

Women Lawyers Association of New South Wales

Submission to the WGEA on data collection for partnerships and other employee owned organisations

29 October 2018



How to explore partnership and leadership structures of law firms and other employee-owned organisations – lessons learned from the 2018 Law Firm Comparison Project

History

Women Lawyers Association of New South Wales (**WLANSW**) has been conducting a comparison of legal firms using publicly available data since 2012. This year's analysis¹ and has been greatly enhanced by the selection of the project by the University of Sydney Policy Lab as one of its inaugural policy research projects. This meant that WLANSW member, Susan Price, was able to conduct this work while a Policy Lab Fellow in 2018.

The commencement of the *Workplace Gender Equality Act 2012* (the *Act*) saw private sector organisations with more than 100 employees begin to report in some detail on their workplace profile, and over time provide more information to the Workplace Gender Equality Agency (*WGEA or the Agency*). This added greatly to the information that WLANSW was able to review and include in its review.

Using one law firm to illustrate, and drawing on the experience of compiling our latest Comparison Report, I will track the reporting requirements to highlight the additional useful information that has been available to the public, with a focus on partnership composition of law firms, and also highlight the additional information the WGEA could collect to aid transparency of law firm ownership structures and assist in meeting the Act's objectives to:

- promote and improve gender equality (including equal remuneration between women and men) in employment and in the workplace
- support employers to remove barriers to the full and equal participation of women in the workforce, in recognition of the disadvantaged position of women in relation to employment matters
- promote, amongst employers, the elimination of discrimination on the basis of gender in relation to employment matters (including in relation to family and caring responsibilities)
- foster workplace consultation between employers and employees on issues concerning gender equality in employment and in the workplace
- improve the productivity and competitiveness of Australian business through the advancement of gender equality in employment and in the workplace.

This could also extend to collecting information on the ownership and leadership structures of other employee owned non-corporate employers to identify where the power and influence lies in those organisations.

¹ Available online at <https://womenlawyersnsw.org.au/workplace-practices/>

2012-13

In this first year of reporting, organisations completed a Workplace Profile. It could be completed from a WGEA supplied spreadsheet available through the Agency's website, or from the organisation's own table or spreadsheet.

The law firm I am using to illustrate the changes in reporting over time, Allens², responded in the following format³.

Requirement 1: Workplace profile

Enter data on the composition of your workforce as instructed below :

1. If needed, additional rows can be added to the workplace profile to reflect accurately the additional/different roles within your organisation.
2. Your workplace profile data should be from no earlier than October 2011 (ie six months prior to the beginning of the 2012-2013 reporting period)
3. Please insert your workplace profile below from:
 - i) our industry-relevant [Microsoft Excel spread sheet which you can obtain from our website](#), or
 - ii) from your own table or spreadsheet (refer table below as a guide).

Occupational Category	Full Time		Part time		Total	Percentage Male/Female	
	F	M	F	M		F	M
Chief Executive Officer	0	1	0	0	1	0	100.00
Chief Operating Officer	0	1	0	0	1	0	100.00
Partnership	22	147	11	8	188	17.50	82.50
The Board	4	8	0	0	12	33.30	66.66
Leadership Team	3	8	1	0	12	33.33	66.66

While this gave a gendered breakdown of the partnership, and identified full-time and part-time partners, it did not show the breakdown of equity and non-equity/salaried partners.

2013 – 14

For reporting in this period, the Workplace Profile had been standardised by the Agency, and an additional Reporting Questionnaire developed. The standardised profile does not suit a partnership structure as it reflects a much more conventional corporate hierarchical structure referenced to levels from the CEO, with categories of:

- CEO/Head of Business in Australia
- Key management personnel
- Other executives/managers
- Senior Managers

² Allens is a leading international law firm that has been chosen as it has equity and non-equity partners. Together with Linklaters, it's global network spans 40 offices across 28 countries. It was named Australian Law Firm of the Year (Chambers Asia Pacific, 2017). More information about the firm can be found at www.allens.com

³ Taken from the public report for Allens for 2012-13 accessed on 25 July 2018 at <https://www.wgea.gov.au/report/public-reports>

- Other managers

Non-management staff (which includes a category of professionals) are also captured.

The structure does not reflect the ways in which law firms, indeed many professional services firms, are categorised, with professional staff also filling the management roles of Practice Group leaders, and sometimes heading up functions such as HR/Business Development.

