

Chapter 8

Professional Women: Pathways and Pitfalls

Kate Jenkins

I have approached my topic today of “professional women: pathways and pitfalls” from both a personal perspective, as a lawyer working in the legal industry, and from a professional perspective, as a lawyer advising large private and public-sector clients on their equal opportunity obligations and diversity strategies.

I will start with a little about me, provide a framework for some of the legal obligations of equal opportunity and diversity and then make some observations on the barriers and initiatives occurring within the legal industry and particularly in the law firm environment.

My Story

I completed a Bachelor of Arts and Bachelor of Law with honours at Melbourne University in 1991. As is still the way of many graduates, I then took a year off to travel overseas, to experience the world and to render myself broke before commencing my articles of clerkship at Freehills in Melbourne in 1993. Depending on how you want to classify me, I am a Generation X-er, an Aries, a Myers-Briggs “ENTJ”, a female partner, a lawyer, a wife and stepmum.

After my articles year I found my way into the employee relations group at Freehills. Freehills is one of the top three corporate commercial firms with almost 1,700 employees nationally, located in Sydney, Melbourne, Perth and Brisbane. We currently employ in total 950 lawyers. I was appointed a partner in the year 2000. I also joined the Board of Berry Street Victoria, Victoria’s largest child and family welfare agency in 2001.

This year I married the man of my dreams and became a step mother to three children aged 9, 13 and 14 years.

My area of practice involves advising large employers, in all employment-related areas. I particularly specialise in the areas of equal opportunity, diversity and workplace privacy. I assist clients by:

- Developing and updating equal opportunity policies.
- Advising on day-to-day equal opportunity issues.
- Representing them in equal opportunity litigation.
- Providing training on all employment related topics, and
- Advising on pro-active diversity initiatives (for example, to increase numbers of women or older workers in the workplace).

In the course of my career it has been fascinating to watch the developments in the workplace generally.

There have been significant changes in work practices, with an increasing demand for flexible working arrangements; changing dress codes; increased claims of bullying; new privacy laws; corporate community programs; paid maternity leave; demands of a global workplace; whistle-blowing protections; competition for highly skilled workers; and introduction of technology (such as emails and the internet, cameras on mobile phones, surveillance and security access cards). Each development has come with its own benefits and risks.

The Compliance Continuum

I have for many years advised employers on their equal opportunity compliance programs. There are now some minimum standards expected of every organisation to meet their equal opportunity obligations under state and federal legislation.

The laws now clearly prohibit direct and indirect discrimination on a range of prohibited grounds, sexual harassment and victimisation of someone who has made an equal opportunity complaint. The prohibited grounds of discrimination include:

- Sex.
- Marital status.
- Pregnancy and potential pregnancy.
- Race.
- Religion.
- Political beliefs.
- Disability.
- Trade union activity.
- Sexual orientation.
- Gender identity.
- Carer status or family responsibilities.
- Physical features.
- Breastfeeding.
- Age, and
- Personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

Some equal opportunity complaints now encompass complaints about bullying behaviour. It is now recognised that the occupational health and safety laws prohibit bullying conduct. Bullying is defined by the Victorian WorkCover Authority as repeated, unreasonable behaviour directed at an individual or group that causes a risk to health and safety.

“Unreasonable behaviour” means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten.

Equal opportunity legislation generally provides that an employer will be vicariously liable for unlawful

conduct by an employee unless it can show it took reasonable precautions or reasonable steps to prevent the unlawful conduct occurring.

Over time the cases have indicated that an employer will be able to show they have taken reasonable precautions in a particular situation if they can show:

- They had a current up-to-date equal opportunity policy in place and well communicated to all staff.
- They train all staff in their specific rights and responsibilities under the policy and under the law at least every second year.
- They have an effective complaint procedure that people are willing to use and that resolves issues that arise quickly and effectively; and that
- They have effective systems to monitor the workplace, and that management and supervisory staff address any inappropriate conduct promptly after it occurs.

