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SUBMISSION TO THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON FAMILY AND HUMAN SERVICES

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Inquiry into Work and Family Balance

Submission to

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THE WOMEN LAWYERS' ASSOCIATION OF NEW SOUTH WALES

The Women Lawyers' Association of New South Wales (WLA NSW) is the peak representative body of women lawyers in New South Wales. Our membership is diverse and includes members of the judiciary, barristers, solicitors, government bodies, corporations, large and small city and country firms, legal centres, law reform agencies, academics and law students.

Since our establishment in 1952, WLA NSW has been dedicated to improving the status and working conditions of women lawyers in New South Wales. We have been active in advocating for and promoting law reform, frequently making submissions on anti-discrimination law, industrial equity, criminal law, women's health, legal aid, child care and gender bias in the legal profession.

Our dedication to equal opportunities for women in the legal profession is demonstrated through the various networking and mentoring programs we have implemented and/or supported, and through our support for and promotion of equal opportunity policies for women in the profession, such as the National Equality of Opportunity Briefing Policy adopted by the Board of Australian Women Lawyers on 20 September 2003.

The weight of our experience informs our submission. We thank Blake Dawson Waldron and Minter Ellison Lawyers for their support in preparing this submission. While we have focused on the position of women in the legal profession, many of the principles in this submission hold for the wider Australian community and the arguments we have put forward for reform are just as applicable.

THE ISSUES – FINANCIAL, CAREER AND SOCIAL DISINCENTIVES TO STARTING A FAMILY

Financial Disincentives

The financial disincentives to starting a family are the same for women lawyers as for members of other professions. They include the:

- Greater impact on the employment and earnings of mothers than on fathers that child rearing has.¹ This is captured by a comment made by one of our members:

¹ Australian Department of Family and Community Services and Department of Employment and Workplace Relations, *OECD Review of Family Friendly Policies: The Reconciliation of Work and Family Life*, August 2002, at 14.

"My career has plateaued since having my children. However I was aware that this would occur as I chose to I return to work in a part time capacity. I purposely chose to have my children close together in age so that I could minimise the interruption my clients. However I expected my career advancement to improve once I had returned to the workforce after my second child. That has not happened. I suspect it may not happen unless I return to work 4 days per week (in which case I will most likely be doing a 5 day job in 4 days). This is not something that I would contemplate at this stage unless my husband was able to reduce his hours to spend a day with the children".

- *WLA NSW member, Senior Associate in a major law firm working 3 days per week with 2 children under 5 years.*

- Lessening in value of labour market skills that is associated with taking time out to have a family.² As this woman lawyer puts it:

"Return to work after my first child was born was ... necessary to continue practising, without significant time off, to ensure my future employability".

- *WLA NSW member, in practice for 7 years with 2 children, aged 4 and 2.*

- Availability of paid maternity and paternity leave. Most law firms reflect the Australian business culture of generally not paying staff on maternity leave.³ 28% of respondents to the Law Society of New South Wales 2002 inaugural Remuneration and Work Conditions Survey reported that paid maternity leave was available to them, with 41% of respondents being unsure if their organisation offered paid maternity leave, and 9% of women participating in the survey reporting that they had accessed paid maternity leave.⁴

On average female solicitors take nine weeks of paid maternity leave.⁵ Anecdotal evidence suggests that women lawyers take less maternity leave than non-legal employees in legal organisations. Such decisions are influenced by systemic pressures within the profession such as the fact that promotion is based in part, on fee-earning capacity,⁶ and the value placed on continuity of client contact.

- Cost of child care. Many members of the legal profession are resorting to private nannies for childcare as it can often be more than a year's wait before a position in a childcare centre becomes available. The opening and closing hours of childcare centres are often inflexible and do not coincide with the sometimes long hours that lawyers work. Late fees are imposed for every hour that a lawyer is, for example, caught up with a client or in city traffic and

² Australian Department of Family and Community Services and Department of Employment and Workplace Relations, above, at 15.

³ The Law Society of New South Wales, *After Ada: A New Precedent for Women in Law*, 29 October 2002, at 25.

⁴ The Law Society of New South Wales, above, at 25.

⁵ "Law Society Report: Remuneration and Work Conditions", *Law Society Journal* (NSW Australia), March 2002, [Internet – <http://www.lawsociety.com.au>. (Accessed 31 March 2005).].

