

**VICTORIAN WOMEN LAWYERS
SUBMISSION TO THE HUMAN RIGHTS
AND EQUAL OPPORTUNITY COMMISSION
ON ITS DISCUSSION PAPER:**

***STRIKING THE BALANCE
WOMEN, MEN WORK AND FAMILY***

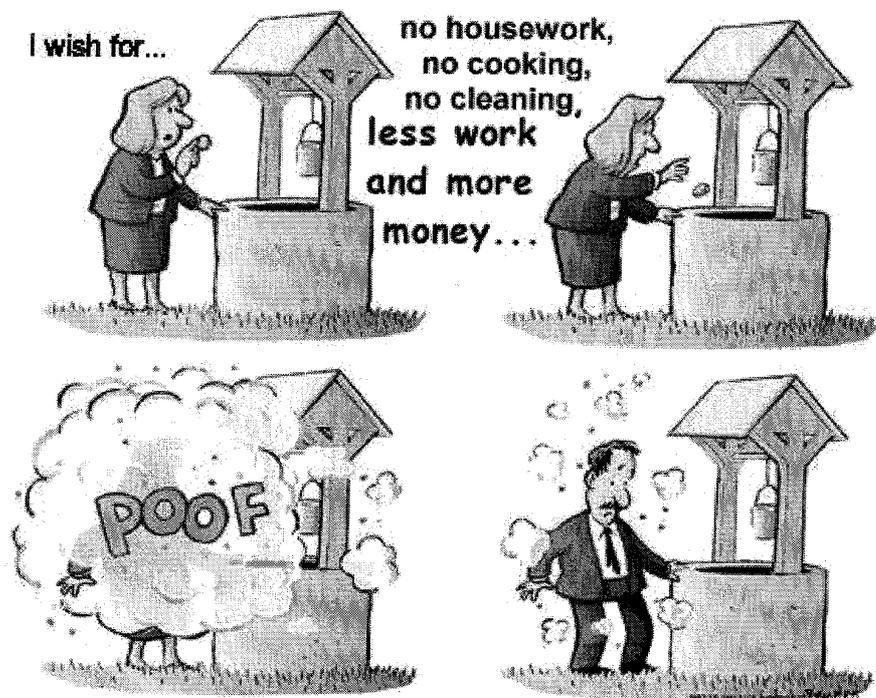


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VWL has been unsuccessful in its attempts to ascertain the identity of the author of the cartoon which appears on the cover of this submission, however we trust there are no objections to its reproduction. The author will certainly be acknowledged if she or he is able to be identified.

1.0 INTRODUCTION

Women have actively participated in the practice of law in Victoria for approximately eighty years. Over the last 20 years, female representation in undergraduate and graduate law programs has been more than 50 per cent on a national basis.¹ While this equal gender balance is reflected in the junior levels of the profession, this is not the case at the more senior levels. Victorian Women Lawyers ('VWL') is an association formed in 1996 as an initiative of female solicitors in Victoria and has over 500 members. Its objectives include the advancement of women in the legal profession, promoting law reform and understanding and supporting women's legal and human rights. It also operates as a network for information exchange, social interaction and continuing education and reform within the legal profession and the broader community. VWL strives to engender culture change within the legal profession by various means, including publishing reports which attempt to identify and explore issues faced by women lawyers, particularly the obstacles to career progression.²

While it might be thought that lawyers, including women lawyers, are a relatively privileged sector in the community in terms of income and opportunity and so outside the scope of a paper which seeks to address issues at a more general level, the experience of women lawyers, as a distinct group of society in general, is nevertheless of relevance. Despite having received relatively high levels of training and professional qualifications, and despite professional experience in negotiation, it can still prove difficult to obtain flexible and family-friendly working conditions in legal workplaces where the culture is still based on traditional attitudes about family care responsibilities and is, in most cases, a long-hours culture. This in turn affects the ability of women to fully participate at senior levels in the legal profession, having a detrimental effect not only on their working life but arguably on the availability, for clients of the legal profession, of the best lawyer for the particular case or project. More generally, the experience of women lawyers strongly suggests that ultimately legislative changes to improve working conditions to include the ability to undertake flexible work arrangements are required to overcome the problems faced by those not educated in rights-based negotiation.

Research undertaken by VWL provides information relevant to effecting change to workplace cultures. Even though the legal profession has not, at graduate level, been male-dominated for many years, it continues to retain the feature of lower numbers of women at senior levels. The various reports published by VWL contain relevant empirical qualitative and quantitative data on the perceived inhibitors to the attainment of more senior positions by women within the law. Not surprisingly, women lawyers' maternal and domestic responsibilities feature prominently when examining reasons for their slowed career advancement.

This submission is based on findings from three reports published by VWL. To a large extent, it focuses on the experiences of women lawyers working in private law firms in metropolitan Melbourne, which largely reflects VWL's membership base. It provides responses to specified questions from page 134 - 135 of the Discussion Paper, provides a general critique of the Discussion Paper and sets out various statements from the Discussion Paper which VWL particularly wishes to endorse. Appendix 5.1 contains 'Family Snapshots' setting out the domestic arrangements in place in five women lawyer's families, including detail of the significant issues facing each family and how arrangements would be different in an 'ideal' world. Appendix 5.2 contains a list of literature relating to flexible work practices, part-time work and women in the law.