Employers are also expected to address any particular identified risk areas that may affect their particular workplace.

In addition, there is legislation requiring particular employers to report on their initiatives for promoting women within the workplace. Employers with a “compliance” attitude to that legislation will file the requisite report with the relevant agency. Others use the process to achieve diversity outcomes within their business and gain recognition of their work practices in the market.

Diversity

My observation in law and in business practice is that there has been a move by leading organisations from simply focusing on equal opportunity compliance as a risk-management strategy to seeking a competitive advantage of having an effective and diverse workforce. These organisations have identified the benefits of having diversity in the workforce, and recognise that to achieve that target, they need to undertake a cultural change program.

A change-management program will often involve the following:

- Information gathering including focus groups and surveys.
- Goal setting.
- Engaging senior management support and engagement.
- Communication.
- Implementation; and
- Measuring outcomes and review.

The key to successful diversity programs in any workplace is for them to be tailored to the experience and issues in the particular environment. While an EO compliance program will have consistent initiatives of policy, training and complaint management, a successful diversity program will be tailored to the unique working environment and industry.

For diversity, the journey of every organisation differs. This is the story of a diversity journey within a law firm.

The Legal Industry

Law graduates do not all end up practicing as lawyers. The critical mass of those who do practice as lawyers end up in the following environments:

- Solicitors working in law firms.
- Lawyers working in public or private sector.
- Barristers; and
- Judicial or tribunal roles.

There is also a strong representation of people with law degrees in a range of other sectors including academia, journalism, politics, public service and management.

History of Women in the Law

Statistics show that women make up at least 50 percent of law school graduates and 25 percent of the legal profession as a whole¹.

However, a number of studies have shown that the legal profession is not doing a very good job at retaining women lawyers. The reasons for this are extensive and have been difficult to both articulate and to remedy. The answer seems to lie in the conflict between the law firm culture and structures and the varying and often competing demands that a woman faces throughout her career.

The Honourable Justice Mary Gaudron, in a speech to the Women Lawyers Association of New South Wales in 2002, noted that 100 years had elapsed since the graduation of Ada Evans, Australia’s first female law student. Ada Evans agitated for legislative reform which enabled her to be admitted to the Bar 17 years after her graduation. Justice Gaudron’s speech was partly celebratory of the achievements of pioneer women lawyers, but equally clear was the message that women remain marginalised in the legal profession.

Justice Gaudron stated that the long hours which young female solicitors are pressured to work are likely to result in exhaustion and the inability to enjoy a fulfilling social or family life. The key to overcoming barriers to entry and under-representation of females, suggest Justice Gaudron, is to “reject patronage and professional structures and create new ones”.

Research on Women in Law

In the last 10 years the legal sector has developed an increasing concern about the lack of women in senior roles, and has recognised that this situation will not alter without proactive measures.

As a result, a vast array of research has been

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conducted as a huge resource to guide diversity initiatives. In Victoria and New South Wales alone, the research includes:

- *The Case for Flexibility – Delivering Best Practice in Integrating Work and Life in the Legal Profession*, The Law Society of NSW, 17 Feb. 2005.

- *After Ada – A New Precedent for Women in Law*, The Law Society of NSW, 29 Oct. 2002.

- *Flexible Partnership – Making it Work in Law Firms*, Victorian Women Lawyers, June 2002.

- *A Snapshot of Employment Practices 2001 – a Survey of Victorian Law Firms*, Victorian Women Lawyers, 2001.

- *Equality of Opportunity for Women at the Victorian Bar*, Rosemary Hunter, Helen McKelvie, Victorian Bar Inc., 1998.

- *Response to Gender Bias and the Law – Women Working in the Legal Profession in NSW*, NSW Department for Women, Oct. 1995.

- *Keys Young Research on Gender Bias and Working Women in the Legal Profession*, NSW Department for Women, March 1995.

- *Equality Before the Law – Justice for Women*, Australian Law Reform Commission, ALRC 69 Part II (Chapter 9: Women in the legal profession), Feb. 1993.

