



SUBMISSION TO

Australian Human Rights Commission on Pregnancy and Return to Work National Review

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About us

Victorian Women Lawyers (**VWL**) is a voluntary association that promotes and protects the interests of women in the legal profession. Formed in 1996, VWL now has over 470 members. VWL provide a network for information exchange, social interaction and continuing education and reform within the legal profession and broader community. VWL has undertaken research into work practices affecting women in the legal profession, and provided protocols and training to effect change.

Details of our publications and submissions are available at www.vwl.asn.au under the 'Publications' tab.

Pregnancy and return to work submission - overview

VWL welcomes the opportunity to make this submission to the Australian Human Rights Commission (**the Commission**). In recent years it has been a widely held belief that the proportion of women practising law and holding senior positions will increase as a direct result of the increasing number of females graduating from Australian law schools.¹ However, although the number of women practising law at junior levels has proportionately increased, the number practising at senior levels has not.

This submission is divided into two sections:

1. A summary of our **observations** over 15 years of research and advocacy in relation to barriers facing women in the legal profession; and
2. results of a **survey** of our members conducted in late 2013. This survey was conducted specifically in response to the Commission's current review.

Our observations

Since forming in 1996 VWL has advocated for the equal representation of women in senior legal roles in Victoria.

VWL's first research publication into work practices was produced in 1999. The report *Taking up the Challenge: Women in the Legal Profession* identified that women were greatly underrepresented at senior levels; that sex discrimination and gender bias existed; and that indirect discrimination and cultural bias underpinned the profession. Finding that the number of male and female graduating lawyers was equal, the report aimed to identify work practices inhibiting women's professional progression. It identified that 'career interruption' for family responsibilities, and a lack of flexible work practices had a disproportionate effect on women. The report proposed an action plan, challenging the profession to question the status quo and build a framework for change.

VWL initiated a practical and strategic solution to address these obstacles, documented in our 2001 report *Flexible Partnership – Making it Work in Law Firms*. This report provided best practice policies and guidelines for implementing flexible work options. Unfortunately, the response from the profession

¹ See, eg Dr Sharyn Roach Anleu, Women in the Legal Profession: Theory and Research, (proceedings of a conference held 24-26 September 1991), accessed at http://www.aic.gov.au/media_library/publications/proceedings/16/anleu.pdf



included many arguments that flexible work practices would not work due to client, co-worker and managers' needs and expectations.

In 2005, VWL undertook a 360-degree review of flexible work practices entitled *Confronting Myths and Realities in the Legal Profession*. The report found that 74 per cent of lawyers working flexibly perceived that the type or quality of work they were doing had changed for the negative. Other issues the report identified were:

- Co-workers perceived that their organisations did not actively encourage them to support lawyers using flexible work arrangements.
- Partners and managers are uncertain about the career aspirations of lawyers using flexible work arrangements and are more likely to assume that they are less ambitious.
- Co-workers unanimously observe that using flexible work arrangements limits career progression.

The 2005 report again offered practical solutions and debunked myths surrounding the perceived attitudes of clients, co-workers and managers to flexible work options.

In 2008, Law Institute of Victoria data analysed in a VWL scoping study showed that 41 per cent of women who had held practising certificates in 1998 no longer held them, and that between the ages of 35 and 55, the number of practising female solicitors fell by approximately 75 per cent. In contrast, the number of male solicitors increased. So not only were women not advancing at proportionate rates, they were also leaving the profession at a disproportionate rate.

In 2010, having identified that successful flexible work practices depended on good support and management, but that partners and managers perceived this to be challenging, VWL undertook further research into organisational barriers to implementing and managing flexible work practices.

Our resulting publication *Do You Manage: a guide to managing lawyers with flexible work arrangements* argued the business case for flexible work practices and set out the critical factors for making them work within the profession. The report also provided two practical tools: a flexible work proposal/business case, and individual flexible work plans. VWL also developed an onsite training program based on the *Do you Manage* research.

The survey we conducted in late 2013 specifically in response to the Commission's Pregnancy and Return to Work National Review (see section 2 below) indicates that despite over a decade of initiatives, many women in the legal profession still face barriers to career progression. While some firms offer diversity programs and flexible work policies, our survey shows that uninhibited access to those programs and policies is still a challenge for many pregnant and returning practitioners.

VWL will continue to examine the institutional and structural barriers that prevent women from progressing and participating in the legal work force. While we have identified flexible work practices as a key to enabling women lawyers to rise to the top of the profession, there is clearly still much work to be done to ensure women are equally represented at senior levels.



