

Parental responsibilities and the bar

Ingmar Taylor SC, in a reprise of his seminal 2002 *Bar News* article, asks: Can you succeed at the bar while having child care responsibilities?

In 2002 I wrote an article for *Bar News*, which posed the question 'If I came to the bar, could I work part-time?'

The article concluded that while it might not suit everyone, it can be done, and done successfully. The flexibility of being your own boss, the per hour pay basis, and the fact that work at the bar can (with willpower) be accepted only in bite-size pieces, makes the bar ideal for many who wish to work part-time so they can take on other responsibilities.

This has been borne out by a survey conducted by the New South Wales Bar Association in 2014 which over 1170 barristers completed ('2014 survey'). It revealed over 10 per cent of barristers work less than 35 hours a week; the majority of these being older men.¹

The article also made the obvious point that juggling part-time work with child care responsibilities is not easy. You cannot take on the long-running cases. You must carry fixed overheads with a reduced income. You need flexible child care. And you must suffer the slings and arrows of negative assumptions about your ability (or undertake the charade of pretending to be full-time).

I finished the article by saying:

Questions of what can be done to make it easier to work part-time have perhaps not traditionally been important to the bar, made up as it is overwhelmingly by full-time, primary income earning, men. However an examination of the various structural and other factors that prevent more working part-time might well be something the bar will need to consider in the future if more women are to come to the bar.

Thirteen years later I return to the subject to examine those structural barriers and what has been done about them, as part of considering a broader question: Can you succeed at the bar while having child care responsibilities?

These questions arise for both men and women. They are particularly acute for women who are more likely to take parental leave and thereafter are more likely to take on a significant role in child care. They arise against a background of increasing numbers of women coming to the bar, but continued difficulty in retaining them. In 2014, 59 per cent of women at the bar were in their first 10 years of practice, compared to 26.5 per cent of men.² A key aspect to retaining women at the bar is addressing issues that make it harder to succeed at the bar with child care responsibilities.



The author, in chambers with his family.

The pressure of having to keep it secret

Anecdotally, the bar and solicitors are more understanding of barristers having parental responsibilities today than in the past. Yet the perception that you cannot have significant child care responsibilities and be a successful barrister remains.

My 2002 article started as follows:

There are a significant number of barristers who work part-time. Not that you would know.

'Who told you I work part-time? I don't work part-time', was the initial reaction of many I contacted.

Not much has changed. There were many barristers who were very happy to speak to me on the record about working flexibly and about periods in the past when they were part-time. But none of the barristers I spoke to who *currently* work part-time at the private bar were prepared to be named.

...there is a perception held by many that if a lawyer has accessed flexible working arrangements, their priorities have lain outside work.

Penny Thew, a senior junior at 8th Floor Wentworth Chambers said: 'I can understand why some barristers would want to speak to you on an anonymous basis given the stigma often attached to women having children at the bar. When I fell pregnant I delayed for as long as possible telling barristers and solicitors with whom I worked that I was pregnant. Even now I talk as

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Brett Hatfield gets some help with his chamber work.

little as possible about having had children and never use carer's responsibilities as a reason for being in any way unavailable for work.'

Why do those who work reduced hours for child care reasons keep it secret? As the Law Council's National Attrition and Re-engagements Study (NARS) Report concluded, there is a perception held by many that if a lawyer has accessed flexible working arrangements, their priorities have lain outside work.

One male barrister I spoke to said the perception that if you are part-time you are not seriously committed to your career at the

bar is perhaps one of the most significant issues that women face if they are considering working part-time.

Most I spoke to thought solicitors would brief them less if the solicitors knew they worked part-time. A senior junior working in commercial and equity who works three days a week told me, 'If people think you work part-time they may not take you as seriously because you are not there full-time, even if you are in court as much as other barristers.'

But is the perception warranted?

Some barristers I spoke to were genuinely surprised that anyone could be at the bar part-time. They do exist. And each of those I spoke to has a very successful practice.

There is, of course, no good reason why a person who has child care responsibilities will not be able to do as good a job as one who does not. In the 2002 article, Kylie Nomchong SC, of Denman Chambers addressed the perception held by some that a mother with young children is not the best person to brief, particularly in relation to complicated matters. 'If those people only opened their eyes they would realise that the very *best* person to brief in a complicated matter is a mother. Mothers are excellent time managers and have great project management skills and logistical skills. If you have got four young children, a household and a career and you are managing all reasonably successfully, you are clearly a very capable person.'

Case study

Sally Dowling SC, Crown prosecutor

I came to the bar in 1997. I had my first child in 2001.

I was appointed a Crown prosecutor in 2002 on a part-time basis. At the time I was appointed a Crown prosecutor I had returned to the bar after my first child was born and was working three days a week doing commercial/intellectual property work. I was initially offered a full-time position which I turned down because I preferred the flexibility that I could get at the private bar. I was then offered a position on the basis that I worked three weeks on and two weeks off, or six weeks on and three weeks off, which I accepted. That enabled me to do trial work. To do that I had a full-time nanny who worked flexibly. She worked fewer hours in the weeks that I was off.

In 2010 I took an appellate position within the Crown Prosecutor's Office. Since then I have worked three and a half days a week every week. I work fixed days. My matters tend to be all heard in one day. Usually the office can arrange matters such that no matters I am in are listed for the one and a half days that I am not in chambers.

I tend to do four or five appeals before the Court of Criminal Appeal on the one day. Most of my working time is preparing submissions and preparing for hearing. I would have on average one hearing day every three or four weeks.

In 2013 I took silk. I was one of the first to be appointed silk while part-time.

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Sally Dowling SC is a Crown prosecutor who works part-time: 'Working part-time promotes efficiency. If you have to leave at 5.30pm you become good at prioritising what has to be done and getting it done before you go. Those who are staying at work until midnight or are arriving at chambers at 6am are not necessarily the best or most efficient during the hours they are actually at work.'

Will working reduced hours affect your career?