⁶ Australian Law Reform Commission, ALRC 69 Part II Equality Before the Law: Womens Equality, 1 October 1994, [Internet – <http://www.austlii.edu.au/au/other/alrc/publications/reports/69/vol2/ALRC69.html>. (Accessed 8 April 2005).], at [9.23].

delayed from picking up their children.

In 2002 the Taxation Committee of the Law Society of New South Wales Business Law Committee considered what tax relief was available in relation to childcare arrangements for women in the legal profession. It concluded that the tax system provides limited benefits to employees who incur childcare expenses while they are at work.⁷ Childcare expenses are not deductible as a general tax deduction, and income support for childcare from the government is based on Australian social security arrangements which, unlike the position in many other OECD countries, are flat rate, means-tested⁸ and not accessible to most members of the legal profession. Any non-means tested support does not provide enough support for most members of the legal profession to be meaningful:

"I appreciate that the government does give some non-means tested assistance to child care. Currently that is approximately \$3 per day. When the centre charges \$80 per day, the \$3 is laughable. With current petrol prices that probably covers the petrol to drive them to child care".

- *WLA NSW member, Senior Associate in a major law firm working 3 days per week with 2 children under 5 years.*

- Gender gap in pay. The number of bright young women graduating from law schools is greater than ever, yet the gender gap in pay remains. In many instances this serves as a disincentive to women having children earlier in their career life while they build an income base for the years when they expect to have a family. In the income year 2001-2002 male and female solicitors reported significantly different income levels irrespective of type of practitioner, location of practice and years in practice.⁹ The average income for female solicitors was \$75 700 compared to \$92 000 for male solicitors in that financial year.

In 2004, 18% of practicing barristers across Australia were women, but they received only 6% of fees from government panel briefs.¹⁰ The number of promotions which secure larger pay dollars continue to serve as a statistic disproportionately against women: in 2001 7.2% of female solicitors were partners while 27% of male solicitors were partners.¹¹ Generally across the profession, there is a fall in the percentage of solicitors practicing as partners, with the percentage of men practicing as partners steadily declining.¹²

Female solicitors do not share the same career aspirations as their male colleagues when it comes to partnerships. 50% of female respondents to the Law Society of New South Wales 2002 Remuneration and Work Conditions Survey identified commitment to family/personal responsibilities, compared to

⁷ The Law Society of New South Wales, above, n 3, at 26.

⁸ Australian Department of Family and Community Services and Department of Employment and Workplace Relations, above, n 1, at 26.

⁹ The Law Society of New South Wales, above, n 3, at 8.

¹⁰ Statistic published by Victorian Attorney-General Rob Hulls, referred to in "How to Rip Through the 'Silk Ceiling'", *Lawyers Weekly*, 15 October 2004, at 18.

¹¹ The Law Society of New South Wales, above, n 3, at 35.

¹² The Law Society of New South Wales, above, n 3, at 35.

23% of men, as a reason why they thought it was unlikely or very unlikely that they would become partners.¹³

- Segregation by area of law and practice type. Many women lawyers are segregated in areas of law traditionally seen as “female”, such as constitutional/administrative law and family law.¹⁴ The experience of women lawyers reflects the experience of women in the workforce generally, with the areas of employment dominated by women characterised by lower status and pay.¹⁵

On 1 August 2002, 66% of practicing women solicitors were in private practice, 14% practiced in the Government sector and 17% in the corporate sector.¹⁶ For the taxable income year ending 20 June 2001, the mean income for each sector was: \$67 000 in the private sector, \$70 000 in the Government sector and \$ 102 000 in the corporate sector.¹⁷

The effects of segregation are more pronounced when the later entry of women into the profession and their consequent accumulation in the lower ranks of the profession are taken into account.

Carer & Social Disincentives

Carer disincentives to starting a family for women lawyers are also “social” disincentives because most carer disincentives are a result of the culture of the legal profession and the attitudes instilled within this culture. These barriers and disincentives include that:

- Historically the legal profession is dominated by Anglo Celtic men. The progression of women through the upper levels of the legal profession has been slow, and the higher ranks of the legal profession continue to be considered as an “exclusive” territory which is largely the domain of men. The pressures of taking time out to have a family followed by the challenges of balancing work and family are seen to jeopardise the chances of a woman lawyer’s promotion through the profession, particularly because women continue to perform 70% of all unpaid household work in Australian households.¹⁸ What this woman lawyer has said illustrates some of these points:

¹³ The Law Society of New South Wales, above, n 3, at 15-16.

¹⁴ Australian Law Reform Commission, above, n 6, at [9.23].

