



Photography: Jason McCormack

# Mum's the word

## The unspoken truth about maternity leave

Many law firms pay lip-service to paid parental leave and flexible work policies for new parents returning to work. But the hushed reality is that in 2018, female lawyers continue to suffer bias, discrimination and a measurable pay gap for taking time off work to have children. **KATE ALLMAN** reports.

**C**hristine Clarke rocks sharp grey pants, strappy heels and a neat pink blazer as she rolls a pram up to Fiveways in Paddington

to meet me for coffee on a frosty July morning. I beseech the waitress for a large soy cap (Clarke settles for a single-shot piccolo) and become acutely aware of how fresh Clarke appears next to me and the other grey professionals meeting at 9am on a Monday, just after the end of financial year.

You wouldn't know she'd woken up several times in the night to quiet her six-month-old daughter, Elena. Or that she chose the outfit because, in her experience, creams and pastel colours tend to hide baby spit better than black or white.

"Having Leni has changed my life in so many unexpected ways – one of them being the way I dress!" laughs Clarke.

Clarke, a family lawyer of seven

years and a senior associate at boutique Sydney firm Broun Abrahams Burreket, knows better than most how complex raising a family can be. But even she was unprepared for the curveballs motherhood would throw at her after giving birth to Elena in December.

"Nothing ever goes to script," Clarke says. "I've got a huge amount of respect now for working mums, because I understand how flexible and adaptable they need to be to make the whole operation work. You need a contingency plan at all times. At home and in the office."

Clarke, 33, had only just joined the team at Broun Abrahams Burreket when she discovered she'd also be taking on a demanding role in her personal life: as a first-time mum. She remembers being extremely apprehensive of broaching the subject with the directors at her new firm.

"Learning of the pregnancy when I had just joined this team – to put it as delicately as I can – was not ideal,"

Clarke says. "But I have to say the firm was fabulous. It was dealt with in such a sensitive and practical way. The parameters about when I would return to work, for how many days and in what capacity were very loosely constructed."

### The reality for most mothers

In Clarke's case, it probably helped that five of the six directors were female and also mothers. This is unusual for a firm leadership group in the Australian legal industry, which is dominated by men in a ratio of about three to one at partnership levels, according to July results from the bi-annual *Australian Financial Review* Law Partnership Survey. Clarke admits her fears surrounding the pregnancy and taking leave stemmed from stories she'd heard from female friends working in law, many of whom were not so lucky.

"They [Clarke's friends] were forced to return to work before they, or their

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children, were ready, and then adhere to rigid and proscriptive work days,” says Clarke. “They would be met with hostility if they had to go into the office a little later or leave a little earlier. Those who worked from home on certain days were fighting perceptions that they wouldn’t get as much work done at home as in the office.”

When I question the realities of flexible work at a networking event among female lawyers, other women are far more disparaging than Clarke about ingrained firm attitudes to parenting.

“It’s all just lip-service,” says a senior female lawyer from one of Australia’s top-tier firms. “A few of my colleagues and I have a name for that whole false flexibility rhetoric: we call it ‘The Sports’. The big firms will throw a lunchtime sports team together and encourage you to join in, then act like that is ‘balance’ and you should be able to stay in the office working late afterwards, regardless whether you have a family.”

The maternity leave story seems to be a common one: high-performing female lawyers almost at the peak of their careers take some time off to have a child, then return to work part-time or flexibly, with the promise that they will receive the same quality work and continue to be exposed to the important clients. Many of them are senior associates eyeing off a partnership carrot being dangled in front of them. But Sydney lawyer and single mother-of-two Zoe Bojanac says the reality of returning to work is starkly different.

“I took two weeks off before the baby and six weeks after,” says Bojanac, who was working at a mid-tier firm in Sydney when she had her first son. “I came in well before I was ready but I just thought, ‘I might not have a job when I come back.’”

Bojanac, who now runs her own practice Rigby & Klaus in Balmain, had previously been working in a legal practice group at PwC when her whole team left to join the mid-tier firm. When Bojanac had no option but to go with the team, her paid maternity leave entitlements were dropped from the new contract overnight. She had to ask for a lump sum payout to cover the costs of taking eight weeks off work as the single mother of a newborn – money which was taxed disproportionately as it came in one payment.