The quantity of this research reflects one of the characteristics of the legal environment: the need to win the intellectual debate before any change has even a remote chance of success. Some changes that have followed this research include:

- Governments imposing requirements of gender balanced briefing practices to the bar.
- Equal opportunity education programs becoming a compulsory component of a solicitor's annual practising certificate requirement in some states.
- Increasing availability of part-time work and flexible working arrangements.

A Diversity Strategy in a Law Firm

As I mentioned before, a diversity program must be tailored to each individual workplace. Following are some observations and experiences about what life in a law firm has been typically like to now. Using the example of the traditional culture of a law firm should give you a good basis to start thinking about the unique issues in your own workplace.

Life in a Law Firm

While up to half of the staff in a firm can be support staff, the culture is primarily determined by the lawyers, and particularly partners. Following are some rash generalisations that are useful to understand in considering what will be the most effective diversity actions in a firm.

A lawyer in a top-tier law firm usually:

- Has excellent academic results.
- Is professional, ambitious and competitive in nature.
- Is highly paid.
- Thinks in “black and white” facts and is paid to produce the “right” answer, well reasoned and supported.

- Is obsessed with detail, cautious, risk averse, and rarely innovative.

- May be naturally, or trained to be, adversarial.

- Is intellectual and cerebral rather than emotional. (When you ask a lawyer how they *feel* about something they will usually reply that they *think* it is a good idea).

- Even when working with others, is usually measured on individual

results.

- Law firms still observe a billable hours culture, measuring budgets based on time invested rather than quality of work. Clients expect law firms to provide accurate advice within timeframes that are at times unreasonable.

- Law firms have come from a heritage of a long-hours culture.

- Law firms are structured as partnerships, where each individual is at personal risk for the liability of the firm. Its structure is one of collaboration and consultation between partners, but also one that rewards individual results.

Challenges in the Law Firm Environment

The vast research and experience suggests the following are a few of the challenges to retaining and promoting women in the law-firm environment:

- Work culture is not naturally flexible. Firms have not yet mastered striking a balance between the needs of our business and supporting the choices of our lawyers (men and women) so that they are more likely to stay with the firm. This can be difficult since the nature of our work often involves strict client deadlines and the need to work long hours and on weekends. The legal profession appears to indirectly discriminate against women with family commitments since a lawyer's worth to the firm is often determined by billable hours and the availability to remain at work to meet tight deadlines.

For women with young children there are some particular challenges. Practical issues, such as child-minding, part-time work, flexible hours and a welcoming environment need to be addressed in order to heighten female participation in the legal profession. While many firms are supportive in principle of these initiatives, their practices have not yet modified to allow, for example, part-time work to be as streamlined as full-

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time work.

- Timing of promotion to partnership. The *Australian Financial Review* reveals “junior lawyers now have to work up to 15 years before making partner. The average age of new partners is now between 36 and 38. Only 15 years ago, the average age of new partners was about 30.”² Law firms therefore have a career structure that assesses the pool of potential new partners at exactly the age when many women are struggling to maintain a career after a maternity-leave break.

Many young women lawyers become disheartened because of a lack of career progression especially with the dim prospect of only being made partner in her mid-to-late thirties after many years of late nights and working weekends.

The reality is the timeframe of the linear law firm career structure: from articulated clerk to solicitor to senior associate to partner, is exactly the same timeframe that most women are meeting their life partner and having children.

It is this child-bearing career break that seems to have the most significant effect on promotions of women. Many women learn that a career break of, say, six months maternity leave can have a crippling effect on a career that relies on regular billable work from client relationships that are hard to recover after a break without support of others. Other women simply choose to pursue other career ambitions at this time, perhaps viewing the law firm career as family unfriendly and too difficult to change.