There is little doubt that working reduced hours is likely to cause some delay in progression. Theresa Baw, a junior at Frederick Jordan worked part-time for a year after returning from eight months parental leave. 'I accept that if you work part-time after returning from months of parental leave your career may not progress as quickly, but that is the choice that you make. It affects your career because as a breastfeeding mum with a baby I did not stay late, I did not say yes to urgent requests to settle something overnight or some matter that required urgent preparation for the next day. I wanted to be there for my young baby.'

But ultimately working part-time is not a barrier to advancement. I spoke to four barristers who were appointed silk at a time when they were part-time. Two were at the private bar, Jane Needham and Anthony McGrath, and two were employed to work part-time in government practice – Sally Dowling at the DPP and Belinda Rigg, public defender. Others I spoke to acknowledged that their time working part-time delayed their progress, but did not ultimately prevent them succeeding.

What are part-time hours?

The NARS report identified that while female barristers had a high degree of control over their work, a common view was that it was often a heavy workload. Barristers reported working longer hours than lawyers in private practice or in-house. The research suggests it can be very difficult for barristers to balance the demands of their role with other responsibilities, such as family responsibilities. Aspects of the legal system (such as the inflexibility of trial schedules) also make achieving this balance difficult.

The NSW Bar's 2014 Survey recorded that 24.6 per cent of respondent barristers worked less than 45 hours per week, and 10.6 per cent less than 35 hours a week. The majority of those working less than 35 hours were men, primarily men over 50 years. Anecdotally, women with parental responsibilities, even those who work 'part-time', tend to work more than 35 hours a week.

On the days that I am at home with the children I still work about five hours per day: I will get up very early in the morning before they are awake and work and at the end of the day I will work again once they have gone to bed.'

One barrister I spoke to works 50 hours a week while juggling child care two days a week: 'One or other of us are at home with the children on Monday and Tuesday of each week. On the other three days a week one or other of us drops them off at school/child care at 9.00am and picks them up at 3.00pm. On those days when my husband drops the children in school/child care, I will get to chambers very early in the morning and then work through until about 2.30pm and then leave to pick them up. On the days that I am at home with the children I still work about five hours per day: I will get up very early in the morning before they are awake and work, and at the end of the day I will work again once they have gone to bed.'

A number of the barristers I spoke to work more than 60 hours a week, while still ensuring that they are at home every day with their young children for a couple of hours before they go to sleep.

Penny Thew told me: 'In essence, unless you hand over your child care to someone else almost entirely, at least 20 per cent to 30 per cent of the time each day that you once performed work will be simply unavailable to you once you have kids. This is even if you have your children in full time commercial care from a very young age. For me that means that on average at least a couple of nights a week I work four or five hours (or more) after 9.00pm in addition to all of the daytime hours worked.'

Bret Walker SC was president of the Bar Association in 2002 when I interviewed him for the earlier article. He said he believed the bar should be the ideal place to work part-time. 'By part-time work I mean a person who works less than 60 hours a week, six to seven days a week. However that theory tends to fall to pieces under the excessive burdens laid by barristers on themselves. Barristers tend to define success by how constantly busy they are. That is a superficial measure of success. People who are forever busy have failed to properly schedule and do the work in a way that is civilised.'

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Case studies

Anthony McGrath SC 12th Floor Selborne/Wentworth Chambers



Anthony was appointed silk after working part-time.

Whilst at the bar I have had two long periods away from chambers when I was the primary carer for my daughter. The first from November 2001 to April 2002 when she was 8–12 months old. The second from January 2010 to October 2010 when she was nine years old.

In May 2002 my wife, Kathryn, was diagnosed with breast cancer which then developed to metastatic breast cancer in 2009. From the time that Kathryn was first diagnosed in 2002 I worked flexibly in my career at the bar to ensure that I was able to support her through the numerous surgeries and treatments she underwent.

In the period from January to July 2013 I considerably reduced my practice to enable me to care for Kathryn, who was then dying from her cancer. During that period I worked part-time, not working on Wednesdays which was her treatment day and working reduced hours on each Thursday when she was recovering from her treatment. Kathryn died on 27 June 2013 and I subsequently returned to full-time practice.

I wrote my silk application the day after Kathryn's funeral.

While I had been working reduced hours for some time I thought 'what the hell, just do it'. I finalised the application a month later and was fortunate to be appointed silk that year.

I was very open with those who were instructing me and made quite clear what days and hours I was working. Everyone was very understanding. With judges however I did not tell them anything as to why I was not available. I did not give a reason; I just said I was not available. Similarly, with offers of new briefs I did not give reasons; I just said I was not available to take the brief. Now that I am back at the bar I still try to work flexibly, but for me working flexibly mostly means working long periods of time and then taking a longer leave period. I have just finished a long trial and will now take a month off. I also do a lot more work at home these days. I have to be home every day by 7.30pm without fail to relieve the person who cares for Megan and does general home help. Then I will usually commence work again at 9.30pm – 10pm. On the weekends I will work at home whilst Megan is in the house. Technology has allowed that to be done. For example the whole transcript of my current long trial is contained on a drive on my key ring.

Anonymous senior junior #1

A male senior junior with a substantial commercial practice

I have a wife who works five days a week, and a young son. About two days a week I will not be in chambers. I would average 35–40 hours work per week. I am responsible for our son in the mornings until the nanny arrives on her days, and on the other two days I drop him off at child care. Normally, the nanny arrives at 9.00am. Depending on my work I will either then leave for work after 9.00am, or if I can, I will leave for chambers later, sometimes not until midday and not at all on those days when I do not need to come in.

Where I do not have meetings or court commitments I will stay at home. I find it quite easy to work at home with the nanny present. I can drift in and out. My wife takes responsibility for being home at 5.30pm although I will also

aim to be home between 5.30–6pm where I can, and then do work after dinner. Sometimes I am in court for a week, in which case I will do the handover at 8.00am and then be home at 5.30pm or 6.00pm.

We pay for the child care whether we use it or not. I could not do it on the basis that I am committed to a particular day or period of time – that would be too stressful. Because we have a good income we have the capacity to pay for that flexibility.

My regular solicitors know that I try to work flexibly and do not work in chambers every day of the week. I would tell them for example if I am not in chambers and take a call that I was taking a day off to be with my son. I tell them it is something I try and do on a consistent basis. I make clear that does not mean I am not available. Frankly it is no-one else's business how I choose to arrange my hours.