The conventional law firm organisational structure for partnerships, and incorporated legal practices, while still hierarchical, is more likely to look like this :

- Managing Partner/Chair of partners – or Managing Director
- Governing Board, or subset of partners that govern
- Partners or Principals (sometimes broken into different categories – equity and salaried, with partial equity also possible depending on the partnership/incorporated practice's rules)
- Special Counsel
- Senior Associates
- Associates
- Senior Solicitors
- Solicitors

Questions were asked about the gender composition of organisations' governing bodies, and the gender split of the board identified.

An additional question was posed for partnerships (question 2.4) asking for the number of EQUITY PARTNERS. The Allens example⁴ is as follows:

2.4 If your organisation, or any organisation you are reporting on, is a partnership please enter the total number of male and female EQUITY PARTNERS in the following table (if your managing partner is also an equity partner enter those details separately in the relevant row below). If you have a separate governing body/board of directors, please enter its composition in 2.1

	F	M
Managing partner	0	1
Other equity partners	28	123

As could be seen, women comprise the minority share of the equity partners, in this case 18.5%.

This additional information was welcome, but did not capture the total number of partners both salaried and equity; the gendered division between equity and non-equity partners; and the extent to which they were full-time or part-time across all categories.

Although located in the section on gender composition of governing bodies, it is often the case that the partnership is not of itself automatically a governing body, but may have a subset that is – in this case the Allens governing body was shown as this in response to Question 1.

⁴Taken from the 2013-14 Public report for Allens accessed on 25 July 2018 at https://www.wgea.gov.au/sites/default/files/public_reports/tempPublicReport_hdylsainx4.pdf

Gender equality indicator 2: Gender composition of governing bodies

2 Does your organisation, or any organisation you are reporting on, have a governing body/board? (If you answered no, you will only be required to answer question 2.4, if applicable)

- ☒ Yes
☐ No

2.1 Please complete the table below. List the names of organisations on whose governing bodies/boards you are reporting. For each organisation, also indicate the gender composition of that governing body/board; and where in place, include what gender composition target has been set and the year the target is to be reached. **IMPORTANT NOTE:** where an organisation name has been entered in the table, you must enter the gender composition numbers of that governing body/board. If no target has been set for that particular governing body/board, please enter the number 0 in the '% Target' column and leave the 'Year to be reached' column blank. Otherwise, please enter a number from 0-100 in the '% Target' column and a future date in the format of YYYY in the 'Year to be reached' column.

	Organisation name	Chairperson		Board members		% Target	Year to be reached
		F	M	F	M		
1	Allens	0	1	4	7	40	2017
2							

2014-15

In the 2014 – 15 reporting questionnaire, question 2.4 was amended. It still asked for the gender composition of EQUITY PARTNERS, but also asked which ones were KMP (Key Management Personnel). Again, total partner numbers and a breakdown across salaried/equity partners was not asked.

The Allens' response⁵ was this

2.4 Partnership structures only: (do NOT answer this question if your organisation is an incorporated entity (i.e. Pty Ltd, Ltd or Inc)). For partnerships, please enter the total number of female and male equity partners (excluding the managing partner) in the following table. Details of your managing partner should be included separately in the CEO row of your workplace profile. If you have a separate governing body/board of directors, please enter its composition in question 2.1.

	Full-time females	Part-time females	Full-time males	Part-time males
Equity partners who ARE key management personnel (KMPs) (excluding your managing partner)	7	1	18	0
Equity partners who are NOT key management personnel (KMPs)	18	6	88	5

⁵ Taken from the public report for Allens for 2014-15 Accessed on 25 July 2018 at https://www.wgea.gov.au/sites/default/files/public_reports/tempPublicReport_soieux8ohnv.pdf

2015 – 2016

In this reporting questionnaire the question was again amended and partnerships were asked to map equity partners only against the WGEA standardised manager definitions. In a law firm context this is not a particularly useful categorisation.

The opportunity to capture total partner numbers, and the gender split between equity and non-equity, and full-time and part-time, was not taken.

The commentary also noted that “*Non-equity (salaried) partners need to be included in your workplace profile.*” With respect to the WGEA, this represents a misunderstanding as to the true legal nature of a salaried partner. They are not engaged on an employment contract and are not employees, but typically are members of the partnership with more limited remuneration rights than other partners to fully participate in any profit share, and are being paid a fixed draw or “salary”. Omitting them from the partnership analysis obscures the full partnership composition, and also gives a skewed picture of the workplace profile, as not all partners will be shown in the workplace profile. We suggest it also may create confusion in those who are completing the report, with uncertainty over how to categorise the non-equity partners, which in turn undermines the ability to compare across firms within the sector.

