



THE CASE FOR FLEXIBILITY

DELIVERING BEST PRACTICE
IN INTEGRATING WORK AND LIFE
IN THE LEGAL PROFESSION

A guide to implementing a flexible workplace



**The Law Society
of New South Wales**

THE CASE FOR FLEXIBILITY

DELIVERING BEST PRACTICE
IN INTEGRATING WORK AND LIFE
IN THE LEGAL PROFESSION

A guide to implementing a flexible workplace

17 February 2005



**The Law Society
of New South Wales**

Executive Summary

In 1999 The Law Society of New South Wales Council adopted a recommendation of the Gender and Industrial Issues Taskforce, namely that the Society undertake a study of legal firms and organisations to examine their implementation of flexible work arrangements. This recommendation was reiterated in 2002 in The Law Society's report "*After Ada*"¹.

In 2003 the Law Society's Legal Workplace Committee identified a need for research on flexibility, and in particular a study which would add a *practical* dimension to the numerous national and international studies advancing theoretical arguments in favour of flexible work practices in the legal profession. The Committee also recognised that the need for flexibility was being articulated by men and women, and that the focus of the research should be broader than just enhancing gender equity.

Hence in December 2003, the Legal Workplace Committee commissioned the current study, "*The case for flexibility*", to assist legal practitioners and firms to develop and implement flexible work practices successfully. In particular the Committee identified the key objectives of the study as being to:

- **raise awareness** of the benefits of implementing flexible work practices (particularly in private practice);
- **build commitment** to implementing flexibility in the legal profession;
- **provide practical advice** on implementing flexibility in the legal profession;
- **increase the use of flexibility** in the legal profession;
- **attract and retain talent** in the legal profession;
- **increase productivity and profitability**; and
- **improve client service** in the legal profession.

To achieve these objectives, the study methodology focussed on the examination of legal firms which were reputedly *best practice* models in implementing flexibility. Seventeen firms were approached to participate in the study, and the final sample of 12 firms represents large, medium and small private practices across the State covering regional, suburban and city areas. Contributions from the Australian Prudential Regulation Authority (APRA) and the College of Law added to the body of qualitative data.

In order to develop a holistic perspective, comments on the implementation of flexibility were sought from three key stakeholders within a firm, namely (i) partners/supervisors, (ii) the human resources manager, and (iii) the legal practitioner working flexibly. Comments from these diverse groups are interspersed in the report.

¹ "*After Ada* – a new precedent for Women in Law", The Law Society of New South Wales, 29 October 2002, p.30

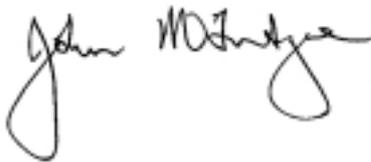
The study identifies eight key findings (which are in the nature of strategies and actions) which contribute to the success of flexibility within law firms:

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

Details about each of these strategies and implementation tips are identified in the report.

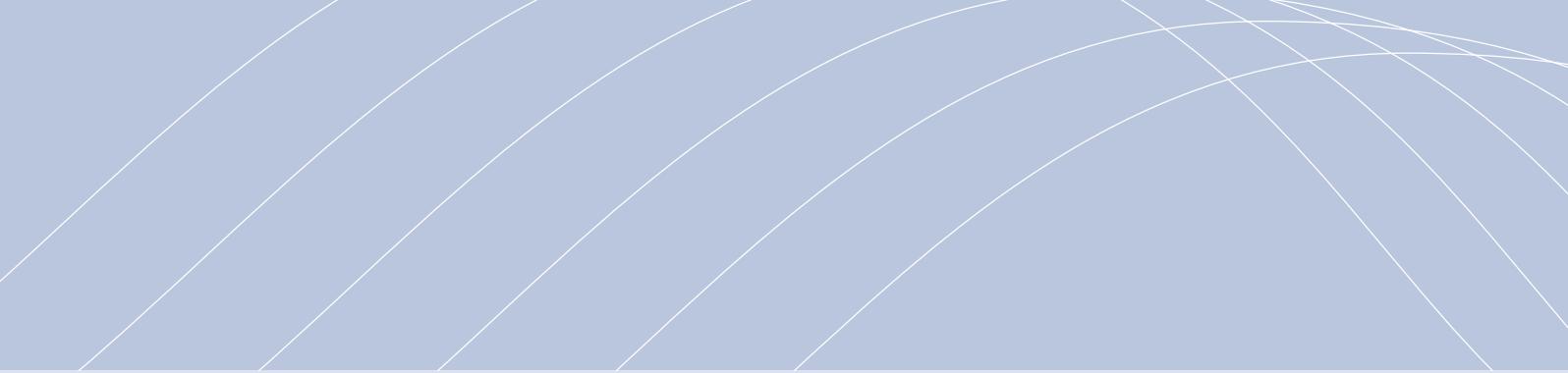
The Appendices to the report provide further valuable information, including a list of common definitions of flexible workplace arrangements, together with references and resources. The contribution of the study participants is gratefully acknowledged, as is the assistance of the study researcher, Ms Sandra Triulzi (Director and Principal Consultant of the Triulzi Group).

Finally, this study presents a compelling case for flexibility in the legal profession, both as a strategy to help practitioners to integrate their work and life commitments, and as a pathway to enhancing the profession's diversity, quality and commitment to service. We hope that the profession will take up this message with alacrity.



JOHN MCINTYRE, LAW SOCIETY PRESIDENT

LEGAL WORKPLACE FLEXIBILITY SUBCOMMITTEE
(SHAUNA JARRETT, KATHRYN KEARLEY AND JULIET BOURKE) 2004



For non-profit purposes
and provided the source is acknowledged,
The Law Society of New South Wales
encourages people to use,
reproduce and distribute any part of

THE CASE FOR FLEXIBILITY
*DELIVERING BEST PRACTICE
IN INTEGRATING WORK AND LIFE
IN THE LEGAL PROFESSION*
A guide to implementing a flexible workplace

TABLE OF CONTENTS



**The Law Society
of New South Wales**

PAGE	
6	1 Background – the art of flexibility
7	2 Methodology
8	3 Key Findings
9	3.1 Articulating and promoting the value of flexibility
11	3.2 Demonstrating leadership
13	3.3 Providing support for supervisors
14	3.4 Growing effective behaviours and attitudes in the employee working flexibly
18	3.5 Developing a communication plan
21	3.6 Developing flexibility principles
21	3.7 Creating a pathway for implementation
24	3.8 Barriers to flexibility and creative strategies
29	4 Concluding Comments
31	5 Appendices
31	5.1 Costing flexibility
34	5.2 Flexibility options – definitions
35	5.3 Resources
36	5.4 List of participating firms and organisations

ACN 000 000 699

170 Phillip Street
Sydney NSW 2000
Australia

Phone (02) 9926 0333

Fax (02) 9231 5809

DX 362 Sydney

<http://www.lawsociety.com.au>

1. Background – the art of flexibility

A subtle evolution is transforming the legal profession, and the broader workforce. Current research on generational differences identifies the integration of work and life as a key issue for younger workers², and an emerging issue for older workers³.

Additional research on gender equity has identified integrating work and life, and in particular flexibility, as of critical concern to women⁴. These changes are having a significant impact on traditional legal workplace relationships, especially the attraction, retention and contribution of talented legal professionals. Unfortunately, the legal profession as a whole has not adapted to these changes, and consequently a gap exists between expectations of work and life integration and the current reality. This gap has created an opportunity for best practice legal firms to capitalise on their development and implementation of flexible work practice (such as part-time work, job-share, working from home and condensed hours).

