideration while maintaining part-time working arrangements. The availability and benefit of these policies to the firm and its clients must be communicated within the firm.

Partnership Criteria

Criteria for partnership should be transparent. Written guidelines should be made available to all lawyers, which set out the firm's partnership criteria. In addition there should be guidelines setting out the criteria for all lateral career paths within the firm, such as salaried partner, special counsel, etc.

Study of Part-Time Partners

A comprehensive study of partners working part-time to assess:

- success of and satisfaction with arrangements from the individual's point of view as well as the firm's perspective; and
- changes required to working conditions, firm's policies, culture and client considerations.

Review of Alternative Career Paths

Review of alternative career paths including:

- arrangements;
- effect on work conditions including career path;
- the firm's policy;
- the firm's culture; and
- client reactions.

Education Program

An educational program to make firms aware of the benefits to the firm and its clients of part-time/flexible work arrangements for all personnel including partners to meet client needs while facilitating retention of senior lawyers particularly women within private law firms. The program could include seminars, training programs for firms, lawyers and clients, training/information kits, and policy-making guidelines.

ANNEXURE A

In undertaking this project the following issues were canvassed:

1. How many partners does the firm have and what is the breakdown by sex?
2. Do the firms have part-time partners or have they ever had them in the past? If yes:
3. What is your firm's definition of 'part-time' particularly in relation to billing, budget, practice development and administration expectations? Do you have guide lines/policies for part-time partners? How are they published? How long have they had them? Do any part-time partners have positions on management committees? What are their responsibilities? How powerful is that committee?
4. Are part-time partners male or female and why were they made part-time? What support was provided? How was it viewed by partners and clients? What were the billing and attendance expectations? How were workload, profit sharing and liability issues addressed? Is there any requirement of equal drawings or can it be adjusted in the partnership deed? How long was the person part-time? Is it possible to have a permanent part-time position? If they stopped working part-time why? Is there an ability to swap between full-time and part-time partnership? Is there a reluctance by partners to take up flexible work practice opportunities?
5. Would they consider part-time partnership in the future? If not, why not? How successful do you think part-time partnership is? How is it perceived by the firm? How is it perceived to impact on relationships with colleagues?
6. Do you see structural issues as an inhibitor to part-time partnership, such as the content of the partnership deed, the distinction between equity and fixed profit share partnership and liability issues?
7. Do you see work expectations and requirements as a inhibitor to part-time partnership? Does your response vary depending on the practice area in which the person works?
8. To what extent is there support amongst the partners of part-time partnership? Has it ever been discussed or the success (or otherwise) of a part-time partnership in the firm been discussed? What was the outcome of those discussions? Do women participate in management of the firm, ie position of power in partnership?
9. What is the attitude of clients to this arrangement? What is the attitude of the firm generally to the arrangement? How does the firm meet client demands?
10. Do you have part-time lawyers and/or senior associates? If so, do you see part-time partnership as different to being a part-time lawyer? If so, why and how?
11. What is the criteria for partnership? Does working part-time effect partnership opportunity?
12. Do you see that the requirement that a person work only part-time as preventing that person being made partner?
13. How do you value a person working part-time? For example, in relation to retention and pay issues.
14. Is there any notion of an extended partnership track for part-time associates?
15. Are there any other models indicating seniority (above senior associate level) which you have adopted for lawyers, in particular lawyers who work part-time? What are these, how successful have they been? How do staff, partners and clients in the firm view them when compared to partnership?

ANNEXURE B

Types of legal partnership remuneration structures

There are, fundamentally, two types of partner remuneration structures that law firms use being lock-step and performance based or some combination of the two. The differences between them are significant and are believed by the proponents of each model to lead to fundamentally different partner behaviour.

Lock-step

The first type of structure is usually known as a 'lock-step based' structure. Under a lock-step based structure each partner has a fixed number of 'points', which are used to determine his/her proportional entitlement to profit. A new partner typically starts on, say, 40 percentage points and increases by a given number of points each year until he/she reached 100 percent profit entitlement (hence the 'lock-step' terminology). There might be some performance hurdles to meet each year, but in practice progression each year would be the norm. Once a partner reaches 100 points, he/she usually stays at 100 points until he/she retires or commences a retirement program on a reverse lock-step basis. There might be some minimum performance levels required each year (eg billing levels and compliance with various management standards), but the norm is for each partner to stay at 100 points for a significant period. Obviously under this structure all 'full equity' partners (ie those with 100 points) all receive the same amount of profit subject to any bonus system.

Performance based

The alternative to the lock-step structure is a 'performance-based' structure. Under such a structure there is no 'normal' number of points for a partner. Instead various aspects of each partner's performance (usually both 'financial' and 'management') are graded on a scale. The total 'score' for each partner is then converted to a corresponding profit share. Under a performance-based structure 'high performing' partners receive a higher percentage profit share than 'low performing' partners. The profit share allocated to a partner can vary from year to year depending upon performance. Typically a partner's profit share is based on an average 'score' over a longer term basis (eg over the previous three years) so that there is no sudden upward or downward movement in the number of points (the idea being that the profit share should reflect the 'long term' performance of the relevant partner rather than be adjusted for a particularly good or bad year).

Hybrid structure

Although a lock-step structure is more common than a performance based structure, increasingly firms using the lock-step structure (particularly the larger firms) are moving towards incorporating more performance-based measures (eg by raising the minimum annual performance levels to some extent, so that they constitute a more substantive requirement, rather than something designed primarily to catch only seriously under performing partners). Thus some firms are moving to a 'hybrid' model. Despite this, at the time of writing, ultimately each firm can be characterised as fundamentally being either lock-step based or performance-based.

Optional additional features

Either type of partnership can also include a 'bonus' component. Under a bonus scheme a percentage of the firm's total profits (typically 5% or 10%) are put into a pool, and allocated each year by way of rewarding exceptional performance during that year. Typically managing partners or a committee consider and determine the amount of bonus (if any) to award. Any unallocated part of the bonus pool is then usually distributed to all partners on the usual basis for that firm.

In addition, either type of partnership can also incorporate 'salaried' or 'fixed share' partners whose profit entitlements are expressed as a fixed dollar amount rather than in percentage 'points' (ie a share of profits) in the case of 'equity partners'. Fixed share partners typically earn less than any of the equity partners and in many firms this is a first step before admission to equity partnership.

BIBLIOGRAPHY TO PART 1

Key organisations involved in the research and promotion of work/life balance and alternative work schedules

Below is a list of the key bodies contributing to the literature on changes in private law practice and especially, issues relating to the advancement of women, the development of alternative work schedules and the issue of work/life balance.

At a national level there is the National Association for Law Placement (NALP), which conducts annual surveys of private law firms in five major cities and twelve States and also publishes research addressing current issues facing the legal profession. Its results are widely publicised, and provide a benchmark for law firms.

In 2001 the American Bar Association's (ABA) Commission on Women in the Profession published *Balanced Lives: Changing the Culture of Legal Practice*, which examined the whole spectrum of issues relating to the effects on women lawyers of the conventional and alternative work schedules.

Two landmark reports on the availability and use of alternative work schedules in individual States have also been released recently. The Project for Attorney Retention (PAR) based at the American University, Washington College of Law published the results of a study into part-time policies at Washington law firms in August 2001 and in September 2000 the Women's Bar Association of Massachusetts released a report on the effect of reduced-hour arrangements on the recruitment and retention of women lawyers in that State.

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