

Female patent attorneys and movements around the profession: achieving non-gendered decision-making

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Abstract

- Female patent attorneys face multiple layers of bias and discrimination. This article uses qualitative and quantitative data to analyse the experiences of female patent attorneys in Australia and New Zealand and their movements around the profession.
- Through interviews with 53 patent attorneys and an analysis of over 5 years of data on registered patent attorneys, we examine the experiences of women and how this can affect their decision to move to in-house roles, set up their own entities or move to smaller firms.
- While noting that women appear to face bias regardless of where they practice, the article concludes that the particular issues mothers face represent a key factor in why women are disproportionately over-represented in in-house roles. The issues also constitute a motivation for many women to set up their own entities and to move firms (though not necessarily from a larger to a smaller firm).

1 Introduction

The experiences of women in IP across Australia and New Zealand are gendered.¹ This can range from how colleagues and clients treat them, to having different opportunities and standards for promotion or experiencing inappropriate sexual behaviour in the workplace, or may be related to their experiences around pregnancy, parental leave and parenthood.² Our work has shown that

women who work in patents typically experience more bias from clients and colleagues than those who work in trade marks.

Here, we examine the experiences of patent attorneys and the reasons they gave for moving around the profession. We focus particularly on those who ‘move laterally’—that is, who are at a large firm and move to a smaller firm, set up their own entity or move in-house/into government—as potential sites of gendered decision-making. More specifically, we undertake qualitative analysis and coding of semi-structured interviews with patent attorneys who identify as women, comparing and contrasting the experiences of those who move laterally with those who do not. The interview data are supported by quantitative data on the movements of women around the profession in Australia and New Zealand.

A selection of themes that were common amongst our participants is outlined and discussed in this article. Our participants, across the board, spoke about the difficulties they encountered

¹Jessica C Lai, Ronelle Geldenhuys, Maryam Khajeh Tabari, ‘Invisible Women in Invisible Professions: Voices from Australian and New Zealand Women in Intellectual Property’ (1 September 2023). Available at <https://ssrn.com/abstract=4556301> or <http://dx.doi.org/10.2139/ssrn.4556301> (accessed 24 February 2024).

²On these concerns in the legal profession generally, see S Kenny, ‘Women at the IP Bar: A Case for Unpacking the “Merit” Ideal’ (2015) 103 IPF 19; F Kay and E Gorman, ‘Women in the Legal Profession’ (2008) 4 *Annual Review of Law and Social Science* 299; S Spurr, ‘Sex Discrimination in the Legal Profession: A Study of Promotion (1990) 43 *Industrial & Labor Relations Review* 406; J Dixon and CSeron, ‘Stratification in the Legal Profession: Sex, Sector, and Salary’ (1995) 29 *LSR* 381.

around pregnancy and parenthood, or even the possibility of these. Amongst other things, women often spoke about these difficulties to explain why they went in-house or set up their own entities. As discussed in this article, we surmise that—despite changes in the experiences of women in the profession over the last 20 years—sexism and structural biases remain, much of which is around pregnancy and parenthood, and which plays a role in women's decision-making to move around the profession.

The purpose of this article is not to suggest that being in-house, in government, in a smaller firm or setting-up one's own entity are 'lesser' career paths than working in a (large) firm. Rather, this article seeks to examine the factors that women consider in their decision-making in order to explore what could be improved in the firms, and elsewhere, to minimize the extent to which women's choices are based on gender inequities. Thus, the article uses firms as a convenient reference point to analyse decision-making around movements. The article also looks at movements from large firms to smaller firms as large firms employ a substantial number of patent attorneys, have a sizeable influence on the culture of the profession and arguably represent what is considered a 'mainstream' career path. It is worth noting that our ability to analyse movements was limited by the experiences that our participants shared with us. That is, few of our participants spoke about moving from smaller to larger firms or from in-house/government roles or their own entities to established firms.

The following part of this article explains our data and the profession. We examine our data vis-à-vis movements around the profession in Section 3, with some general observations before looking at caregiving responsibilities in detail. Section 4 provides some concluding thoughts.

2 Our data and the profession

This article uses two data sets to analyse the movement of women around the profession. The first data set was created through interviews with those who identify as women or gender diverse (that is, anyone who did not identify as a man) across Australia and New Zealand who had practised as a patent attorney, regarding their experiences in the profession. The second set of data tracked the movement of registered patent attorneys, comparing women and men, using publicly available data collected over time. We chose Australia and New Zealand as they co-regulate patent attorneys through the Trans-Tasman Intellectual Property Attorneys Board (TTIPAB).³ Historical, legal and cultural similarities also mean that writing about the women as a group is reasonable.⁴

2.1 Interview data

2.1.1 Methodology

Conscious of various axes of inequality and that context matters,⁵ we aimed to cover a diverse range of ages, ethnicities, experiences and career paths (eg from different firm sizes) to obtain a range of perspectives. Participants were sought through calls for interest through various networks for

those in IP-related professions, such as: New Zealand Intellectual Property Attorneys (NZIPA), Chiefs in Intellectual Property (ChIPs), the Intellectual Property Office of New Zealand (IPONZ) Newsletter and through word of mouth. Interviews were held in person where possible or via video-conferencing where in-person interviews were not possible. Each interview took around an hour. They took place between November 2022 and April 2023.

The research used convenience sampling rather than random sampling. Convenience sampling relies on a representative sample opting to partake; otherwise, one can have over-representation or under-representation of a particular demographic and/or perspective. We sought to overcome this limitation by talking to a relatively large number of women.

The interviewers asked broad questions and used the set of questions to guide the discussion towards areas of interest, namely:

- demographic/background questions;
- questions about how stereotypical gender roles and professional structures have affected the participant's experiences and careers;
- questions about what is valued by the participant's profession and by the participant;
- pandemic-related questions; and
- questions about the participant's thoughts on the future of women in the participant's profession.

The interviews were not surveys. The reason for this is that the women had different experiences and focal points. The interviewees tended to talk about what they felt was important to them and their careers, with some prompting if there was silence. Furthermore, each interviewee had a unique set of circumstances that made their particular experiences unique to them. While there were certainly common themes, it was not possible to capture this diversity of experiences in a survey. Doing so would have sacrificed the context and richness of the women's experiences.

We coded the data using deductive and inductive methodology. It was deductive because we had some hypotheses based on literature on the experiences of women and mothers in legal practice and women in science, technology, engineering and mathematics (STEM), which were reflected in our questions. The coding was also inductive, as we coded for themes that we did not anticipate.

As the interviews were not surveys, the fact that a participant did not say something does not mean that she did not experience it. Alternative explanations are that the participant did not place salience on that kind of experience, or she did not recall it by herself, but may have had she been prompted. It is worth noting that we were asking some of our participants to think back over (up-to) 50 year careers, and much of what they had experienced they qualified as being normal for the times, and thus not worth raising. Because of this, the counts and statistics resulting from the interviews are likely an underrepresentation of actual experiences.

We categorized our participants as those who 'moved laterally' and those 'who stayed'. A move was considered 'lateral' if it was from a large firm (>30 attorneys) to a smaller firm (medium with 6–30 attorneys, small with 2–5 attorneys, or a sole practitioner), from a firm to an in-house/government position or if the participant left a firm to set up her own entity. Moves from in-house/government to a firm or from a smaller firm to a larger firm or between firms at the around the same size were not considered a move laterally.

³Arrangement between the Government of Australia and the Government of New Zealand Relating to Trans-Tasman Regulation of Patent Attorneys (signed March 2013).

⁴Both are former British colonies that continue to be part of the Commonwealth of Nations. They are neighbouring common law countries with shared legal history stemming from Britain. Both are constitutional monarchies with Westminster parliamentary systems. The countries are tied by trade, allied missions in the two world wars (eg ANZAC), and sports rivalries.

⁵J Acker, 'Inequality Regimes: Gender, Class, and Race in Organizations' (2006) 20 GS 441.

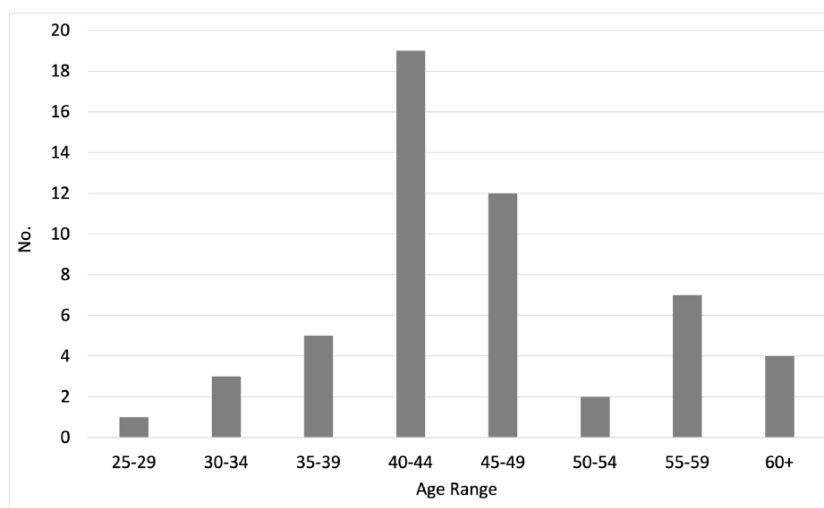


Figure 1. Ages of participants.

2.1.2 The participants

We spoke with 53 patent attorneys across New Zealand (20) and Australia (33), between November 2022 and April 2023.⁶ This was 16.3 per cent of female patent attorneys registered in November 2022. While 53 is a relatively large number of interviews for a qualitative study, the intersectionality of our participants (based on their location, age and exact context) means that it is not possible to statistically analyse the experiences of some sub-groups from the 53 interviews.

The participants were located across multiple cities in Australia and New Zealand. Some demographics of our participants follows. Note that certain granular detail is not provided in order to maintain the anonymity of our participants. Our participants represent a range of ages (Fig. 1).

While we sought to talk to anyone who identified as a woman or as gender diverse, no women with a trans or non-binary experiences chose to talk to us. Thus, our study was only of those who identify as cis-women. We also spoke to very few women who identified as anything other than Caucasian or Pākehā (New Zealander of European descent), New Zealand/Australian European or a specific category of European—these were categorized together, including those from Eastern Europe, in order to maintain anonymity. We spoke to only three women of colour. A total of 16 of our participants had migrant backgrounds, 13 of whom had emigrated from an English-speaking country or Continental Europe.

Of the 53 patent attorneys with whom we spoke, 27 (or 51 per cent) moved 'laterally'. This constituted 65 per cent of the patent attorneys we spoke to in New Zealand and 42.5 per cent of the patent attorneys we spoke to in Australia. Of the 27 women who moved laterally, 9 had set up their own entities, 16 had moved in-house/into government, 6 moved to smaller entities. Note that this adds up to more than 27 as some women moved laterally in more than one way. We spoke to very few women who had left the profession—this perspective is largely missing from our data.

A noteworthy number of our participants moved laterally, especially in New Zealand. However, one should not infer too much from this statistic, as this could reflect multiple things. For

example, the motivations behind why our participants spoke to us, or a 'snow ball' effect (perhaps more women in New Zealand who had moved laterally spoke to us because they spoke to each other about our work). The actual distribution of registered patent attorneys is discussed in the following.

2.2 Data on registered patent attorneys

2.2.1 Data gathering

The TTIPAB publishes a searchable copy of its database of registered trans-Tasman patent attorneys and Australian trade mark attorneys on its website.⁷ Details of all registered attorneys, including attorney names, employer names, registration status (ie patent attorney, trade marks attorney or both) and registered address, were retrieved on a monthly basis from January 2018 to August 2023. Retrieval and data matching employed a semi-automated process, commencing with an unrestricted search to fetch the available registration information for all registered attorneys. Names and employer names were then matched against previously retrieved data, using an inexact matching process to allow for common variations and minor typographical errors. Countries of practice were extracted or inferred from registered addresses. We assumed that attorneys reside in their countries of practice, although it is possible that some attorneys may work remotely and have their registration recorded at a firm located in a different country.

⁶This work is part of a larger project looking at women in IP, for which we also spoke to trade mark attorneys who were also registered as patent attorneys, but did not practice in patents. In addition, we spoke to solicitors and barristers who worked in patent law. These participants do not make up the 53 patent attorneys discussed in this article.

⁷When the TTIPAB came into force in February 2017, those who had previously practised as patent attorneys and/or trade mark attorneys could grandfather into the new system. Prior to the TTIPAB, some patent attorneys in New Zealand did not have the requisite science or engineering backgrounds. They typically only practised in trade marks, but maintained their patent attorney registrations. To ensure that we were only looking at registered patent attorneys who indeed practised as patent attorneys, we removed data pertaining to anyone who worked for a firm or entity that had not been active in filing or prosecuting patent applications, based on data on Australian, New Zealand and PCT filings originating in Australia and New Zealand over the relevant time period. Of course, it is possible that a registered patent attorney who does not practise in patents could work for a firm where other practitioners handle patent applications. However, to the extent that it is the environment in which the practitioner works that is relevant, more so than the specific type of work that they do themselves, this creates cleaner data. We removed only seven patent attorneys from the data. We postulate that many who could have grandfathered in either did not or have subsequently allowed their registration to lapse, as they do not actually practise in patents, and there are registration costs, requirements for continued professional education and the Code of Conduct has requirements for technical competence.