- The leadership are by nature cautious and driven by intellectual debate. We are led by partners who manage in a structure that encourages consultation and consensus between all partners, who are all equal owners of the business. Partners are usually risk averse, predominantly male and make decisions by intellectual debate. The challenge is that intellectual debate can be used to conceal passive resistance to change. Resistance to change is often based on preconceived views, for example: that part-time workers have less commitment; that lawyers must achieve rigorous budget goals to be successful and add value to the firm; that clients will not tolerate less than 24-7 availability; that part-time work will cause more work for others; and, that men will be disadvantaged by the firm putting in place measures to retain women.

Resistance to change is based on fear of change. The challenge for our leadership and for each one of us is to be courageous to truly drive the change required.

Freehills Initiatives

Freehills has identified creating a female friendly culture and improving the retention of our talented senior female lawyers as a strategic initiative in the firm’s three-year plan. Its leadership has committed resources and support.

The firm has identified that while its numbers of female partners meet the industry average, they are still appallingly low at something like 16 percent or 17 percent of partners. The business case is clear. Freehills has a suite of initiatives to assist in achieving its strategic goals. Its initiatives include the following:

- EO compliance program. Freehills regularly updates its workplace behaviour program to ensure it covers all inappropriate conduct, including discrimination, sexual harassment, bullying and victimisation. It has a network of trained contact officers across the office to encourage employees to raise complaints promptly and confidentially. It also has a national training program developed by our training company, the Institute of Knowledge Development. The program includes an induction session, a two-hour introductory session

tailored to staff, managers / senior associates and partners, and a refresher session for these same groups to be attended at least every two years.

- Women lawyers at Freehills. We have a national steering committee made up of male and female partners from across the country, supported by our human resources staff.

This group is tasked with

leading the strategic goal to create a female friendly culture and improve the retention of our talented senior female lawyers.

Our gender diversity program is a long-term project. It includes information gathering, goal setting, obtaining senior commitment to initiatives, a communication strategy and some implementation. Our review is yet to come. Some of the initiatives to date include:

- Quantitative and qualitative research and consultation by diversity specialists.
- Development of an external mentoring program for female partners.
- Consideration of childcare options, and
- Implementing more effective flexible working arrangements.

Freehills Women in Business

Freehills has a Women in Business program to create opportunities for our female professionals, contacts and clients. The Freehills Women in Business networking forum was established in 1994. Since then, Freehills network has grown to almost 700 women in business, who represent industries as diverse as banking, telecommunications, retail, publishing, government, law and manufacturing.

Women in Business aims to foster networks among women at all stages in their professional careers, by providing:

- Opportunities for senior business women from diverse organisations and industries to meet one another and exchange views and experiences.
- A comfortable environment for women who are up and coming in their field to meet senior women in

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business.

- Opportunities for Freehills women partners and solicitors to meet women clients of the firm and develop their networking skills.

Freehills Women in Business forum hosts seminars, workshops and entertainment functions and facilitates networking through one-to-one introductions.

Involvement in the Legal and EO Community

We have been a sponsor of Australian Women Lawyers (AWL) since their launch in 1997, providing funding, furniture and office equipment and secretarial support. AWL's focus is on women as members of the legal profession as well as women as consumers of legal services.

The firm has also been a sponsor of Victorian Women Lawyers. We assist with the publication of the AWL and WA Women Lawyers newsletters. We also sponsor events such as the launch of the paper produced by the Taskforce on Childcare Costs and the EEO Network.

Conclusion

The business case in the law firm environment has been researched and is convincing. But the challenge to implement change remains. The barriers are both unique to the legal sector and universal to all business.

Diversity in the legal sector is still in early days. It still simply means gender diversity, not a recognition of the full range of diverse attributes that people can bring to a team and workplace. We will know the journey is well advanced when firms seek a balance of skills, attributes and experiences of their staff.

However, a lot of work is being done and change is happening. Improving the pace of change is the challenge for all firms. I hope Freehills leads the charge. I hope this case study is useful for you to consider your work culture and its barriers to change.

FOOTNOTES

1. See "Women in the legal profession" ALRC 69 Part II and Vic Bar Report.
2. Moran, S. and Kazi, E. "Law's young guns shoot through" 24 June 2005.