¹ The Law Society of New South Wales, *After Ada: A New Precedent for Women in Law*, 29 October 2002

² Victorian Women Lawyers 1999 Report, *Taking up the challenge – Women in the legal profession*, Trifiletti G; Victorian Women Lawyers 2001 Report, *Flexible Partnership – Making it work in law firms*, Kaufman S, Frost G; Victorian Women Lawyers 2005 Report, *A 360 Degree Review of flexible work practices in the legal profession: Confronting myths and realities*, Bourke J, Russell G

2.0 RESPONSES TO QUESTIONS

2.1 *Question 10: What workplace flexibilities are useful for particular types of carers?*

2.1.1 'Family responsibilities' (that is, caring for children) is the most commonly cited reason for lawyers adopting flexible work arrangements.³ The types of flexible work practices used in the legal profession include:

- (i) Part-time work;
- (ii) Job-share arrangements;
- (iii) Tele-working / working from home;
- (iv) Flexible working hours;
- (v) Variable leave arrangements.⁴

2.1.2 The most common form of flexible work arrangement currently used by lawyers to balance work and family responsibilities is part time work. This is not necessarily because part-time work is the most suitable form of flexible work arrangement; rather, the legal profession has been slow to recognise and implement other flexible work arrangements such as variable start and finish times and job share.

2.1.3 The requirements of each carer are best addressed if flexible work arrangements are determined on a case-by-case basis ensuring that the carer's working hours are tailored to suit their responsibilities. Policies emphasising flexibility and sensitivity to and consideration of all employees' private needs and demands are essential if the profession is to retain and develop its valuable human resources.⁵

2.2 *Question 16: Do women's and men's different paid and unpaid work obligations affect their economic outcomes, health, relationships and life chances?*

Economic Outcomes

2.2.1 The following statistics provide pertinent information on the relationship between women lawyers' economic outcomes and professional status and their family responsibilities:

- Over the last 20 years, female representation in undergraduate and graduate law programs has been more than 50 per cent on a national basis;⁶
- In 2004 at Monash University, almost 60 per cent of the cohort of 2,300 law undergraduates were female;⁷ and

³ Victorian Women Lawyers 2001 Report, *Flexible Partnership – Making it work in law firms*, Kaufman S, Frost G, p.25

⁴ Victorian Women Lawyers 2005 Report, *A 360 Degree Review of flexible work practices in the legal profession: Confronting myths and realities*, Bourke J, Russell G pp. 17-19

⁵ Victorian Women Lawyers 1999 Report, *Taking up the Challenge – Women in the Legal Profession*, Trifiletti G, p.19

⁶ The Law Society of New South Wales, *After Ada: A New Precedent for Women in Law*, 29 October 2002

⁷ The Law Report in *Melbourne Magazine*, August 2004, Issue 21, p.13

- In 2004 at Melbourne University, 56.3 per cent of graduating law students were female, and females represented at least 56 per cent of the students who graduated with honours.⁸

2.2.2 The Law Society of New South Wales report, *After Ada: A New Precedent for Women in Law*, 29 October 2002, reported that:

- In the financial year 2001-02, the average income for female solicitors in NSW was \$75,700 compared to \$92,000 for male solicitors; and
- In 2001, 7.2 per cent of female solicitors in NSW were partners while 27 per cent of male solicitors were partners.

2.2.3 The Law Institute of Victoria, *Career Patterns of Law Graduates* c. 1993 study reported that:⁹

- the birth of a child was cited as the reason for career interruption by 35 per cent of females compared with 1 per cent of males;
- child care was cited as a career interruption by 24 per cent of females compared with 1 per cent of males;
- 65 per cent of female ex-practitioners compared to 32 per cent of male ex-practitioners said family commitments was important to their decision to discontinue practice; and
- 26 per cent of female ex-practitioners compared to 7 per cent of male ex-practitioners said consideration of a partner's career commitments was important to their decision to discontinue practice.

2.2.4 The 2005 Mahlab Recruitment annual survey of the legal profession reported that:

- 14 per cent of surveyed private practice lawyers were 'very satisfied' and 44 per cent were 'somewhat satisfied' with their career. Those lawyers that reported dissatisfaction with their career indicated that greater flexibility of hours was one of the changes that would improve their career fulfilment; and
- 38 per cent of surveyed private practice lawyers had been offered the benefit of flexible work arrangements, and 11 per cent had been offered part-time partnership.

2.2.5 The Law Institute of Victoria, *Survey Report of Legal Practitioners*, Kreigler R, 1999 referred to in Victorian Women Lawyers 1999 Report, *Taking up the challenge – Women in the legal profession*, Trifiletti G, reported that:

- the career paths of male and female law graduates diverge dramatically within only 5 years of graduation from Law School;
- having children, and even the expectation that women will have children, has profound effects on female lawyers' careers;
- the birth of a child was cited as an interruption by 35 per cent of females compared with 1 per cent of males;
- 22 per cent of male lawyers are involved in the care of their children compared with 95 per cent of female lawyers; and

⁸ Information provided by Melbourne University Law School, Undergraduate Studies Office

⁹ Ewing J, Dennerstein L, Bartlett C, Hopper J c. 1993 [undated.] This study compared 1000 male to 1000 female law graduates of similar graduating years

- 97 per cent of male graduates indicated that they were much more likely to have partners who had higher involvement in the care of their children compared to 20 per cent of females.
- 2.2.6 The Law Society of NSW 2002 Remuneration and Work Conditions Survey reported that 50 per cent of female respondents compared to 23 per cent of male respondents identified commitment to family/personal responsibilities as a reason why they thought it was unlikely or very unlikely that they would become partners.
- 2.2.7 Information provided by the Law Institute of Victoria of practicing certificate holders in 2005, shows that of practitioners who hold the title 'partner' (excluding sole practitioners) 86 percent are males compared with 14 per cent females.
- 2.2.8 It is widely recognised within the legal profession that becoming a mother acts as an impediment to career progression. 'Career interruptions' most often resulting from women's family responsibilities, are identified as a major barrier to women's advancement to partner levels.¹⁰ Conversely, women who have not experienced 'career interruptions' are more likely to reach partner levels.¹¹ When questioned on the issue, one partner in a top tier firm recognised that 'it's hard to find an example of a woman who has gone on maternity leave and become a partner. They become a partner before maternity leave'.¹²
- 2.2.9 Reasons that 'career interruptions' are identified as a major barrier to advancement include:
- systemic discrimination preventing women lawyers who are also mothers from becoming partners; and
 - entrenched resistance to developing alternative career paths such as part-time partnership and respected alternatives to partnership.