Survey conducted by Victorian Women Lawyers

In late 2013, VWL conducted a survey of members which asked questions relating to a number of the issues raised by the Commission. An invitation to participate in the survey was sent to all members. It was open for nine days and attracted 119 responses. Our aim was to collect quantitative and qualitative data about our members' experiences of pregnancy and return to work following parental leave.

A full list of the questions we asked is attached as Appendix 1, In summary, we asked our members:

- whether they had experienced discrimination based on pregnancy or parental leave, or had witnessed discrimination against a colleague;
- If so, what types of discrimination had been experienced;
- how this discrimination impacted on their career decisions;
- whether they considered their own organisations were aware of the current legal framework around pregnancy and parental leave discrimination; and
- To provide examples of leading practices and strategies taken by employers to address pregnancy and parental leave discrimination.

The greatest proportion of respondents were lawyers in private practice (23%), followed by senior lawyers in private practice (19%) and principals or managers in private practice (17%). The survey also had a high response rate from the community and government sector (19%) and law students (10%), with the remaining respondents identifying as graduate lawyers, in-house counsel, policy and law reform workers, legal assistants and barristers. The majority of respondents (60%) had been pregnant or taken parental leave.

We have collated the survey's statistical results and summarised the qualitative responses below. We also provide a number of quotes from survey participants which highlight a number of key issues. We can provide full survey results to the Commission on request.

Challenges experienced

Difficulty attending out of hours events and missed training and development opportunities

"Getting CPD points is now incredibly challenging - working two days a week you can't really take a whole day to attend a seminar; not all CPD sessions are at appropriate times to dial in from home either."

The main challenge experienced by respondents who have been pregnant or taken parental leave is the difficulty in attending out of hours work events, with 42 per cent struggling to attend functions such as breakfast meetings, networking events and training days. An inability to attend seminars to gain 'Continuing Professional Development' (CPD) Points required for legal registration was a common problem for many respondents (30 per cent). A lack of flexible and appropriate childcare options contributed to this issue.



Missed opportunities for promotion or career advancement

“I am currently pregnant and a promotion became available. I was told that I am fully capable of filling the position however anticipating my maternity leave it would be best that somebody else fill the role and I will get promoted upon my return from maternity leave.”

Another significant challenge experienced was the loss of opportunities for promotion and/or career advancement (29%). Many women felt they missed opportunities for promotions or pay reviews and that their male counterparts who had not taken parental leave had gained partnerships earlier, despite parity in qualifications and experience.

Many felt that the culture within the legal community promoted the idea that part time employees would not progress their careers as far as those who work full time. Some respondents were told this directly by their manager or employer.

Lack of flexibility on return to work

“Upon return to work after my first born I was granted a 4 day working week. In reality I still had to cover the exact amount of work but my pay was reduced by one fifth.”

Half of all respondents (50.5%) reported lack of flexibility on return to work to allow them to manage parental responsibilities. Respondents reported a distinct lack of part time opportunities, especially for senior roles. Others advised that while in name – and pay - they were given a part time position, they were expected to do the same amount of work as full timers, or were given work of lower value, complexity or profitability. Some had resigned as a result.

Witnessing others’ experiences of pregnancy and return to work

“Meetings at my firm are often held at 8:00am which make it difficult for those with family commitments. I have also noticed that those who have taken a significant time for parental leave are less likely to progress in their careers.”

“I have seen colleagues struggle to complete a full time workload within part-time hours. They also miss meetings, training events and seminars, which are scheduled on days they are not in the office.”

Many respondents reported witnessing challenges faced in their workplace by colleagues as a result of pregnancy and/or parental leave. At least half of the respondents observed that women in their workplace faced difficulties in returning to work after parental leave. This included workplaces not providing an appropriate workload, a change to the quality of work, not providing access to learning opportunities and not providing flexibility and support.

Some felt their employers saw no value in flexible work arrangements, and some reported that colleagues had their employment terminated while on maternity leave.

Making decisions based on real or perceived challenges in relation to pregnancy and return to work



“I have witnessed the difficulties that my colleagues have experienced when returning to work as a mother and it has made me seriously consider leaving private practice”

“I put off having a family until I had several years ‘under my belt’ and had done my specialist accreditation.”