The Allens’ response⁶ was this:

2.4 Partnership structures only: (only answer this question if your organisation operates under a partnership structure, ie is NOT an incorporated entity (ie Pty Ltd, Ltd or Inc), or an unincorporated entity).

Please enter the total number of female and male equity partners (excluding the managing partner) in the following table against the relevant WGEA standardised manager definitions. Non-equity (salaried) partners need to be included in your workplace profile.

Details of your managing partner should be included separately in the CEO row of your workplace profile.

NB: Please ensure that the composition of your governing body/board (which may include all or some of your equity partners below) is also entered in question 2.1.

	Full-time females	Part-time females	Full-time males	Part-time males
Equity partners who ARE key management personnel (KMPs) (excluding your managing partner)	4	1	5	0
Equity partners who are “Other executives/General managers”	3	0	8	0
Equity partners who are “Senior managers”	16	7	82	4
Equity partners who are “Other managers”	0	0	0	0

A much better approach would be to have all partners included in the workplace profile and ask for details of the entire partnership in question 2.4, broken down into full equity, partial equity, and salaried or fixed draw categories, and then also analysed across significant roles within the organisation.

⁶ Taken from the public report for Allens for 2015-16 accessed on 25 July 2018 at https://www.wgea.gov.au/sites/default/files/public_reports/tempPublicReport_26ls36crlh.pdf

2016-17

In this reporting questionnaire, Question 2.4 had been amended again. This time it asked for the number of Equity and Non-equity partners to be mapped against the Manager and non-manager categories.

While for the first time we do have total partner numbers from the response, and a breakdown of full-time and part-time partners, unfortunately the question does not require the initial identification of the split between equity and non-equity partners, so it is no longer possible to identify the number of equity partners and the gender split in that group. As there can be a significant disparity between the gender composition of equity partner and non-equity partner groups, this information is important to know as it highlights how a firm is progressing towards gender equality at the most senior and powerful ownership levels of its structure.

The question and response⁷ looks like this:

2.4 Enter the number of EQUITY and NON-EQUITY partners (excluding the managing partner) against the WGEA standardised manager and non-manager categories below.

	Based on WGEA-defined manager categories EQUITY and NON-EQUITY PARTNERS ONLY			
	Full-time EQUITY and NON-EQUITY partners		Part-time EQUITY and NON-EQUITY partners	
	Females	Males	Females	Males
Key management personnel (KMPs) (excluding managing partner)	2	4	2	0
Other executives/general managers	4	8	0	0
Senior managers	16	79	6	1
Other managers	0	0	0	0
Non-managers	0	0	0	0

Guidance is given to organisations to complete the report⁸, and the guidance on this issue is in the following terms:

⁷ Taken from the public report for Allens for 2016-17 accessed on 25 July 2018 at https://www.wgea.gov.au/sites/default/files/public_reports/tempPublicReport_lfavnkwf9x.pdf

⁸ WGEA Reporting Reference Guide accessed on 25 July 2018 at <https://www.wgea.gov.au/sites/default/files/2018-reporting-reference-guide.pdf>

2.4 Enter the number of EQUITY and NON-EQUITY partners (excluding managing partner) against the WGEA standardised manager and non-manager categories below.

This question requires data to be entered into a table.

No cell should be left blank. Where a cell does not require data, enter '0' (zero).

For partnerships, you are required to provide the total number of female and male equity and non-equity partners, by manager and non-manager categories. Non-equity partners may also be referred to as fixed profit share or fixed-draw partners.

Only those engaged under partnership terms and conditions **should be included** in this table.

Where a person holds the title of Partner but is engaged on an employment contract they **should NOT be included** in this table. They should be reported on in the workplace profile,

The managing partner is NOT to be included in this table. The managing partner should be reported on separately in the CEO row of the workplace profile.

Important note: The composition of your governing body also needs to be entered in question 2. This may include all or some of the equity partners and non-equity partners entered into 2.4.

This guidance repeats the incorrect classification of non-equity partners as employees, as outlined above in relation to the 2015-16 reporting.

In our 2018 Law firm comparison project, which analysed the 2016 – 17 WGEA data, we made the following observations and recommendations⁹:

“Law firms have traditionally only been permitted to operate as partnerships, but with an easing of professional restrictions on structure, increasingly are moving to incorporate for a variety of reasons, including the ability to limit personal liability. In 2017 64.7% of reporting organisations to the WGEA in the Legal Services category, or 44 of the 68 employers, were still partnerships.