Health and relationships

- 2.2.10 Women lawyers balancing their paid and unpaid work responsibilities report the following impacts in their personal lives:
- loss of identity when they leave the workplace on parental leave;
 - loss of identity where income is reduced or lost, and consequent loss of financial independence;
 - feelings of inadequacy, guilt and frustration due to the inability to provide 100 percent focus and attention to both work and family; and
 - stress and anxiety associated with bearing the responsibility for two occupations; enduring the same rigours of the workplace as their male colleagues while assuming prime responsibility for the needs of their children and family.
- 2.2.11 What remains startling is the definition adopted by law firms as to what constitutes a working schedule. For a large firm, it is expected that the lawyers will bill between 7 to

¹⁰ Women Lawyers Association of Tasmania, *Women Working in the Legal Profession in Tasmania: Final Report*, Goodluck J, 1996 as cited in the Trifiletti report, p. 8

¹¹ Victorian Women Lawyers 1999 Report, *Taking up the Challenge – Women in the Legal Profession*, Trifiletti G, p. 8

¹² Victorian Women Lawyers' 2005 Report, *A 360 degree review of flexibility in the legal profession: Confronting the myths and realities*. p. 50

7.5 hours per day. For smaller firms, it is expected that lawyers will bill between 5 to 6.5 hours per day.¹³ This requirement does not mean an expectation that the lawyer will work those hours. Rather it is an expectation that of the hours spent in the working day, those hours will be entirely spent in chargeable work on a client file. Because this necessarily excludes meals and other necessary breaks (non client-related meetings, professional development and work-related social engagements) in practice it requires a working day 3 – 4 hours longer than the billing requirement. Experience has shown that those lawyers who are part-time or are working flexible schedules (flextime, flexplace, compressed schedule, caseload sharing or reduced caseload) are more stressed and feel increased pressure than full-time lawyers.

2.3 *Question 19 – Are fertility rates sensitive to social and economic conditions and, if so, what specific conditions and how sensitive are they to changed conditions?*

2.3.1 In private practice, the norm is for women to be made partner before having children. It is much less common for women to make partner after having had children because reduced hour working arrangements slows career advancement.¹⁴ This is because the primary basis for promotion is financial performance assuming a full-time, long hours workload. Time-based billing, which is now the norm, rather than outcome-based billing, which used to be the norm, has the effect of indirectly discriminating against employees who work fewer hours than full-time employees and arguably indirectly discriminates against lawyers who are comparatively efficient.

2.3.2 As a result, many women lawyers are delaying having children until their mid to late thirties, increasing the associated risks of being unable to have children due to reduced fertility. In the legal profession, the national average age of first time mothers is 39.¹⁵ The Family Snapshots set out in Appendix 5.1 repeatedly refer to social and economic factors in terms of effect on career progression and costs associated with child rearing as reasons for limiting the number of children to two.

2.4 *Question 29 – Do informal workplace policies work well to assist employees to balance their paid work and family responsibilities? Do they assist some employees more than others, and if so, is this appropriate?*

2.4.1 While positive informal workplace policies can assist employees to balance their work and family responsibilities, formal policies which provide a framework for, and thereby validate the use of, flexible work arrangements are vital.

2.4.2 Informal workplace policies or cultures may also adversely impact upon a carer/employee's ability to balance work and family responsibilities. This is evident in many women lawyers' experience of hiding their 'family self' whilst at work and is testament to the perception held by both women lawyers and law firms that the loyalty of a lawyer (who is also a mother) to her firm is seen to be divided between family and the firm. This is experienced to a far lesser extent by fathers as men are much less likely to take extended breaks from work on parental leave and are further much less likely to request flexible work arrangements.

¹³ Victorian Women Lawyers 2001 Report, *Flexible Partnership – Making it work in Law Firms*, Kaufman S, Frost G, p. 29

¹⁴ Victorian Women Lawyers 2001 Report, *Flexible Partnership – Making it work in Law Firms*, Kaufman S, Frost G, p. 27

¹⁵ *Work and family: The legal perspective* Speech delivered by Pru Goward, Federal Sex Discrimination Commissioner at the Women' Lawyers Association of NSW 2003 National Speaker Series, Sydney NSW 2000, 15 October 2003

2.4.3 Many women lawyers also report tailoring their choice of specialisation according to whether a particular partner is supportive of greater flexibility and whose work practices are not antithetical to more flexible work practices. This is done in an attempt to structure and coordinate work and family commitments. However, identifying partners supportive of flexible arrangements as the basis for determining a women lawyer's specialisation has implications in terms of misallocation of expertise and, consequently, inefficient allocation of resources.

2.5 *Question 31 – How can Australian workplaces be made more family friendly?* and *Question 39 – How can workplace cultures be encouraged to change to promote better balance between paid work and family responsibilities?*

2.5.1 A major overhaul of the culture prevalent in the legal profession and more specifically within law firms themselves is required. There exists a need to embrace flexible work arrangements if firms are to maintain their competitive edge. High attrition rates are one of the largest costs to law firms, particularly when lawyers are leaving at around the time they when they start to generate profit.¹⁶ Women lawyers generally leave for other sectors of the profession, namely for corporate entities and the public sector.¹⁷ The development and retention of skilled labour is critical to firms' growth and success, and to their ability to provide the highest quality of services to their clients requiring firms to embrace flexible work arrangements and be sensitive to employees' private needs and demands.¹⁸

2.5.2 An additional side-effect of the current culture, including the long hours expected at all levels, is that male lawyers, who have reached senior partnership level, tend to be retiring earlier, in their mid fifties. While this may in some cases be choice, it may also be a result of what has become an unsustainable working environment. This in turn may have implications in terms of loss of expertise to clients and the benefit of their long experience to law firms in a similar way to the impact of the loss of able women lawyers.