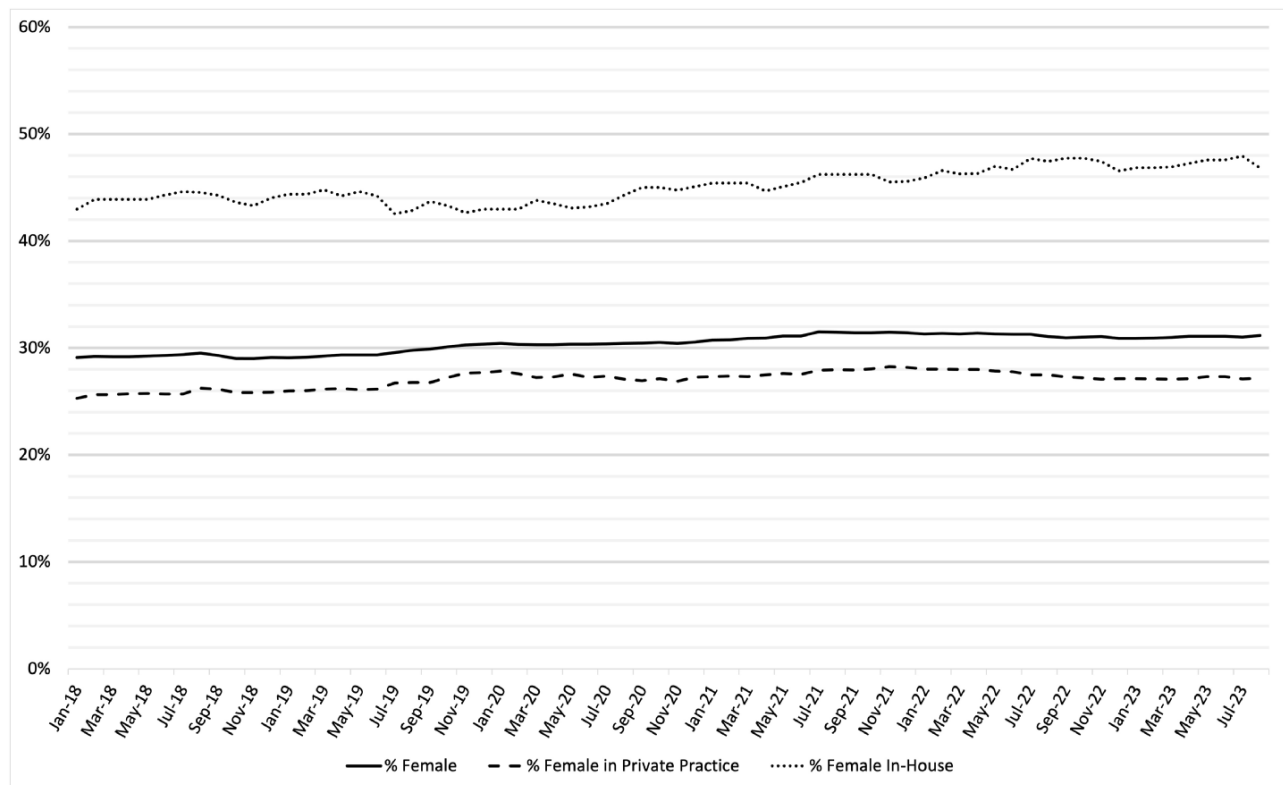


Figure 2. Proportion of registered female patent attorneys.

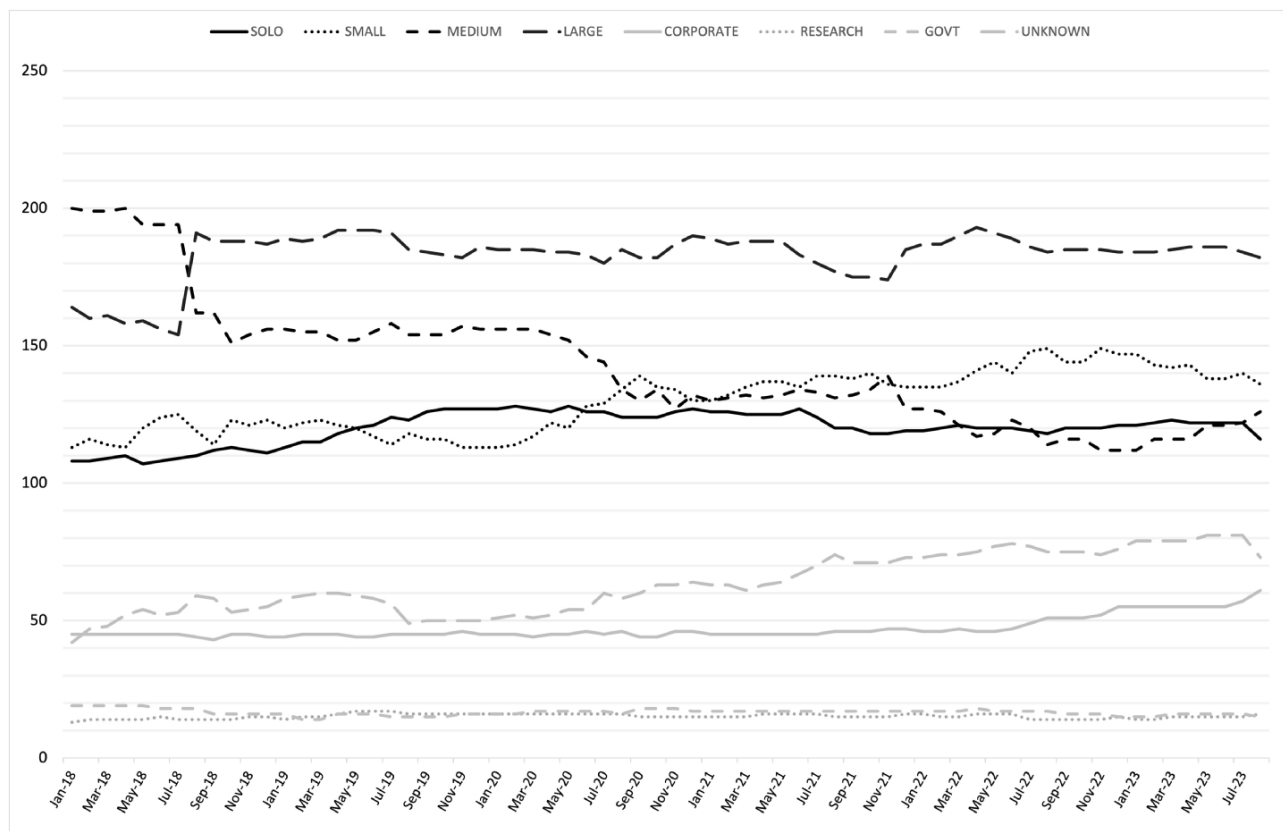


Figure 3. Number of male patent attorneys by sector.

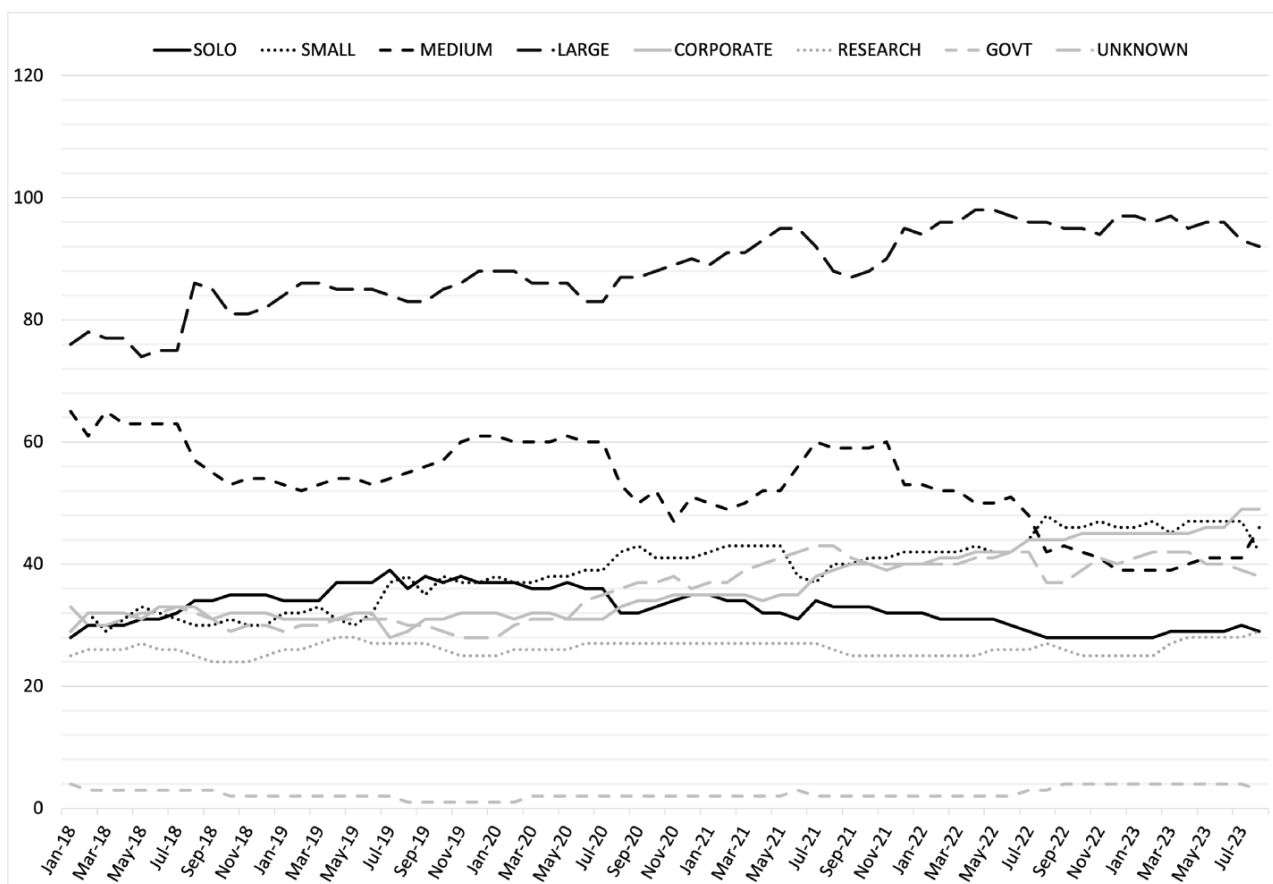


Figure 4. Number of female patent attorneys by sector.

Attorneys or employers that were not matched to existing records through this process were referred for manual checking, correction and/or update. For newly registered attorneys, gender was assigned manually, using business webpages and LinkedIn to assist. Newly identified firms or employers were manually assigned to one of the following categories: solo practitioner; law/attorney firm; corporate (ie commercial/private sector); research (universities, research institutes and Commonwealth Scientific and Industrial Research Organisation (CSIRO)) and government (non-research government departments/bodies). Attorneys whose employment/practice status could not be determined from the Register were categorized as 'unknown'.

For the purposes of this study, attorneys with employers in the corporate, research and government categories were classified as 'in-house'. Attorneys in private practice (ie solo or firm categories) were classified by firm size, calculated as the number of registered patent attorneys employed by the firm during each month covered by the data, according to the Register. We note that there is a small number of large law firms that incorporate small patent attorney practices, and which are therefore classified as small firms under our method. Whether attorneys in those organizations have a 'small firm' or 'large firm' experience will depend upon the internal structure and culture of these businesses, and we have not made any attempt to delve further into this issue for the present study. It must also be kept in mind that our data are dependent upon the accuracy of the TTIPAB records, which in turn depends upon attorneys promptly notifying the TTIPAB of any changes in their details. There is often a delay in such notifications, and the data are most accurate around August each year, following the annual renewal of registrations in July.

2.2.2 The profession

As of August 2023, our data comprised 1053 patent attorneys, only 31.2 per cent of whom were women (Fig. 2). Looking at the jurisdictions separately, in Australia 30.6 per cent of patent attorneys were women, in New Zealand 35.8 per cent of patent attorneys were women, while 21.2 per cent of trans-Tasman patent attorneys residing elsewhere in the world were women. Since January 2018, there has been only a moderate increase (2 per cent) of female patent attorneys proportionately. Note also that the profession has fewer women in senior positions.⁸

The vast majority of patent attorneys (73 per cent) are in private practice. The size of this sector of the profession has remained fairly static over the period covered. As of August 2023, only 27.2 per cent of these patent attorneys were women. This has increased moderately from 25.3 per cent in January 2018 (Fig. 2).

The proportion of women in in-house roles is higher than in private practice, and has also grown since January 2018, from 43.0 per cent to 46.8 per cent in August 2023 (Fig. 2). Indeed, women are disproportionately represented in in-house roles, keeping in mind that they represented only 31.2 per cent of the profession in August 2023. Note that there has been substantial growth in this sector generally, increasing from 135 registered patent attorneys in in-house roles in January 2018 to 173 in August 2023.

If we track the number of men and women in different sized firms (solo, small medium, large—as defined above) and different

⁸See eg K Rock, 'Gender (Im)balance in the Patent Attorney Profession in Australia: Myths and Evidence based Recommendations for Change' (2018) 28 AIPR 64, 66–68.

Table 1. Themes related to masculine profession

	All participants (%)	Those who moved laterally (%)	Those who stayed (%)
Men at top	60.4	63.0	57.7
Boys' club	56.6	59.3	53.8
Has felt that doesn't belong or 'other'	43.4	37.0	50.0
Bias from clients	75.5	74.1	76.9
Bias from colleagues	45.3	44.4	46.2
Bias due to technical field	56.6	48.1	65.4
Need to win over colleagues/clients	39.6	44.4	34.6
Inappropriate verbal behaviour	49.1	55.6	42.3
Inappropriate sexual behaviour	41.5	44.4	38.5

kinds of in-house roles ('corporate', 'research' and 'government'),⁹ one can see that the number of male attorneys in large firms has remained fairly static, whereas the number of female attorneys in large firms has grown quite substantially (Figs. 3 and 4).¹⁰

3 The experiences of female patent attorneys

3.1 An overview

A comparison of various themes that the women spoke about at sizeable rates regarding the gendered nature of the profession is tabulated in Table 1. This table compares the statistics for all the patent attorneys we spoke to, the patent attorneys who moved laterally and the women who stayed. Due to the relatively small numbers, it is not statistically sound to analyse the different categories of moving laterally separately. Note that the women who moved laterally often reflected on their experiences in the large firms as well as their experiences once they had moved. Thus, one should not view the data on those who moved against those who stayed as direct proxies for experiences in smaller or own firms, in-house/government, compared to experiences in large firms. Moreover, while the vast majority of women who stayed did so at large firms, several women who stayed had started and stayed in a medium/small firm or in-house'.

While there is much overlap between the topics that the groups spoke about, generally, the women who moved laterally spoke about the themes from Table 1 at either similar or greater rates compared to women who stayed. What is strikingly similar is women speaking about bias from clients and bias from colleagues. More women who stayed reported a technology-related bias (where they believed that patent law being a high technology legal field results in bias against them). That women who moved

⁹Note: the category 'unknown' covers all attorneys for whom there is no employer/firm information recorded on the Register. Most of these are probably retired, taking career breaks or doing different things.