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Success at the bar

Ultimately each of us at the bar work hours that reflect choices we make about what constitutes 'success' for us.

One senior junior with a substantial commercial practice who works reduced hours told me: 'Taking on an extra five cases a year may advance your career, but it may also just be five cases too many. By not taking them on you might be so much happier. I see other barristers who take on those cases. I used to be that person. Now I might have fewer cases but I do not think the work I do is any less in quality.'

When I interviewed him in 2002 Walker SC said: 'If you are successful at the bar the most obvious side of that success is that people want to brief you all the time. I have never heard of anyone who can so finely calibrate their practice such that no one wants to brief them for more or less hours than they have available to do work. So if you are successful you will always be saying no to work. They would have you working 24 hours a day, 365 days a year, and one more day every fourth year, if you kept saying yes. Some people fall into the trap by thinking that the only limit to how much work they can take on is the biological need for sleep.'

Walker SC said, if you want to be part-time you can't do long cases. 'But that may be acceptable to those who work part-time. They can, like many of us do, decline to take cases that run more than a certain length because of the impact on their life. They are quite entitled to do that. So one can simply say you are 'not available' for the cases that last, say, more than two days. And in my opinion, in any event, cases that are less than two days are the best ones to run.'

That view was echoed by a number of barristers I spoke to with family responsibilities. Even those who work full-time were very content to avoid long-running matters that tend to make it hard to be at home on a regular basis when children are awake.

A senior junior who works reduced hours said to me: 'There are some at the bar who are seen as very successful and are the fashionable barristers to brief. They are often exhausted and it is not uncommon for them to be underdone when they are in court because of the multitude of matters that they are juggling. My definition of professional success is doing the best possible job in court. That involves careful preparation. That can be achieved by planning and ensuring you do not take on too many matters close to each other and leaving sufficient time between them for preparation.'

She continued: 'I see people who are my peers who do more cases than me. Because they work longer hours they may be going faster in their career. My barometer of success is whether I am doing a good job in the cases I appear in.'

Another junior who works part-time three days a week told me: 'Success in my view is to be judged on the nature and quality of the work. Not necessarily on the quantity. But it is also important to have balance: to have intellectual challenges and to also have a family and relax on the weekends. If you can do those two things successfully then in my view you are 'successful'.'

Working flexibly rather than part-time

Louise Clegg worked part-time at the bar for a short period many years ago. After more than a decade of mostly full-time practice, she is now combining academic life at the ANU with the bar. When I interviewed her in 2002 she told me that before coming to the bar she had thought a part-time barrister was a 'pretend' barrister, but having become a barrister she thought that women with child care responsibilities could take advantage of the flexibility of the bar. 'You just have to be confident enough to say 'no' to some work that comes in the door. The way I look at it is that I have got 20 years to do my time at the bar. I do not need to prove myself to anyone in my first year or two.'

There are some at the bar who are seen as very successful and are the fashionable barristers to brief. They are often exhausted and it is not uncommon for them to be underdone when they are in court because of the multitude of matters that they are juggling.

I contacted Louise again for this article and she sent an email, in which she said: 'I don't really know anyone who practises 'part-time' at the bar who is a really serious barrister. I don't think it can really be done in the true sense of the 'part-time' word – for the same reason that you cannot job-share as a barrister. You cannot simply clock-off for two days a week. That might not be a PC thing to say but it is the truth. However, many serious barristers – men and women – do practise 'flexibly', and while it is always a massive balancing act, it is quite doable.'

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Some aim to take all of the school holidays off. Others try to maintain hours that permit them to see their children every day, but still get the work done.

I put Louise's proposition to a number I spoke to. All agreed that it is very hard to work part-time if that means fixed days, unless you have flexible child care that can be accessed at short notice.

Georgina Wright on 12 Selborne/Wentworth worked reduced hours for a time after her first child was born. She told me: 'I imagine that it would not be that hard to work part-time at the bar without children. It is hard to do if you have children. That is because without children you could maintain flexibility as to what days you work – something which is very difficult when you have children.'

Flexible child care can be expensive. One senior male junior works on average 35 hours a week over 3.5 days. He and his wife can afford to remove the stress that would be associated by having fixed child care days by paying for child care five days a week but not utilising it when he can stay home.

Practising 'flexibly' rather than part-time is something that many barristers with children do. Some aim to take all of the school holidays off. Others try to maintain hours that permit them to see their children every day, but still get the work done.

Anecdotally, the more senior the barrister the more likely they can successfully work flexible hours. They can afford to work fewer hours because of a higher charge-out rate, they are more confident of their ability to do the work in a compressed time period and they have established a reputation and so have the confidence that their solicitors/clients will not be overly concerned if they reveal they have a child care responsibility that makes them unavailable at a particular time.

Key to working flexibly is controlling the amount of work you take on.

Jeremy Kirk SC at Eleven Wentworth Chambers works full time. However he leaves chambers by 4.45pm so he can spend an hour or two with his children who are now six and eight years old. Having spent that time with them he then continues to work at home. He can usually do that five days a week.

Advances in technology make flexible hours feasible. Kirk SC said: 'I find that I can usually get away with only taking one or two slim folders home and otherwise do work by accessing online materials, emails and other online resources. It is only rarely that I have to go back into chambers of an evening to get work done.'

Case study

Anonymous senior junior #2

A highly regarded female senior junior

I have been at the bar 10 years and have two children.

I try to be at home one to two days per week if possible, during which time I often work and work during the night to enable being out of chambers. When both of my children were in child care I had them booked in on a permanent basis three days a week although could access extra days whenever necessary with almost no notice.

My working week in the first year or so after having each child averaged at least 35 hours. Several years on, however, it averages at around 50 hours but can be significantly more

than that, depending on workload. It is essential to have trusted, reliable back up child care available at little notice for additional work.

In the early years, after my first child was born, I tried to be home by 5.00pm or 6.00pm every night (my partner has almost always done the drop off and pickup). These days it's closer to 6.30 most nights and I'm able to ensure that I'm almost always home before my children go to sleep (other than when I'm outside Sydney for work). I like to be able to do the bath, dinner and bed routine if possible.