2.5.3 Factors which encourage flexible work arrangements in law firms include:

- policies and practical guidelines for establishing flexible work arrangements;
- education and awareness programs (as opposed to policies that are merely written on paper);
- persons in senior positions with flexible work arrangements;
- recognition in the partnership of part-time and other 'flexible' partners;
- ongoing education in the workplace in relation to flexible work arrangements;
- transparency with clients regarding lawyers with flexible work arrangements;
- continual monitoring and adjustment of part-time and other flexible work arrangements; and
- practical assistance for lawyers with flexible work arrangements in the form of technological facilities and administrative support.

2.5.4 Although flexible work arrangements are available in most of the larger Victorian law firms, what is needed is a shift in attitude to greater utilisation of such arrangements by male lawyers.

¹⁶ Ibid, p. 7

¹⁷ Ibid, p. 7

¹⁸ Victorian Women Lawyers 1999 Report, *Taking up the Challenge – Women in the Legal Profession*, Trifiletti G, p.19

- 2.5.5 The importance of family relationships and responsibilities to all employees at all levels must be recognised. A corollary to this, is recognising that every workplace is comprised of different 'groups' (ie, Baby Boomers, Generation X and Generation Y) each of which are identified as having different professional expectations and motivators. For example, younger lawyers who fall within Generation Y (which is described as impatient, having too many options open to it, unsettled, technologically apt, demanding and 'wanting it all') report incongruity between their expectations and those they encounter on entering corporate law culture which is more mundane, routine and inflexible.
- 2.5.6 Creative, practical initiatives are required to change the way lawyers currently work. An example of a creative initiative by Holding Redlich Lawyers to assist lawyers who wish to negotiate a flexible work arrangement is the 'Parenting Partner' program implemented in early 2005. The program was introduced as part of the firm's commitment to flexible work arrangements and to counter the high attrition rates of quality professionals upon their transition to parenthood..
- 2.5.7 The program works in the following way. A partner is designated as the 'Parenting Partner'. The Parenting Partner is the first point of contact for professional employees considering requesting flexible work arrangements. The employee's request is discussed with the Parenting Partner who acts as the employee's advocate in negotiating their request with the employee's direct supervisor and the partnership as a whole. The Parenting Partner seeks to negotiate an arrangement that addresses both the needs of the employee and that of the business.
- 2.5.8 The Parenting Partner is also available to discuss redefinition of ongoing flexible work arrangements and can act as a sounding board to provide pre-pregnancy advice concerning career advancement and practice management. Importantly, the existence of the Parenting Partner at the Firm ensures a central figure and point of contact to manage flexible work practices thereby ensuring that there is a degree of consistency across the Firm and as between the various practice groups.
- 2.5.9 Legislation that sets norms which operate as a benchmark against which working practices may be assessed and with which employers are required to comply, are one means of initiating and driving cultural change to embrace family friendly workplaces and policies. Current legislative reform in this area in the United Kingdom may be looked to for examples of how to drive cultural change within the legal profession and Australian workplaces more generally.
- 2.6 ***Question 38 – How important are workplace cultures, as opposed to workplace structures, as a deterrent to men's more active engagement with their family responsibilities and more equitable sharing between men and women of unpaid work in the home?***
- 2.6.1 Flexible work arrangement policies must be accompanied by a real commitment to making flexible work arrangements work.¹⁹ This requires a significant change in the culture of legal practice. In order to effect such a change, there must be reassessment of the economic assumptions underpinning law firms' recruitment policies, salary levels and promotion processes and further, a reassessment of the culture of commitment, such that self-sacrifice is no longer a prerequisite to advancement to partnership. It might

¹⁹ Victorian Women Lawyers 2001 Report, *Flexible Partnership – Making it work in Law Firms*, Kaufman S, Frost G, p. 13

also be timely to have a reassessment of the value and efficiency of time-based billing for legal services.

- 2.6.2 Recognition must be given to the fact that flexible work schedules which minimise staff attrition and replacement costs are commercially viable. Firms must acknowledge that an imbalance between work and family life can have a detrimental effect on firm productivity and efficiency and can adversely affect male and female staff and their families.²⁰
- 2.6.3 Women are reportedly finding alternatives to private practice to pursue careers without sacrificing family life. This is indicative of the mounting external pressures on law firms to implement workable part-time arrangements. Previously, law firms paid higher salaries in order to ensure senior lawyers were retained. Now it seems that the higher salaries (and escalated labour costs) are not effective in retaining experienced women lawyers; women lawyers leave firms in favour of more competitive employment conditions offered by corporate entities and within the public sector.
- 2.6.4 The US experience of the availability and use of alternative work schedules notes that there has been a conspicuous reluctance to take up alternative work schedules by US lawyers.²¹ In 2001 the American Bar Association Commission found that almost half the men in law firms thought it unacceptable to request part-time work, and that less than 5 per cent of male lawyers have taken up reduced schedules.²² This is indicative that culture change around the use of flexible work arrangements is unlikely to occur as long as the debate around flexible work practices is regarded as a women's issue.

2.7 *Question 45 – What evidence is lacking on the issues covered in this paper? What else does HREOC need to know in its consideration of these issues?*

2.7.1 Grandparental Care

- (i) More attention should be given to analysis of, and evidence regarding, the care provided by grandparents. The significance of care provided by grandparents must be recognised, in terms of both the social effect on grandparents in their experience of retirement and for the importance of this care for many families in permitting both parents (and particularly the mother) to engage in paid work to a greater extent than would otherwise be possible. This is clear from the Family Snapshot of Sara and Andrew.
- (ii) The care provided by grandparents has particular significance for single parent families which are predominantly headed by women, in that often it is the provision of grandparental care which allows these mothers to engage in paid work. This enables investment by these women in their labour force skills, reduces their marginalisation from the labour force and increases their access to economic resources. This is likely to lead to a higher family income than would otherwise be possible through receipt of welfare payments, meaning reduced poverty for Australian children and reduced burden on the Australian welfare system.