¹⁰Note: there are couple of 'jumps' between 'medium' and 'large' firms, in August 2018 and November 2022. These correspond with the mergers of FAK Callinans and Shelston IP, respectively, into Spruson & Ferguson, which resulted in all of the affected attorneys moving from a medium sized firm to a large firm.

Table 2. Structural themes

	All participants (%)	Those who moved laterally (%)	Those who stayed (%)
Promotion an issue	47.2	40.7	53.8
Soft things not as valued	39.6	37.0	42.3
Does invisible things ^a	20.8	18.5	23.1
Does things outside of role	49.1	40.7	57.7
KPIs and billable system is biased	49.1	44.4	53.8

aA Kaplan, "Just Let it Pass by and it Will Fall on Some Woman": Invisible Work in the Labor Market' (2022) 36 GS 838.

Table 3. Looking to the future

	All participants (%)	Those who moved laterally (%)	Those who stayed (%)
Concern—tokenism of diversity policies	15.1	25.9	3.8
Concern—things are still gendered, but hidden (eg in support staff)	17.0	25.9	7.7
Optimistic—yes	60.4	55.6	65.4
Cautiously optimistic	3.8	7.4	0
Optimistic—yes and no, wants to be optimistic, hopeful	5.7	3.7	7.7
Optimistic—neutral	3.8	3.7	3.8
Optimistic—no	7.5	11.1	3.8
Things are changing	66.0	59.3	73.1
Things are not changing	9.4	11.1	7.7

laterally were more likely to talk about men being at the top, that the profession is a boys' club, that they had to win over their colleagues and clients and that they had experienced inappropriate verbal or sexual behaviour explain why they moved laterally. Notably, five of the six women who moved to a smaller entity spoke about inappropriate sexual behaviour, and seven of the nine women who set up their own entities spoke about how men were at the top.

Concerns around how the profession is structured, what it values for promotion and whether a participant thought promotion was gendered were generally spoken about more by women who stayed (Table 2).

Interestingly, women who moved laterally were overall more pessimistic about the future of women in the profession than

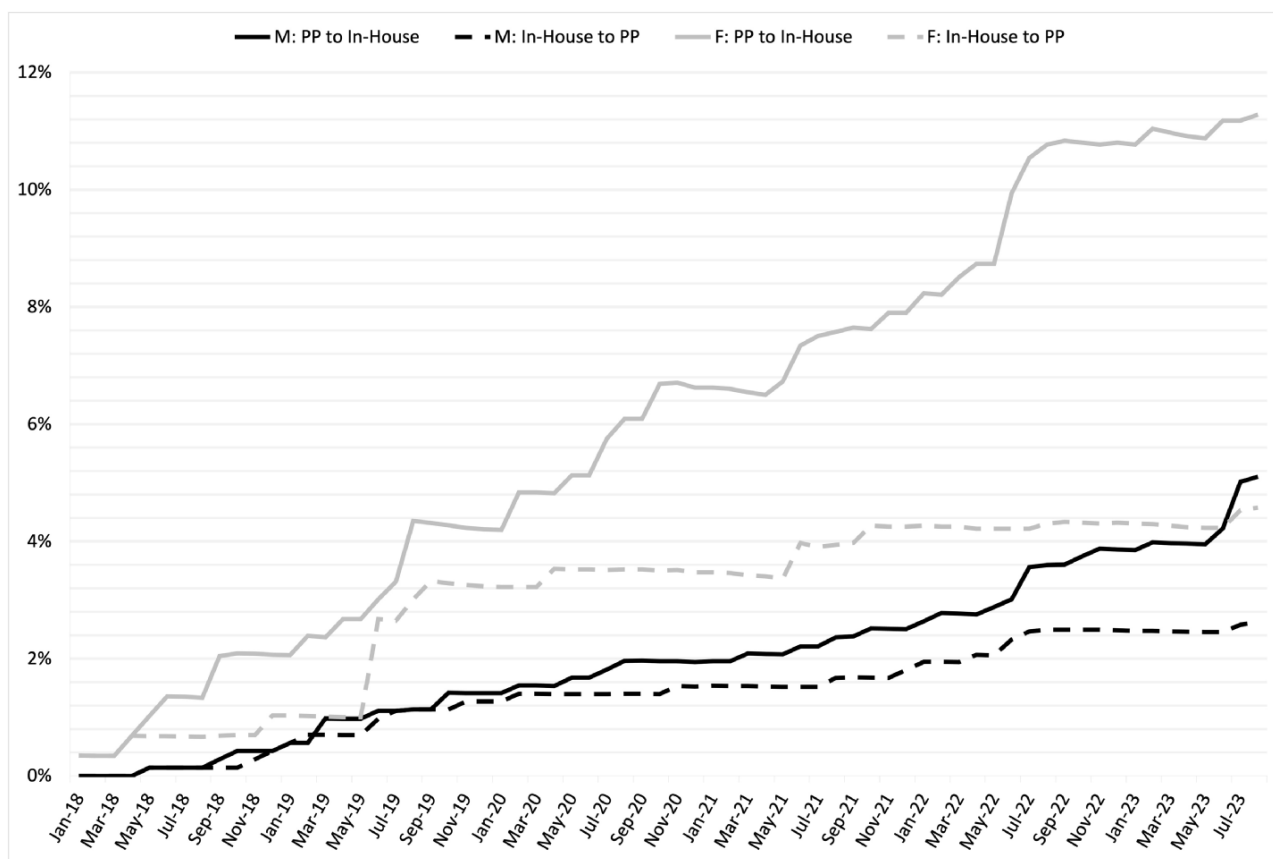


Figure 5. Cumulative % of male (M) and female (M) attorneys moving between private practice and in-house roles.

women who stayed (Table 3). They were less likely to say they were optimistic about the future and also more likely to say that they were not optimistic, things are not changing, they thought diversity policies were tokenistic and hidden gender structures remain. This likely reflects why some women (who are less pessimistic) stay where they are, while others (who are more pessimistic) move laterally. Notably, those who moved in-house were the least likely to say that they were optimistic about women in the profession (43.8 per cent) or that things are changing (43.8 per cent), and most likely to say that they were not optimistic (12.5 per cent). Those who set up their own entities or moved to a smaller firm were most likely to be optimistic about women in the profession (66.7 per cent) and to talk about how things are changing (77.8 per cent and 83.3 per cent).

Our quantitative data on the movement of female and male patent attorneys support our qualitative data. As noted above, women are over-represented in in-house roles (Fig. 2). In addition, Fig. 5 shows the cumulative proportions of male and female attorneys who have moved between private practice and in-house roles (in both directions) over time.¹¹ Overwhelmingly, the most movement, relatively speaking, has been by female attorneys from private practice to in-house roles.

We can also look at the proportion of women vis-à-vis private practice and different in-house roles and how this has changed over time (Fig. 6). The largest shifts are an increase in the proportion of women in corporate in-house roles and a decline in the ‘unknown’ proportion. Note that women are more greatly represented in corporate (44.5 per cent) and research (64.4 per cent) in-house roles compared to their proportion as registered patent attorneys (31.2 per cent) and their proportion in private practice (27.2 per cent) (per centages in August 2023).

Reasons for why women move laterally are discussed in the following.

3.2 General reasons women move laterally

Regarding why women moved laterally, we heard various reasons, largely related to becoming tired of the sexism in the firms or the traditional way that the firms work (including the hierarchy), feeling a lack of respect in the firms and questioning the social value of work in a firm. The most common reason we heard related to negative experiences women had or expected when they became pregnant or mothers and the lack of real flexibility in the firms. We discuss the latter of these below, when looking specifically at our data vis-à-vis issues relating to caregiving responsibilities. Note that it was primarily women who went in-house or set up their own entities (rather than women who moved to a smaller firm) who spoke about their moves vis-à-vis dissatisfaction with the profession and how it works as a whole (with the exception of one participant, who moved in-house before moving to a smaller entity). This makes sense, as moving to a smaller firm, would not necessarily represent a move away from such concerns.

¹¹While the data are cumulative, there are periods of decline because the number of registered attorneys can increase over time, which can cause the proportion of attorneys who have moved between sectors to decline slightly.

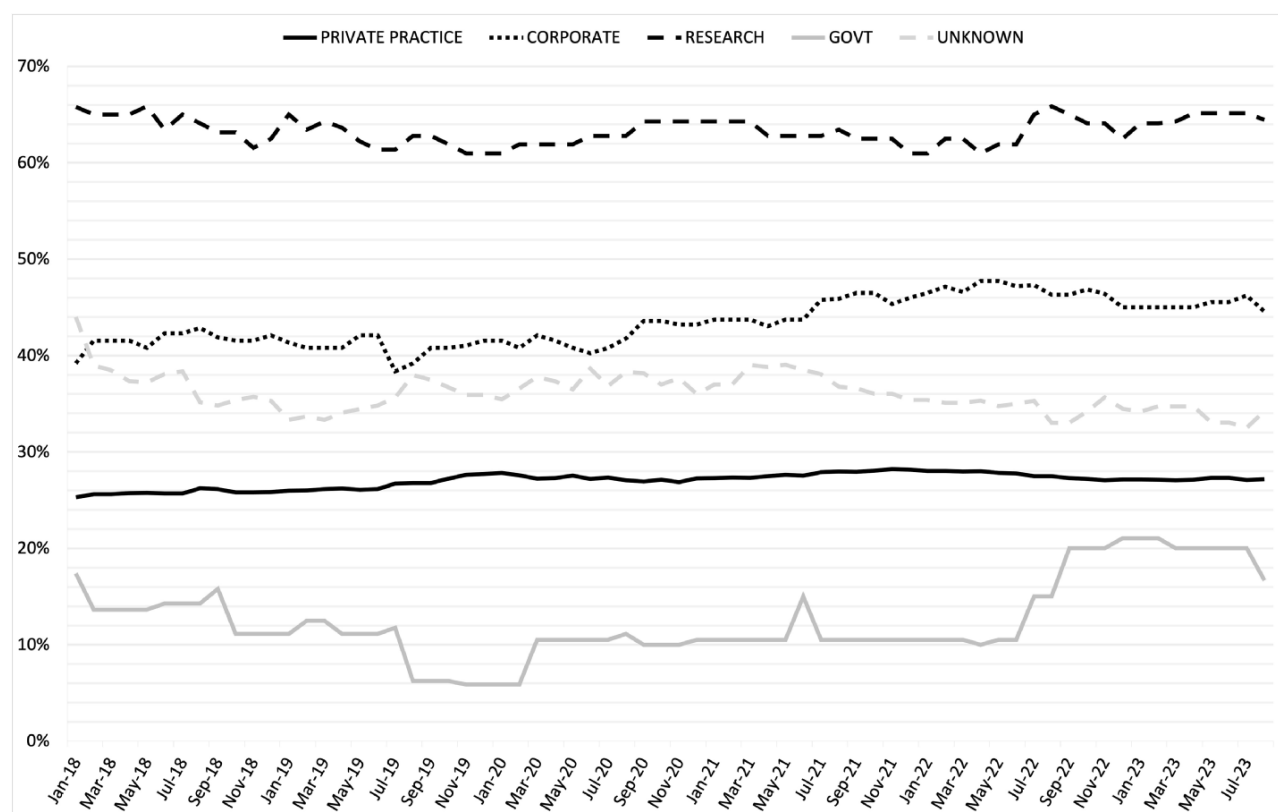


Figure 6. Proportion of female patent attorneys by sector.

3.2.1 Fed up with the culture and hierarchy

To illustrate being fed-up with practice and the kind of culture that one could find there, one patent attorney (45–49) spoke about how the culture at the firm that she was at was ‘appalling’ and it was a ‘bizarre culture of people that still had all these [sexist] views about women’.¹² When she left the firm, she stated that ‘the thought of going into another firm, was just exhausting. ... I just couldn’t do working with those sorts of people again’. Once in-house, ‘I was just amazed at how different and how professional a company could be run. And you know, they have all sorts of professional policies and no sexual harassment and proper media, proper actual respect for people as individuals’. It is worth noting that the participant spoke about subsequently working at a different firm that had a very different culture compared to her first firm. That is, firm culture varies.

Another participant (45–49) spoke about how brutal the hierarchy could be. Speaking about others she knew, she stated that people who left were sometimes ‘beaten down’, and:

instead of succeeding in private practice, where they wanted to succeed in the first place, they went in-house, which was great for them. But equally, I know a couple of them had regrets. Because they actually wanted to succeed in that private practice role. Not that they don’t have a fantastic job and career

now still, but it was an opportunity essentially taken away from them. Whereas I didn’t have that. I just had some champions supporting me that would just change that. And that was very unusual.

Note that this participant highlights that moving laterally is not necessarily something negative. Working in-house, for the government, for a smaller firm or for oneself are not inherently lesser choices. As she laments, the concern is when women’s choices are shaped by the inequities they face, which result in them moving laterally.

A patent attorney who moved laterally (40–44) expressed frustration at the traditional hierarchy of the firm structure and seeing men advance ahead of her.¹³ Similarly, women also reflected negatively on how the traditional hierarchy of the firms (in the partnership model) is designed to have a few partners at the top, which halts the career progression of senior associates. This could result in senior associates leaving to create their own entities. For example, a participant who set up her own entity told us that she did so, in part, because she wanted to run a business (50–54). While this can allow one to achieve seniority and control (and flexibility, discussed below), it could also add a level of precarity (as noted by one participant, 55–59).

¹²Law firms in New Zealand and Australia (as in many jurisdictions) are known for sexist cultures. See eg M. Bazley, ‘Independent Review of Russell McVeagh’ (March–June 2018); and C Wahlquist, ‘“We’re All Gentlemen Here”: Australia’s Legal Profession Can Pretend No More’ (3 July 2020) *The Guardian*. Available at <https://www.theguardian.com/law/2020/jul/04/were-all-gentlemen-here-australias-legal-profession-can-pretend-no-more> (accessed 24 February 2024); K Pender, ‘Us Too? Bullying and Sexual Harassment in the Legal Profession’ (May 2019) International Bar Association, Legal Policy & Research Unit.