In the *Family Responsibilities Study, 1998*⁵, undertaken for The Law Society of New South Wales, the findings revealed a disparity between the introduction of formalised work and family policies and the implementation of these in private practice. The dominant barrier identified in this research concerned the culture or 'ethos' of the legal profession, particularly a long work hours culture which often served to disenfranchise those lawyers or practitioners, female or male, who sought to use flexible work arrangements⁶.

In more recent years there has been a noticeable shift in the attitude of some of the firms to the benefits that can be derived from truly embracing flexibility. In this study there was general agreement from all key stakeholders that this attitudinal shift has occurred because of the increase in the proportion of female practitioners in the profession, the increasingly competitive environment to attract and retain the best and brightest, and the knowledge that client loyalty can no longer be assumed.

Despite the positive changes implemented by the best practice firms and organisations, flexible work practices are not consistently available across the legal profession, and barriers continue to exist for those who use flexibility, particularly in terms of career development. The aim of this study is to strengthen the case for flexibility by identifying and addressing attitudinal barriers to flexibility, and provide practical guidance on its implementation.

Finally, invariably, when the subject of flexibility arises, it is immediately assumed that women are the main beneficiaries and that childcare is the primary reason. There is no denying this link; however this study suggests that to maximise the benefits the profession might derive from implementing flexibility, it is necessary to reframe our views and notions about flexibility, i.e. to develop an approach which is inclusive of men and women, and a range of reasons for flexibility.

2 Families and Work Institute, *Generation and Gender in the Workplace, USA, 2004* (www.familiesandwork.org)

3 AARP, *Staying Ahead of the Curve, USA, 2002* (www.aarp.org)

4 Victorian Women Lawyers, *Taking up the challenge*, Melbourne, 1999 (www.vwl.asn.au)

5 The Triulzi Group, *Family Responsibilities Study, 1998*, pp 80-83

6 These findings were echoed in Bourke J, *Corporate Women, Children, Careers and Workplace Culture: Integrating flexible work practices into the legal and finance professions*, 2000, IRR, UNSW



2. Methodology

As the aim of the study was to examine the practical implementation of flexibility in best practice firms, and to share the lessons learned across the profession, three key stakeholder groups were identified, namely (i) partners/supervisors, (ii) the human resources manager and (iii) the legal practitioner working flexibly.

Interview questionnaires were developed for each of the three stakeholder groups in order to capture the organisational and business reasons for implementing flexibility, as well as their personal stories.

Face-to-face interviews were conducted with representatives from the city and suburban law firms, while telephone interviews were used to gather information from the regional-based firms. The study respondents were asked to comment on their experiences, both organisationally and personally, and to share their perspectives on the barriers to implementing flexibility and the successful solutions that they and their firms had identified.

In total 40 interviews were conducted, providing a diverse range of views. In relation to the practitioners interviewed, they included a board member and partner, managing partner, manager, equity team leader, senior associate, project manager, consultant, human resources director, paralegal and administrator.

Respondents were also asked for their views on whether the introduction of flexibility had impacted on client service delivery and the management solutions put in place to maximise client workflow.

To complement the study findings, a review of cutting-edge research on best practice initiatives in flexibility was undertaken and is referenced as a source in this report. Papers, articles and publications that relate specifically to the legal profession are also referenced.



3. Key findings

“The organisations now emerging as successful will be, above all, flexible...”
Rosabeth Moss Kanter, *The Change Masters*.⁷

The study identifies eight key findings (which are in the nature of strategies and actions) that contribute to the success of flexibility within law firms:

1. **Articulate** and promote the value of flexibility.
2. **Demonstrate** leadership.
3. **Provide** support for supervisors.
4. **Grow** effective behaviours and attitudes in the employee working flexibly.
5. **Develop** a communication plan.
6. **Identify** barriers to flexibility and develop creative solutions.
7. **Develop** Flexibility Principles.
8. **Create** the pathway for implementation.

⁷ 1992 Kanter, Rosabeth M, *The Change Masters – Corporate Entrepreneurs at Work*, International Thomson Business Press, London

⁸ Drucker, Peter A, *Landmarks of Tomorrow*, 1959: a knowledge worker is anyone who works for a living at the tasks of developing or using knowledge. The knowledge worker includes those in the information technology fields, such as programmers, systems analysts, technical writers, academic professionals, researchers, and so forth. The term is also frequently used to include people outside of information technology, such as lawyers, teachers, scientists of all kinds, and also students of all kinds.

3.1. Articulating and promoting the value of flexibility

“It’s a selling point. That’s how it’s presented to people. And I think the other reason it’s good is I’ve seen so many people in other firms who suffer burnout at a great rate at an early age.”

Sonja Daly, Managing Partner, Watkins Tapsell,
winner 2004 Law Society of NSW Equality Opportunity Awards.

To ensure that flexibility is perceived as a valuable workplace tool to improve individual and organisational outcomes, the study suggests that reasons for flexibility should be articulated and promoted. These reasons include the impact on attracting and retaining talent; improving morale, productivity and satisfaction; and reducing stress and burnout.

(i) Attracting talent

Legal practitioners are aptly described as *knowledge workers*⁸. Practitioners seek the opportunity to work with a firm that understands and values their contribution, provides development and experience through work projects and respects the desire for balance in their lives, be that for family reasons or life interests. The knowledge worker is not necessarily wooed by orthodox rewards and achievement systems. The study found that being known as an employer of choice in relation to flexibility attracted a wider pool of legal candidates to firms.

To ensure they are able to attract the best talent (particularly in a competitive workforce), firms may need to review their recruitment strategies, productivity measures, incentives, employee policies, work schedules and work processes. Most of these were designed for a different generation of workers with different lifestyles and working conditions.

“Adopting sound equal opportunity and flexible work policies is more than just a wise move, it is critical, especially for large professional organisations who wish to attract and retain the best people.”

CEO, City-based large firm.

The study observed that a number of smaller firms had used flexibility as a tool to attract talented legal practitioners who were dissatisfied with the approach of larger firms. The smaller firms identified this strategy as overwhelmingly positive:

“I looked at flexibility from a whole person perspective. The outcome has produced dollars through new work, good client relationships and our pro-bono work. Flexibility has been positive in building teamwork and in everyone giving back to the practice.”

Managing Partner, City-based small firm.

(ii) Retaining talent

The *knowledge worker* consciously thinks about and plans their career path. Some of the firms noted a link between flexibility and an increase in loyalty and a reduction in their staff turnover rates, particularly in relation to increasing return rates after maternity leave. The ability to retain valued employees has a direct impact on the bottom line, in terms of reducing recruitment costs, minimising the unwanted loss of staff, and retaining clients (who may follow the departing legal practitioner).

"I've come to recognise difference and different needs and I'm motivated because it's purely a business case. It costs a lot of money to lose a good employee. Dollars are lost through loss of corporate knowledge; having to rebuild relationships with clients and losing high quality skills and experience."

Managing Partner, City-based medium-size firm.

Information on the direct and indirect costs of turnover and case study examples are outlined at Appendix 5.1

(iii) Improving morale and job satisfaction

Flexibility has the capacity to improve morale and job satisfaction and, as one partner noted, *"an investment in people rather than premises pays off"*. All of the lawyers agreed that being able to work flexibly had had a positive bearing on how they viewed their firm and this translated into loyalty, commitment and diligence.

Generally, the legal practitioners were pleased with the quality of work available to them. One practitioner who worked on a part-time basis referred to the opportunity to work on a special restructuring project at the request of the Managing Partner. The project was significant for the firm and the practitioner felt recognised and valued for her competence and skills, not the hours she was present in the office.

