

PRACTICE

Daniel Tynan, 'Case management reforms in the Federal Court of Australia'

expert evidence, as well as the relevant facts and assumptions. The new Code of Conduct will require changes to the wording of the expert's acknowledgement that they have read and agreed to be bound by the Practice Note and the Code of Conduct.

The new practice note provides non-exhaustive guidance on the types of orders the court might make. Unless ordered by the court, the parties' lawyers will not attend expert conferences.

Costs

The *Costs Practice Note (GPN-COSTS)* provides that:

- Parties are expected to make a genuine effort to resolve costs issues between them early and are encouraged to use formal offers of compromise or other offers. Parties are also encouraged to use alternative dispute resolution.
- Where appropriate, the court will make consolidated cost orders which have the effect of consolidating multiple or competing costs entitlements as between the parties.
- Where costs cannot be agreed, the court has expressed a preference to make lump-sum costs orders to avoid lengthy taxation processes.

The use of technology

The Technology and the court Practice Note (GPN-TECH) promotes the effective use of technology at all stages of proceedings as well as within the court. It incorporates a number of former practice notes, including CM6 Electronic technology in litigation, CM22 Video-link hearing arrangements, CM23 Electronic Court File and preparation and lodgement of documents, GEN2 Documents and GEN3 Use of court forms.

The Federal Court embraces the use of technology and views it as an important tool in achieving the quick, inexpensive and efficient resolution of proceedings. The court aims to be flexible and adaptable to changes in technology and to the addition of emerging technology.

Parties are encouraged to utilise eLodgement, electronic exchange of material, videoconference facilities, advanced forensic and analytics technologies to minimise the document review process and to conduct hearings electronically.

Prior to the provision of discovery, parties are expected to discuss and agree on a practical cost-effective discovery plan, including the protocols to be used for the electronic exchange and efficient management of documents.

In preparation for the pre-trial case management hearing, parties are to consider the ways in which technology can be used to reduce the length of the hearing, for example, by using electronic court books, uploading documents to an electronic court-based platform or engaging an external provider to assist in conducting an eTrial.

All of the Federal Court's practice notes can be found at <http://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes>.

Attracting the best and brightest women lawyers to the bar

By Ingmar Taylor SC

On 8 March 2017 Greenway Chambers adopted a policy that allows a chambers member to take a period of six months leave free of rent and chambers fees following the birth or adoption of a child.

Professor George Williams' recent analysis of gender equality among barristers before the High Court reveals how rarely women appear and speak before the High Court, despite the fact that for years more than half of all law graduates have been women.¹ His research shows that in more than half the matters heard by the High Court over the 2015-16 financial

year, not a single female barrister appeared for any party and in the matters in which women did appear, very few had speaking parts.

His research did not extend to examining the reasons for this, but when Professor Williams discussed his findings at a recent Bar Association seminar he said that female (but not male) law students regularly questioned him about whether they should go to the bar. Why? Because they are worried that it is 'not family friendly'. Women make up less than 22 per cent of the New South Wales Bar and less than 11 per cent in

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the ranks of senior counsel. The majority of women barristers have less than 10 years experience.

The structure of the New South Wales Bar dissuades female law graduates from becoming barristers and makes it more difficult to retain those who do come to the bar. I discussed the reasons for this in some detail in an article for *Bar News: Parental Responsibilities at the bar*². One of those reasons is the financial effect of taking parental leave, something that usually occurs before a barrister has become senior and well established. Not only is there no paid leave for barristers, who are sole practitioners, they are likely to have significant ongoing costs to meet while on leave, in particular the responsibility to pay for their room and chambers fees.

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a large law firm. The senior associate will receive paid leave and will return to work at the same level of income. The barrister will receive no income during leave, reduced income while she rebuilds her practice and working part-time due to parental responsibilities, and must continue to pay practice expenses while on leave.

In the UK, where Barristers Chambers are regulated by a central authority, all chambers must offer six months leave free of rent and chambers' fees.³ In Victoria, where most barristers are in rooms they rent (but do not purchase) from a Bar owned company, barristers can retain their room and pay 25 per cent of their rent for six months.⁴

For those taking parental leave the Bar Association waives the requirement to pay an annual membership fee⁵. The Bar Association, however, is not empowered to require individual chambers to adopt any particular policies in respect of parental leave. As a consequence there are no standard rules or policies that apply to chambers in NSW. The Bar Association

publishes 'Best Practice Guidelines'⁶ (BPG) which includes guidelines on Model Parental and Other Extended Leave. The Bar Association encourages the various chambers to adopt the BPGs, with mixed success.

There remain chambers in Sydney that discourage barristers licensing their room (ie subletting it) for any reason, and many refuse to allow sharing of a room for those who have returned from a period of leave and wish to reduce costs while working part-time.

Most chambers will do what they can to assist a member to licence their room, and so cover or defray those costs during a period of parental leave. However, the risk remains on the parent taking leave where no licensee can be found. I am not aware of any other chambers that has adopted a policy of allowing a chambers member to be relieved of floor fees and rent during parental leave.

The New South Wales Bar has historically prided itself as being the home of the best and brightest legal minds in the country. But if it wishes to attract and retain the best of the 50 per cent of graduates who are women it needs to address the structural issues that dissuade many of them from coming to the bar.

And so I was very pleased that, on International Women's Day, my fellow floor members agreed to my proposal to adopt the new policy. The policy assists members taking leave to licence their rooms, permits rooms to be shared, and removes from members the obligation to pay rent and floor fees while taking parental leave for six months.

Endnotes

1. Thomson Reuters, *Gender equality among barristers before the High Court* (27 February 2017) available at: http://blog.thomsonreuters.com.au/2017/02/gender-equality-among-barristers-high-court/?utm_campaign=ret_loyalty_value_insider-research-newsletter_070317&utm_medium=email&utm_source=Eloqua&celqTrackId=4431b576983742c9a14e58359f795634&celq=ebf702f4a07
2. I Taylor SC, *Parental responsibilities and the bar* [2015] (Winter) *Bar News* pp30-31; available at : http://www.nswbar.asn.au/docs/webdocs/BN_022015_feature1.pdf
3. UK Bar Council Equality and Diversity Guides – Parental Leave as at January 2015; available at: http://www.barcouncil.org.uk/media/323036/bar_council_ed_guides_parental_leave_policies_2015.pdf
4. Parental Leave Policy of the Victorian Bar published on 7 October 2008; available at: http://static1.1.sqspcdn.com/static/1/556710/21174829/1354704097000/VicBar_parental_leave.pdf?token=gikEBqYBzInyJXXBzAHx18oAhxw%3D
5. <http://www.nswbar.asn.au/docs/webdocs/pfeewavier.pdf>
6. New South Wales Bar Association Best Practice Guidelines are available at <http://www.nswbar.asn.au/for-members/bpg>