¹³Women in the legal profession also encounter issues with promotion. See eg S Spurr, ‘Sex Discrimination in the Legal Profession: A Study of Promotion’ (1990) 43(4) *ILR Review* 406; H Wootton, ‘Female Law Partners Break Through 30pc Barrier’ (10 December 2020) *Financial Review*. Available at <https://www.afr.com/companies/professional-services/women-partners-break-through-30pc-barrier-20201130-p56j7u> (accessed 24 February 2024); New Zealand Law Society, ‘By the Numbers’ (29 July 2020). Available at <https://www.lawsociety.org.nz/professional-practice/diversity-and-inclusion/women-in-the-legal-profession/by-the-numbers/> (accessed 24 February 2024).

Even if a woman wishes to move, it is possible that a sense of loyalty acts as a barrier to this, as there is some evidence that women feel more obligation (including to employers) than men.¹⁴ In this vein, another participant (40–44) noted that she took some time to decide to go in-house after being offered a position because of a sense of obligation. More specifically, she felt indebted to the firm that had put her through her training. Despite the fact that she had been earning for the firm while she was studying and for several years thereafter, she felt that she could not leave for the in-house role. The participant added that some of her fears about how some of her colleagues would react came to fruition when she did finally leave.

A participant (40–44) believed that there are also more women in in-house roles because, historically, in-house roles have not paid as well as private practice has and there is no opportunity for partnership, and women are more prepared than men to earn less and not have the title, while contributing intellectually. The participant reflected on whether the movement of women from the firms to in-house roles might decrease as the firms change their cultures, and whether we might start to see similar numbers of men and women in in-house roles as they become more lucrative. This is consistent with the literature finding that men and women are socialized to value different things (including money) differently.¹⁵ In addition, Fig. 7 indicates an increase in the rate at which men are moving from private practice to in-house roles since March 2022.

3.2.2 Finding respect and voice

Several participants spoke about the higher respect they received when they were in-house compared to in a firm. To illustrate, a participant stated (55–59) that she felt ‘a lot more respect’ in-house compared to in a firm. She continued saying that in some ‘elite’ firms, one is expected to look a certain way, whereas this is not an issue in-house. Another participant (40–44) told us that, when she moved in-house, it was the first time that she had ever felt that she was not defined by her gender. She recalled going home and telling her family about how people did not look at her like she was just a young woman who might not know what she was talking about, or was just there to make someone else look good, or to take notes. Instead, people wanted her opinion because she was the subject-matter expert and she could materially contribute.

Similarly, a participant who moved away from a larger firm to a smaller entity (30–34) indicated that she felt much more respected and heard—she had a voice at the table. In her words, the entity where she was working chose ‘the best person from each realm to advise on big projects’, which meant:

There’s a real diversity of ideas. And I think honesty is our number one, sort of, policy. You know, you can lean across a table and tell someone their idea’s rubbish or their brand’s crap and you should throw your trade marks in the bin because it’s yeah ... It just seems better that way ...

¹⁴See eg PS Thompson, DM Bergeron, and MC Bolino, ‘No Obligation? How Gender Influences the Relationship Between Perceived Organizational Support and Organizational Citizenship Behavior’ (2020) 105 JAP 133

¹⁵See eg MD Newcomb and J Rabow, ‘Gender, Socialization, and Money’ (1999) 29 JASP 852; and HM Sittenthaler and A Mohnen, ‘Cash, Non-cash, or Mix? Gender Matters! The Impact of Monetary, Non-monetary, and Mixed Incentives on Performance’ (2020) 90 JBE 1253; and Jessica A Kennedy and Laura J Kray, ‘Who Is Willing to Sacrifice Ethical Values for Money and Social Status?: Gender Differences in Reactions to Ethical Compromises’ (2014) 5 SPSS 52; Adrian Furnham and Ryo Okamura, ‘Your Money or Your Life: Behavioral and Emotional Predictors of Money Pathology’ (1999) 52 HR 1157.

This participant also alluded to an additional problem with the traditional hierarchy of the firm structure, namely that it meant that there was much secrecy:

there was always this feeling in a law firm that no one was telling you anything, the partnership kept everything secret. You weren’t allowed to know what was going on. You just should be at your desk. All that kind of like weird, old-school stuff was uncomfortable for me. But it’s the opposite here. The books are open, they’ll show us where the company is tracking, and they want everyone to be involved.

Women who set up on their own also spoke about the increase in respect that they experienced. For example, one participant (40–44) spoke about how she had encountered gender bias when at a firm and expected this to also be the case when she set up her own entity, but she was pleasantly surprised. She believed that her clients potentially respected her because she was running her own business.

3.2.3 A desire to provide value and be part of something

It was common for women who had moved in-house to talk about how they felt that they were not providing value in a firm. This was not because of the quality of their work, but because they were under pressure to bill work, yet either struggled to see the value of the patent to the client, or knew that many of the patents they filed would not result in market success.

As an example of the former, one participant (35–39) spoke about how, as a junior patent attorney in a firm, she struggled to understand the value of the patent vis-à-vis a client’s business because she did not participate in commercialization and enforcement activities, and this affected her confidence regarding whether she was providing value:

In a firm, clients are constantly questioning the value of your work because patent attorneys are so expensive. For a junior attorney it can be difficult to respond. Because without considerable experience in commercialisation and/or enforcement, it is hard to assess whether or not the patent you are working on is likely turn out as high value or low value. In the absence of any feedback on the matter, it can become easy to start doubting whether you are, in fact, providing any value at all. I suspect that female attorneys experience the difficulty more keenly because they are generally under greater pressure to ‘prove’ themselves, although male colleagues have reported it also.

She continued by saying that it was different in-house:

But once you are in a business, then you get to participate in the commercialisation and/or enforcement part as it happens. You can observe whether the patents you are getting turn out to be low value or high value, and you gain more confidence in your assessment about what makes high value IP. You can also see that if the business does nothing to secure its IP (eg gets no patents) then it almost always runs into issues with commercialisation or enforcement later down the track.

Note that other participants spoke about the siloed nature of work in larger firms, and how this could result in dissatisfaction. Note also that this sentiment is closely related to a desire to work as a peer in a team, wherein one sees more of the innovation process—discussed further below.

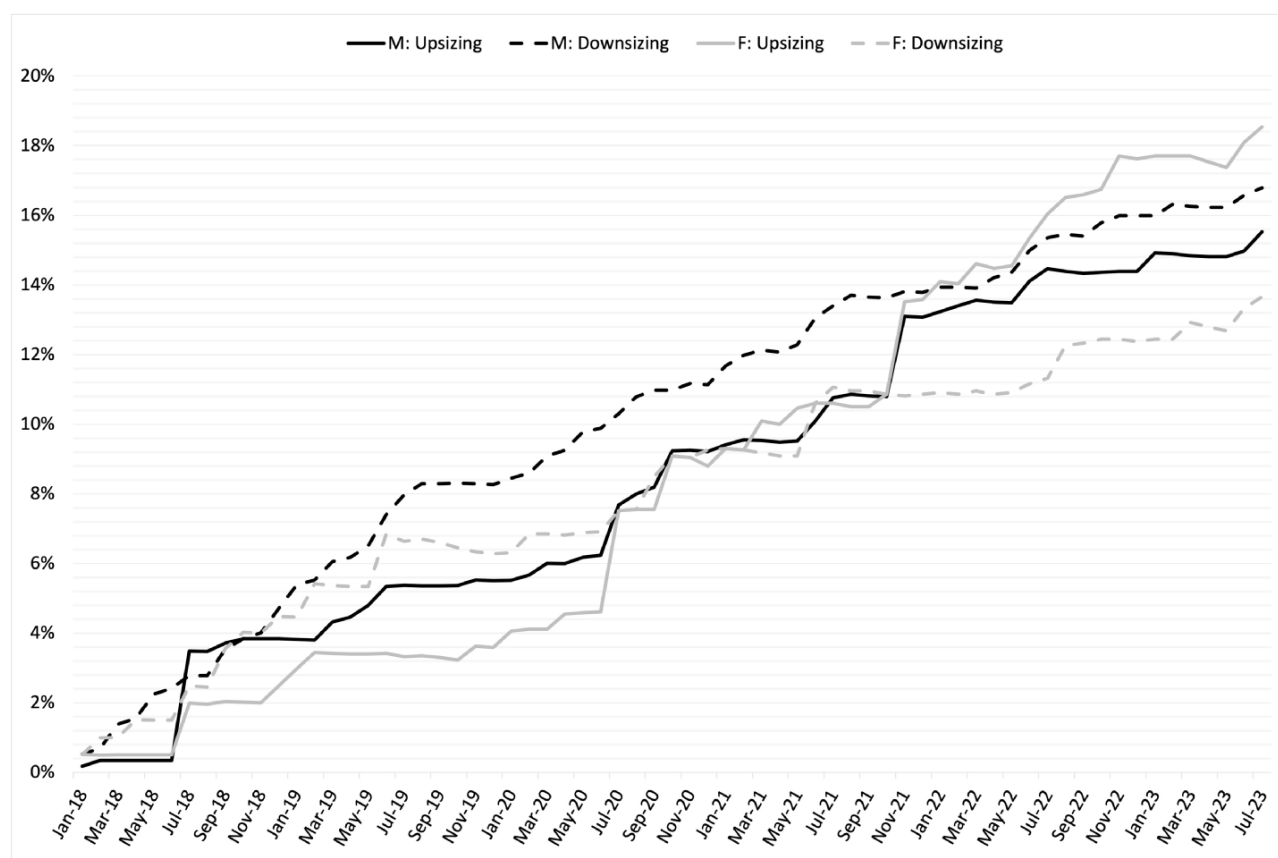


Figure 7. Cumulative % of male (M) and female (M) attorneys moving between firms.

To illustrate the concern that patents often do not lead to market success, another patent attorney (60–64) spoke about one of the reasons she moved in-house being related to how she had wanted to help everyday people, but:

Then you realise they're spending their life savings, taking mortgages for a patent, they will never make any money on it. So you think I'm just ripping these people off, really. You know, how are they ever going to enforce a patent if they spend their hundreds of thousands of dollars, and you just watch the system, and think 'oh, it's criminal'.

At the same time, she spoke about being sick of the fact that 'all I'm doing is making big companies get richer', working for big companies and making them money.¹⁶

Similarly, another participant (40–44) talked about offering more 'value-add' when in-house. After noting that her experience in-house was 'phenomenally different' to her experience in private practice because she had an equal number of male and female line managers, she stated that, in house, one better understood one's 'value proposition' and what one was bringing to the business. She compared this to private practice, where the only

metric is one's billable hours, and not the value-add one delivered to one's clients or to one's firm.

Closely related to feeling more control, having more voice, being more respected and that they were bringing more value, women spoke about the benefits of working as part of a team—the scientists and engineers in the company, as well as executives and so on.¹⁷ While patent attorneys in firms typically offer a narrow set of services to clients, those in-house often interact with colleagues across the innovative process, from the inventors to the marketing team. To illustrate, one participant who had moved in-house (40–44) stated that she found 'the work a lot more fulfilling' because, 'when you work for the same company, you're colleagues [with the inventors]', which allowed one to build deeper relationships with the creators, such that 'it doesn't feel like a kind of client-service provider or transactional relationship'. Further to this, she noted that she liked being across the technology of the company, as well as the higher-level running of the company and strategizing. Note that this ties in with other women talking about how the traditional hierarchy of the firm structure meant that they often felt left out. In our participant's words, she liked 'getting to know the technology and being across that portfolio in a very, very deep way. But also, I get to think more creatively about

¹⁶On the effect of women on legal practice and legal ethics, see eg C Menkel-Meadow, 'Portia Redux: Another Look at Gender, Feminism, and Legal Ethics' (1994) 2 *Virginia Journal of Social Policy & the Law* 75; and Carrie Menkel-Meadow, 'Portia in a Different Voice: Speculations on a Women's Lawyering Process' (1985) 19 *Berkeley Journal of Gender, Law & Justice* 39; PW Hatamyar and KM Simmons, 'Are Women More Ethical Lawyers—An Empirical Study' (2004) 31 *Florida State University Law Review* 785; and F Bartlett, 'Professional Discipline Against Female Lawyers in Queensland: A Gendered Analysis' (2008) 17 *GLR* 301.

¹⁷Women are socialized to be more communal (or see themselves as more relational) and men more individual. See eg DS Moskowitz, EJ Suh and Desaulniers, 'Situational Influences on Gender Differences in Agency and Communion' (1994) 66 *JPPS* 753; and Y Kashima et al. 'Culture, Gender, and Self: A Perspective from Individualism-Collectivism Research' (1995) 69 *JPPS* 925. In addition, there is some evidence that women prefer working in a team compared to men. See eg P Kuhn and MC Villeval, 'Are Women More Attracted to Co-operation Than Men?' (2015) 125 *EJ* 115.

education programs and other programs to enhance IP awareness ...

The positive way in which some participants viewed being integrated when in-house is the flipside of the coin to women talking about how the traditional hierarchy of the firm structure meant that they often felt left out. While some of the reflections of our participants might be attributable to being junior (and for that reason not brought onto certain matters), it is worth contextualizing their reflections in the fact that over half our participants spoke about the profession being a boys' club, and one in five of our participants spoke about not being given opportunities that their male counterparts were given, such as partaking in client meetings or being invited to networking opportunities. That is, junior women potentially experience more exclusion than junior men. Furthermore, there is some evidence that women are more successful in flatter hierarchies.¹⁸ Tentatively, this could be due to women generally being socialized to be more communal (relationship-orientated), whereas men are socialized to be more agentic (self-orientated).¹⁹

Before turning to issues relating to parenthood and caregiving responsibilities, let us look at the movement of patent attorneys in relation to firm size and in relation to firm ownership model.

3.3 Movement by firm size

The interview data (as outlined in the foregoing) indicate that most movements, laterally that had gendered grounds, were moves in-house or to one's own entity, rather than to a smaller established firm. At the same time, our quantitative data indicate that women are more likely to upsize than downsize, and men are more likely to downsize than upsize—see Fig. 7, which shows the cumulative proportions of male and female attorneys who have moved between firms in different size categories over time.²⁰ That is, there is not a disproportionate number of women moving to smaller firms (though, of course, when women do downsize their reasons might be gendered). In contrast, there is a disproportionate number of women moving in-house (Fig. 5, discussed above).