(iv) Improving productivity

The study found that the introduction of flexibility policies has resulted in the reduction of unscheduled absences from work. Many of the legal practitioners spoke of feeling *'guilt-free'* when citing reasons for their absence from work. They also felt that their relationships with their clients had not suffered but, in fact, had become more open. As a result, the client and the legal practitioner benefited from an improved communication and working partnership. Further, research data also suggests a positive link between reduced fatigue and productivity, and flexibility can assist to reduce fatigue.⁹

(v) Reducing stress or burnout

All legal practitioners interviewed identified that one of their objectives in working flexibly was to reduce the level of stress in their lives. They also acknowledged that working flexibly did not necessarily solve all the issues that arose through juggling a professional career with family and personal responsibilities. However, in comparison to some of their contemporaries who continued to work in the traditional manner, the legal practitioners were unanimous that flexibility had provided them with a healthier outlook.

⁹ Productivity can be linked to fatigue. In an article published in the Australian Law Management Journal, Summer Issue 2003, lawyer Juliet Bourke cites research by Professor Drew Dawson at the Sleep and Research Centre, on the effect of fatigue arising from reduced quality and duration of sleep. In her article, Ms Bourke argues that the profession's focus on client accessibility may 'neglect a key service issue, namely the quality of service delivered.' She highlights a possible nexus between the long work hours culture and the rate of errors lawyers make and draws the reader's attention to a research finding by Professor Dawson, who states: "Fatigue delays response and reaction times, negatively impacts on logical reasoning and decision making and impairs hand-eye co-ordination." The article also highlights the work undertaken by the ACTU to raise awareness of the impact of long work hours on an individual's performance. The ACTU cites research that "17 hours of sustained wakefulness leads to a decrease in performance equivalent to a blood alcohol level of 0.05%.". Bourke, J, "Engaging leaders on work/life issues", Australian Law Management Journal Summer Issue 2003, pp 18-20

3.2 Demonstrating leadership

Implementing flexibility requires cultural change, and leadership is a fundamental component in that change process. Without the commitment and solid support of a firm's partners/leaders, the capacity to achieve sustainable change in any area is difficult, if not impossible. Hence, for flexibility to become embedded in a culture, partners/leaders must articulate and promote the value of flexibility to the firm.

"Some say it's difficult, not easy – quite frankly I came from the opposite end. I don't understand why you would not do it – it just makes good business sense."

Managing Partner, City-based medium-size firm.

As well as commitment and support, it is imperative that partners/leaders are seen as role models for the change. In the case of flexibility, there must be a consistency between the views expressed and the actions taken. As one managing partner expressed:

"I promote work/life balance through my own role modelling. I have always recognised that downtime is essential. I self-manage by working at a high performance level in the office; and being vigilant about taking time out on weekends and holidays."

Managing Partner, City-based medium-size firm.

It was evident throughout the study that the cultural foundations upon which the firms operated were based around strong family values and that these values informed their strategic approach to being both family-friendly and pragmatic.

The study also emphasised the fact that partners and team leaders in the best practice firms had recognised the need to develop good people management skills, as well as developing their legal expertise.

One aspect of leadership that was highly valued was the extent to which the partners/leaders took a personal interest in each member of staff. The move away from the formalised, hierarchical structures to a team-based approach has fostered better communication and interaction, developed trust and mutual respect amongst team members, provided an environment for learning and development, and built an area of expertise within the team that is bigger than an individual.

Successful leaders challenge outdated mindsets. In relation to flexibility, for example, leaders challenge those who continue to hold expectations that long hours are the 'norm'; that people who work flexibly are questionable in terms of their competence, intellectual ability and commitment to their employer; and that clients won't like it.

Successful leaders also acknowledge that implementing flexibility is a challenge and may require new thinking and skills. Some partners/leaders interviewed in the study noted that when the discussion around flexibility came up, they did not understand the concept and what this meant for their organisation. They were, however, open to new ideas and to examining their assumptions about how work is managed and conducted.

The study identified leaders within the partnership group who embraced flexibility in the face of new business opportunities:

"I managed a business area where 40% of my legal staff had children all at the same time. If I didn't explore the option of flexibility, I ran the risk of seeing the 40% walk out of the door. Our business survival meant that we had to develop a business case for flexibility to retain these excellent workers. The result has been a paradigm shift from full-time to part-time work."

Board Member and Partner, City-based large firm.

The study also identified leaders who looked for synergies between flexibility and existing strategies:

"We have a history of bringing outsiders [management consultants] into the firm to review how we do things and to improve how we do things. We have a willingness to try things."

Partner, City-based medium-size firm.

Finally, leadership was demonstrated in some of the recently established law firms by their inclusion of flexibility in their vision and guiding principles. They operated from the perspective that an investment in people is the most strategic way to build a brand and win client business, thereby achieving growth and profitability.

One of these firms, Harmers Workplace Lawyers, won the 2004 NSW Australian Human Resources Institute HRI Award for Excellence in People Management.¹⁰ Harmers Workplace Lawyers Staff Partner Joydeep Hor noted that *"being the best law firm in workplace relations involves practising what you preach."* The philosophy and culture behind Harmers has inspired the firm to lead by example in model people relations. Joydeep Hor continued,

"one of our key differentiators as a business is that we have a set of business principles that commit us to being model people managers and ensuring that our internal people management practices reflect the advice we give to clients."¹¹

3.3 Providing support for supervisors

The supervisor holds a critical role in ensuring the effective implementation of flexibility. Nevertheless, the importance of this role is often neglected, and supervisors receive little if any training or guidance on negotiating a flexible work arrangement, supervising a staff member working flexibly, or terminating an arrangement. Further, in a firm that is generally unsupportive of flexibility, the supervisor may feel like a lone ranger when challenged by the partnership/senior management on the value of the arrangement.

The study found that best practice supervising lawyers were unanimous in their approval of flexible work practices. Although the supervisors acknowledged that managing flexibility was not always easy, they were of the view that flexibility had enhanced their firm's position as an employer of choice. In particular, flexibility had ensured that they retained good people on whom they could rely for their skills, expertise, knowledge and experience.

Supervisors were generally of the view that flexibility created a healthier and more balanced work environment and that the staff working flexibly tended to give back to the organisation through greater commitment and effort to their work. With guidance from the firm's leadership and the availability of policies and procedures on flexible work options, many of the supervisors used their discretion to identify creative ways in which individual employees could integrate their work, family and personal commitments.

At a personal level, the supervising lawyers recognised that they had also made some adjustments to their own work styles to ensure the successful implementation of flexibility. These adjustments included the need to:

- be more involved in the client work undertaken by the flexible employee;
- enhance their own management and communication skills;
- establish clear operational requirements and boundaries; and
- be open and curious to the benefits that flexibility might offer.

3.3.1 Tips for Supervisors

The study respondents identified a range of tips for supervisors seeking to implement flexibility successfully. Underlying these tips was a constant theme articulated by the study respondents, namely that supervisors should be open-minded, especially on the reasons why employees requested flexibility. As one study respondent noted:

“Be prepared for strange requests!”

Partner, CBD medium-size firm.

SUPERVISOR TIPS FOR SUCCESS

- **Become knowledgeable about firm policies and guidelines.** Be familiar with the firm’s information on flexibility. Become aware of trends in flexibility through media, publications and social discussions.
- **Promote flexibility and work with employees to customise solutions.** Use a collaborative and problem-solving approach to find the options that best meet business and personal needs. Remember, flexibility is a management tool, and should not be used to favour some employees over others.
- **Use discretion wisely. Flexibility requires the exercise of discretion.** What suits one employee does not necessarily suit another. Discretion means considering each employee’s needs individually and working collaboratively to find the right solution for that individual and the firm.
- **Be fair.** Consciously work towards managing staff in a consistent and objective manner when considering requests for flexibility.
- **Be proactive.** Put flexibility on the firm agenda. Open discussions about flexibility may lead to more efficient ways to organise work and time for the benefit of all team members.
- **Be open to a variety of requests for flexibility.** Childcare and family commitments are often the reasons given when requesting flexible work options. Be aware that anti-discrimination legislation, both Federal and State, prohibits discrimination in

3.4 Growing effective behaviours and attitudes in the employee working flexibly

The study identified some common traits amongst legal practitioners working flexibly, including their high levels of motivation to make their flexible arrangement work, and their willingness to be flexible. As for motivation, as one legal practitioner noted,

“The single most important condition of my work arrangements is my flexibility – it dwarfs anything that money can ever do.”

