

Submission to the workplace gender reporting public consultation

Women Lawyers Association of NSW Inc.

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Introduction

These submissions are made by the Women Lawyers Association of New South Wales Inc (WLANSW).

WLANSW is the peak body representing women lawyers in New South Wales for the advancement of women in the legal profession. It has members (male, female and corporate) throughout NSW. Members work in private practice, corporations, the public sector, the community legal sector, and at the Bar.

These submissions do not necessarily reflect the view of views of all WLANSW members.

WLANSW asked its corporate members for feedback on their experiences, and direct comments have been reproduced in this report.

Summary of position

WLANSW supports the reporting requirements under the *Workforce Gender Equality Act*, (WGEA) and is pleased that this information is being collected, analysed and made public.

It is particularly pleasing that information is sought as to partnership gender composition, as previously many law firms would have reported on the service company that employed the more junior legal and administrative staff, but had no requirement to disclose any information about the partnership.

For the past few years, WLANSW has conducted its own analysis of the publicly available partnership data provided by law firms, and measured that against benchmark data from the NSW Law Society to monitor the progress of women in leadership positions in the profession, particularly private practice¹. The more transparent reporting process required under the Act is welcome as WLANSW's position is that there must be reporting and tracking of gender data if any change is to be achieved.

The legal profession is an example where despite women graduating in equal or greater numbers to men for more than 20 years, that has not translated into equal or anything close to

¹ See <http://www.womenlawyersnsw.org.au/content/workplace-practices>

equal gender representation in the leadership ranks of private law firms, nor has it flowed on to the Bar, or the judiciary.

The only reservation that WLANSW has about the data is that it is not collected in a consistent manner, making comparisons between firms difficult, and it does not capture the different types of ownership arrangements that are most commonly used in law firms, and as such, misses the opportunity to identify and track gender differences in ownership arrangements. For those reasons, our response focusses on improvements that could be made to the reporting process.

Response

What improvements could be made to the reporting requirements?

1. *Development of an industry specific workplace profile for law firms to allow effective comparisons*

From the sample of the publicly available reports that we have seen from 2012/13, it appears some law firms, particularly the larger ones, have customised the workplace profile to suit the structure of their firm, and also to reflect better the nature of the legal profession. Some have done this by breaking down the allocation between legal and non-legal staff (such as Clayton Utz), others have listed all staff by rank (King & Wood Mallesons). AS the 2013/14 reports are not yet publicly available, we cannot comment on whether this has continued in this last round of reporting.

The development of an industry standardised workplace profile for law firms would assist in comparisons, and ease of reporting for law firms, and may avoid uncertainty about what level employees are (for example, "Team Member" and "Independent Contributor" in the Allens 2012/13 report, where categories are listed alphabetically below the leadership roles, makes it hard to assess seniority and real role responsibility).

A very typical industry framework would be the ones used on 2012/13 by Clayton Utz which identifies legal and non-legal staff and then a limited number of categories under each heading, or Ashurst, which has adopted a similar methodology.

Feedback from one of our corporate members on the issue of an industry profile was;

"It would ensure the benchmark reports are comparable and take out any "guesswork" for comparable industry roles. This year's approach [2013/14] may see some skewed benchmarked data as it is dependent on how firms categorised their roles against standard occupational categories.

Consideration should be given to crafting/defining industry roles because legal firms structure roles differently”.

Another corporate member also noted that the reporting requirements could better align to the legal profession structure.

2. *Question 2.4 could be worded differently to capture a richer range of data*

Question 2.4 in the Reporting questionnaire asks partnerships to identify the gender split of equity partners. No further breakdown is sought. This misses some important gender data.

- (a) The way that partnerships are structured, with the ability under some partnerships deeds to have “salaried” or fixed profit share partners, who while still described as partners, are not entitled to a true profit share, but rather a fixed or salary equivalent, means that the simple “equity” analysis will tend to over-represent the number of women in true full ownership positions.
- (b) Partnership deeds also often allow for partial, or stepped equity, so there is also a distinction to be made between a “full equity partner” and a “partial equity partner”
- (c) The ability of law firms to incorporate means that they are not operating as partnerships, so the response will not capture that data.

WLANSW analysis of the publicly available information for the 2012/13 financial year , which is attached as annexure A, shows that;

- (a) some firms do not publically disclose the numbers of equity partners as opposed to “partners” as a generic term
- (b) where there is data available, there is often a disparity between the number of partners as a whole, and women as equity partners, with women under represented as equity partners, and over represented as fixed share or salaried partners – the “non-equity partners” – for an example drawn from Annexure A, Hunt & Hunt have 26.% percent of women as partners, which puts them above the industry benchmark, but only 10.9% as equity partners, way below the benchmark
- (c) the data is not sufficiently transparent to also identify the full equity partners from partial equity, or fixed profit share partners.

The Law Society of New South Wales uses the term “private practice principals” which is broader than partners², and encompasses shareholder owners of incorporated legal practices.