Furthermore, if we focus on women in private practice (Fig. 8), and look at the proportion of women in each firm size category (relative to the total number of attorneys in the category), we can see that large firms have consistently employed a higher proportion of women than smaller firms—this is the only category that has had above 30 per cent representation (around proportionate to the percentage of female patent attorneys), and it has grown over the period covered. Women are under-represented in medium and small firms (below their proportion in the profession). Medium

firms appear to have a declining proportion of female patent attorneys. The proportion of women in small firms seems to have plateaued since mid-2019. The proportion of women practising alone increased from January 2018 to mid-2019, but has slowly decreased since then.

These data are consistent with our discussion below that, generally, women do not appear to move to smaller firms to achieve goals such as flexibility. A further reason why women might not move to smaller firms is that there might be fewer opportunities at smaller firms, which might be less willing to hire women to avoid the possibility of having to pay parental leave. This is because it might be more challenging for a smaller firm than a larger firm to absorb the costs of parental leave or an employee working part-time due to carer responsibilities.²¹

In addition, several of our interviewees told us that small firms can sometimes be 'a little bit backwards' and 'very old fashioned' (40–44). This, of course, depends on the exact firm. In contrast, participants (40–44) spoke about how larger firms tended to have HR departments and policies in place, such as policies for gender and diversity,²² which potentially removes some of the power from the partners (principals), especially the managing partner/principal. Note, however, that we also heard that HR is employed and instructed by the partners/principals and, ultimately, it is the partners/principals who create the culture of a firm. In the words of one participant (40–44):

I think the culture mainly comes from the partners, or the principals, depending which model they're running. What the partners find acceptable, and what they model, just really models the culture for the entire firm. So to be able to see partners that are women, and they have children at school age, or they have taken time off for maternity leave. ... So it's all these kind of things that are just seen as normal in that company, and that just sets the whole culture all the way down.

That said, it is arguable that the larger a firm and the more partners/principals, the more likely they are to hold one another accountable. In this vein, one could contend that the more partners/principals, the less likely it is that one or a small number of partners/principals could strongly affect the culture of the firm.

Other participants spoke about how small firms might prove challenging because they do not have the same support systems and processes in place, such as mentoring (45–49), a clear structure for promotion (40–44) or career planning (40–44). In addition, working in a small firm could potentially be more difficult for women with caregiving responsibilities, because there is no one to pick up the work if one cannot do it (40–44). This does, of course, depend on the exact firm, how work is shared around and the exact technical competencies of the members of the firm. Note, that while small firms might have disadvantages, women might be more visible in them because they are smaller (40–44). That is, women are less likely to be invisible vis-à-vis male counterparts.²³

¹⁸S Schlamp et al, 'The Glass Pyramid Hypothesis: Sex Differences in Preferences for Organizational Hierarchies' (2019) 1 AMAMP 1; SC Eaton 'Surprising Opportunities: Gender and the Structure of Work in Biotechnology Firms' (1999) 869 ANYAS 175; and L Smith-Doerr, *Women's Work: Gender Equality vs. Hierarchy in the Life Sciences* (Lynne Rienner Publishers 2004); K Bunker Whittington and L Smith-Doerr, 'Women Inventors in Context' (2008) 22 GS 194.

¹⁹SL Bem, 'The Measurement of Psychological Androgyny' (1974) 42 JCCP 155; JT Spence, RL Helmreich and J Stapp 'The Personal Attributes Questionnaire: A Measure of Sex Role Stereotypes and Masculinity-Femininity' (1974) 43 JSAS Catalog of Selected Documents in Psychology Manuscript No. 617; VS Helgeson and HL Fritz 'The Implications of Unmitigated Agency and Unmitigated Communion for Domains of Problem Behavior' (2000) 68 JP 1031.

²⁰The data have not been broken down to every specific change (eg 'small-to-medium', 'small-to-large', 'medium-to-large' etc), because there are a lot of permutations. Instead, all 'upsizing' and all 'downsizing' changes have been grouped together, by gender. You can again see the impact of mergers in this data (especially the 'upsizing' of Shelston IP to Sprusons in November 2021).

²¹See eg J Michelson, 'How Small Companies Can Offer Great Paid-Leave Programs' (7 January 2021) HBR. Available at <https://hbr.org/2021/01/how-small-companies-can-offer-great-paid-leave-programs> (accessed 24 February 2024); D Burton, 'Yes, Big Business Can Do More to Support Parents in the Workforce' (30 November 2022) Stuff. Available at <https://www.stuff.co.nz/business/opinion-analysis/300750758/yes-big-business-can-do-more-to-support-parents-in-the-workforce> (accessed 24 February 2024); E Broderick, 'Small Business Needs to Think Big About Paid Maternity Leave' (18 June 2008) Sydney Morning Herald 11.

²²Note that some participants spoke about how many people (men and women) left (or were pushed out of) firms when they listed.

²³On the issues women face with visibility, see eg SJ Correll and LN Mackenzie, 'To Succeed in Tech, Women Need More Visibility' (13 September 2016) HBR. Available

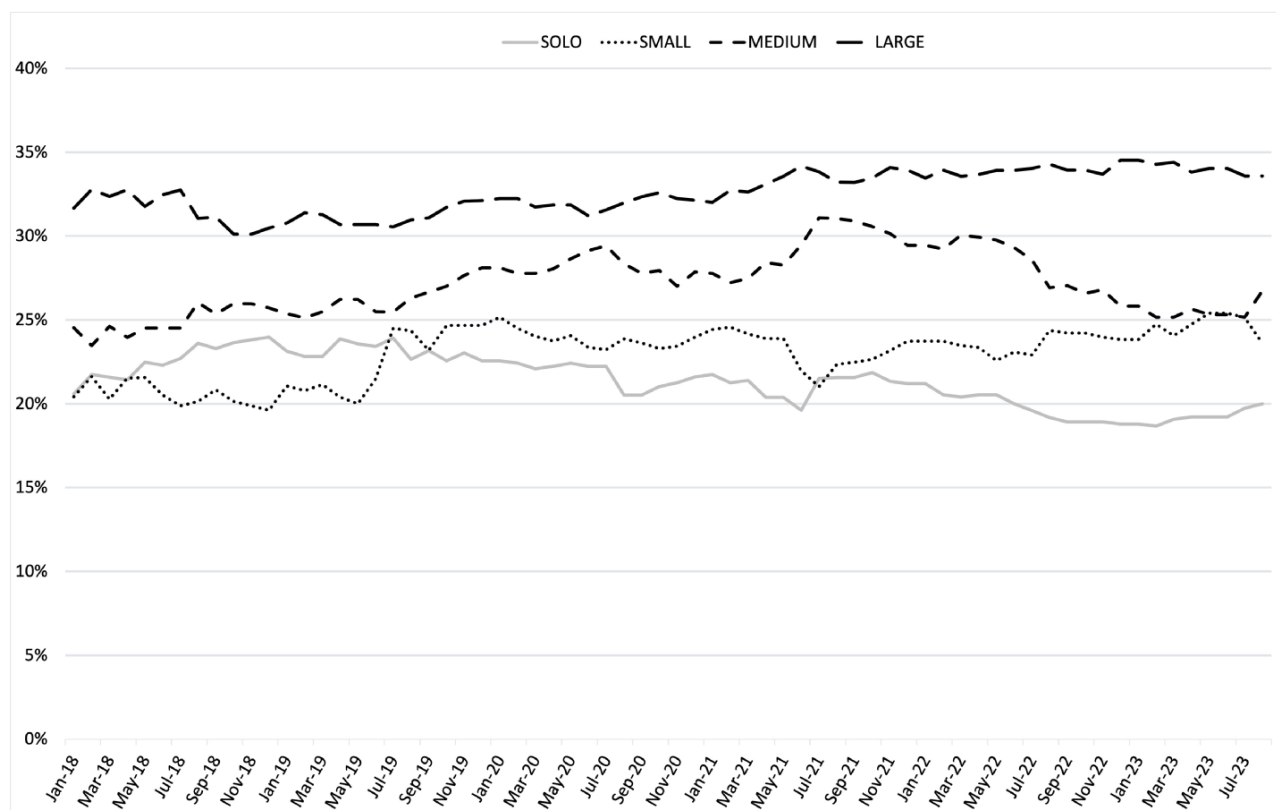


Figure 8. Proportion of female patent attorneys in private practice by firm size.

This is not to say that moves from large to smaller firms are never gendered. As discussed above and below, we had participants who moved to smaller entities due to gendered challenges they faced, particularly as primary caregivers. However, our data suggest that women who face these challenges do not necessarily move to a *smaller* firm (though of course some do), but perhaps move to a *different* firm, or they move in-house or set up on their own.

3.4 Movement by ownership type

In 2013, the commencement of the Intellectual Property Laws Amendment (Raising the Bar) Act 2012 (Cth) made it possible, for the first time, for Australian patent attorney businesses to incorporate. This was mirrored in New Zealand in 2017.²⁴ This paved the way for new ownership structures, including the holding of patent attorney businesses by publicly listed entities.²⁵ This resulted in a major restructuring in the trans-Tasman patent attorney profession, and consolidation of a number of established firms through a series of listings on the Australian Securities Exchange (ASX), acquisitions and mergers. As of August 2023,

there were two listed holding companies, IPH Limited (ASX:IPH) and QANTM IP Limited (ASX:QIP), that together owned six patent attorney firms across Australia and New Zealand (Spruson & Ferguson, Griffith Hack, AJ Park, Pizzeys, Davies Collison Cave and FPA Patent Attorneys), along with a number of other IP businesses internationally. In the course of this process, seven small to mid-sized firms (Fisher Adams Kelly, Callinans, Cullens, Watermark, Shelston IP, Baldwins and Cotters) were merged into the remaining six firms within the two groups. One consequence of this restructuring is that many attorneys have found themselves moved involuntarily into new ownership and management arrangements and into firms in different size categories.

We compared male and female patent attorneys moving between firms with different ownership models—specifically between privately owned (either in partnership or as a company) v publicly listed. Such movements are graphed in Fig. 9 and Fig. 10—the data are cumulative. Over the period covered, women and men were almost equally likely to move between firms. Men most frequently moved between privately held firms. Earlier in the time period, men were moving from listed group firms to privately held firms with approximately equal frequency to private-private movements, but more recently this has slowed. Women showed the same pattern up until the past 15 months or so, during which time they have been moving away from listed group firms at a greater rate. Overall, however, women have moved from privately held firms to listed group firms with greater frequency (relatively) than men.

This is consistent with the comparisons that our participants made between private ownership and publicly listed companies. Note that much of what they said is about both the move from a partnership to a company model, as well as a shift from private ownership to being publicly listed, as these things often

at <https://hbr.org/2016/09/to-succeed-in-tech-women-need-more-visibility> (accessed 24 February 2024); C Simard et al., 'Climbing the Technical Ladder: Obstacles and Solutions for Mid-level Women in Technology' (2008) Clayman Institute of Gender Research. Available at https://gender.stanford.edu/sites/gender/files/climbing_the_technical_ladder.pdf (accessed 24 February 2024).

²⁴Patents (Trans-Tasman Patent Attorneys and Other Matters) Amendment Act 2016, s 271(2)(b). Prior to this, the Patents Act 1953, s 103, prevented any new firms from incorporating, but existing companies could remain as they were.

²⁵It should be noted that incorporation has a number of advantages, even under private ownership, and has not been used solely, or even primarily, as a vehicle for public ownership and capital-raising. As of August 2023, there are 94 incorporated patent attorneys across Australia and New Zealand, the majority of which are not held within the listed ownership groups of IPH Limited and QANTM IP Limited.

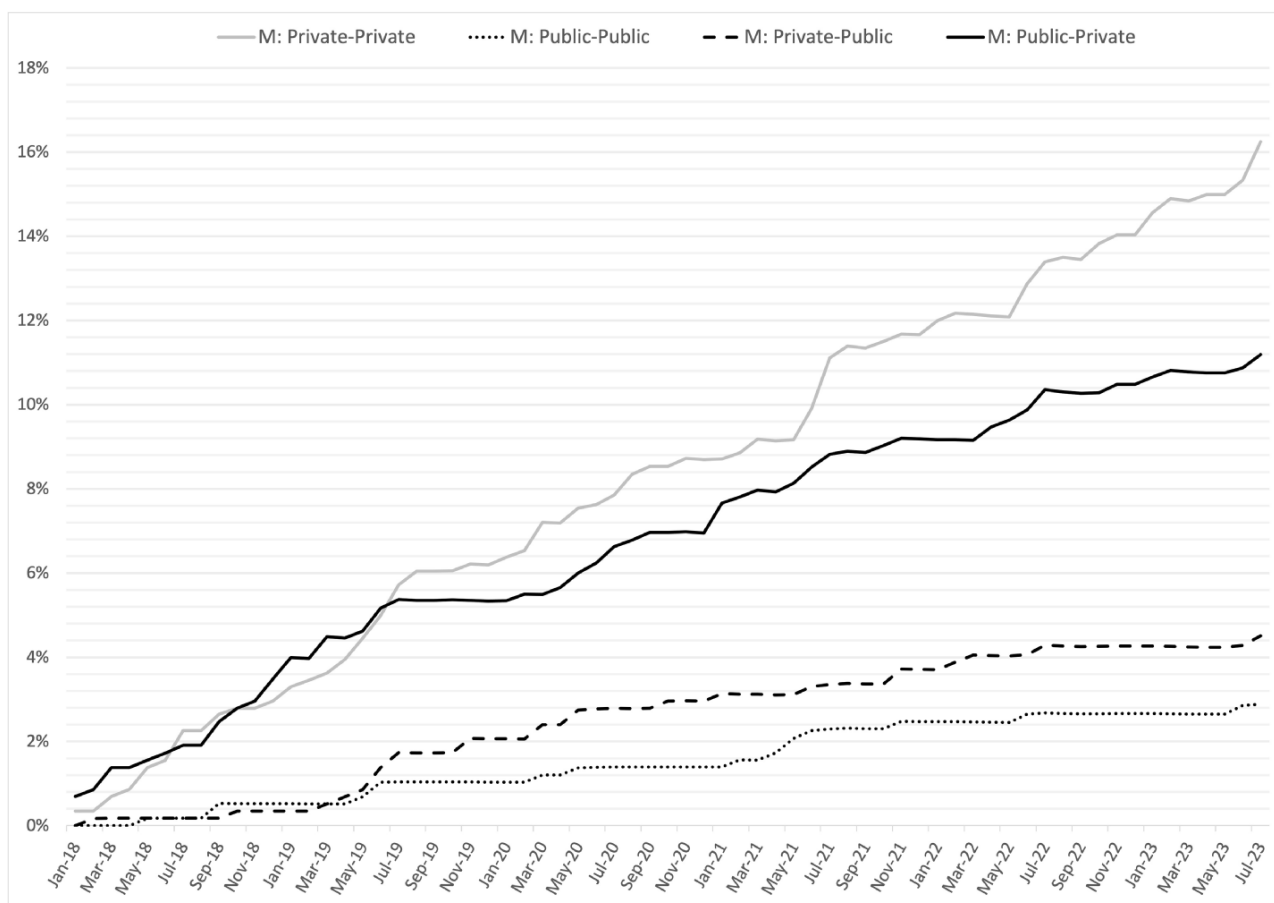


Figure 9. Cumulative movement of male patent attorneys by ownership model of firm.