Partner, City-based large firm.

12 “Bond, T J, Galinsky, E, and Hill, J E, “When work works. A status report on workplace flexibility. Who has it? Who wants it? What difference does it make (2004) Families and Work Institute and IBM (USA) (on www.familiesandwork.org)

employment against employees with family or caring responsibilities. There are, however, many other reasons why an employee would seek flexibility, for example to study; play competitive sport; pursue an individual interest; or develop another professional interest. The supervisor will need to set priorities, but as long as the work gets done, the reason for the request should not affect whether it is granted.

- **Be willing to say 'no'.** There are situations where the supervisor should not grant a practitioner's request for flexibility, for instance because of organisational constraints (for example the nature of the work) or individual constraints (for example the staff member cannot work independently, or demonstrates an inflexible mindset). If you are unsure about the suitability of a request you may opt to trial the arrangement for a short period, and then review its success against clearly identified measures (for example client service).
- **Be flexible.** Even with proper planning, unforeseen events can occur. The needs of the individual or the business may change and this may require a re-evaluation of the flexible arrangement. To facilitate the success of a flexible working arrangement, it is recommended that it be tried on a pilot basis for a period of time; and after implementation of the pilot stage, a process for review should be established to make modifications as required.
- **Evaluate flexible solutions.** Be clear about the work deliverables and incorporate these in the performance plans for the individual practitioner, the practice area and the team.

All of the study respondents agreed that flexibility had had a positive effect and that the legal practitioners were:

- more engaged in their jobs and committed to helping their firm succeed;
- more likely to plan on staying with their employer; and
- more satisfied with their work roles.

These findings are consistent with other research outside the legal profession, namely that employees with a high level of flexibility demonstrate increased levels of engagement and motivation, increased retention levels and improved mental health in comparison to employees with low levels of flexibility¹².

Employers and legal practitioners identified key effective behaviours and attitudes to working flexibly, central to which is a mutual commitment to success. The identification of these attributes is particularly important for legal practitioners making the transition from full-time work to a flexible work arrangement.

ATTRIBUTES FOR PARTNERS AND EMPLOYEES CRITICAL TO SUCCESS: A MUTUAL OBLIGATION

- Share a good understanding of the business – its vision, objectives, culture, service commitment and team-based environment
- Share a mutual obligation based on trust, openness and honesty
- Demonstrate maturity and a common-sense approach
- Communicate clearly
- Commit to meeting, if not exceeding, client expectations
- Commit to being ‘flexibly’ flexible, ie when work or personal demands require it
- Ensure reasonable accessibility and availability
- Demonstrate self-motivation and responsibility
- Develop good organisational skills
- Demonstrate consideration for others and be a team player.

A factor which did have an impact on the legal practitioner’s available work time was the number of internal committees and meetings that they were required to attend. Some legal practitioners acknowledged, with reluctance, that they were no longer able to commit to some of the internal activities that did not directly relate to their client work, given their focus on meeting performance criteria and limited time. This was a compromise. On the positive side, they enjoyed the opportunity to work in a pleasant environment, on rewarding work and to be well remunerated for their efforts.

Partners and employees alike suggested that the more senior the legal practitioner, the easier it was for that individual to manage the balance between client work and their personal and family needs. Seniority assumed that the legal practitioner had established a solid client base; had gained credibility and trust within the firm; and had developed experience and expertise in their area of work or specialisation.

3.4.1 Tips for employees

The key stakeholders provided advice to legal practitioners aspiring to work flexibly. The advice centres on undertaking a critical analysis of the practitioner's situation; creating solutions; and making a business case for flexibility.

TIPS FOR THE ASPIRING FLEXIBLE EMPLOYEE: BUILDING YOUR CASE FOR FLEXIBILITY

If you have identified that you would like to work flexibly, the following steps will help you build the case to present to your firm.

1. Assess your situation

- First, determine your need for flexibility – why do you want it and what form will it take to best meet your needs.
- Find out what your firm currently provides in the form of flexible work practices. Talk with different people across the organisation. If there are no policies in place, then identify the kind of flexibility you want and be prepared to pioneer it.
- Think about your working style and what kind of flexibility is most suitable.
- Be realistic about possible costs on your employer, for example setting up an office at home.

2. Create strategies

- Identify several options that will help you handle your work responsibilities and that will work for your supervisor, the team and the client.
- Plan for everyday as well as emergency situations.
- Develop a communication plan – when, where and how you will be available. Conversely, when and where you will not be available.

3. Make your business case

- Identify the flexible leave options you are seeking and why.
- Give examples of successful implementation of the flexible leave options.
- Outline the benefits compared with the perceived problems and costs.
- Outline the plans and steps to be implemented to minimise any impact on your work responsibilities, the team and client.
- Outline the communication plan.



3.5 Developing a communication plan

Technology, in all its various forms, often aids the implementation of flexible work options. However, it was generally recognised by all the study respondents that there is a need to develop guidelines on communication etiquette and reasonable access. Many of the legal practitioners negotiated access arrangements directly with their clients and so provided a seamless process to deal with matters.

With improved communication guidelines, their teams were able to more effectively manage the day-to-day practice and respond to urgent issues that arose.

Whilst the legal practitioners were keenly aware of their responsibilities, they were mindful of the need to establish clear boundaries between their work and personal lives. They were also aware of the need to be discriminating in the use of technology and to minimise its intrusion into their personal lives.

A factor that emerged in discussion was the need for employers to be cognisant of the needs and expectations of those legal practitioners who were returning to work after a leave of absence for childcare or other personal reasons. Some of these practitioners, required support and time to rebuild their confidence in their area of expertise; and to rebuild a client base. Therefore, ideally, the communication plan should also cover the period of leave and help develop a 'keep in touch' program to enable the legal practitioner to stay connected to the firm during the leave period.

3.5.1 Tips on developing a communication checklist

The law firms agreed that communication is critical to the successful implementation of flexible work options. The key issues, which form the basis of the communication checklist below, are based on the experiences of the study respondents, and cover accessibility; client contact; messages; meetings and information.

COMMUNICATION CHECKLIST

1. Accessibility: how and when to be reached

- When the employee is not in the office, how will they be accessible?
- When will the employee be available for calls – on which days, at what hours? Are there specific hours when they must be available or, conversely, are not available?
- Has the employee informed others of how and when they can be reached (for example office extension, email address, mobile telephone, home telephone, fax number, pager number)?

2. Clients (internal and external)

- What is the best way to communicate with clients (for example when, where and how the employee can be reached, who can be reached in their absence)?
- If there are additional people with whom the client will be working, would it be helpful to set up a meeting to make the introductions?
- Filter the telephone call by seeking further information and assessing whether the question can be answered by someone from the team in the office. As a last resort, telephone the person who is not at work, or send an email.

3. Messages

- Where can messages be checked (for example voicemail number, answering machine at home, a team member who can take and communicate messages, back-up person when the employee is not available)?
- Limit the number of places the employee will need to check for messages.
- To avoid possible confusion, limit telephone numbers to those identified as essential.

continued overleaf...

COMMUNICATION CHECKLIST *continued*

4. Meetings

- Will the employee be available for meetings in person when necessary?
- What contingency plans are there in the event there is short notice for a meeting?
- Can the employee participate in a meeting by telephone or video link-up?
- Is there agreement about when staff meetings will be scheduled?
- Try to organise that those with flexible work arrangements have one common day when meetings can be scheduled.