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SEX DISCRIMINATION  
COMMISSIONER KATE  
JENKINS



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“Nobody wants to come back when their baby is six weeks old,” says Bojanac. “But the reality is, what choice do some people have? I was a single mother and I had to provide for my family financially. I know a secretary working in the same firm who had her whole team leave and go to another firm while she was on maternity leave. She came back and didn’t have a job.”

#### The silent discriminator

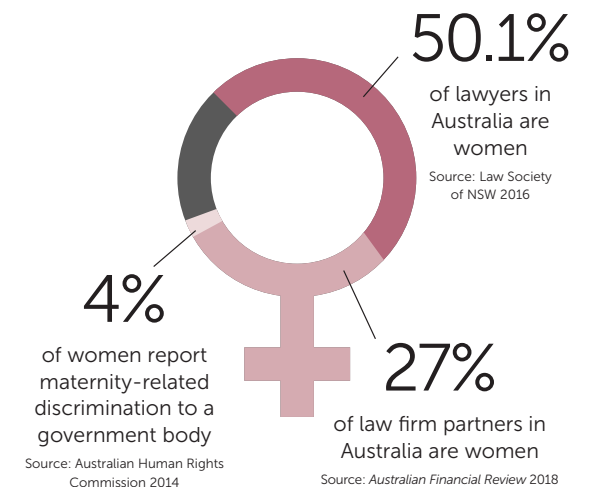
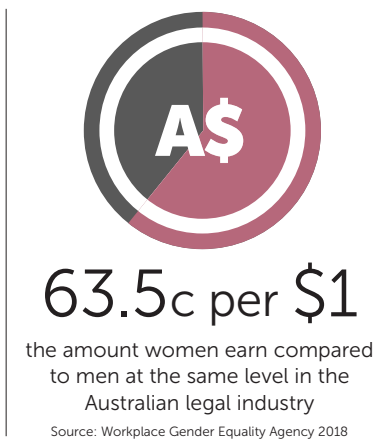
For professional women lucky enough to return to the same job after having children, stories of prejudice are devastatingly common. The 2014 Pregnancy and Return to Work National Review by the Australian Human Rights Commission (AHRC) found almost one in two pregnant women and new mothers experienced some form of unfavourable treatment during pregnancy, maternity leave, or on return to work. This is even though Australia’s federal *Fair Work Act* and *Sex Discrimination Act* outlaw “unfavourable treatment” related to pregnancy or taking parental leave. Employers, by law, cannot unreasonably refuse to create a flexible working arrangement for the parent returning to work – such as working from home or part-time if the job allows.

“Forty-nine per cent of mothers surveyed reported experiencing discrimination in the workplace,” says Sex Discrimination Commissioner Kate Jenkins. “This is unacceptable, and workplaces must do more to prevent discrimination.”

The 2014 review noted that only 4 per cent of the more than 2,000 women surveyed reported their discrimination to a government body such as the AHRC. Jenkins says the AHRC received 66 complaints alleging pregnancy discrimination in the most recent 2017-2018 financial year but believes the prevalence of unreported discrimination is likely to be much higher. There are simply too many barriers deterring women from reporting it, “including the uncertainty surrounding remedies, the risk of high costs in pursuing litigation, lack of awareness about what constitutes discrimination, and fear of negative consequences in the workplace as a result of taking action against discrimination”.

Employment lawyer Giri Sivaraman has seen maternity leave discrimination cases

## WOMEN IN LAW ARE FALLING SHORT



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“make fairly regular appearances” throughout his 17-year career. Sivaraman heads up the employment law department of Maurice Blackburn in Brisbane, and says professional industries like law are not immune to pregnancy or maternity leave-related discrimination.

“I’ve definitely represented plenty of lawyers, professionals, corporates, and accountants from the Big Four firms,” says Sivaraman. “My experience is that the lawyer comes back to work and wants a flexible arrangement, but the employer says that’s not possible. It’s sadly a case of bad employers not walking the talk.”

Sivaraman notes that many cases of pregnancy or parental leave discrimination are difficult to prove, which can be devastating for working mothers.

“Discrimination can manifest in subtle changes to the work you are doing or the way you are treated. It’s death by 1,000 cuts rather than one fell swoop.”