Partnerships are incredibly opaque, with little visibility even to those who work in them often, of how the partnership is structured and what the process and rules are for obtaining a partnership interest. WLANSW has previously made representations to the WGEA to drive better data collection on partnership structures in order to aid transparency. While some questions have been asked in previous Reporting Questionnaires, there is still room for improvement.

...

WLANSW recommends the WGEA:

- **Collect information on the gender split within a partnership group, and in the categories of equity and non-equity, and full equity and partial equity, in addition to the full-time/part-time categories already sought**
- **Collect information on the gender split of the ownership of incorporated employee owned entities”**

⁹ Which can be accessed at <https://womenlawyersnsw.org.au/workplace-practices/>

Ideal questions

Law firms have traditionally only been permitted to operate as partnerships, but with an easing of professional restrictions on structure, increasingly are moving to incorporate for a variety of reasons, including the ability to limit personal liability. In 2017 64.7% of reporting organisations to the WGEA in the Legal Services category, or 44 of the 68 employers, were still partnerships.

It is important to capture data on partnerships, but also other incorporated employee owned businesses.

The question of ownership could be asked as part of ***Gender equality indicator 1: Gender composition of workforce.***

WLANSW submits that the better questions to be posed by the WGEA ***for partnerships*** would be along these lines:

1. Partnership composition

	<i>Full-time M</i>	<i>Full-time F</i>	<i>Part-time M</i>	<i>Part-time F</i>
<i>Equity partner – full equity</i>				
<i>Equity partner - partial equity</i>				
<i>Non-equity/salaried/fixed draw partners</i>				

This would disclose the composition of the entire partnership and the separately identify the categories of equity and non-equity; male and female; and full-time and part-time partners.

The request for a partial equity partner breakdown is also important as there are many variations of partnership arrangements, and it is possible to have part-equity holdings, either through the use of points system, notional shares or other capital holdings, or other ways of allocating partnership rights. Power increases with equity held, up to having a full equity position. In some firms it is managed though a “lock-step” arrangements where once in, a participant advances over a set period of years, with additional equity allocated in equal tranches, in other firms it is much more discretionary.

Traditionally law firms have not disclosed details about the partnership terms or arrangements, even to those already working in the firm, and it is common for it not to be known within a firm if a particular partner is an equity or salaried partner, or how much equity a partner may hold. Additional transparency would be useful.

Rather than have these questions sit in the section of governing body composition, these questions really go to ownership and structure of employee owned organisations.

Further not only would these questions apply to partnerships, but to any employee owned organisation.

Many law firms are incorporated practices, and outside law, many other organisations are employee-owned. Asking the same questions of the ownership group would identify the split between female and male owners, and the proportions in which they hold ownership.

WLANSW submits that the better questions to be posed by the WGEA **for all incorporated employee owned organisations** would be along these lines:

Are you an employee owned organisation? If so, please identify the current ownership composition. If there are categories of ownership, please also identify who is considered to be a full owner, and who is a partial owner (for example, if your organisation has a shareholders agreement that contains different levels of ownership)

2. Ownership composition

	<i>Full-time M</i>	<i>Full-time F</i>	<i>Part-time M</i>	<i>Part-time F</i>
<i>Shareholder employee</i>				
<i>Full shareholding</i>				
<i>Partial shareholding</i>				

In the category **Gender Equality indicate 2: Gender composition of governing bodies**, it would still be relevant for WGRA to ask a question along similar lines to Question 2.4 in the 2016 – 17 Workplace questionnaire.

Unlike a conventional corporate structure, there are also many leadership roles within law firms that carry significant power and prestige that do not relate to the WGEA's standardised classifications of KMP or manager/non-manager. It would be good to see the allocation of partners to those roles as the Workplace Profile does not adequately capture these features of a law firm practice. This would also be translatable to other professional service organisations including accountants, management consultants and consulting engineers.

3. Partnership roles

	FT E M*	FT E F	FT S M	FT S F	PT E M	PT E F	PT S M	PT S F
Chair								
Governing body member								
Practice Group Leader								
Function Leader (eg Human Capital, General Counsel, CFO)								

Client Lead Partner (top 10 clients)								
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*FT = Full-time, PT = Part-time, E = Equity, S = Salaried/fixed draw

WLANSW would be very happy to discuss any of these suggestions with the Agency.

Please contact Acting President Larissa Andelman, or sub-committee member Susan Price.

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