WLANSW recommends that this usage be adopted in the WGEA reporting question, so that it reads “*If your organisation is a partnership or incorporated legal practice, please enter the number of female and male principals in the*”

Further, the detail sought should be broken down into “Fully participating principals” and “Partially participating/fixed share principals” to capture the distinction between full principals/equity owners, and partial/fixed share principals.

From the information that WLANSW has been able to identify, a simple headline number of women as a percentage of partners does not reveal the true gender disparity in the ownership ranks of private law firms.

3. The Reference Guide should be amended to better reflect how partnerships operate

The WGEA Reference Guide (at page 31) suggests that salaried partners should be treated as employees, but they are not employees. They are still members of the partnership – just with fixed drawings.

One of our corporate members noted that “*the definition provide by WGEA in relation to salaried partners is that they are paid via the firm payroll and tax is deducted by the firm. This does not fit our definition of a fixed profit share partner.*”

The suggestion we have made above in point 2 would address the issues of full, partial, and fixed equity holding in a better way.

As assumption is also made in the Reference guide that equity partners are considered to be the members of the governing body for reporting under GEI2. In small firms this may be the case, but for many firms it is not, and there will be a sub-set of partners that perform the same role as a Board. This should be clarified in the Reference Guide as it appears the larger firms have not adopted this approach (for example Allens – Board totals 12 out of a partnership of 188, Ashurst Board of 6 out of total partnership of 177, Clayton Utz board of 10 out of partnership of 203), and WLANSW believes it is more useful to have the governing body of a partnership separately identified in the workplace profile.

4. Other formatting issues

² For example, see the Law Society of New South Wales Thought Leadership Progress Report on Advancement of women in the profession and the use of private practice principal in the analysis on pages 24 - 25

One of our corporate members made the following comment regarding the questionnaire:

"Less repetitiveness. Also an indication of which questions were the compulsory qualifying questions for the Equal Opportunity [Employer of Choice] application. We also found it difficult to estimate time input needed with one glance at the questionnaire as we found that as we started completing the questions depending whether you answered 'yes' or 'no' further questions would open up ie. 16a, 16b etc. So perhaps from the outset they should be listed as 'If you answered yes to question 16, please proceed to 16a, if you answered no, please go to question 17."

2013 Table

(six months
to June
2013)

Firm	Total number of partners	Female partners	Women as a % of partners	Number of equity partners	Female equity partners	Women as a % of equity partners	Paid Parental Leave (PPL) weeks	Is PPL in addition to or include any Govt. provided PPL?	PPL Conditions: (a) Service based; (b) Income Test; (c) Repayment on departure from the firm	Extras
Gilbert + Tobin	67.5	23.5	34.8	63.9	21.9	34.3	18*	In addition	(a) Yes (b) No (c) No	EOCFW
Henry Davis York	49	16	33.9			28.1	Up to 12	In addition	(a) Yes (b) No (c) No	EOCFW, WLANSW corp membership
Lander & Rogers	56.3	18.2	32.3				Up to 20	In addition	(a) Yes (b) No (c) No	WLANSW corp membership
TressCox	38.2	12.2	31.9	22.8	1.8	7.9	Up to 14	In addition	(a) Yes (b) No (c) Yes	WLANSW corp membership
Maddocks	68.2	20.4	29.9				12	In addition	(a) Yes (b) No (c) No	EOCFW, WLANSW corp membership
Holding Redlich	50	14.5	29	38.5	10.5	27.3	Up to 18	In addition	(a) Yes (b) No (c) No	EOCFW
Curwoods Lawyers	14	4	28.6	6	0	0	Up to 12	In addition	(a) Yes (b) No (c) No	
Griffith Hack	32.6	8.6	26.4	21.8	3.8	17.4	12	In addition	(a) Yes (b) No (c) No	
Hall & Wilcox	35	9.2	26.3	20.6	5.6	27.2	Up to 12	In addition	(a) Yes (b) No (c) Yes	
Hunt & Hunt	57.8	14.8	25.6	25.8	2.8	10.9	10 to 12	In addition	(a) Yes (b) No (c) No	WLANSW corp membership
King & Wood Mallesons	153.9	39.2	25.4	153.9	39.2	25.4	Up to 18	In addition	(a) Yes (b) No (c) No	EOCFW
Jackson McDonald	28.5	7	24.6	21.1	3.6	17.1	Up to 12	In addition	(a) Yes (b) No (c) Yes	
Gadens	139.3	32.3	23.2	65.8	10.8	16.4	Up to 14	In addition	(a) Yes (b) No (c) No	
Hopgoodgarinm Lawyers	32.4	7.4	22.8	21	4	19	Up to 20	In addition	(a) Yes (b) No (c) Yes	