²⁰ Ibid, p. 13

²¹ Victorian Women Lawyers 2001 Report, *Flexible Partnership – Making it work in Law Firms*, Kaufman S, Frost G, p. 9

²² Ibid, p. 9

- (iii) Consideration might be given to allowing payments to be made by working parents to grandparents for providing care, without affecting their pension entitlements. This would be recognition of the value and importance of the provision of care and could assist in enhancing the financial resilience of retirees.

2.7.2 Availability of externally provided child care

- (i) A separate section devoted to examining the need for affordable high quality externally provided child care at affordable prices is required. While the care of children provided by parents is at the heart of this paper, greater availability of quality child care is critical to enabling women to engage in paid work to a greater extent. This is evident from the finding of the LIV Survey Report regarding the greater involvement of female law graduates in care of children than male graduates and consequently the significantly greater use of childcare facilities by female than male lawyers.
- (ii) Critical to this issue, is the need for reform of the tax relief available in relation to child care costs which, for Australian professional women, is limited.²³ Unlike most other OECD countries, income support for child care is means tested and so is therefore not available to most lawyers.²⁴ Further, child care expenses are not tax deductible as a work-related expense. The statement by Liberal MP Bronwyn Bishop quoted in *The Age* on 2 October 2005 indicates possible positive developments in this regard where she said, 'When listening to the evidence of the committee it does seem unreasonable that you can get tax relief for cars and computers and all sorts of things but not for child-care expenses, which can be absolutely vital to a woman's ability to return to work'.²⁵
- (iii) The importance of this issue is clear from all of the Family Snapshots in which the lack of available affordable child care and the impact on family income of using child care as opposed to parental care features prominently.

2.7.3 Impact of effective marginal tax rates on women's participation in paid work

- (i) There should be a more critical and explicit analysis of the impact of effective marginal tax rates in the interaction between increasing rates of income tax and the withdrawal of family welfare payments as a significant disincentive for many women, as the secondary earner, to engage in paid work.
- (ii) This is particularly true in relation to the withdrawal of Family Tax Benefit B which is designed to reduce specifically by reference to income of the secondary earner in the family, which statistically is predominantly the woman. Further, if the additional household costs of child care which, in the absence of care provided on a gratis basis such as by grandparents, must be incurred in order to engage in paid work are factored into the analysis, the effective marginal tax rates faced by women wishing to return to paid work are further increased.

²³ The Law Society of NSW, *After Ada: A New Precedent for Women in Law*, 29 October 2002 at 26

²⁴ Australian Department of Family and Community Services and Department of Employment and Workplace Relations, *OECD Review of Family Friendly Policies: The Reconciliation of Work and Family Life*, August 2003, at 14, cited in the Submission of the Women Lawyers Association of NSW to the House of Representatives Standing Committee on Family and Human Services Inquiry into Balancing Work and Family, 14 April 2005

²⁵ The House of Representatives Standing Committee on Family and Human Services Inquiry into Balancing Work and Family

- (iii) An analysis of effective marginal tax rates on primary and secondary earners in two parent families following the 2005 federal budget shows that the combined effect of reduced marginal tax rates for the primary earner (on an income above \$52,000) and high marginal tax rates for the secondary earner tend to encourage two parent households to augment their income through increased participation in paid work by the primary earner (statistically usually the male) rather than by increased participation in paid work by the secondary earner (statistically usually the female).²⁶
- (iv) From a regulatory viewpoint, assuming that the tax system is designed with certain policy objectives in mind, the way in which effective marginal tax rates operate have clear implications for women's decisions regarding the allocation of their labour.

2.7.4 Other issues which the Discussion Paper may wish to examine include:

- differences in attitudes and issues as between rural and urban families and workplaces;
- ethnic and cultural differences and expectations;
- women's mental health issues such as whether there is a relationship between post-natal depression and the loss of identity as a result of loss of career or substantially reduced career opportunities; and
- the correlation between education and fertility rates and the reasons for this.

3.0 CRITIQUE OF THE DISCUSSION PAPER - STRIKING THE BALANCE: WOMEN, MEN, WORK AND FAMILY

- 3.1 The report is currently extremely repetitive. This is evident in the wording of many of the questions posed at the end of the paper: Question 31 – How can Australian workplaces be made more family friendly? is very similar to Question 39 – How can workplace cultures be encouraged to change to promote better balance between paid work and family responsibilities
- 3.2 The statistics are not readily understandable by lay people. Recommend presenting the statistics in brief at the start of the paper and putting comprehensive treatment in an appendix. In this way, lay people reading the report will not be discouraged from reading it.
- 3.3 The paper refers to many terms which are not defined or used consistently. Some examples of this include 'workplace cultures', 'workplace structures', 'workplace flexibilities' and informal versus formal workplace policies. The use of such terms without sufficient precision leads to confusion.
- 3.4 Terms with a precise meaning are used without adequate definition (such as the reference to the Workplace Relations System) which people without a legal background will have difficulty understanding.

²⁶ Rider C (Professor of Taxation Law, Melbourne University law School) 'Rethinking Taxation and Work: The Role of Taxation Law in Regulating Entry into and Conduct in labour Markets', Paper presented at the 2005 Labour Law, Equity and Efficiency: Structuring and Regulating the Labour Market for the 21st Century Conference at p.12. The author has indicated that he would be very happy to provide a copy of his paper on request.

- 3.5 The leading nature of a number of the questions may affect the information provided in response, for example, Question 38 – How important are workplace cultures, as opposed to workplace structures, as a deterrent to men’s more active engagement with their family responsibilities and more equitable sharing between men and women of unpaid work in the home?