A significant number of respondents (61%) had made career decisions based on perceived or actual challenges relating to pregnancy and/or parental leave. Salient examples include:

- withdrawal from private practice with its perceived inflexibility to pregnancy and/or parental leave requirements;
- acceptance of deferred career advancement due to family responsibilities and the inability to excel professionally in a part-time position; and
- actively seeking out firms with flexible work practices or work-life balance culture

Many career decisions appear to have been made on the basis of anticipated obstacles to balancing a career and pregnancy/parental leave. This suggests that female lawyers may be deterred from seeking advancement or flexible working arrangements by the perception that it will hinder their careers. It also highlights that younger women lawyers are witnessing the challenges faced by their colleagues and remembering those experiences when they come to start their own families.

Witnessing positive policies and/or practices

A majority of respondents to our survey (66%) had seen positive steps or programs within their workplaces or elsewhere, while 19 per cent had not, and 15 per cent were unsure. The positive steps/programs included:

- regular contact from employers during maternity leave;
- flexible work arrangements (such as part time employment, working from home or adjusted start and finish time);
- parental leave (both paid and unpaid);
- job-sharing arrangements; and
- assistance with child care (either by providing subsidies, emergency child care, or a space where employees can work with children present).

While the highest number of positive comments related to flexible work arrangements and parental leave, job sharing arrangements were described as particularly successful.

Notwithstanding the generally positive response, some survey respondents reported a disconnect between workplace policies and their implementation or effectiveness. A common example was reduced working hours but a failure to reduce workload accordingly.



The *Do You Manage* research found that a successful flexible work arrangement is where:

- the lawyer is fully utilised;
- the work quality and quantity is as discussed and expected;
- the lawyer is valued and respected by the team and the clients;
- the other team members are supportive and accepting of the arrangement;
- the partners can see the value of the contribution of the lawyer; and
- any issues are openly and promptly discussed.

Concluding remarks

VWL's observations over 15 years of research, along with the material obtained from our 2013 survey, show that while many women in the legal industry feel that their organisation is aware of their legal obligations in relation to pregnancy, parental leave and return to work, a significant number of women continue to experience discrimination based on pregnancy or parental leave.

The impact of these experiences is far-reaching, with 61% of respondents to our survey having made decisions about their career as a result of perceived or actual challenges relating to pregnancy and/or parental leave.

While many positive policies or procedures in the legal sector were noted, such as flexible work arrangements, generous parental leave and job sharing arrangements, the overwhelming response from our members was that more needs to be done to reduce the incidence of discrimination based on pregnancy and/or parental leave.



APPENDIX 1

VWL Survey Questions

1. Which of the following best describes you?

- Law Student
- Graduate Lawyer – Government / Community
- Graduate Lawyer – private practice
- Lawyer – Government / Community
- Lawyer – Private practice
- Senior Lawyer – Government / Community
- Senior Lawyer – Private practice
- Principal / Manager – Government / Community
- Principal / Manager – Private practice
- In-House Counsel
- Policy / Law Reform

2. Have you been pregnant and/or taken parental leave?

- Yes
- No

3. As a result of your pregnancy or parental leave, have you experienced any of the following

- Not applicable
- Inappropriate or negative comments from co-worker



- Inappropriate or negative comments from a supervision or manager
- Difficulty attending out of hours events
- Missing training or development opportunities
- Change to quality or nature of work
- Inappropriate management of work
- Lack of flexibility on return to work or in managing parental responsibilities
- Missing opportunities for promotion or career advancement
- Inability to return to role
- Other (Please specify)
- None of the above

4. If you ticked 'yes' to any of the challenges outlined in question 3, please provide your comments or your thoughts in relation to these challenges

5. Have you made decisions about your career on the basis of perceived or actual challenges, such as those outlined above?

- Yes
- No

6. If you answered 'yes' to question 5, please provide examples, please explain how your decisions about your career have changed and what effect this has had on your life.

7. Have you ever witnessed another person at your workplace or in the legal sector experience any of the following

- Inappropriate or negative comments from co-worker
- Inappropriate or negative comments from a supervision or manager



- Difficulty attending out of hours events
- Missing training or development opportunities
- Change to quality or nature of work
- Inappropriate management of work
- Lack of flexibility on return to work or in managing parental responsibilities
- Missing opportunities for promotion or career advancement
- Inability to return to role
- Other (Please specify)
- None of the above

8. If you answered 'yes' to any of the challenges outlined in question 7, please provide your comments or your thoughts in relation to these challenges

9. Do you feel your organisation is aware of their legal obligations in relation to pregnancy, parental leave and return to work?

- Yes
- No

10. Have you seen any positive steps or programs implemented by your organisation, or elsewhere in relation to pregnancy, parental leave and return to work?

- Yes
- No

11. If you answered 'yes' to question 10, please outline the positive steps that have been implemented and whether you consider they were successfully implemented.