5. Information

- Has the employee informed people about where critical information is kept (for example filing system, computer access, keys to files, desk and office, addresses and contact information, the employee's calendar and diary)?
- Are computer files shared with others who might need to access them?
- If working out of the office, how will the employee get access to information he/she might need?

6. Receiving feedback

- How will supervisors, team members, clients and others give feedback on how the employee's new schedule is working for each of them?

3.6 Developing Flexibility Principles

In response to the question, “*What have been the lessons learned?*”, all study respondents agreed that the successful implementation of flexibility relied on a set of principles that were understood and shared by all.

FLEXIBILITY PRINCIPLES

1. Flexibility is a management tool that can help get the job done, not an employee perk or accommodation.
2. Employees’ reasons for wanting flexibility should not matter to access a flexible work arrangement.
3. Not everyone wants flexible work arrangements.
4. Not everyone can have flexible work arrangements.
5. Flexibility must be applied consistently and fairly, although there may be tailored arrangements to suit different circumstances.
6. Flexibility works best when the work team and the clients are involved.
7. Flexible work arrangements can be temporary or permanent.

These principles, together with the following key steps to implementation, facilitate the required cultural change in a firm.

3.7 Creating a pathway for implementation

To ensure the success of a workplace initiative that will essentially alter the way that some people work, yet still meet business and organisational needs, a series of implementation steps must be adhered to. These implementation steps fall within the three categories: education, activation and evaluation. These steps integrate the key findings from this study.

Managing partners, human resource managers and legal practitioners interviewed for this study adopted these criteria to influence the introduction of flexible work options, and its continued usage:

1. Develop the business case

It is paramount to properly research and prepare a business case for the flexibility initiative. Without this, there is little chance of flexibility being approved or implemented, or both. Some partners are enthusiastic, some sceptical, some strongly resistant to change. A well-prepared business case in favour of flexibility is hard to argue against. A well-prepared business case makes it easier to get partners or managers who are supporters on board, and to get to first base with the doubters. The business case is often based on statistics on retention and employee turnover, however more creative business cases might be based on increased levels of performance and productivity¹³.

2. Engage the leaders

To get supporters on board or to advance the flexibility agenda, establish a forum to engage people in a discussion about values and their relationship to work/life integration issues. The forum's discussions can highlight the gap between employment policy and practice and provide the impetus to change. Sharing collective and personal stories of work and life integration will add a human dimension to statistical data.¹⁴

3. Review the firm's experience

Review any existing policies or programs to see how well they are working and what needs improving. Review past studies and ideas canvassed, although not implemented. Just because an initiative didn't work in the past, does not necessarily mean it failed. The mix of right time, right idea and right environment is a powerful motivator. Identify interested legal practitioners who can serve as role models and who are willing to trial new ways of working. Consider establishing a flexibility task force of individuals who are well respected and whose opinions carry weight in the firm.

4. Define policies and practices

Determine the flexible work options that are best suited to your firm at the time. Conduct a pilot of the flexibility initiative, evaluate the results and make the necessary changes before implementing the policy and practice across the firm.

Further flexibility policies should be integrated into mainstream firm policies. In one firm this meant a change to the recruitment criteria, where the individual was hired not only because of their legal competence, but also because of their life interests outside of work.

"We're not looking to recruit the workaholic who will spend from eight in the morning till eleven every night in the office. When we recruit people who have already got that balance in their lives, they bring that into the culture of our firm and fit in very well."

Head of HR, City-based medium-size firm.

5. Create tools and resources

Provide supervisors (partners and managers) and employees with information, checklists and examples of how to think through their work options, including flexible work practices.

6. Help supervisors learn to manage flexibly

Managing a team that includes full-time and flexible employees requires a new set of skills and competencies. Supervisors need help with learning new ways of managing and problem-solving. These options can include specialised training programs, briefing sessions, coaching and a 'how-to' tool kit.

¹⁴ Bourke, J, "Engaging leaders on work/life issues", *ibid*, pp 18-20

7. Communicate

Develop a communication strategy, using a variety of communication media, to ensure that all supervisors and employees are fully informed of the firm's stance on flexibility, the policy and implementation process.

8. Evaluate usage and effectiveness

Use a variety of models to evaluate the effectiveness of flexibility initiatives. For example, an annual study, team briefings and individual discussions are some feedback options.

9. Highlight success stories

Develop a format to capture and disseminate examples of successful flexibility options. This is a powerful way to reinforce the firm's stance on flexibility. It is also a useful medium to influence learning and to market the achievements internally and externally to clients and potential employees.

10. Monitor and Evaluate

Implement procedures to monitor and evaluate the use and effectiveness of flexibility initiatives. The procedures can consist of both informal and formal evaluation methods to be undertaken on a six or twelve-month basis.

3.8 Identifying barriers to flexibility and developing creative strategies

All respondents in the study agreed that there had been many challenges to introducing flexibility in their workplaces. Whilst some of these challenges have been overcome, there is still residual resistance from areas within the legal profession.

The study respondents established the importance of identifying barriers to flexibility and developing creative strategies. The barriers included (i) resistance to change; (ii) concerns about equity; (iii) fear of abuse/‘floodgates’; (iv) perceived client disapproval; (v) perceived increase in management; (vi) difficulty managing expectations; (vii) a bad past experience; and (viii) perceived operational barriers (for example specific areas of law, court hours, office space and the billing system).

The strategies identified below address these barriers within the framework that the solution must benefit both the individual seeking flexibility and the firm. As one study respondent commented,

“Flexibility is about creating an environment in which an individual’s interests can be accommodated whilst still meeting commercial needs and the interests of the firm.”

Partner, Suburban medium-size firm.

1. Resistance to change. Factors such as the conservative nature of the legal profession, the over-representation of men (and full-time workers) at senior levels, and residual prejudice towards women were all perceived to contribute to maintaining the status quo.

Strategy: Educate for change. There was unanimous agreement by all study respondents that the introduction of flexibility options had to be presented as a business case. The content of the business case model included research and comparative analysis, costs and benefits of the flexibility model, case studies (preferably within the legal profession) and examples.

Other solutions included:

- finding a ‘champion’ in the firm’s partnership or the executive;
- putting flexibility on the agenda at key meetings or strategic planning sessions; and
- trialling a flexible work option in a ‘friendly’ practice area or practice group.

2. Concerns about equity. One of the reasons many employers from all industry sectors have resisted introducing flexible initiatives is the concern that they will be perceived as unfair for the majority of employees. The legal profession shares these concerns.

The firms in this study placed an emphasis on process, ie recognising that the outcome may vary for each employee but the intention of the policy will remain constant.

Strategy: Ensure there is no distinction between policy and practical implementation, so ensuring every practitioner’s request is fairly considered, and that flexibility is open to all practitioners.

3. Fear of abuse/‘floodgates’. In terms of fear of abuse, there will always be some employees who will take advantage of their working conditions/policies, whether they are working full-time or flexibly. These are performance management issues, and should be dealt with separately from the issue of flexibility.

Overall, the legal practitioners utilising the flexible work options provided by the firms were accountable and responsible. All of the legal practitioners interviewed were acutely aware that their behaviour and attitude towards the use of the flexibility option had a bearing on its successful implementation and acceptance within the firm, and thus sought to be model employees.

In terms of the fear of floodgates (for example that every practitioner will want to work from home or part-time), the reality is that not everyone wants to use flexible work arrangements. The floodgates fear is more of a myth than a reality.

Strategy: Develop and communicate the policy and procedures to all employees. Use the policy document as a guideline in determining the flexible work option that best meets the individual’s needs and the business operations. Make sure any recalcitrant employees are managed on their performance on a case-by-case basis. Identify if a reasonable ceiling should be imposed for a certain type of flexibility (for example the number of people working part-time who are managed by one supervisor).