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Paul Daley has recently retired as clerk of 11 Wentworth and 5th Floor St James Hall after working as a clerk for 54 years. He identified a noticeable change over the years: 'If you go back a couple of decades it would never happen that there would be barristers working flexible hours. Now it happens frequently. It is a question of time management. Many barristers have adjusted their working hours. There are many who leave earlier or come in later having dropped the young ones off or leaving early to pick them up.'

Daley continued: 'In my view it all works smoothly. I have very busy barristers who manage their child care responsibilities in that way. They include couples who share the responsibilities for either dropping off their children or picking them up. Weekends now for many are different. Now 90 per cent would usually spend their weekends not working, but being with their family.'

Daley said he was not aware of barristers who have a regular day or more off per week. 'Rather there are more who are in chambers working for shorter periods of time each day of the week.'

Barriers to working reduced hours

There are entrenched structural barriers that make it difficult for barristers to work reduced hours at the private bar.

Sally Dowling SC worked part-time at the private bar briefly before being appointed a Crown prosecutor. 'Whilst the bar can assist barristers who wish to work part-time there are structural reasons why it is more difficult for barristers to work part-time than it would be at a solicitor firm or in other businesses. The nature of the private bar is that each person is responsible separately for their share of the costs and expenses of maintaining chambers. Expenses are not shared based on income. It is the nature of the bar in that respect which makes it more difficult from a financial point of view for barristers to work fewer hours because of child care responsibilities.'

Indeed the bar is set up on the assumption of full time practice. Room rent, floor fees, practising certificate and professional indemnity insurance are all costs that do not reduce for those working part-time. Add to that the cost of funding child care out of after-tax dollars and it is very difficult for those without a high-income partner or a high hourly rate to be able to afford to work part-time at the bar.

Dowling SC identified the issue this way: 'Thinking about the costs at the private bar, I would think that those at some of the more expensive chambers would have fixed costs ranging up to \$150,000 a year or more. Add to that the cost of child

care in after-tax dollars and barristers would need to be earning something above \$200,000 per annum before they have made any money after expenses. That means that for those who are starting at the bar it is very difficult to work part-time and earn enough to meet expenses.

This is borne out by the 2014 survey statistics. It revealed 77 per cent of women in their first five years at the bar and 34 per cent of women with 5–10 years at the bar had gross fees of less than \$200,000 pa, while average practice expenses were \$77,000 pa. That suggests income after expenses for many women in their early years at the bar will fall into a range of around \$100,000 to \$150,000 pa (presumably at the lower end for those who work reduced hours).

Penny Thew has two children in long-day care three days a week, with occasional additional days. Her child care costs (funded out of after-tax dollars) were \$60,000 per year (and more when she had a nanny) although she could claim \$7,500 per child in child rebate when they were in approved commercial care.

On those figures one can readily understand that some leave the bar once they start a family.

A senior junior I spoke to who does predominantly government work told me: 'If I was on commercial rates I would be more confident of staying at the bar. At my current rates I question whether I can stay at the bar with the child care costs and practice costs that I have. There is a real financial barrier being at the bar and working part-time. You do need to earn a reasonable sum merely to meet the fixed practice expenses plus pay for child care out of after-tax dollars.'

The 38 per cent gender pay gap

The difficulties in affording to stay at the bar while working reduced hours is exaggerated by the fact that women at the bar on average earn substantially less than men.

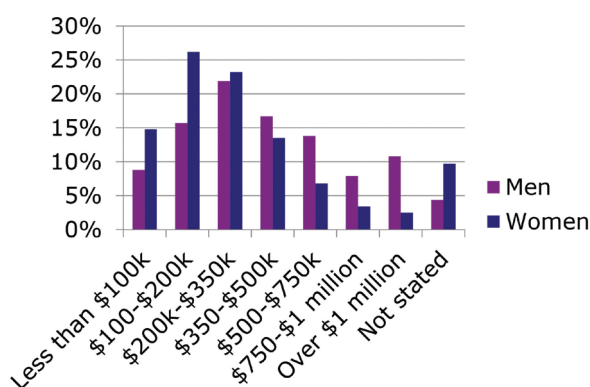
Arthur Moses SC, senior vice-president, speaking recently on equitable briefing, drew on the 2014 survey data to identify a staggering 38 per cent gender pay gap at the bar: average fees for men in 2014 were \$437,450 and for women were \$269,958.

It is not because women work fewer hours than men. The 2014 survey data reveals the same percentages of men and women work more than 55 hours a week (50 per cent of women and 47.5 per cent of men), and fewer than 45 hours a week (25 per cent of women and 22 per cent of men).

The difference appears to arise from two factors. First, most women have less than 10 years at the bar. Second, women on average charge less for the same number of years at the bar.

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Of all women at the bar, 59 per cent have been at the bar less than 10 years, while the equivalent statistic is 26.5 per cent of all men. That makes a huge difference when calculating overall average fees because those who have more than 10 years at the bar earn considerably more on average than those with less seniority. The 2014 survey reveals that the majority of those with more than 10 years seniority earn gross fees of more than \$350,000 (51 per cent of women, 60 per cent of men).



The second reason that women earn less is that, on average, they charge a lower hourly rate given the same seniority, as the table below demonstrates. There are a number of possible reasons for the hourly rate differential including: the nature of the work (e.g., more government work); attitudes of clients; women perhaps being in greater numbers at the lower part of each seniority band; and more controversially, differing self-assessments of worth.

The difficulties in affording to stay at the bar while working reduced hours is exaggerated by the fact that women at the bar on average earn substantially less than men.

Seniority	Men - hourly rate	Women - hourly rate
1–5 years	55% over \$250/hr	45% over \$250/hr
5–10 years	26% over \$400/hr	7% over \$400/hr
10–20 years	60% over \$400/hr	38% over \$400/hr
	16% over \$600/hr	6% over \$600/hr

Case study

Kate Richardson, Banco Chambers

I came to the bar in 2002. In 2009 I had my first child. I now have two children, aged five and three.