#### Mind the wage gap

Discriminatory treatment of working mothers is the second biggest factor contributing to the gender pay gap in Australia, which currently sits at 15.3 per cent, according to the federal Workplace Gender Equality Agency (WGEA). The gap specific to the legal services industry is much wider – sitting at 35.6 per cent in 2018. The WGEA estimates that career breaks come second only to outright sex discrimination in reducing women’s earning abilities compared to men’s.

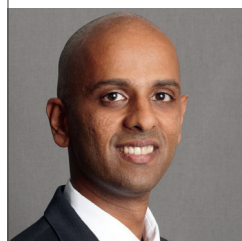
A 2016 report by the Institute for Fiscal Studies (IFS) in the UK found that mothers who returned to work ended up earning approximately one third less than men, as their chances of promotions and pay rises dropped considerably. The report noted that “Men’s wages tend to continue growing rapidly at this point in the life cycle (particularly for the highly-educated), while women’s wages plateau.”

At high levels of the Australian legal industry, this gap becomes blindingly obvious. July results from the *Australian Financial Review* Law Partnership Survey show women account for only 27 per cent of partners in law firms, despite there being

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GIRI SIRAVAMAN



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overall more women lawyers than men according to the Law Society of NSW’s 2016 National Profile of the Profession.

“We have more women entering the profession than men, but there are still only a minor proportion of women in partnership in big firms,” says Sivaraman. “This highlights the fact there is a systemic problem that needs to change.”

Compounding the money problem is the fact that many female lawyers go without adequate (or any) pay for the time they are on leave. Law firms that offer paid parental leave usually only offer it to employees who have worked for more than a year, and the amount of paid time varies from firm to firm. While the Australian Government Paid Parental Leave Scheme covers a small gap by offering new parents up to 18 weeks’ paid leave at the national minimum wage (an equivalent annual salary of \$37,400), this is only available to parents who earn an individual adjusted salary of less than \$150,000. If your partner earns more, this can easily tip you over the threshold.

“It is very easy to envisage family circumstances that don’t lend themselves to a single income,” says Clarke, whose partner Reuben – a commercial manager of a construction company – will continue to work throughout her leave period.

“Some women might be single parents,” she adds. “Those women, depending on their income, are not entitled to financial assistance when they need it the most.”

#### What needs to change?

Ashurst partner Jeff Lynn believes men have a huge role to play in “normalising” flexible work and eliminating any flow-on career discrimination women face after having children. At Ashurst, both men and women who are the primary carer of a child can access up to 18 weeks of parental leave, paid at their full-time salary rate. The firm reports that 16 men of the more than 3,500 employees at Ashurst Australia have taken up parental leave in the past two years.

“There needs to be more encouragement and facilitation for men to take leave and to take a more even caring role in parenting,” says Lynn, who didn’t take parental leave but flexes his work hours to drop his sons, aged

nine and 15, to school or take them to football training in the evenings.

“I think this would help to normalise the culture of flexibility and parental leave, but it will also help pull down some of the structural barriers that are contributing to the gender pay gap for women,” says Lynn.

Deputy General Counsel at KPMG James McClelland agrees, but says structural barriers to parental equality run deep in the legal industry. It’s part of the reason he moved from Blake Dawson Waldron (now Ashurst) eight years ago to work at KPMG – in what is traditionally considered one of the Big Four accounting firms.

“The biggest difference between working at KPMG and what I’ve heard anecdotally from men who work at big law firms like Allens and Ashurst is that KPMG has a really clear agile work policy, which actually works in practice,” says McClelland. “I like to leave work at 6.15 to get home to help put my kids to bed and read them a book after dinner. At a law firm, that was never really an acceptable hour to leave work. Law firms tend to want you to be at your desk. There is a focus on presenteeism.”


Christine Clarke agrees that the legal industry has fallen behind other professional industries in offering true flexibility for parents returning to work. She says the slow rate of change in law perhaps reflects outdated societal attitudes towards gender roles in the household.

But she is positive that the new generation of parents – which includes herself and her partner Reuben – are changing that.

“I really think there are evolving attitudes towards the gender roles within households,” says Clarke. “Young fathers are more willing to take a hands-on role. They have an attitude towards parenting that is far removed from, ‘I’m the breadwinner and you stay home to look after the child.’

“Five out of six directors at my firm are women and mothers. We’ve got partners working part-time, and another part-time mum has just been promoted to partner. Eventually I hope that egalitarian attitude will become more of a widespread community value. But it’s still in its infancy now.” **LSJ**

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