4. The client will not like it. The study respondents generally agreed that this statement is a myth, although it is hard to dispel. The study respondents acknowledged that some clients may express concern about working with a legal practitioner working flexibly, but in general the focus for clients is on service delivery and quality. Whether a practitioner is working flexibly is irrelevant if client service needs are met. In canvassing the views and issues that clients may have had about flexibility, two areas were identified as the most critical. These are: (i) *Continuity* – the clients generally were concerned to know that their matter would be dealt with by the same lawyer or practitioner for the period of time that the case required; and (ii) *Accessibility* – the clients were not necessarily concerned about where the lawyer or practitioner was working, but that they had access to that individual, be that by phone, email, fax or another source, for example the personal assistant or paralegal.

The study found that client service was not only a key business objective for the law firms, it was also a personal commitment of the legal practitioner to effectively and collaboratively manage the client relationship, irrespective of the legal practitioner’s own need for flexibility. The legal practitioners ensured that all clients and their work teams had reasonable access to them and were kept well informed on the progress of matters.

Finally, some study respondents suggested that there is a benefit to clients (and thus the firm) if they work with a flexible practitioner:

“The best work can be produced for clients through a range of different working arrangements.”

Head of Organisational Development, City-based large firm.

For those firms whose client base was drawn mainly from the corporate sector, some respondents observed a shared cultural ethos and understanding of flexible work options. The clients were familiar with the tenets of work and life balance and many of the client’s own employees were working in a flexible arrangement.

Strategy: Provide the client with details of all the team members, their work schedules and availability. Reasonable contact via landline telephone, mobile telephone or email needs to be established between the legal practitioner and the client at the outset and this information must be conveyed to all team members. The key to managing client expectations is continuity and accessibility.

Further solutions include:

- the establishment of client teams comprising partner, lawyers and administration staff;
- recognising difference and different needs within the client team and establishing reasonable operational standards;
- establishing and managing client expectations in service delivery;
- promoting open and honest communication with the client;
- establishing communication guidelines for all team members;
- establishing regular team forums to review client projects and proactively manage workflow and personal needs.

When the study respondents implemented these solutions they found unexpected benefits flowed from creating a team environment where issues, ideas and solutions were canvassed and greater attention has been given to establishing reasonable operational standards and communication guidelines. For example, personal assistants and paralegals have developed a higher level of knowledge of client matters and issues pertaining to their team, as they are the conduit between the client and the legal representative/s. This has resulted in the smooth flow of information and minimisation of delays in workflow, providing a seamless process that benefits the client.

The relationship between the lawyer working flexibly and other team members relies on shared trust, respect, communication and competence. The outcomes are a 'satisfied' client, a 'happy' work environment, increased job satisfaction and the acceptance of *flexibility* as part of the normal operations of the law firm.

5. Managing expectations. Access to flexible work practices has generally been viewed as a benefit that the employer may or may not choose to offer employees. Many of the law firms believed that, in the early stages of implementation, they were obliged to provide such benefits. Some employees held the view that access to a flexible work practice to help them manage their work and personal lives was automatic and that little or no effort was required of them. Today, the law firms and the employees think differently about workplace flexibility and both parties acknowledge that finding flexible ways to work requires a shared partnership.

Strategy: Establish a client management plan that identifies key milestones and performance outcomes. Include contingency options in the client management plan to respond to unforeseen events of a work, personal or family nature that may arise.

6. Past experience was a failure. Introducing new and flexible ways to work is part of the change process. Sometimes a new initiative does not work the first time. The reasons are varied and will most likely include one or all of the above factors. Failure does not mean it is not worth trying again. Learning from past mistakes can be useful in making improvements to the policy, procedural documentation, practical implementation and the management process.

Strategy: Establish a monitoring and evaluation methodology to gather data on the effectiveness of the flexible work options, from the perspective of all interested parties and use the results to make any changes necessary to the policy or procedure, or both. The methodology can be conducted on a formal or an informal basis and the information used to develop case studies for internal communication, or externally as a marketing exercise.

7. Perceived Operational Barriers. The law firms identified some perceived operational barriers to implementing flexibility. Those perceived barriers are set out below together with the responses of the legal practitioners and firms:

a) Specific areas of law, for example transactional. It is often said that particular areas of law, or types of practice, are not amenable to flexibility. Nevertheless, the study found, or heard of, practitioners working flexibly in all areas of law and types of practices (for example litigation, policy, transactional). It was generally agreed that a key to success was identifying the precise nature of the perceived barrier (for example to attend court), and creating solutions. In addition, client expectations had to be managed and there was also a need to take account of the impact on other members of the team when one or more of their colleagues worked flexibly.

In relation to court-based work, the firms in the study recognised that certain stages in the litigation process required extra effort by all team members, including those who work flexibly. The litigation lawyers who worked flexibly indicated that preparation and planning were critical factors in managing the client workload, particularly when the lawyer was instructing another legal professional such as a barrister.

Through the implementation of good planning systems, the lawyers were able to anticipate and respond to the work requirements.

Particular difficulties might arise in relation to urgent and intense transactional work, a last-minute court deadline, a long trial or a late-night sitting of parliament- nevertheless the study found or heard of lawyers working flexibly who had successfully managed each of these difficulties. Success was achieved because of the high level of support and commitment by the supervising lawyer, the willingness of the lawyer to be flexibly flexible when required (for example to work different days or full-time for a short period, or to work in the office rather than from home when required), and the whole-of-team approach to communication, consultation and administration.

b) Space utilisation. One of the issues facing law firms is the hidden costs associated with unused office space and facilities. Sometimes this is seen as a barrier to enabling practitioners to work part-time or work from home. Some firms in this study dealt with this issue by having their practitioners share an office or by using open-plan setups and hot-desking.

c) The budgeting system. Most law firms operate using a time-based billing model. In recent years some firms have questioned the efficiency of this system from the point of view of the firm and its employees, as well as the clients. An inherent flaw in the application of the time-based model is that although the system spells out the billable hours a legal practitioner is required to work and the individual's annual budget, there is an expectation that the legal practitioner will and must work in excess of the billable hours required of them and their annual budget, in order to achieve recognition for their efforts and possible promotion. The time-based model has contributed to the long work hours culture and contradicts a firm's stated commitment to work and life integration.

The study found that the law firms recognised that the traditional budgeting system could operate as a barrier to lawyers working flexibly, and to their disadvantage. All of the participating firms had addressed this anomaly by adopting new approaches to their budgeting systems.

One example is Australian Business Lawyers (ABL), winner of the 2002 *Law Society of NSW Special Work and Family Award*. Staff partner Tim Capelin contests the link between great client service and long hours. Upon its establishment, ABL created a financial foundation where its budgets were set at a substantially lower rate than many of its competitors. Capelin reduced the number of billable hours per day for partners to 5.0 and for staff to 5.5 over 44 weeks per year. The firm also deliberately positioned itself as an attractive employer offering flexible work options. In relation to the issue of service delivery, Capelin says:

“Actually it ensures that service delivery will be better. If you have a satisfied, not overworked, workforce you will have motivated, energetic staff that will ensure quality of work is delivered to clients every time.”¹⁵

Harmers Workplace Lawyers is another firm that sought to lead by example in model people relations. Some of the hallmarks of the firm's culture include an award-winning employee remuneration scheme where the total remuneration of its employees depends on the profitability of the firm. The scheme contains three components which usually consist of base salary, profit share and individual contribution to the team. In terms of practitioners working flexibly, the scheme ensures that they are assessed on the quality of their client work and the contribution they each make overall to the firm's profitability and reputation. They are not judged by the long-held, but outmoded assumption that “presence equals productivity”. Harmers was a finalist in the ACCI/BCA National Work and Family Awards 2004.