I don't work part-time but I do work flexibly. I aim to work four or five days a week. I do not aim to take particular days off.

I try and avoid work that would prevent me from sequencing cases with sufficient time between them for preparation. That way I can properly prepare without having to work huge hours outside normal hours.

Before I had children I tended to say yes to everything and I would be working nights and weekends on a regular basis.

I tend to mark holidays out of my diary in advance and when hearing dates are being set down, do my best to avoid them being set down during holidays.

Working flexibly involves a compromise. I now want balance at the bar. When I was a baby barrister I wanted to try and be in every matter, but after being at the bar a while I came to realise there are different definitions of success.

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Barrister Stephen Free at the Martin Place Early Learning Centre. Photo: Murray Harris Photography.

What can be done to assist those who want to work flexibly?

In her president's column for the *Bar News* winter 2014 edition Jane Needham SC said that while she had received support from the bar when she was working reduced hours after having children, she was saddened to hear stories from other barristers who were not so supported, and who have had to sell their rooms, curtail their practices, or even leave the bar as a result of having children.

In response to those concerns the Bar Association has developed Best Practice Guidelines including a Guideline on Extended Leave which contains a number of proposals to assist those who have parental responsibilities including:

- Permitting sub-licensing of rooms;
- Providing that rooms remain open to return to for a period of at least one year;
- Six months free of rent and chambers fees (optional);
- Encouraging those on leave to maintain contact by ensuring the floor communicates as to all floor activities and invites the barrister to floor functions and events;
- Assisting with setting up home-based work arrangements; and
- On return from leave, permitting room sharing (optional).

Needham SC said: 'Such measures are important not just to attract barristers but also to retain them. One of the major issues for the bar in this regard is retaining women once they

have had children at the bar. Some women choose at that point to either move to become in-house counsel or become solicitors. In respect of women with older children the hours worked by judicial officers are attractive, both in terms of the amount of leave and the lack of need to be in chambers at fixed times before and after court hours.

'To the extent to which chambers can adopt policies which encourage young parents to remain at the bar, that is good for the bar generally, and for those chambers in particular – it's in their long term interest to retain the best quality candidates.

'I'm aware that some floors have pushed back from some or all aspects of the Best Practice Guidelines. In effect the attitude of some is: 'Why should we fund a lifestyle choice?'

'I don't understand that attitude. Barristers have to work very hard to get to a point where they can come to the bar, and then work very hard in their initial years at the bar to succeed. It seems to me inherently unlikely that they would be trying to take advantage of the floor's goodwill.

One senior junior echoed these sentiments when speaking about the obvious sense in allowing barristers to sub-licence rooms when on parental leave and share rooms on their return: 'chambers with a formal or informal policy of not allowing these relatively straightforward practices (including simply because it's never been done before or is 'not the done thing') make having children unnecessarily onerous and women may avoid such chambers for that reason.'

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Sharing rooms

Some chambers do not allow for rooms to be shared. No-one I spoke to could identify a rationale for that approach other than 'it isn't done'.

Following the birth of her first child Georgina Wright of 12th Floor Selborne/Wentworth Chambers worked about three days a week and shared a room. 'The 12th Floor was great. The clerk suggested I share a room. It meant we both paid half of the full rent and fees. The person I shared with had a practice which meant he was often away. It was absolutely brilliant. We hardly ever were in chambers at the same time.'

Theresa Baw of Frederick Jordan Chambers would have been interested in sharing a room if that had been an option to reduce her practice costs. 'Sharing a room might have allowed me to take another day off per week during the year that I returned part-time after parental leave.'

Wright made an interesting suggestion: the Bar Association could create a register of barristers interested in sharing a room.

In Victoria every barrister shares a room during their time at the bar, usually more than once, because of their practice of

having readers sit in their mentor's room during their reading period. That might be why sharing rooms following a period of parental leave is more accepted there. Rachel Doyle SC of the Victorian Bar told me: 'A number of junior barristers say to me that they really enjoy sharing because they enjoy the company of having someone else in the room with them. Personally I prefer to have my own room but I can see what a positive thing it can be for those who are seeking to reduce practice expenses – it certainly can help them reduce their working hours.'

Child care

The New South Wales Bar Association commenced a major initiative in 2014 to assist those with parental responsibilities. It contracted to reserve 50 places per week (10 per day) at the Martin Place Early Learning Centre for Bar Association members. The centre is located at level 1, 39 Martin Place. It can usually accept additional days at short notice (including on the day) for Bar Association members who have a child there or who are pre-registered. That helps address one of the fundamental difficulties for barristers who work part-time – the need for reliable, quality child care at short notice if you are required to work on a day that is not a usual working day.

Case study

Richard Scruby, 10th Floor, Selborne/Wentworth Chambers

My wife Vanessa Whittaker is on 11th Floor. We have two girls, one six years old and one eight years old.

When our first child was born Vanessa had been at the bar one year and I had been at the bar three years.

We initially had a full-time nanny, then for a few months we tried to work part-time on the basis that each of us would spend one day a week at home. We found that was not manageable for us. It was too hard to predict in advance what day each of us could be at home and our nanny was not one who could maintain the flexibility to be told at short notice what days we would need her.

After that period of attempted part-time work we reverted back to full time nannies, with one working three days and a second working two days. The nanny would start at

7.30am or 8am and finish at 6pm. Vanessa and I would then share the responsibility for one of us to be home by 6pm. We continue to share the job of being home by the time the nanny finishes.

In 2014 we took a year off from the bar and lived in New Zealand as stay-at-home parents with our children going to the local school.

Now that our children are in school we have nannies only in the afternoon from school pickup through to 7pm. Vanessa and I deal with the school drop off ourselves. That is very hard. Your head is in the day ahead, you are trying to leave to get away on time, you cannot find a child's shoes and, well, the child *simply does not care*.

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Other steps the Bar Association has taken

In her first year as president Jane Needham SC spoke to the heads of jurisdiction about the importance of predictable sitting hours. 'Nowadays everyone has their timetable so carefully organised that it creates real difficulties for many if there is an unexpected change to a sitting hour. Most people would have seen counsel quickly getting their phone out and sending messages under the bar table following the judge announcing that the proceeding will sit beyond the expected hour. All the courts have given a very positive response – ironically other than the Family Court which indicated that the nature of its jurisdiction is so unpredictable that it is not possible to sit only fixed hours.'