¹⁵ Australian Law Reform Commission, above, n 6, at [9.23].

¹⁶ The Law Society of New South Wales, above, n 3, at 7.

¹⁷ “Law Society Report: Remuneration and Work Conditions”, above, n 5.

¹⁸ “After the Barbeque: Women, Men, Work and Family”, Speech by Pru Goward, Federal Sex Discrimination Commissioner at the “Families Matter” Australian Institute of Family Studies Conference, Melbourne, 10 February 2005, [Internet – http://www.hreoc.gov.au/speeches/sex_discrim/aifs/html]. (Accessed 13 March 2005).]

"It is very difficult to maintain any career, let alone a legal one, with 2 children.

If I were to have a third child I do not think I could continue to practise. As it is I feel guilty that I'm not giving 100% to either my family or my work. I just don't think I could keep all the "balls in the air" with another child in the equation".

- WLA NSW member, in practice for 7 years with 2 children, aged 4 and 2.

- Within the culture of the legal workplace, as with other workplaces, attitudes that flexible work options belong on the "mummy track"¹⁹ or "never-to-be-promoted daddy track"²⁰ persist, as do the attitudes that balancing work and family is a woman's concern,²¹ the field of the less ambitious, slack or soft. More men may be expressing the desire to seek a better balance between paid work and family commitments,²² but the low uptake of family friendly practices by men continues.

In a survey of 1000 fathers, more than half believed that the major barrier to being the kind of father they wanted to be was the commitment to paid work.²³ Until the differences in provisions for paid maternal and paternal leave are addressed, and sufficient education and training targeted at changing existing attitudes is introduced, it will be difficult to change the unwillingness and inability of men to forgo income. Workplace and managerial cultures impede men's use of unpaid parental leave provisions. Income maintenance will assist in encouraging fathers to take time out of the workforce to care for children.²⁴

Many women as well as men in the legal workplace feel pressured by their perception of how others in their workplace will perceive them. While various firms and organisations have come a long way in introducing flexible arrangements and programs to the legal workplace, the toughest barriers to overcome are attitudes based around the individual. Firms and organisations can introduce part time, job share, work from home or other arrangements, but until individual-based attitudes are overcome, men and women will not be encouraged to take advantage of the options that are available.

- There is a lack of role models and mentors for women and a lack of formal networking groups. Allowing both men and women to share stories of how they managed to have a family on their journey to partnership or the bar will

¹⁹ The Law Society of New South Wales, above, n 3, at 9.

²⁰ "Coming of Age: the Sex Discrimination Act, women, Men, Work and Family", Address to the National Press Club in Canberra by Pru Goward, Federal Sex Discrimination Commissioner and the Commissioner Responsible for Age Discrimination, 9 February 2005, [Internet – http://www.hreoc.gov.au/speeches/sex_discrim/press_club.html]. (Accessed 13 March 2005).]

²¹ "Striking the Balance with Work and Family", Media Release by Pru Goward, Federal Sex Discrimination Commissioner, 4 February 2005, [Internet – http://www.hreoc.gov.au/media_release/2005/04_05.html]. (Accessed 13 March 2005).]

²² "Striking the Balance: Women, Men, Work and Family, A Snapshot of Some of the Facts Informing the Project", [Internet – http://www.hreoc.gov.au/sex_discrimination/strikingbalance/snapshot.html]. (Accessed 13 March 2005).]

²³ "Striking the Balance: Women, Men, Work and Family, A Snapshot of Some of the Facts Informing the Project", above.

²⁴ "Striking the Balance: Women, Men, Work and Family, A Snapshot of Some of the Facts Informing the Project", above, n 22.

go a long way in changing attitudes within the legal profession as to what a “mainstream” career path is.

- Difficulties in balancing carer and family can be multiplied for those who are female, indigenous Australian, have a disability and/or come from a non-English speaking background.

WHAT CAN BE DONE – MAKING IT EASIER FOR PARENTS WHO SO WISH TO RETURN TO THE PAID WORKFORCE

Government Funded Paid Parental Leave

In December 2002 Australian Women Lawyers (AWL) made a submission in response to the Options for Paid Maternity Leave Interim Paper 2002 of the Human Rights and Equal Opportunity Commission. WLA NSW continues to support the view submitted by AWL that paid maternity leave should be paid parental leave so that it is available to both men and women who are in the paid workplace and who are self-employed. Paid parental leave should be government funded, it should not be subject to means-testing, and it should be available for 14 weeks in accordance with the International Labour Organisation (ILO) standard, which has been internationally recognised as the appropriate period under Articles 4 and 6 of the ILO 183 Maternity Protection Convention 2000.