4.0 **VWL ENDORSEMENTS OF STATEMENTS IN THE DISCUSSION PAPER**

- 4.1 Page 19 – *Equality for men and women should be recognised in all spheres of life including the workplace and the house.*
- 4.2 Page 75 – *Valuing care also means that as a society we value the children and the elderly who are the recipients of care.*
- 4.3 Page 119 – *Seeing paid work and family imbalance as a women’s issue entrenches traditional family arrangements and limits other options available to Australian families.*
- 4.4 Page 127 – *The needs of Australian children demand all family types be given support.*
- 4.5 Page 131 – *It is important that reforms include and engage both men and women.*

5.0 APPENDICES

5.1 Family Snapshots

1. Meaghan and Linton

Details

Meaghan (36) is a senior associate at a large city law Firm. Her partner Linton (35) is also a lawyer working in-house for a smaller employer. They have one son who is 19 months old. Meaghan has worked fulltime, apart from a 6-month period of maternity leave. Following Meaghan's return to work after maternity leave, Linton took 3 months paternity leave. Once both Meaghan and Linton returned full-time to work, they engaged a nanny full-time for 3 months. When their son was 12 months old, they reduced the nanny to two days a week and their son attends a local childcare centre during the other three days. Meaghan and Linton's parents don't live close by, but when they visit they assist with the childcare. Both Meaghan and Linton have the flexibility to work from home occasionally and probably do so about 1 day in every 3 weeks.

Meaghan and Linton share the domestic unpaid duties fairly evenly. They also engage a cleaner once a fortnight and occasionally a gardener. In addition to work commitments, Meaghan has just completed a Masters.

In an Ideal World

Both Meaghan and Linton would like to spend more time with their son. However, both would find it difficult to achieve this given their current positions. Meaghan works fairly autonomously from her colleagues, which does give her some flexibility in juggling her work and home commitments, and her role is rewarding, both in a financial and intellectual terms. However, were she to go part-time to spend more time with her son, she feels that this would give her less flexibility to juggle commitments on the days she did work and would also place the family under more financial pressure. Linton is more likely to consider going part-time if his employer would agree, although this would be difficult, both because his position involves some management responsibilities and because of the perception that working part-time is seen as a sign of not being 'committed' to the employment relationship.

Major Issues

The major issue Meaghan and Linton face is organising the competing commitments. If Meaghan or Linton were able to go part-time, the financial losses arising may mean that they could not afford to employ a nanny at all (resulting in no increase to their son's 'one on one' time with an adult) and may also result in either Meaghan or Linton being dissatisfied and under more pressure in their jobs. On the other hand, Meaghan and Linton are conscious of the fact that their son is spending more of his waking hours with other carers than with his parents. While this has no apparent effects on their son at present, there is concern about whether this will have some longer-term negative effect. There is also no time left in the week for Meaghan and Linton to do things for themselves, like making sure they get adequate exercise. While it is sometimes difficult to juggle work commitments, neither feels that their work or careers are being held back by the current arrangements. Meaghan is concerned though about how they would manage things if they had another child.

Overall satisfaction

Meaghan and Linton are happy with their lives. They hope that because their responsibilities are very evenly balanced and divided and they have had a lot of common experiences (including respective stints at home caring for a baby full-time), that this assists their relationship to stay on track. They also realise, however, that what works at one time during the children's life and/or your working life, may not work at another. Both their employers have been flexible to the extent that has been requested, although there is hesitancy on both Meaghan and Linton's parts to push that goodwill too far. They both also earn sufficient incomes to be able to obtain help with the domestic arrangements. Meaghan and Linton do feel that the current tax system involves far too much money being provided to reasonably well off people where one chooses to stay at home to look after children, whereas for people choosing (and therefore earning income) to work, there are substantial penalties. It would assist if childcare was tax deductible - after all, that expenditure is only necessary because of work commitments. This would make more attractive the option of going part-time and still engaging a nanny for two days a week.

2. Sara and Andrew

Details

Sara (32) is a senior associate at a large city law Firm. She is married to Andrew (33), a senior account director in advertising and together they have two children, ages 6 and 3. Sara worked full-time until she had her first child in 1999. Since that date she has taken two periods of maternity leave of just over 12 months each. In August 2000, Sara returned to work in a newly created part-time role (3 days per week) in a 50-week year, as a junior associate and has recently been promoted to senior associate. Andrew has continued to work fulltime since having children.

Sara and Andrew engage a nanny two days a week and are supported also by Sara's mother, Ann (60), one day a week. Sara and Andrew share the domestic unpaid duties with Andrew often shopping, cooking and washing clothes, however the division of labour in the home is not evenly split since Sara does not work fulltime. To help further, Sara and Andrew also engage a cleaner once a fortnight. In addition to Sara's paid work, she is also involved in the local kinder building committee and is a literacy assistant in the classroom once a fortnight. Overall, the general family organisation is largely Sara's responsibility.

In an Ideal World

In an ideal world Sara would work 4 days a week to allow her to really build her career and technical expertise. In her current position there is a perception that she cannot always participate in substantial job assignments. This is not always the reality, but it results in her sometimes missing out on serious work opportunities. In the legal profession the work hours are often long and pressured. Sara would not work four days unless Andrew also worked four days to allow him to take on more responsibility in the family and participate in the children's daily activities such as swimming classes, kindergarten and school. Andrew believes his industry and current position prevents him working part-time, as it is client service oriented. Interestingly, Sara's role also involves client service, but it seems across industries there is a greater degree of acceptance for her to work part-time than him. There is also a question of willingness to

delay career progression due to family commitments; whilst Sara would have liked to advance in her career quicker, carrying out unpaid family responsibilities has been a priority for her, which she has found to be extremely rewarding.

Major Issues

The major issues Sara and Andrew face are time constraints and constant clashes with work, child minding and leisure commitments. Ultimately, sorting priorities with each other's careers is a major issue to address. Further, children are out of the question as the cost (especially of childcare) is too prohibitive. For Sara to work in her profession the hours she works, childcare centres are not an option and nannies are not cheap. Also, having another child would also impact on Sara's career, not Andrew's, and Sara's career has already been delayed. Whilst the idea of Andrew staying at home full time for a period of time has been canvassed, there is definitely no chance this would become a reality. Therefore, two children are plenty in this busy household!