The Bar Association has also been supportive of the need for federal government policy review in two key areas affecting barristers, namely the tax deductibility of the costs of child care and the government funded paid parental leave scheme.

Pregnancy

A barrister who had been at the bar for a short period of time asked Needham SC about when would be a good time to start a family. 'I said to her that I thought it was best to have been at the bar four or five years before having a first child so that you have had time to establish a practice. It was only then that she told me that she was in fact already pregnant. I quickly switched to discussing plan B, having a child after less than five years' practice.'

Taking parental leave before you have established yourself at the bar means having to re-establish yourself again. One female barrister described having children as the equivalent of 'a Mack truck to your career (albeit from which it can recover)'.

A senior junior said: 'I would strongly recommend that women who are considering a family wait if they can until they are well established at the bar. I know of women who had their children in their first three years at the bar and found it very difficult. Some of them have left the bar now.'

The 2014 survey revealed 60 per cent of barristers who responded have had a child while at the bar and 36 per cent of respondents have taken some parental leave. For men the majority of the leave was less than a month. 16.5 per cent of women and 2.2 per cent of men who responded had taken 6 months or more parental leave.

Kristen Deards came to the bar in 2006 having been a solicitor for seven years. She had her first child after five years and her second child three years later. On each occasion she had a substantial period out of chambers but re-established her

practice quickly. 'My experience may have been different if I had not been at the bar for five years before I had my first child. That is why I came to the bar when I did and had my first child when I did. I worked hard in that first five years to establish a practice.'

Anthony McGrath SC took two periods of parental leave: five months leave after being at the bar for two years and eight months after being at the bar 10 years. He found that the time it took to re-establish his practice the second time was much shorter.

Taking parental leave

Taking leave at the private bar means your income stops, but your expenses do not.

Increasingly solicitors have access to paid parental leave. Even if not paid, they do not incur work expenses while on leave. In that respect the bar is at a disadvantage in its goal of attracting and retaining the best and brightest lawyers.

A large part of those expenses are rent and chambers' fees. They are not expenses that are easy to address, given the nature of our bar, since the burden of relieving barristers of that expense falls on the individual chambers, some of which are comparatively small. It can perhaps only truly be addressed by a 'whole of bar' response.

All of those I spoke to who took extended parental leave sought to licence their room while they were away. Most succeeded, but a number had to continue to pay rent on an empty room for part or all of their time off.

The UK Bar mandates that all chambers offer a rent free period of at least six months to those taking parental leave.³

The New South Wales Bar Association Best Practice on Extended Leave includes an optional provision which if adopted would provide a right for a member or licensee to have six months free of rent and chambers fees when taking parental or other extended leave.

Needham SC said: 'The Best Practice Guidelines are in part aimed at trying to encourage chambers to adopt measures to assist parents who take time off because of their parental responsibilities. If chambers want to attract and, equally importantly, retain the best and the brightest they should be adopting policies which assist barristers who, whilst at the bar, will start a family. That should apply to both men and women of course. Those initiatives include assisting barristers to relieve themselves of their floor fee/rental costs whilst on parental leave. That could be done by the floor having a policy

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of charging reduced or no floor fees during a period of parental leave. That, I acknowledge, is more difficult to achieve for an individual floor than it is in Victoria where the costs of doing so are in effect borne by the bar as a whole. In lieu of that, chambers can at least assist such barristers taking such leave to licence their rooms and, either whilst on leave, or on return, or both, to share a room and so share the costs. Encouraging floors to have conference rooms which can be used by barristers who are sharing, or indeed (like I did) spending some or all time working from home, also assists.'

Victoria's different system makes it easier for rent relief to be offered. In Victoria most barristers are in chambers owned by Barristers Chambers Pty Ltd (BCL). Tenancy is month by month. Barristers do not 'buy' a room and can let one go by giving a month's notice. Barristers however may not want to give up their room when taking extended leave. Licensing is more difficult to arrange than in NSW because barristers who want a room can apply for the next available room. Those taking leave will usually want to maintain that room and their connection to the floor.

Rachel Doyle SC of the Victorian Bar explained the steps taken by the Victorian Bar to address problems of attraction and retention of women:

'More than nine years ago the Victorian Bar adopted a policy which I still think is astounding. The policy was that a barrister

with primary care of a child could for six months retain their room whilst on parental leave and pay only 25 per cent of the rent that would otherwise be payable. BCL carries the remaining 75 per cent of that room's rent. Since it has been introduced this has been used by many barristers, predominantly women, immediately following the birth of a child.

'Of course the value of that reduction was greater for those with larger rooms where the rent is higher. At some point a view was formed amongst some that there were women who were 'rorting' the system. They had in mind senior women with large rooms who I think they considered were getting pregnant, or at the very least taking time off, at the expense of the bar as a whole. That led to the scheme being modified so that the subsidiary is now capped at 75 per cent of rent or \$1,300 a month whichever is lower.

'The scheme originally worked on the basis that a barrister receiving that subsidiary could not work for more than eight hours a week. When the subsidy was capped, that policy was improved so that a barrister could work 16 hours a week either from home or chambers.

'The motivation for bringing in the subsidy policy was to address the difficulty of women leaving the bar after having practised for five to seven years. Surveys identified that barristers taking maternity leave had to give up a room and then financially and psychologically it was very difficult to come back to the bar and

Case study

Anonymous barrister #4

In 2010, having been at the bar five years, I had my first child. I was at home for eight months. After four months I hired a nanny and started working part-time before returning to the bar. I had my second child in 2013. I had six months at home. In the last two months of the six month period I started working part-time from home.

I would estimate I work about 50–55 hours per week in chambers plus a further 12–15 hours a week at home.

Unlike before, when I might routinely work in chambers late, I leave chambers by 5.30pm at the latest. I 'block out' the time between 5.30pm and 8pm. From around 8.30pm I go back to doing work at home for two to three hours.