Australia has not ratified ILO 183, but all OECD countries apart from Australia and the USA provide paid maternity leave.²⁵ In Denmark employees are entitled to 30 weeks maternity leave at full pay; in Norway, 42 weeks at full pay; in Finland, 52 weeks at 70% pay; and in Sweden, 64 weeks at 63% pay.²⁶ Since 1 July 2002 paid parental leave has been introduced in New Zealand providing for 12 weeks paid leave.²⁷

The 14 weeks ILO standard should be set as the universal minimum standard for parental leave in appropriate federal, state and territory legislation, such as Division 5 and Schedule 14 of the *Workplace Relations Act* 1996 (Cth), and Part 4 of the *Industrial Relations Act* 1996 (NSW). We recommend that paid parental leave be paid at the rate of the minimum wage level to all parents who are the primary carers of their child, and who have spent the previous 12 months in the labour force. This should be paid pro rata for those earning less than the minimum wage. Employers should be free to “top-up” the payment if they wish.

Government Funding and Subsidies for Education and Training Programs

Funding, education and co-ordination of agencies and services are the key to changing the attitudes which serve as barriers to men and women taking up flexible work options. WLA NSW recommends that the federal government provides subsidies to firms and organisations providing employees with education and training

²⁵ The Law Society of New South Wales, above, n 3, at 25.

²⁶ The Law Society of New South Wales, above, n 3, at 25.

²⁷ The Law Society of New South Wales, above, n 3, at 25.

programs. Programs and resources targeted at addressing attitudinal barriers should be developed and funded. WLA NSW further recommends that awards given by government departments for work and family balance initiatives, such as the Equal Opportunity for Women in the Workplace Agency Awards, and the Australian Chamber of Commerce and Industry/Business Council of Australia National Work and Family Awards, should place a greater emphasis on recognising the value of educating and training male employees on flexible work arrangements. Increases in the rate at which such arrangements are taken up by male members of staff should also be acknowledged as an achievement on the part of organisations applying for such awards.

We additionally recommend that funding by federal and state governments be provided for the introduction of mentoring and networking programs for men and women employees, but particularly for women lawyers who seek to have a family while continuing on their career path.

Tax Deductions for Care Costs & The Impact of Taxation on the Choices that Families Make in Balancing Work and Family

"I am lucky to be in an occupation that is well paid. Despite this child care still consumes one third of my after tax salary. If we were to consider having a larger family serious thought needs to be given to whether we could afford another child in child care (ie an increase of our current child care costs by 50%)".

- *Comment from WLA NSW member: Senior Associate in a major law firm working 3 days per week with 2 children under 5 years.*

WLA NSW is an active and supportive member of the Taskforce on Care Costs (TOCC). We endorse the findings, submissions and recommendations of the TOCC which support the introduction of a scheme for the tax deductibility of care costs. We accordingly recommend that the federal government:

- Immediately draft legislation (for consultation) to implement its promised 30% rebate for care costs;
- Extend the child-care rebate to cover elder and disability care costs;
- Extend the 30% rebate to a more meaningful level (i.e. closer to dollar for dollar rebate) and remove the proposed \$4 000 cap;
- Introduce reforms to assist the cost of care in combination with a strategy to improve the accessibility and quality of care;
- By June 2006 release a public report identifying the steps it has taken to implement the Taskforce's recommendations.

CONCLUSION

WLA NSW maintains that the declining birth rate is not only a "women's issue". It is not necessarily women who are reluctant to have children – their partner has to be willing as well.

Many firms and organisations are introducing flexible work options so that they are available to both men and women, but the existence of such options alone is not

enough. Much can be achieved in encouraging both sexes to access flexible work options by government funding and support, education, co-ordination on the part of state and federal governments in setting uniform minimum entitlements, co-ordination of state and federal agencies and services, and co-operation between employers, employees and members of both sexes.

Making flexible work options more accessible for our male colleagues within and outside of the legal profession will have a significant impact on the choices that women of child-bearing age are making to delay, or in some cases give up on, having children. It will also enhance the opportunities for professionals to continue in their chosen career while having a family. Lawyers, both men and women, who seek to balance work and family while rising through the profession do not lack ambition. What they need is support. Support from government will go a long way in changing the social attitudes and gender stereotypes that undermine the accessibility of family friendly work arrangements.