Overall satisfaction

Overall Sara and Andrew are happy with their lives and the structures they have put in place to organise their paid and unpaid work commitments. Part-time work in law for Sara is not ideal, but it can be managed for a period of time. More tolerance and flexibility at work and less pressure to work long hours in Sara's profession, with greater participation in the children's daily lives by Andrew if his work permitted, would obviously assist in a higher quality of family life.

3. Rob and Anna

Details

Rob (37) is a solicitor at a major Melbourne law firm. Rob's wife Anna (38) is an advertising executive. Rob and Anna have a five-month-old daughter and rent a two-bedroom apartment in St Kilda. They are looking to buy a house but like so many of their friends are not in a position to make such a commitment in the present market. Anna initially took her full twelve-month maternity leave entitlement. However, after only four months, feeling pressure to maintain a foothold at her place of work, Anna negotiated an early return to work. The initial work commitment was to be one day per week working from home. However, Anna now spends this day at the office. Rob continues to work full-time.

On Anna's one day of the week at work, Anna's parents care for her daughter. During the working week, Anna does the vast majority of domestic duties. Rob is responsible for all the family's finances including paying the rent and all bills.

In an Ideal World

Ideally, Anna would have liked to have taken 12 months paid maternity leave and had Rob at home during much of this period to share in the experience of being first-time parents. Anna would then have liked to return to work on a part-time basis, working two days per week and leaving her daughter in cheap and accessible childcare. Rob would like to work a four-day week however feels that the legal profession maintains a very traditional and disparaging view of 'stay at home dads'.

Major Issues

Time, or lack of. Rob and Anna's major issue is striking a healthy balance between family time, time together as a couple and time for themselves as individuals.

Overall satisfaction

Rob and Anna believe they are doing the best they can as first-time parents but are still struggling with the forever-conflicting demands of work and family. They feel that while issues such as paid maternity leave, greater scope for part-time work, access to childcare, housing affordability etc appear to be increasingly on the agenda, most developments in these areas are token and a lot more needs to be done.

4. Dalia and Darron

Details

Dalia (31) is a senior associate at a medium sized, rapidly growing law firm. She is married to Darron (33), an economics partner at an engineering firm and together they have two children, ages 5 and 2. Dalia worked full time until she had her first child. Since that date she has taken two periods of maternity leave, once for 8 months and the second for 10 months. She was made a senior associate after returning to work from maternity leave for the first time. Dalia returned to leave in a part-time capacity, working 3 days per week. This was reduced to 2 days per week with the occasional 3rd day following her second period of maternity leave. She currently works on secondment to a large client of the firm under a 2 year agreement. This has given her increased flexibility and also shorter contact hours and less take-home work. She has found that the quality of her work has increased since taking this new position and she is well supported by the firm when called upon.

Dalia's firm has been particularly accommodating since she has become a parent, offering work from work, home or on secondment and flexible working days of any number. They have also been keen to ensure that her work is of the highest quality to make the best use of her time.

Darron has continued to work full time since having children.

Dalia and Darron send their 5 year old to full time kindergarten and their 2 year old attends crèche 3 days per week. Both children are picked up in the early afternoon by their grandparents who provide them with dinner and return them home later in the evening. Dalia is responsible for almost all the domestic unpaid duties including childcare on Thursdays and Fridays, although the couple engage a cleaner for half a day per week. Dalia often assists at her son's school on Wednesdays. She is also responsible for all family arrangements.

In an Ideal world

In an ideal world, Dalia would work 3 days per week, split between her secondment position and her role at the firm. The difficulty with Dalia returning to exclusive work at the firm is that the role is significantly more pressured, involving court appearances, training more junior staff and often being on call for work outside normal hours. At the same time, there is increased professional recognition associated with this role.

In the longer term, Darron is proposing to work a 9-day fortnight to enable him to spend a day at home with the children. This would be the first arrangement of its kind within his large engineering firm, which currently has poor alternative working models for working parents.

The school kindergarten system is such that in-class care finishes at 3pm (which is early compared with the legal working day) and Dalia and Darron do not consider the school aftercare adequate. Dalia can see that there is no real prospect of her finishing work early to collect the children on any given day, so a 4 'short day' week is not feasible.

Major issues

Dalia and Darron rely very heavily on their families to take the children to school and crèche and to care for them in the afternoons. Dalia is sometimes required to work an additional day or to attend after work functions in order to continue her professional development or for marketing opportunities. Dalia is concerned about her eventual return to the firm, since it will involve an increase in pressure and hours and this will need to be balanced with family commitments and energy levels. She considers that this is an inherent part of work in a highly successful boutique area of law (town planning).

Overall satisfaction

Dalia and Darron are very happy with their lives but acknowledge their high-maintenance lifestyle, which involves a great deal of extended family commitments, entertaining and socialising. Both realise the significant potential income that they are passing up by Dalia only working 2 - 3 days per week, but consider that this arrangement is vital to provide quality contact between her and their two young children. Darron feels that his relationship with their children would be significantly improved if he was able to spend more time with them in the afternoons rather than only in the evening. He also feels that the pace of life is such that there is very little scope for one-on-one time with Dalia and this is increasingly becoming a priority.

5. Angela and Patrick

Details

Angela (35) is a general associate at a large city (Sydney) law firm. She is married to Patrick (34), a senior energy efficiency consultant and together they have two children, ages 7 and 4. Angela worked part-time while undertaking her legal studies. During the same period she also married and had both her children. Following completion of her university studies, Angela returned to work in February 2002 in a newly created part-time role (3 days per week) in a 50-week year, as a law graduate. During the course of 2002, in addition to her part-time and parenting roles, Angela undertook the College of Law course in legal practice in the evenings (being a New South Wales pre-requisite to admission as a legal practitioner). Following her admission, Angela increased her paid work to 4 days per week. Patrick has worked full-time during the course of Angela's studies and since having children.