I tell people who wish to speak to me after 5.30pm that I will be available to speak to them at about 8.30pm. Funnily enough even if the call was 'urgent' they usually then prefer to speak to me the next morning.

On weekends I used to work long hours, sometimes both days. Since I have had children I try to only do work on the weekends in the evenings when they are asleep. Occasionally I will come into chambers if I have to and my husband will then look after the children. I prefer, however, to work from home as much as I can.

Before I had children I would spend whole days of the weekend in chambers, but I was not as efficient then as I am now. I now get the work done in a shorter amount of time.

Ingmar Taylor, 'Parental responsibilities and the bar'

Case study

Theresa Baw, Frederick Jordan Chambers

I started at the bar in 2006. I had a child in November 2010. I took eight months off. I returned to the bar in June 2011 and then worked on a part-time basis for one year.

During the year that I was part-time I tried not to work on Fridays. I was sometimes doing extra hours at other times to compensate, such as on weekends. However, overall I was certainly working fewer hours. That is in part because I made a deliberate decision that I would always be home by 6pm.

My clerk knew that I did not want to work on Fridays and so would try to avoid matters being set down on those days and would check with me before setting anything down on a Friday. But my clerk did not tell solicitors that I had Fridays off. She would simply say that I was busy on those days.

I would often take calls on a Friday – which meant that I could not really hide the fact that I was not in chambers. It is a bit hard to take a telephone call in a playground and that not be clear to the person at the other end of the line.

When it came to matters being set down I would simply say in respect of a day that was a Friday that I was 'not available'. There are some courts who do not take into account counsel availability, in which case the court would not ask about availability and the issue would not arise. Those courts that do take into account counsel availability do not generally ask for a reason why you are not available.

Thinking back on that year I am quite happy I arranged it in the way I did. The reason I wanted to do it was because I wanted to spend more time with my daughter.

Being at the bar there is always inbuilt flexibility. I am full-time now, but where I can I am happy to manage my time so I can spend more time at home with my daughter. That is the thing about the bar – you are your own boss and so you have more control over your own hours.

in effect start again. Permitting barristers to retain their room whilst on leave whilst making it financially viable for them to do so was seen, correctly, as an important way to both make it easier for barristers to stay at the bar and to send a signal that the bar wanted them to stay at the bar. I believe that has been an important factor in substantially increasing the percentage of women commencing at the bar until the point where now about 50 per cent of new barristers are women.

'It's perhaps ironic that the counsel chambers system of making it easy to come to the bar at a low cost was designed by men for junior men, but is now being embraced and used to assist women to both attract them to the bar and retain them. It is extraordinary that barristers, pooling together, have agreed to effectively fund the parental leave to be taken by their colleagues.

Waiver of practising certificate fee

A number of those I spoke to had taken extended leave were unaware of the policy that has been applied for some years now

whereby on application the treasurer waives 100 per cent of the practising certificate fee in respect of the year in which parental leave is taken with the first child; 50 per cent for the second child; and 25 per cent for the third child. It does not matter how much leave the parent wishes to take, if any. I understand the policy will be reviewed as part of the association's response to the Law Council's Diversity and Equity Plan.

Professional indemnity insurers do not waive or reduce premium costs for those taking long leave, although they do base premiums on income and as such there is indirectly a lower cost for those who have taken leave.

Pregnancy – What to tell your clients

Some women I spoke to were slow to reveal they were pregnant to their colleagues and clients. One senior junior told me: 'When I fell pregnant I delayed for as long as possible telling barristers and solicitors with whom I worked that I was pregnant. Even now I talk as little as possible about having

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Case study

Jane Needham SC, president of the Bar Association

Jane was appointed silk when working part-time.

After my first child was born in 2002 I licensed my room for 12 months and worked part-time from home; during that period coming in when necessary for conferences and Court appearances. For the first three months I was not working. Then during the course of the year I gradually increased from two days a week to three days a week and then finally four days a week. On the days that I was working I worked primarily from home from 9.00am to 5.00pm and had a nanny on those days. I worked very intensely on those days that the nanny was there. Otherwise I did work where I could whilst my daughter was asleep.

The second year after my daughter was born I came to chambers four days a week and had one day at home. I shared a room for most of that year, which reduced my practice costs.

During those two years I had fixed days where I was not working. I was able to achieve this in part by being quite clear with judges as to my availability given my child care responsibilities. My husband at that time was self-employed and could where necessary, re-arrange his work. Otherwise I triaged work as best I could on the days I was not working. I recall being at Rushcutters Bay with a baby in a pram taking instructions for something that was happening the next day and wondering at how my life had changed.

I took silk in 2004. I disclosed to the silk committee that I had been part-time in the previous two years.

After the twins were born in 2006 I took six months before I returned to chambers. Having by that stage already established child care I returned almost immediately to working five days a week.

When the children were older I would usually get into chambers at 9.30am having dropped my daughter off at



Kate Guilfoyle (left) and Jane Needham (right) with their girls Imogen and Stella in 2004. Photo: Wade Laube / Fairfaxphotos

primary school on the way. We had a nanny after school so I had more flexibility in the afternoons to work later. No doubt there were some who saw me arriving at 9.30am who thought I must have a fairly relaxed lifestyle. They didn't know that I'd already spent three hours getting three children up and ready for their day.

Juggling a busy practice and child care responsibilities has its stresses. I was in the midst of a six week trial in Newcastle when my nanny resigned. Most of the counsel and solicitors involved in that trial were themselves parents of young children. I remember telling them that morning what I had learnt overnight and them all saying with incredible concern 'are you okay?'. That day I posted an ad. On Friday as I came back on the train I worked through the responses and that weekend I interviewed and managed to have a new nanny start the following week.

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Case study

Georgina Wright, 12th Floor Selborne/Wentworth Chambers

I had my first child in 2011. I had almost a year off. On my return I worked about three days a week.

In 2013 I had my second child. I then had about nine months maternity leave before I returned to chambers. During that time I did a couple of short trials and some advice work.