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Ashurst Australia	186.4	41.8	22.4	122.6	23.6	19.2	18	In addition	(a) Yes (b) No (c) No	EOCFW, WLANSW corp membership
Corrs Chambers Westgarth	118.6	26.6	22.4	82.1	12.6	15.3	18	In addition	(a) Yes (b) No (c) No	EOCFW
Cowell Clarke	14	3	21.4	9	0	0	14	Includes	(a) Yes (b) No (c) No	
Kennedy Strang Legal Group	71.2	15.2	21.3	39	5	12.8				
Norton Rose Fulbright	145.4	30.8	21.2	100.5	16.5	16.5	14-18	In addition	(a) Yes (b) No (c) No	EOCFW
Sparke Helmore	61.8	13	21	35	7	20	Up to 14	In addition	(a) Yes (b) No (c) Yes	
Piper Alderman	52.8	11	20.8	30	2	6.7				
Herbert Smith Freehills Australia	181.9	36.8	20.2	174.9	36.8	21	18	Includes	(a) Yes (b) No (c) Yes	EOCFW, WLANSW corp membership
Winter Ellison Legal Group	199.8	40	20	144.2	24.4	16.9	Up to 14	In addition	(a) Yes (b) No (c) No	EOCFW
K&L Gates Australia	69.2	13.4	19.4			17	14	In addition	(a) Yes (b) No (c) No	EOCFW, WLANSW corp membership
DLA Piper	104	20.1	19.3	104	20.1	19.3				WLANSW corp membership
Arnold Bloch Leibler	37	7	18.9	25	3	12	12 to 18	Includes	(a) Yes (b) No (c) Yes	
Clayton Utz	196.9	36.9	18.7	159.6	25.4	15.9	Up to 18	In addition	(a) Yes (b) No (c) No	EOCFW
Baker & McKenzie	83.2	15.2	18.3	43	5	11.6	Up to 14	In addition	(a) Yes (b) No (c) Yes	EOCFW

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Herbert Geer	37.7	6.7	17.8	14.8	0.8	5.4	Up to 12	In addition	(a) Yes (b) No (c) Yes	
HWL Edsforth	154	27	17.5	98	12	12.2	Up to 18	In addition	(a) Yes (b) Yes (c) Yes	
Moray & Agnew	69	12	17.4	27	2	7.4	12*			
Allens	162.6	27.3	16.8	157.6	26.3	16.7	14 to 18	In addition	(a) Yes (b) No (c) No	EOCFW
Cooper Grace Ward	21.4	3.4	15.9	15.6	0.6	3.8	8	In addition	(a) Yes (b) No (c) No	EOCFW
M+K Lawyers	58	9.2	15.9				Up to 12	In addition	(a) Yes (b) No (c) Yes	
Collin Biggers & Paisley	43.9	6.9	15.7	12	0	0				EOCFW, WLANSW corp membership
Wotton & Kearney	13	2	15.4	8	2	25				
Lavan Legal	21	3	14.3				12		(a) Yes (b) No (c) Yes	
Dibbs Barker	45.2	6.4	14.2	45.2	6.4	14.2	Up to 12	In addition	(a) Yes (b) No (c) Yes	EOCFW, WLANSW corp membership
McCullough Robertson	52.2	7.4	14.2	35.8	4.8	13.4	12	In addition	(a) Yes (b) No (c) Yes	EOCFW, WLANSW corp membership
Mills Oakley Lawyers	44	6	13.6	13	0	0	Up to 12	In addition	(a) Yes (b) No (c) Yes	
Squire Sanders Australia	15	2	13.3	12	0	0	14	In addition	(a) Yes (b) No (c) Yes	
Thomson's Lawyers	63	7	11.1	48	5	10.4	12	In addition	(a) Yes (b) No (c) Yes	

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Footnotes:

1. Information in columns 1 to 6 taken from the Australian's Partnership Survey, conducted by Beaton and published in the Australian on Friday 5 July 2013
2. Information in columns 7 - 9 provided in response to WLANSW letter, except for those entries marked with an * where information came from ALB Issue 10.4 May 2012, Women in Law, page 15.
3. Information in column 10 from 2012 EOWA Employer of Choice for Women results, and Women Lawyers Association of NSW records.
4. Shading in column 3 represents those firms who are above the average for the gender profile of partners in private firms based on 2012 data as reported in the Thought Leadership 2013 Advancement of women in the profession, Law Society of New South Wales
5. An empty box means no data is available for that category
6. EOOCFW means Employer of Choice for Women as determined by the former Equal Opportunity for Women in the Workplace Agency

Legend:

Meets benchmark with improved figures from 2012	
Meets benchmark with same figures as 2012/ Improves from not meeting benchmark in 2012 to meeting benchmark in 2013	
Meets benchmark with lower figures than 2012	
Below benchmark with improved figures from 2012	

2013 Table

(six months to June 2013)

Firm	Total number of partners	Female partners	Women as a % of partners	Number of equity partners	Female equity partners	Women as a % of equity partners	Paid Parental Leave (PPL) weeks	Is PPL in addition to or include any Govt. provided PPL?	PPL Conditions: (a) Service based; (b) Income Test; (c) Repayment on departure from the firm	Extras
Below benchmark with same figures as 2012/ Moves from meeting benchmark in 2012 to not meeting benchmark in 2013										
Below benchmark with lower figures than 2012										

The NSW Law Society benchmark for the percentage of partners who are women is **23.3%** (see the Advancement of Women in the Profession Progress Report published 30 June 2013).