Since Angela and Patrick have no proximate family support, their children attend school and after-school care (7 year old) and long-day care (4 year old). On the 4 days that Angela works, Patrick undertakes all pre-and post-school care of the children including preparing lunches, drop offs and pick ups, cooking, home work, bathing and 'mid-week' washing of clothes. Angela carries out all other domestic duties from cleaning to gardening, arranging trades people, making costumes for school events and undertaking the pre and post-school care of the children on her day-off. On the whole Angela and

Patrick feel that the division of labour in the home is evenly split and both are happy with the other's level of participation in domestic duties.

In addition to Angela's paid work, she also volunteers at a homeless persons legal centre once a month, maintains a 'penal' relationship with a 'rural, regional and remote' primary school child, manages the local soccer team from April to September, undertakes voluntary fund-raising social activities for the children's school and kindergarten and though the local church. Despite Patrick's involvement with the management of the children on the 4 days Angela works, overall, the general family organisation is largely Angela's responsibility.

In an Ideal World

In an ideal world, Angela would work 4 days a week start to finish times allow her to spend more time with her children and take a greater role in their education progression. In her current position Angela is the only female lawyer with external family commitments. This imposes restrictions on Angela that she perceives the other lawyers do not face. The work hours are often long and pressured and there is an expectation that Angela will participate fully in sustainable job assignments. There is also an expectation that Angela will progress to a more senior position over the next 2-3 years which of necessity requires her to complete a Master of Laws. Further study at this stage is something that Angela is reluctant to do for financial and quality of life reasons.

Angela and Patrick's mutual goal is for each of them to work 4 days per week to allow Patrick to participate more in the children's daily activities. Patrick believes his industry and current position prevents him working part-time. Also, until such time as the gap in their respective income closes, a 4-day week for Patrick is not financially viable in order that the family maintains its current standard of living.

Major Issues

The major issues Angela and Patrick face are time constraints and constant clashes with work, child-minding and leisure commitments. Ultimately, sorting priorities with each other's careers is a major issue to address, particularly when the end goal is to address the income disparity, reduce Patrick's working week and thus improve the quality overall quality of life for all of the family. Striking a balance between maintaining Patrick's career (and income) while progressing Angela's is proving a major challenge. While further children would have been well received, the costs (especially of housing and childcare) are too prohibitive.

Overall satisfaction

Overall Angela and Patrick are happy with their lives and the structures they have put in place to organise there paid and unpaid work commitments. Part-time work in law for Angela is presently ideal, but more tolerance and flexibility at work would assist in a higher quality of family life.

5.2 **Flexible work practices, part-time work and women in the law literature list**

National Young Lawyers Survey 2004 Law Council Survey of 850 lawyers aged in the 20s and 30s from across the country. Questions on career aspirations, job satisfaction, working hours, salary and interests outside work. May 2004
<http://www.lawcouncil.asn.au/> [NATIONAL YOUNG LAWYER SURVEY 2004](http://www.lawcouncil.asn.au/NATIONAL_YOUNG_LAWYER_SURVEY_2004)

Equitable Briefing statement and policy Australian Women Lawyers amended version March 2004 <http://www.womenlawyers.org.au>

Flexible Partnerships - Making it work in Law Firms Victorian Women Lawyers, Law Foundation Report looks at whether there are any barriers to partners in law firms working part time. It reviews Australian and US literature and then reports on interviews with 10 Melbourne Law firms of varied size and structure - 44 pages. June 2002 <http://www.vwl.asn.au>

A Snapshot of Employment Practices 2001 - A Survey of Victorian Law Firms The survey examines the employment policies and practices of 41 law firms and legal departments relating to work/life balance and family friendly practices. 21 pages - November 2001 <http://www.vwl.asn.au>

Taking up the Challenge VWL, VLF Report summarises the major findings from various research sources and concludes with suggestions for future strategies and research - 22 pages May 1999 <http://www.vwl.asn.au>

Living and Working Together: Looking to the Future, Work Practices and Policies for Legal Firms Law Institute Victoria, VWL, Office of Women's Affairs, VLF. Content: Leave for work, Working part-time, Other flexible work arrangements, Case study - Introduction of flexible work practices, Model policies - Sexual Harassment, Schedule - Occupational Health and Safety and working from home 1998
<http://www.vwl.asn.au>

Equality of Opportunity for Women at the Victorian Bar, A Report commissioned and published by the Victorian Bar Council July 1998
http://www.vicbar.com.au/5_2_15.html

Without Prejudice: women in the law Brooker's Legal Information, Wellington, New Zealand 1996

Facing the Future: Gender, Employment and Best Practice Issues for Law Firms Herron, Woodger, Beaton. Survey findings - overall job satisfaction, what makes jobs satisfying and unsatisfying?, will I stay or will I go?, rating the corporate environment, life satisfaction, gender - similarity and difference 1996 <http://www.liv.asn.au>

Gender Bias and the Law: Women Working in the Legal Profession Report of the Implementation Committee on government practices - Margaret Thornton 1996

A 360 Degree Review of flexible work practices in the legal profession: Confronting myths and realities Victorian Women Lawyers 2005 Bourke J, Russell G

Dissonance and Distrust: Women in the Legal Profession OUP Melbourne Margaret Thornton – 323 pages 1996

Women Working in the Legal Profession in Tasmania: Final Report Women Lawyers Association of Tasmania Ireland and Goodluck 1996

NSW Women Barrister's Survey 1995

NSW Research on Gender Bias and Women Working in the Legal Profession - Keys Young Report (This study investigated the disparity between the high number of women graduating from law schools and the comparatively low number of women reaching senior levels in the legal profession) March 1995

Report of the Chief Justice's Taskforce on Gender Bias WA June 1994

Career Patterns of Law Graduates LIV Ewing, Dennerstein, Bartlett and Hooper (This study compared 1000 male and female law graduates) 1993

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