15 Bourke, J, “Engaging leaders on work/life issues” *ibid* p 19

16 Bond JT, Galinsky, E, Hill, EJ, “When Work Works” *ibid*

17 *Women in Law: Making the Case*, Catalyst, New York (2001)

www.catalystwomen.org

18 Galinsky E, Friedman DE, Hernandez, CA, *The Corporate Reference Guide for Work-Family Programs*, Families and Work Institute, New York, 1991, pp 9–14

19 Bond JT, Galinsky, E, Hill, EJ, “When Work Works” *ibid*

4. Concluding comments

The pressure to integrate work and family/life commitments has stimulated a search for effective solutions, including the use of flexible work practices. The personal and organisational benefits gained from flexibility in the workplace are the subject of a considerable body of academic and industry research¹⁶, and have become more widely known and accepted. The importance of flexibility in the legal profession has also received considerable attention, both in Australia and internationally. In the US, a recent study¹⁷ found that “in virtually equal numbers women (68%) and men (66%) find it difficult to balance the demands of work and personal life”, and 45% of women and 34% of men cited work/life balance as one of their top reasons for selecting their current employer.

Nevertheless, implementing flexible work practices has proved challenging. In part this challenge arises because:

*“when companies address flexibility as a way to help employees balance their work and family life, they begin to challenge prevalent assumptions about the way work is managed and conducted.”*¹⁸

Many previous studies have addressed the assumption – now generally recognised as false – that flexibility is not good for business. These studies demonstrate that flexibility improves individual and organisational performance, particularly in relation to recruiting and retaining talent, and increasing engagement, performance and satisfaction¹⁹. The importance of the current study is that it dispels a second key assumption, namely that the use of flexible work practices is not a practical or viable option in the legal profession.

The best practice law firms in this study have examined and re-examined their assumptions about work and family/life and taken action. They demonstrate that implementing flexibility successfully is achievable, and their continued support for flexibility demonstrates that it is beneficial.

Further, the study respondents have generously shared the lessons they have learned, and their tips for success. The key message is that implementing flexibility requires considered attention, and the study has identified 8 key strategies/actions to ensure success.

The study did not find any significant differences between respondents in terms of their location (ie regional and city-based) and size (that is small, medium and large) in terms of the lessons they had learned, the outcomes they had achieved with flexibility or their commitment to it. Having said that, there were some slight differences. In the smaller law firms, partners had the benefit of a more intimate knowledge and understanding of their employees’ needs. All the small firms interviewed stressed the impact that a change in an employee’s personal situation had on workflow and client response time, and their high level of knowledge enabled organisational agility and creativity. They were unanimous in their commitment to and support of flexible work initiatives as a solution to meeting both the needs of their business and their employees’ work/life issues.

Further, the smaller firms saw their capacity to offer flexibility as a key recruitment strategy, differentiating themselves from larger firms. The strategic use of flexibility was also adopted by one of the regional firms studied, and in this case the firm used flexibility as a means of cementing its position within the community as a family-oriented firm, and retaining its talent.

Finally, intense interest in flexibility in the legal profession, particularly over the last decade, signals an important fact: flexibility is not a fad or something that will fade with time²⁰. In the words of one of the study respondents,

“If you don’t put in flexibility you’re behind the eight-ball... because flexibility is essential today.”

Administrator, regional medium-size firm.

²⁰ This prediction is reinforced by data which shows the current link between women using flexible work practices to care for children, and the increasing feminisation of the profession. As at December 2004 women comprised 40% of the legal profession in NSW, and approximately 75.7% of employed solicitors are women, 30.5% of solicitors are women less than 29 years old and 35.6% of solicitors are women aged between 30 and 39 years (ie in their peak child-bearing/rearing years)

²¹ *Women in Law: Making the Case*, Catalyst fact sheet, USA, 2001

²² Merrit, Chris, *Flexibility key to female presence*, Australian Financial Review, 19 December 2003

5. Appendices

5.1 Costing flexibility

“Cost! It’s a nonsense for big business to say that cost is a factor for not introducing flexible work practices. It is not a significant impost on large firms. For some small firms, the cost may be a different matter.”

General Manager, HR, Regulatory Body.

None of the firms in the study had undertaken a comprehensive cost-benefit analysis to support the business case for implementing flexible work practices; nor had any undertaken a comprehensive assessment on the success or otherwise of these practices.

The respondents had, however, considered a range of factors that would support the business case for change. These included:

- the extensive and costly process of attracting and recruiting staff,
- career development costs, and
- replacement (or turnover) costs.

Reducing the turnover rate, therefore, was a primary reason for implementing flexibility. Another motivating reason was to position the firm as an employer of choice, by offering a different work experience to the traditional model known within the legal profession.

Also a factor is the increasing female presence in law as indicated in the December 2004 edition of *Profile Law Society Research Update*. International research²¹, sponsored by leading law schools and conducted by Catalyst, a non-profit research and advisory organisation, also confirms the increasing presence of women in law. The Catalyst study explores the reasons legal employers are not retaining women in equal numbers with men, much less advancing them to partner.

The study quotes Martha W Barnett, President of the American Bar Association, who says,

“women are the emerging majority in the legal profession. The law firms that want to be successful in the future need to focus on recruitment, retention and advancement of women.”

Recruitment is only the first step. It is in the areas of retention and advancement that the law firms also need to concentrate their efforts. In an article by Chris Merritt on the findings of the Australian Financial Review’s partnership study, Danny Gilbert, Managing Partner of law firm Gilbert + Tobin Lawyers, comments that, “If you are going to be an employer of women today you have obligations to meet as a good corporate citizen.”²²

The AFR article noted that Gilbert + Tobin Lawyers topped the rankings as the nation’s fastest-growing law firm. It had also emerged as one of the firms that have worked out how to bring significant numbers of women into its top ranks. As a result of Gilbert + Tobin Lawyers’ initiatives, the firm has increased the number of women partners during 2003 by 22.2 %. Two of the firm’s eleven female partners work part-time, as do a number of female solicitors.

Danny Gilbert further commented, "I think there is a general acceptance within the partnership that we are prepared to be flexible. We put a lot of effort into these people and we have people who are committed to the firm, committed to the profession and they have a large contribution to make."²³

The views and experiences of the women lawyers and practitioners interviewed in this study verify the benefits of flexibility, both on a personal level and from a firm perspective. All the women lawyers and practitioners indicated high satisfaction levels with their current employer and gave the following reasons for this:

- Advancement opportunities
- Availability of mentors
- Control over their work and time
- Professional development opportunities
- Availability of flexible work practices.

Some of the women lawyers had achieved partnership status; some still aspired to it; all of the women lawyers had opted to work in a flexible arrangement to meet their work and family commitments. They counted themselves fortunate to be working with a *best practice* legal firm.

The firms found that the most useful data to support flexible work practices in developing indicia of success are:

- High return-to-work rate
- Individual performance of the lawyer or practitioner
- Retention of knowledge, skills, expertise and experience
- Excellent client satisfaction levels
- Development of new business opportunities.

23 *ibid*

24 1997 Helmlinger, Will and Suzi, *The High Cost of Turnover, Your Hire Authority*, pp 1–3

25 *ibid*

26 2001–2004 Commonwealth Government of Australia, *EOWA Attract and Retain the Best Talent*

27 http://www.eowa.gov.au/About_Equal_Opportunity/Why_EO_Makes_Business_Sense/Five_Ways_EO_Boosts_Profitability/Attract_and_Retain_the_Best_Talent.asp

28 *ibid*

5.1.1 Turnover - the direct and indirect costs

In their article "The High Cost of Turnover" (1997)²⁴, Will and Suzi Helmlinger state that:

"The costs associated with turnover can be extremely high for any company. Many times, companies large and small do not have a way to determine actual costs of turnover or have not taken the time to calculate their true and total costs."