coincided. To illustrate, one participant (40–44) spoke about how listing meant that a firm was no longer ‘a closed shop’ which ‘opened up way more opportunities for women to advance ... to more senior levels’. The participant continued by explaining that companies have more principals than there were partners because there is no equity involved.²⁶ The matter is, however, not black and white. She added that, while she believed that the listed company model allowed for more diversity in senior roles because less agreement needed to be sought, these positions might be nominal:

So the way a business is run in a partnership is quite different. There's got to be agreement and votes, and a homogenised group is more likely to agree on stuff and to make decisions that are less likely to be challenged. Whereas once you introduce the diversity, whilst you can definitely get a better outcome, it's more difficult to obtain agreement for progress to be made. In a listed entity, there's less of that because it's run more like a corporation. There's less need for agreement before decisions are made, because the reality is that all principals aren't consulted or involved with decisions, and it's not each person's personal money at stake. So whilst the listed environment provides more opportunities for women to seemingly advance, it is not comparable to being an equity partner.

²⁶The partnership model restricts how many people become partners because the more partners there are, the less their share of earnings.

A participant (55–59) spoke about how she believed that the glass ceiling was certainly present under the partnership model, but not the principal model.

Participants also spoke about the lack of transparency being a problem under the partnership model (40–44) (as noted above), which was less of a problem with publicly listed companies, which are more open to public scrutiny (40–44). In addition, that listed companies often have managers and CEOs that are not patent attorneys possibly affects the culture and dynamics of listed firms. After all, they are brought in specifically to manage.

A shift from the partnership model to the company model also potentially affects some people's motivations. As one participant (50–54) told us, it removes the ‘carrot’ from the firm:

The change from a partnership to a company has been huge. And it's had some negatives, but I think a lot of positives, and the thing that all the younger ones are doing now is saying ‘no’. And again, it's males and females, but it's impacting the females who maybe need to say ‘no’ more, because they've got more childcare responsibilities. Because there's no partnership. You know, I never said ‘no’ to any job. I never said ‘no, I can't do that. I don't have time’, because I'd work a weekend if I had to. Because ... you had to do everything perfectly to even have a hope of being a partner. And even then you might not make it. Well now there's no partnership. So the younger generation is saying ‘no, fuck off, I'm only getting paid this much. I'll work to the level of my salary, not my salary plus some far away promise. And I'm too busy to do that or I can't take that on or I don't want to’. And partly that's appalling to me, my generation is going, ‘Oh my god, look at that’. But we're also, you know, in awe of them, saying ‘Good on you, keep your work-life balance. It's just a job’, you know. Especially

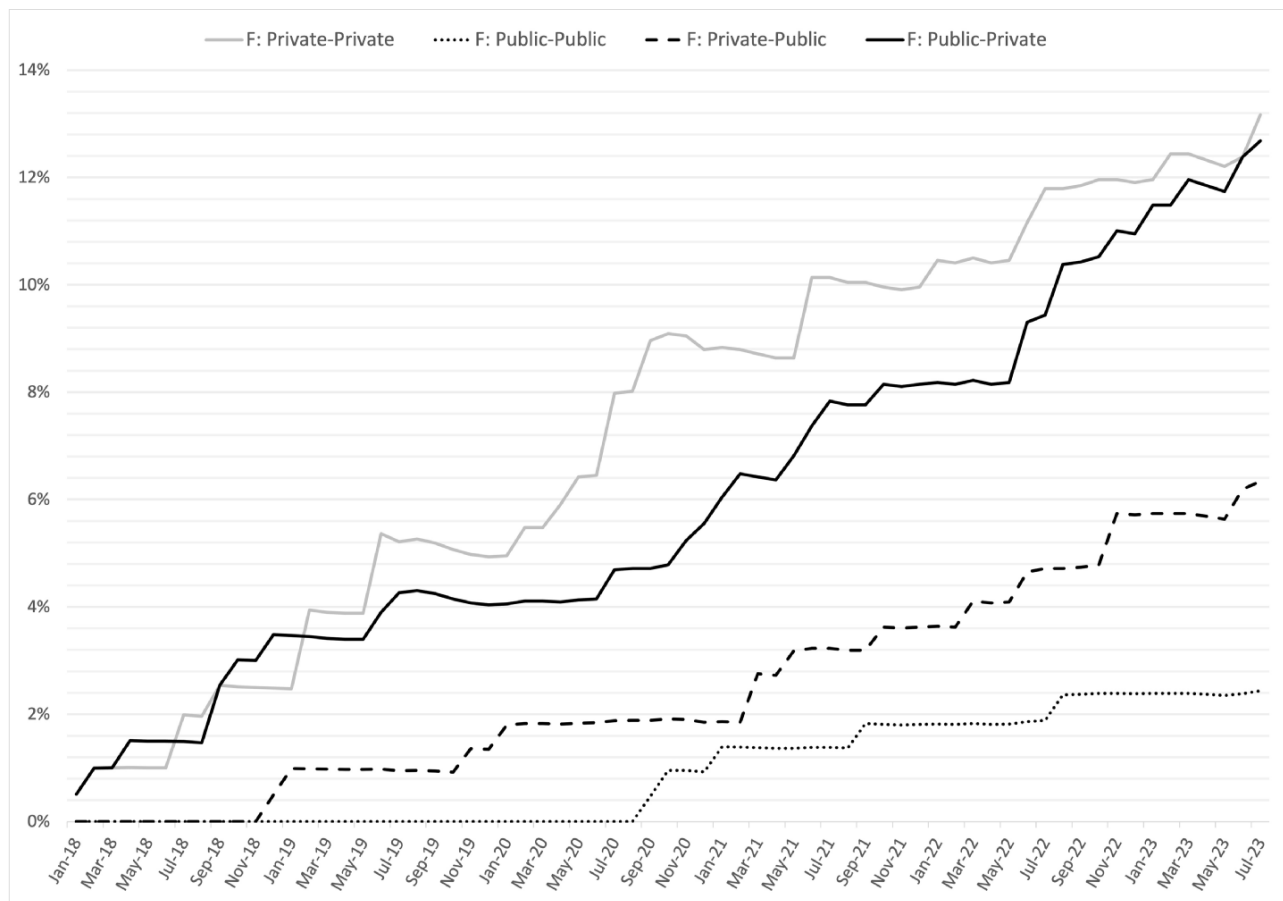


Figure 10. Cumulative movement of female patent attorneys by ownership model of firm.

some of the people who kind of got burnt out, spat out from the system.

The same participant continued by noting that the company model, and in particular publicly listing companies, has also changed things because it typically comes with clearer measures for promotion and bonuses. In her words:

I think all the firms are ‘waking up’ and recognising bias, but the listed company model has an edge in this because it strongly prioritises the bottom line. It sets out clear, transparent targets to be met in order for bonuses and promotions to be given. Meet the targets, get the promotion. Your promotion isn’t dependent on whether a group of (mostly male) partners think you are ‘the right stuff’ – with all the potential for bias that this introduces.

These sentiments (particularly those about listed companies) are consistent with our quantitative data, which—as noted above—show that women are 50 per cent more likely move from privately held firms to listed firms than men (Figs 9 and 10). Note, however, that there are limits to how much a change in business model can change the culture of a firm, as there is not a wholesale change of staff or senior leadership and the work does not change. To exemplify this, a participant (40–44) spoke about how a listed firm could be more transparent, open and collaborative, but also noted that ‘people are indoctrinated into certain patterns of behaviour’, which meant that some principals might still have a mindset focused on their own individual practice.

Rather than ownership model, our interviews suggest that the most substantial factors that affect a woman’s decision to move laterally relate to parenthood and caregiving responsibilities. This is discussed in the following. Note that choices made relating to parenthood and caregiving responsibilities might be related to the ownership model (or might become so), as firms start to compete for staff based on their policies, including around parental leave and flexibility in working. We postulate that we might see this increasingly affecting the choices that women make in where they work.

3.5 Issues relating to parenthood and caregiving responsibilities

3.5.1 General

Women remain the primary caregivers in Australia and New Zealand.²⁷ This was reflected by our participants. A total of 5 had dependents but were not the primary caregiver, while 14 did not have any caregiving responsibilities (Table 4). Thirty-one participants had dependents and were the primary caregivers

²⁷See eg New Zealand Ministry for Women, ‘Labour Market Participation’. Available at <https://women.govt.nz/women-and-work/labour-market-participation> (accessed 24 February 2024); New Zealand Ministry of Health, ‘Carers in New Zealand’. Available at <https://www.health.govt.nz/our-work/carers-in-new-zealand> (accessed 24 February 2024); Workplace Gender Equality Agency, ‘Australia’s Gender Equality Scorecard’ (February 2022) 28.

For the US, see J Barsh and L Yee, ‘Unlocking the Full Potential of Women in the US Economy’ (2012) McKinsey & Co, 6x. Available at [https://www.mckinsey.com/~/media/McKinsey/BusinessFunctions/Organization/Our Insights/Unlocking the full potential of women at work/Unlocking the full potential of women at work.pdf](https://www.mckinsey.com/~/media/McKinsey/BusinessFunctions/Organization/Our%20Insights/Unlocking%20the%20full%20potential%20of%20women%20at%20work/Unlocking%20the%20full%20potential%20of%20women%20at%20work.pdf) (accessed 24 February 2024).

Table 4. Movement relative to caregiving responsibilities

Caregiving responsibilities?	All participants	Moved in-house	Set up own entity	Moved to medium or small firm
No—dependents, but not primary caregiver	5	0	2	1
No—none	14	4	1	2
Yes—dependents	31	12	6	2
Yes—parent/family member	3	0	0	1

Table 5. Care-related themes (data limited to women who are primary caregivers of dependents)

	All participants (%)	Those who moved laterally (%)	Those who stayed (%)
Care responsibilities negatively affected opportunities	48.4	41.2	57.1
Not given good opportunities	19.4	17.6	21.4
Not given more complex matters	22.6	29.4	14.3
Not given work	16.1	23.5	7.1
Mothers viewed as less reliable or effective	19.4	17.6	21.4
Mothers viewed as off track	22.6	29.4	14.3
Fall behind when you step out for parental leave	29.0	29.4	28.6
Mothers miss out on important things, eg networking events	41.9	35.3	50.0
Punished while pregnant or on parental leave	22.6	35.3	7.1
Flexibility in the firms an issue	74.2	70.6	78.6
Have to be seen to be working in the firms	35.4	41.2	28.6
Need stay-at-home partner, etc. for career in firm	41.9	41.2	42.9
Bias in firms because could have children	45.2	52.9	35.7
Bias in firms because have children	32.3	35.3	28.6
Covid-19—has improved flexibility	71.0	64.7	78.6

(potentially shared with their partners), and three had caregiving responsibilities for parents or family members. There appears to be a correlation in our data between being a primary caregiver of dependents and moving laterally. Notably, 12 of the 16 women who went in-house had caregiving responsibilities. Similarly, six of the nine women who set up their own entities had caregiving responsibilities for dependents. We could tentatively say that flexibility required for parenthood as well as other goals are commonly achieved through moving in-house or setting up one's own entity.

Interestingly, of the women who moved to a smaller entity, only two had dependents and the other four had no children or were not the primary caregiver. The sample size is too small to draw any conclusions, but suggests that moving to a smaller firm is not chiefly driven by parenthood. As noted above, this makes sense, as working at a smaller firm does not necessarily change the nature of the work and its demands. This is not to say that the decisions to move to a smaller firm could not be based on parenthood or other gendered grounds.

The rate at which primary caregivers of dependents spoke about care responsibilities affecting their opportunities were meaningfully higher for women who stayed (57.1 per cent) than women who moved laterally (41.2 per cent) (Table 5). In contrast, primary caregivers who moved laterally were almost twice as likely to talk about not being given more complex matters (29.4 per cent), and more likely to talk about not being given work at all (23.5 per cent).

In relation to caregiving responsibilities, women spoke about these issues in the context of being perceived as less dedicated or able to put in the necessary hours.²⁸ In this vein, around

19.4 per cent of the patent attorneys who were primary caregivers of dependents told us that firms tended to view mothers as less reliable and/or less effective. 22.6 per cent of these primary caregivers said that mothers were viewed as 'off track' (or no longer on the path to partnership). Women who moved laterally (especially primary caregivers of dependents) spoke about being viewed as off-track more than women who stayed. Around 30 per cent of primary caregivers felt they fell behind when they stepped out for parental leave, and 41.9 per cent noted that they missed out on important things like networking events, relationship building and chance encounters that resulted in work (this was 50.0 per cent for women who stayed).

Three quarters of primary caregivers of dependents spoke about flexibility as an issue, and around a third spoke about how one has to be seen to be working (in the office), in the firms (Table 5). 41.9 per cent of participants who were primary caregivers reflected on how the demands of the profession means that one requires a stay-at-home partner (or nanny, etc.). More women who moved laterally spoke about bias they encountered because of the potential that they could have children, or because they did have children, when working in the firms. Furthermore, four times as many women who moved laterally spoke about being punished in some way while they were pregnant or on parental leave, for example, being pressured to change their contract or being made redundant. This was one in five participants who were primary caregivers, and one in three who moved laterally. Arguably, these themes explain why these women moved laterally. That is, they sought positions that were more flexible because they took issue with these themes and/or they were pushed out.