The hours I am in chambers have reduced. In the past I would be in chambers before 8am. Now it is not uncommon for me to arrive quite late if I do not need to be in chambers earlier. Likewise, before I had children it would not be unusual for me to be still in chambers after 9.00pm. Now I often try to leave by 5.00pm. The children are in a child care centre two

days a week and need to be picked up before 6.00pm by my husband or me.

I have not found leaving chambers at that time too hard. The children are usually down by about 7.00pm and I can then do work. In effect I can postpone work that would otherwise be done between 5.00–6.30pm and do that later that evening.

Am I more efficient now? Absolutely. I have to digest large amounts of information very quickly and I have become adept at doing that. Having said that, I am conscious that I do not have the luxury any more of being able to spend many hours reading cases just in case they may be raised.

had children and never use carer's responsibilities as a reason for being in any way unavailable for work. I have spoken to other women who have become pregnant while at the bar and their experience appears to have been similar to mine in that some solicitors stop briefing women upon finding out they're pregnant. As a result, in my experience, many women at the bar hide their pregnancies until a point where it is no longer able to be unnoticed.'

Another senior junior who was quite junior at the time said: 'When I fell pregnant I was concerned to conceal my pregnancy from the floor and solicitors because I was concerned of the impact it might have on the work coming in. I thought perhaps that I might be able to do some work while I was on maternity leave, although that did not eventuate.'

Rachel Doyle SC told me: 'Prior to my first child I shut up shop completely. I was a junior counsel and did not know whether I would have any capacity to do work whilst I was on maternity leave and so returned all my briefs. I realised that after the first two to three months I had capacity to do some level of work. Now that I'm on maternity leave for the second time I made a decision to retain a lot of my work (although happily taking the opportunity to return some matters!). I speak to juniors involved in my matters to check how they're going. From time to time that might involve an hour or two hours of work for which I would charge. I have also come in for the occasional matter, such as a special leave application. As the maternity

leave gets closer to ending I will increase the amount of work I am doing before returning to chambers. I think it makes sense for those on parental leave to keep at least some of the work that they have rather than return it all.'

Georgina Wright said: 'When I went on maternity leave the first time I gave some briefs back, which in retrospect I should have kept. For example I had a matter that was a one day appeal in the Court of Appeal which in retrospect I could have done. But before the birth of my first child I did not know whether I would be in a position to do the work on the briefs. In contrast, when I was pregnant the second time I did not even tell some solicitors that I would be taking maternity leave for some matters as I knew I would be able to do the work.'

Concluding remarks

There are structural issues that make working at the bar while also having child care responsibilities difficult. Key among them are costs that do not fluctuate with income and the demand of clients and courts to be available on any day of the week.

Yet, as the case studies included in this article demonstrate, it can be done successfully. It might be difficult to earn gross fees of over \$1m. It might be difficult to run back-to-back long trials. But if 'success' is defined as doing high quality work well, it is very achievable. Perhaps the best evidence of that are the four members of the bar who were appointed silk while working part-time.

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Despite the odd second-hand anecdote to the contrary, most I spoke to said how accommodating the bar is to those who have child care responsibilities. Kate Richardson was one of those: 'I often say to young women who are thinking of starting a family that being a barrister is much better in that regard than being a litigation solicitor. At the bar you are your own boss and can create flexibility. Further, barristers are comparatively well paid and can often afford good options for child care. Further, because barristers are not sharing income they do not have pressures in the way that partners in law firms have placed on them as to how much work and income they are earning.'

Yet more can be done to attract and retain those who plan to take on parental responsibilities.

Chambers need to facilitate the licensing of rooms during periods of parental leave. Perhaps there needs to be a 'whole of bar' approach to assist chambers to ensure a rent free period is available to all those who take parental leave.

Chambers need to permit the sharing of rooms for those who work on a reduced hour basis. A register of those looking to share might further encourage that trend. Having ready access to a meeting room would also assist.

These and similar steps contained in the Best Practice Guideline on Extended Leave are not radical steps. Nor are they purely altruistic. If a set of chambers in particular and the bar in general want to attract and retain a greater share of the best and the brightest they are necessary steps.

The bar at its essence is defined by its collegiality. Barristers will, unthinkingly, put aside what they are doing to assist other barristers when requested. It doesn't seem a major extension of that for the bar as a whole, or a floor in particular, to seek to assist young barristers to meet the challenges of balancing their professional and family life.

Endnotes

1. 2014 Survey results: 80 per cent of barristers working less than 35 hours were men; 74 per cent of barristers working less than 35 hours a week were over 50yrs. These men would not necessarily describe themselves as 'part-time'.
2. 2014 Survey data.
3. Bar Standards Board Rules, C110(3)(k); See the BSB Handbook Equality Rules.

Case study

Anonymous senior junior #3

The fact that I work part-time is not for general consumption. If someone calls me on a day that I am not in chambers, Reception simply tells them that I am presently unavailable and a message is taken for me to return their call. I do not disclose my part-time status largely because of a belief on my part that there persists an overwhelming expectation amongst solicitors for counsel to be constantly available and that, by reason of my child care responsibilities, I might be overlooked.

In general, I am in chambers three days a week, although I will come in on one or both of the other days if unavoidable. Otherwise, I work remotely from home if and when necessary. On the days that I am in chambers, my child is looked after variously by my parents and the Bar Association child care scheme. If I require additional child care days, I am fortunate enough to be able to rely upon both my parents and the Bar Association child care scheme. Once a child attends the Bar Association child care scheme, additional days outside the set days may be booked at short notice if required.

Given my current working arrangements, it is not feasible for me to take on large matters. I generally only accept matters that run a couple of days, maximum one week. But having said that, if I were offered a long-running matter that I found to be particularly compelling, I would accept it because of the flexibility I do have in obtaining additional child care.

When I went on maternity leave, I licensed my room to a former reader. The Floor had no difficulty with that arrangement. In the event, my room was vacated before I ultimately returned to chambers which meant that I paid floor fees and Counsels' Chambers fees for a few months thereafter.

Whilst I work part-time, there is no abatement in my expenses. Sometimes it feels like a rather decadent hobby. However, because I do intend to return to the Bar on a full time basis in due course, I see my current arrangement as necessary.