The article further notes that the cost of hiring at the executive level exceeds \$A250,000.²⁵ This figure consists of salary and the costs typically associated with the hiring process alone. The \$A250,000 figure does not include all the costs of employee turnover.

In their article, the Helmlingers refer to a calculation tool that identified not only the visible costs of turnover, but also the hidden or indirect ones.

The hidden or indirect costs include:

- Loss of business revenue
- Loss of specialist knowledge
- Loss of clients/customers
- Loss of investment in professional development of individuals
- Advertising and employment costs
- Lost time spent on interviews, clerical and administrative tasks
- Possible legal and time costs due to discrimination complaints and lawsuits.

The biggest single business expense for any firm is the cost of human resources. The hidden or indirect costs of turnover have the most negative impact on business operations.

The Equal Opportunity for Women in the Workplace Agency (EOWA) has also developed a cost turnover calculator tool²⁶ which can be accessed via their website www.eowa.gov.au.

The website provides case studies on firms that have put in place initiatives to attract and retain the best talent. One of the case studies refers to Blake Dawson Waldron²⁷. In 2001 the firm's head of HR conservatively estimated that replacing a lawyer with five or more years' experience costs the firm at least \$75,000.

"We cannot afford to train up good lawyers who build relationships with our clients – and see them walk out the door after a couple of years with no intention of returning. We have put in place initiatives to make our talent want to stay."

Another case study noted the actions of the CEO of Deloitte²⁸, a large professional services firm:

"The CEO realised that too many talented women were walking out the door – NOT to raise families (as had previously been assumed), but because they had weighed up their options in Deloitte's male-dominated culture and found it wanting. Through the CEO's personal drive, women partners went from 5% to 14% and saved the company over \$250 million in hiring and training costs."

5.2 Flexibility options – definitions

1. Flexi-Time

Traditional flexi-time allows employees to select their starting and finishing times within a range of hours around core operating hours.

A **compressed work week** enables employees to work their allotted hours over fewer days, for example 10 hours per day over 4 days, or 80 hours over 9 days, rather than the traditional 8 hours per day over 5 days.

Time in lieu, banked hours and making up time. Banked hours are extra hours worked above the expected number of hours, for use at another time. Time in lieu (of payment) refers to taking time off to make up for the extra hours worked. Making up time refers to working extra hours above the expected hours for time taken off at an earlier date and which are now 'owed' to the employer.

2. Reduced time or flexible hours

Part-time work means working part days, five or less days per week or working full days, but fewer than five days per week.

Job-sharing, where two employees share one full-time job with its pro-rata salary and benefits, is also a form of part-time work.

Part-year work means working reduced hours on an annual basis, rather than a daily or weekly basis. For example, working full-time during the school year and then taking a block of time off during school holidays or the summer break.

3. Flex-Leaves

Time off during the workday to address personal and family issues includes time off for anticipated issues (a parent-teacher meeting) or unanticipated issues (eg waiting for a tradesperson or facilities service provider).

Time off for personal illness allows employees paid time off when they are ill.

Family leave – or paid time off to care for children involves being allowed to take days off to care for a sick child without losing pay or without having to make up some other reason for one's absence.

Parental leave is planned time off for mothers and fathers for the birth or adoption of a child, or care of a foster child. Under the *Workplace Relations Act 1966* (Cth) full-time and part-time employees are entitled to unpaid parental leave totalling 52 weeks before and after the birth or adoption of a child. Government and some firms have implemented paid parental leave schemes.

4. Flex-Careers

Flex-Careers include multiple points of entry, exit and re-entry over the course of one career or working life, including formal leaves and sabbaticals, as well as taking time out of the paid labour market, with the ability to re-enter.

5. Flex-Place or telecommuting

Flex-Place is defined as working some or most of one's regularly scheduled hours at a place other than the main location of one's employer. Sites away from the workplace include working from home, from a satellite office, in a telecentre and at another worksite (for example a client's office).

5.3 Resources

- ACTU, *“Reasonable Hours are Safe Hours. Did you know?”*
ACTU National Campaign on dangerous hours, October 1999
- Bond, JT, Galinsky, E, Hill, EJ, *“When Work Works”*.
Families and Work Institute, 2002 <http://familiesandwork.org/3w/research/index.html>
- Bourke J, *Corporate Women, Children, Careers and Workplace Culture: Integrating flexible work practices into the legal and finance professions*, 2000, IRRC, UNSW.
- Bourke, J, *“Engaging leaders on work/life issues”*, Australian Law Management Journal Summer Issue, 2003
- Catalyst, *“Women in Law – Making the Case”*, 2001
http://www.catalystwomen.org/knowledge/titles/title.php?page=lead_wlmkcase_01
- Department of Employment, Workplace Relations and Small Business: Work and Family Case Studies http://www.eowa.gov.au/case_studies.asp
- Drucker, Peter, *“Landmarks of Tomorrow”*, 1959
- Equal Opportunity for Women Agency, *“Attract and Retain the Best Talent”*, Commonwealth Government of Australia 2001–2004
http://www.eowa.gov.au/About_Equal_Opportunity/Why_EO_Makes_Business_Sense/Five_Ways_EO_Boosts_Profitability/Attract_and_Retain_the_Best_Talent.asp
- Galinsky, E, Friedman, DE, Hernandez, CA, *“The Corporate Reference Guide to Work-Family Programs”*, Families and Work Institute, New York, 1991 <http://www.familiesandwork.org/>
- Goward, Pru, speech to Women Lawyers Association of NSW, 15 October 2003:
http://www.hreoc.gov.au/speeches/sex_discrim/legal_perspective.html
- Harmers Workplace Lawyers *“Newsletter”*, August 2004
- Helmlinger, Will and Suzi, *“The High Cost of Turnover”*, Your Hire Authority, 1997
- Johnston, WB and Parker, AH, *“Workforce 2000: Work and Workers for the 21st Century”*
Hudson Institute, Indiana, 1987
- Merrit, Chris, *“Flexibility key to female presence”* Australian Financial Review, December 2003
- Kanter, Rosabeth M, *“The Change Masters: Corporate Entrepreneurs at Work”*, International Thomson Business Press, London, 1992
- NSW Attorney General’s Department *“Advancing Flexibility – a case study in implementing flexible work practices in the NSW Attorney General’s Department”*, 1999
- The Law Society of New South Wales, *“After Ada – a new precedent for Women in Law”*, 29 October 2002
http://www.lawsociety.com.au/uploads/filelibrary/1036022928786_0.9151443275908748.pdf
- The Triulzi Group, *“Family Responsibilities Study – The Law Society of New South Wales”*, 1998
- Victorian Women Lawyers, *“Living and Working Together – Work Practices”*, 1998
http://www.vwl.asn.au/cgi-bin/cimpublic/retrieve.cgi?catalog_id=1.5&dbname=current-issues-and-events
- Victorian Women Lawyers, *“Flexible partnership – making it work in law firms”*, June 2002
http://www.vwl.asn.au/vwl_flexible.pdf



5.4 List of participating firms and organisations

Acknowledgement and thanks are extended to the following organisations and their employees for their participation in the study. Their willingness to provide their time, energy, views and experiences has been instrumental in providing practical ideas and personal accounts on the benefits of flexibility.

Australian Business Lawyers

Australian Prudential Regulatory Authority

Blake Dawson Waldron

Cohen & Krass

Ebsworth & Ebsworth

Gayle Meredith & Associates

GIO

Harmers

Henry Davis York

Kells, Wollongong

North & Badgery, Dubbo

Schweizer Kobras

The College of Law

Wm Walker Taylor Edwards