²⁸ S. Kenny, 'Women at the IP Bar: A Case for Unpacking the "Merit" Ideal' (2015) 103 *IPF* 19, 24, noted that mothers are considered to lack the 'necessary' commitment to the bar

compared to men who are considered 'married' to the bar, able to do anything at short notice.

While there are differences in the rates at which the different categories of patent attorneys spoke about these themes, women who moved laterally and women who stayed shared concerns. Thus, we will discuss what women spoke about generally as mothers, before turning to the specific caregiving-related reasons that the women who moved laterally gave for doing so.

3.5.2 Experiences in the firms

(a) The juggling act

As alluded to above, several women spoke about the difficulties of juggling work and family obligations.²⁹ The vast majority of the parents we spoke to considered themselves the primary caregivers of their children. This was regardless of their relationship status or whether they were working part- or full-time. Regarding working part- or full-time, several women (typically aged 45+) spoke about the fact that there was no maternity leave when they had their children and firms were not open to them working part-time. That is, after having their children, they often had to promptly go back to work, full-time. Even with the help of family, nannies, babysitters and so on, they faced challenges, due to limited sick leave, not being allowed to work from home and negative presumptions around mothers—discussed in the following.

At the time of writing, both Australia and New Zealand have paid parental leave. Furthermore, firms typically offered more flexibility regarding working part-time, and as to when and where one worked. Note, however, that a major driver of this change was external—namely, government Covid-19-related ‘lockdown’ and social distancing measures. Two-thirds of our participants spoke about how these measures had increased flexibility of when and where one worked. This was 80.8 per cent of women who stayed, and 55.6 per cent of women who moved laterally. A few participants also reflected on the fact that men seemed to have less of a problem getting flexibility, whether they wanted it for childcare or recreation, and that perhaps the push for flexibility was made disproportionately stronger when men asked for it compared to when women did. To illustrate, one participant (45–49) observed:

What I notice nowadays is that firms are far more open to having attorneys work from home (especially post-covid), and allow many attorneys to work altered hours to drop off or pick up kids from day-care or school. However, the shift seems to have developed from a desire to cater to the interests of male attorneys who are hands-on fathers, more than from a desire to meet the needs of female attorneys who are mothers. I’m pleased we got there. But I think would still be fighting that battle, if it wasn’t in the men’s interests as well. But perhaps this is just my cynical view after seeing and receiving so much push back against women trying to juggle parenthood and the role of patent attorney!

Regardless of whether a woman was working part-time or full-time, as primary caregivers they spoke about the challenges involved with getting their work done, including all their key performance indicators (KPIs), dropping off and picking up their children from day care and school, taking care of sick children and taking care of the household. To illustrate, one participant (55–59) spoke about having to leave work for school pick-up, take care of her children during the evening before starting work again at 9

PM and working until 2 AM to try and get work finished. The same participant explained how she felt like she had two selves, and she had to switch between her two identities as a ‘mummy’ and as a “corporate” IP attorney’. The flexibility required for parenthood is discussed further below with respect to further reasons why women move laterally.

Regarding KPIs, we commonly heard that achieving billable targets could be challenging when one was working part-time because one had fewer hours to achieve the targets.³⁰ Even if working full-time, women spoke about the difficulties they encountered because one had less flexibility to put in extra hours (and being a patent-attorney is not a nine-to-five job) and less time to attract work. Building networks is important for bringing in new clients and new work, and thus the ability to bill more. Examining why there are fewer women in senior positions in the Australian patent attorney world, Katherine Rock has noted that, while women continue to be responsible for the majority of caregiving, it is simply not reasonable to expect that they will have the same access to informal networks and networking opportunities conducted after hours.³¹ Consistent with this, a participant (40–44) spoke about how she was not invited to things that would help with network building because she was a mother, but—even if she had been—she wanted to go home and spend time with her family.

Similarly, one participant (45–49) told us that, when working part-time, achieving her billable targets was not the issue, as one’s target can be proportionately decreased (note, however, that some women spoke about how this was not the case for them). Rather, she explained that the difficulty for her was everything else that one has to do. She gave the example that one has to read the same number of firm emails and do the same amount of continued professional development/education. The more senior one is, the more this constitutes a problem, because one has more non-billing-related KPIs, such as managing a team (ensuring they are hitting their KPIs), business development (BD), training juniors, recruitment and setting a good example by achieving one’s own KPIs.

A substantial number of our participants (20) spoke about how the construct of the ideal patent attorney (unencumbered, dedicated and always visible in the office) meant that to have a child or children one required a stay-at-home partner, a nanny, help from family or a partner with a less demanding job. Thirteen of these women moved laterally (five in-house, five set up their own entity and three moved to a smaller firm). Four women spoke about how the constructed expectations of practice were incompatible with parenthood, and twelve participants said these things limited the number of children one could have.

This is not to say that our participants did not achieve despite challenges relating to parenthood. Twenty of our participants had become partner/principal at a large- or medium-sized firm, only two of whom had children but were not the primary caregiver, and two of whom had no dependents. Twelve of the participants who had become partner/principal had been primary caregivers of dependents, and three had been caregivers for parents or family members. Note, however, that three of our participants (all partners/principals) noted that having children and being a patent

²⁹This has been documented in the legal profession. See eg M Thornton, ‘Work/Life or Work/Work? Corporate Legal Practice in the Twenty-First Century’ (2016) 23 *JLP* 13; I Bacik and E Drew, ‘Struggling with Juggling: Gender and Work/Life Balance in the Legal Professions’ (2006) 29 *WSIF* 136; Deborah L Rhode, ‘Diversity and Gender Equality in Legal Practice’ (2013) 82 *University of Cincinnati Law Review* 871.

³⁰This is also an issue in the legal profession. See eg S Durrani and P Singh, ‘Women, Private Practice and Billable Hours: Time for a Total Rewards Strategy?’ (2011) 43 *CBR* 300; and FM Kay, SL Alarie, JK Adjei, ‘Undermining Gender Equality: Female Attrition from Private Law Practice’ (2016) 50 *LSR* 766.

³¹K Rock, ‘Gender (Im)balance in the Patent Attorney Profession in Australia: Myths and Evidence based Recommendations for Change’ (2018) 28 *AIPR* 64, 75.

attorney had meant sacrificing either the wellbeing of their children or their own advancement. And, of course, our participant group did not comprise women who left (or were pushed out of) the profession because of caregiving-related challenges.

To be clear, neither the participants nor we are saying that mothers cannot be patent attorneys. Instead, the women were reflecting on how socially constructed practice norms were biased against women. That the practice norms are socially constructed rather than necessary was made apparent by the success of the profession when it was forced to work from home due to government-mandated Covid-19 measures. Moreover, the women were reflecting on negative presumptions around mothers, discussed below.

Highlighting that the career of a patent attorney has been idealized around someone without care responsibilities, women spoke about how being a mother meant that they fell behind. By way of example, a participant (45–49) reflected on how there was no thought given to the career paths of mothers. In her words, ‘there was just no management of it at all’, and ‘it was sink or swim’. She reflected on how women ‘spend all this time ... building up your practice, getting your skills, finally feeling like you’re, you know, this really valuable contributing member. And then it all gets taken away’. She continued that, because having a child is an individual’s ‘choice’, the consequences all fall on the individual, and ‘then you’ve got to start all over again. And ... imagine doing that several times. ... you’d just be so behind the eight ball. Your practice would just take such a hit if you did that twice over, three times over’. Note that, while this participant is referring to re-building a practice post-parental leave, recall that almost one in two participants who were primary caregivers of dependents spoke about how care responsibilities negatively affected opportunities and, as discussed in the following, about how motherhood negatively affected the work they were given.

(b) Become ‘mothers’

Several women said that the challenges that they had experienced in the profession were not due to them being women, but mothers. This is despite the fact that our participants also spoke about how women with children become mothers in a way that men with children did not become fathers, and the experience of mothers was not the same as that of fathers. That is, experiences related to being a mother and experiences related to being a woman are not mutually exclusive, as parenthood is gendered.

To illustrate, a participant (40–44) reflected on how this was both her own feelings and also how people treated her. She stated that even when she went back to full-time, ‘there’s always more attached to you, that consciousness that you’ve got family responsibilities, ... even when the kids are older’. Regarding the perceptions of others, she stated:

So you can definitely see, all of a sudden at work, people just keep asking you about your kids. Right? Which is fine. But then, you know, it was really weird when it was coming from a person, like another lady actually I was working with, who hadn’t had a child at the time, after maternity leave. And all of a sudden, all she ever asked me was about my kid. So I think I feel like—I did feel like I became less dimensional.

When asked if she felt like the professional side of her disappeared, she answered: ‘A little bit, a little bit. Because I think people see you and they see that you’re a mum. And even though ... I’m going to work as a patent attorney as a mum, I’m not there

to mother anybody, right?’³² Closely related to this, seven women spoke about feeling that they had to hide all aspects of their family lives, that they had children or were pregnant, because this would negatively affect whether they were hired, how they would be treated and whether they were seen as patent attorneys (as opposed to mothers).

Several women commented on the fact that they did not think that they had a gendered experience until they became pregnant or mothers.³³ It was at that point that presumptions about them changed, and they were treated differently. By way of example, a participant (35–39) spoke about how people warned her that ‘gender stuff’ hits women when they become a mother. Because, before that, one can compensate for anything as one has extra time and energy, and one ‘can be the most available person’. She continued by explaining how becoming a mother means one becomes ‘constrained’. Furthermore, everyone expects that you are constrained, and she gave the example that people were surprised if a mother worked full-time. She added that when a woman became a mother, the ‘gender stuff’ ‘becomes inescapable at that point’.

Several participants reflected on how becoming pregnant and mothers simply added layers to their already gendered experiences. One participant (45–49), who spoke about the ‘highly testosterone fuelled culture’ at a larger and traditional firm, stated that she was ‘written off’ when she told her partner she was pregnant. As a further illustration, a participant who had moved in-house (40–44) spoke about how her already negatively gendered experiences simply became worse when she became pregnant. She gave an example of entering the profession and, from that early stage, noticing that her male colleagues seemed to be able to skip certain queues that she had been told were for everyone. But things became worse when she became pregnant and she encountered a ‘benevolent bias’, where it was suddenly presumed that, ‘Oh, she’s pregnant, maybe she can’t do anything’, and she found that she was not invited to certain events. As discussed further below, it also affected the opportunities she was given, and there was an attitudinal change towards her.

Across the ditch, another participant (45–49) who moved in-house relayed that her experiences had always been gendered, especially with clients ‘treat[ing] you like a girl who didn’t know what she was talking about’, but that things ‘majorly changed’ when she first became pregnant. She continued by stating that ‘It was really hard coming back in after having a baby ... they weren’t supportive of part time at all. I had to go back full time’. She added that she was treated differently upon her return. Colleagues around a similar level as she or partners ‘would treat me sometimes like a secretary, or legal assistant’. She continued by talking about how a number of her male colleagues were at a similar level as she was when she had children and continued to partnership, ‘some very quickly’, whereas she ‘would have been on a much much slower route’ had she not decided to go in-house. The participant added that this was on top of decreased confidence levels after being on maternity leave—something we commonly heard.

³² AJC Cuddy, ST Fiske, P Glick, ‘When Professionals Become Mothers, Warmth Doesn’t Cut the Ice’ (2004) 60 *JSI* 701, found that when women become mothers, they lose competence and gain warmth. In contrast, when men become fathers they gain perceived confidence and retain perceived competence. See also M Pownall, M Conner, RC Hutter, ‘Blame it on Her “Baby Brain”? Investigating the Contents of Social Stereotypes about Pregnant Women’s Warmth and Competence’ (2023) 62 *SP* 692, which found that pregnant women are perceived as warm and low in competence.

³³ See also S Kenny, ‘Women at the IP Bar: A Case for Unpacking the “Merit” Ideal’ (2015) 103 *IPF* 19, 26.

It is worth noting that these two participants were sharing experiences that had occurred within the past decade. And they were not alone in having these kinds of experiences (and the experiences discussed throughout this section) within this time period.

(c) Negative presumptions against mothers

One in three participants with dependents spoke specifically about bias in the firms because they had children. That is, they felt that they were treated differently than others because they were women with children. Mothers are often viewed as less dedicated and less effective.³⁴ To illustrate, a participant (40–44) spoke about how ‘perceptions around [her] ability to handle work and [her] commitment to work’ changed when she became a parent and worked part-time.³⁵ A participant who moved laterally (40–44), after returning from maternity leave, was told ‘if you want to work part time, then you’re not going anywhere in this firm’.

Some participants spoke about how they observed the bias against mothers generally. To illustrate, one participant without dependents (30–34) noted about a firm she had worked at:

... it was gendered in the way that I noticed that my female colleagues who had kids were always looked, not down on, but a little bit. You know, ‘Oh she’s going to leave at three o’clock again today to go and get her kid’, or ‘little Johnny’s sick, so she won’t be in the office’, or ‘oh, yeah, there’s no way she’ll make her budget this month, because, you know, XYZ, mum by ...’ That kind of thing. They’d come back from maternity leave, and they’d only want to work two or three days a week, and that wasn’t acceptable to the firm because they needed them to be billing hours all the time. And so they just either weren’t given the job back, or were told that they just couldn’t be flexible in that kind of way. Whereas the male counterparts who had children never seemed to be looked at in that way.

Note her final remark that men with children do not appear to face the same bias. As a further illustration of this, a participant across the Tasman (55–59) stated that she did not think that she herself had ‘necessarily been disadvantaged being a woman. ... But I do think there was always this overarching thing where ... if you’re a man, and you start having kids, it’s not treated the same’.

Yet another participant (45–49) told us that she was aware of several male partners who believed that mothers could not be decent patent attorneys and should not be employed, as well as issues she herself encountered when she joined a firm and they were not aware that she had children when they hired her. This participant reflected on the fact that she understood the perception that she was less reliable and dedicated than her male counterparts, because she could not put in the hours that the men could, she was less ‘visible’ (having to leave at 5:00 P.M. to pick up children), and she was often on leave when she had to take care of sick children, or when she was sick because her children made her sick, or she was rundown. At the same time, she spoke about how hard it was to work as a patent attorney and be a parent because of issues with childcare, lack of support, being unable to work from home (before files were electronic, and before Covid-19 made it more acceptable to work from home) and running out of sick leave.

While the presumption might be that mothers are less effective, several women spoke about how the opposite was the case.³⁶ This might be because they had to be very focused with the time they had to work, because they did not have spare time and could not just work extra hours to catch-up. Or it might be because they felt a need to prove themselves or counter the presumption. For example, a participant (45–49) stated:

... most of the people who came back part-time, none of them that I knew said, ‘I’m not going to work on this’. Because everyone bent over backwards. So the suggestion that you don’t have time or you won’t be able to do it, it was such bullshit. ... every female I know who came back part-time or full-time from maternity leave was just so ... I think we were so desperate to prove ourselves as well, that it wasn’t going to change us, that we were the same attorney, that we should still be going along as we were ... that we would bend over backwards to do things. So the suggestion that we couldn’t do it was so insulting and it was so ... ugh, I found that really hard.

She continued by saying that people presumed that mothers were ‘choosing to put [...] work on a back burner’, which put things into questions, ‘like your dedication, your priorities, whether you have the determination to keep going, and actually it’s the bloody polar opposite. ... you’re so determined to prove yourself and make sure nothing falls down’.

After reflecting on how ‘as a female with kids, I had a black mark against me’, which affected the work she was given and her promotion (discussed further below), another participant (45–49) stated:

But what I can say of myself, and what I’ve noticed from other women, is we tend to work pretty damn hard. And we do focus really hard. And many of us, especially with children, we work in a deadline driven environment, and so we’re focused on getting stuff done before that deadline. We can’t muck around. We’re not walking the corridors with coffees in our hands and chatting away. We are focused.

Thus, this participant concluded that women might not appear reliable and dedicated because they were not as visible as men, but they were in other ways. She was not alone in talking about how being a mother, and having to pick up her children, meant that she was more focused than those without these demands (45–49).

Similarly, another participant (40–44) stated that ‘you end up having to be more responsive and in many respects more available and flexible. Because you’ve got to compensate for those biases’. Interestingly, the participant continued by talking about how difficult it is to change the presumption, saying that:

And it doesn’t necessarily really matter how many times you’ve shown that you can handle it, and that you have handled it, and it’s been fine. There’ll still be these sorts of comments around ‘Must be difficult’. And some of those are underpinned by their own biases brought from how their own families have been structured.

The participant contextualized her statement as follows:

³⁴J. Acker, ‘Inequality Regimes: Gender, Class, and Race in Organizations’ (2006) 20 *GS* 441, 448.

³⁵This is a common issue faced by women in the legal profession. See eg H Sommerlad, ‘The Gendering of the Professional Subject: Commitment, Choice and Social Closure in the Legal Profession’ in Clare McGlynn (ed), *Legal Feminisms: Theory and Practice* (Aldershot, UK: Ashgate, 1998) Ch1.

³⁶Academic mothers in STEM in the US have similar experiences; JA Kmec, ‘Why Academic STEM Mothers Feel They Have to Work Harder than Others on the Job’ (2013) 5 *IJGST* 79.

Comments around how balancing the responsibilities of parenting and work of a patent attorney 'must be difficult' might be couched in sympathetic terms. However, in many instances, it is an expression of sympathy (or pity) from the perspective that the challenges faced by working parents are intractable. What can be lacking is genuine curiosity about the experiences of working parents, let alone any interest in better accommodating attorneys with caring responsibilities.

This is an important observation that it is not enough to notice that it might be difficult for parents. The participant is saying that more is required. Namely, actually learning about what it is like for working parents and trying to create an environment more suitable for caregivers.

We end this sub-part by noting that there may be a connection between women feeling the need to prove themselves, women's hesitation to talk about gendered issues and that women sometimes feel the need to hide weakness in the workplace (17 per cent of our participants spoke about this). Put another way, women might feel they need to hide weakness, and might hesitate to talk about the challenges they face, because they do not want to give the impression that women (and mothers) cannot be patent attorneys—because they can be.

(d) Negative effects on the material reality of mothers

The presumption that mothers are not as reliable or dedicated can have material effects on a woman's career and livelihood. As indicated in the foregoing, it can result in women being given less complex work and/or more administrative work. This, in turn, can affect one's billable hours and subsequently promotion. To illustrate, a participant (45–49) spoke about how she had a partner who told her that another partner did not believe that women could make good patent attorneys. And, while he did not think this, he did think that 'mothers do not make decent patent attorneys', so she was given basic transactional work, and was not brought onto bigger projects, which affected her promotion. It is also conceivable that women might not have job satisfaction (they might even be bored) if given such work.

A participant (50–54) noted that she did not believe that the assignment of work one had to do with having children, but whether one was part-time or full-time, as there would be a reluctance to give someone working part-time a big matter. The participant acknowledged that this could be gendered because it was primarily women who were part-time, rather than men. Furthermore, this participant noted that working part-time and being less physically present in the office could also have material effects, as internal networking decreases:

women don't get the benefit of going, hanging around after work, going into the kitchen and having a glass of wine. You know, some of those just incidental get-togethers that can really help promote your career by being recognised. I did make an effort to stick around and do the after work, drinks because I felt like you had to be seen. People have to know you and particularly if you want to get elevated into the partnership, they have to know you.

That is (as noted above), visibility matters.

(e) Issues may increase at senior levels

The same participant as in the foregoing spoke about how the presumption that mothers are not as reliable or dedicated could become more of an issue as one moves up the corporate ladder, as expectations around dedication and loyalty increase, yet women

are viewed as 'off track'.³⁷ In her words, 'once you get into the equity rounds of partnership, the billable hour and responsible billings expectations are quite substantive. And so for a lot of women to achieve that, you have to be working full time'. In this vein, another participant (40–44) spoke about how a male partner told her that she would be the first female partner at the firm because she did not want children. The same male partner had complained about potential female partners who might have children, whom he believed would not pull their weight and would contribute less, and so should not get partner bonuses.

A participant (50–54) reflected on how difficult it is for a firm to accommodate part-time partners. She stated that partners have:

... a lot more administration, there are a lot more meetings. There's a lot more kind of bigger, firm picture, things that you get involved in. And so people just organise the meetings, and I think there is a bit of a frustration amongst the males that if they're like, 'Oh, well, I can't do it that day', because they don't work that day, and 'I can't do it that day, because ...' There is still that old school thinking about well, I should just be able to plan a meeting and then they should be available. So I think it's going to take a little bit of a mind shift.

This participant observed that because women became mothers in a way men did not become fathers, mothers became partners later in life than men. She added that it was difficult not to 'get a bit angry when you see these, ... young men, who have barely been in the profession ten years, elevated to partnership'. Note that, at the same time, several women told us that they were working extremely hard to get to partnership before they had children, because they knew how motherhood would affect how they were perceived and their ability to progress in their careers. This embodies another way in which a woman's decision-making is gendered.

(f) Societal expectations

Women's experiences are not only a result of presumptions in their workplaces, but also of societal expectations. While it is females who go through pregnancy and the birthing process, societal expectations also contribute to women becoming mothers in a way that men do not become fathers. Seven women spoke about how their male partners expected them to be the primary caregivers, or would presume that certain caregiving responsibilities would fall to them because they were women or because the male's career trumped the female's career.³⁸ This allows men to be better at separating their caregiving responsibilities from their work lives. Three participants spoke about times when their male partners sought to help with caregiving but received bias from their bosses, who expected the female partner to do the caregiving. In this vein, 10 women spoke about how society also placed this expectation on them rather than their male partners. For example, schools would call them if there was a problem, even if the father was listed as the point of contact.

By way of example, a participant who moved in-house (45–49) stated the following:

[my husband] would probably disagree that I'm the primary caregiver, but I can tell you I am. I know what's going on in their

³⁷ M Thornton, 'Authority and Corporeality: The Conundrum for Women in Law' (1998) 6 *FLS* 147, 164–165.

³⁸ M Thornton, 'Authority and Corporeality: The Conundrum for Women in Law' (1998) 6 *FLS* 147, 165.

lives.³⁹ I organise it. I'm their emotional support. If something happened with school, they'll call me first, even if I tell them that my husband is the one today ...

It was crazy, because, I mean, I've had multiple times where I've been called by the school and they haven't been able to get a hold of me. So they leave a message, and they don't even call my husband. ...

The participant opined that 'it's not that he necessarily has shied away from parenting. It's just that society has made it easier for him to be ... more independent'. Moreover, even though her husband was happy for her to go back to work and have the children in day care, things still fell on her as 'the wife'. This participant continued by highlighting how her male colleagues also reflected these societal expectations vis-à-vis their relationships, which gave them an advantage in the workplace:

But the thing that I found kind of amusing, but also made me kind of angry, was the countless times one of my colleagues, male colleagues would say, 'I just asked my wife to do that'. Or 'I got my wife to pick up this or I got my wife to do that'. Or, 'I just, you know, that my wife will organise it'. And, after a number of times, I kind of went, 'where can I get myself a wife? Because ... I'm the wife. So often, my husband actually gets me to do some of that stuff'. And so I started going, 'No, actually, I'm not doing that stuff for him'. ... It was very, sort of enlightening for me. And I think without that, I may not have realised that that's what happens. So I worked with males who had wives at home, who may be working part time that often had nannies, because they're earning a lot of money. So not only was the wife or their nanny doing it. It's a very, very vastly different proposition when you are the primary caregiver, even if you're full time, and even if your husband is sharing. But I think being a woman in that role, unless you have someone else [like a nanny, or] unless you are in a very, very equal partnership ... it more often than not will fall to the woman, because we're the ones who have the children who actually have the pregnancy.

Another woman (also working in patent law, but not a patent attorney, 50–54), described motherhood as follows:

It's like the designated driver all the time. Stay on guard, stay safe in case you have to rush to the hospital in the middle of the night. And it's just crazy.

And even now, my husband is like – it's just habit right? – 'What time is the party on?'

'Well, you got the same invitation. You had the same conversation, you were there when we talked about it. I'm not telling you anymore'. Yeah, I think after 35 years of marriage, I'm done. 'No, sorry, you're not my child. I am not your PA'.

She continued by saying that, when fathers did look after their children, 'dads babysit, and mothers raise children'.⁴⁰

3.5.3 Gaining flexibility through moving laterally

Around one in five of our participants directly stated that having children affected their decision-making with respect to their careers. This was before and after having children.⁴¹ As discussed in the following, having children could play a substantial role in the decision to move laterally, especially moving in-house or setting up one's own entity. This could be because women found that their experiences and career paths changed negatively when they became mothers (as discussed above), and/or they sought flexibility.

Several of our in-house participants noted that there are more women in such roles than in private practise. One participant (40–44) stated that, in her observation, women 'far outnumber the men'. She continued by saying that this was 'interesting because ... you've got more flexibility in-house compared to a firm and maybe that's what's attracting women more in-house'. Consistent with this, a patent attorney and litigator (55–59) spoke about how having children and wanting to work part-time to spend time with them were not feasible as a litigator. In her words, 'It was pretty much impossible to do the role that I had been doing before'. This meant that, though this particular participant had career opportunities where she was, she went in-house. Reflecting this sentiment across the Tasman (60–64), a participant noted that it was 'not a great career move, having kids', in fact it 'Bugged up my career'. However, she added that going in-house was a good move with children. Similarly, another participant who moved in-house (40–44) spoke about how child caring responsibilities meant that at times she had to leave the office and instead complete work at home. This resulted in discussions with HR about whether she had to take unpaid leave for office absences, despite working long hours at home.

Flexibility was also a strong driver for women with children to set up their own entities. For example, one participant (40–44) spoke about the advantages of being able to decide what hours she worked, how many clients she accepted and being able to spend time with her children. As a further illustration, another participant (40–44) spoke about how working at a firm became 'untenable' due to traffic and commuting: 'You do a day's work, come home, pick up the kids'. She stated her move was not due to the partners where she had been working, but because the juggle of work and children was 'just too hard'. Note that this was pre-Covid, before working from home was normal. The participant herself noted this, saying, 'And to be honest, I didn't really broach the whole, "can I just work from home?" It was almost like it didn't even occur that that might be an option, because nobody did it'.

The same participant spoke about how 'being her own boss' worked well in terms of flexibility because she had the flexibility to take the work if she wanted it and to work around her caregiving responsibilities:

... some days, I'd do an hour and then I'd go off with the kids and do the grocery shopping and whatever. And then other days, I'd be really busy and I'd work at night. So having that flexibility and nobody expecting anything of you, man or woman, was super useful and good, really good. But it's a nice profession, and that you can do that. You can dip in and you can have as

³⁹ Similarly, one woman we spoke to (working in patent law, but not a patent attorney, 40–44) described herself as 'the family cloud', from which her husband and children expected to be able to simply 'download' information about their lives.

⁴⁰ Note that when 'father' is used as a verb, it refers to the act of biologically contributing to the creation of a child. In contrast, when 'mother' is used as a verb, it refers to caregiving.

⁴¹ Barsh and L Yee, 'Unlocking the Full Potential of Women in the US Economy' (2012) McKinsey & Co, 6–7. Available at [https://www.mckinsey.com/~media/McKinsey/Business Functions/Organization/Our Insights/Unlocking the full potential of women at work/Unlocking the full potential of women at work.pdf](https://www.mckinsey.com/~media/McKinsey/Business%20Functions/Organization/Our%20Insights/Unlocking%20the%20full%20potential%20of%20women%20at%20work.pdf) (accessed 24 February 2024), suggested that women make choices that increase predictability (or decrease risk) and lessen anything inflexible (such as travel).

many clients as you want, or as few clients as you want. You can say no, if you don't want any more work. And it has actually worked very well, from a family, work-life balance.

This has become even easier with the move from paper files to electronic files. In addition, she noted that not having to reach billable-hour targets was also a positive for her. Firms have billable hour targets, and it can be 'demoralising' if one does not hit their targets. In contrast, working for herself was less 'stressful' because she did not have such targets, and this was a benefit that she would not have had, had she simply requested to work from home at her previous firm. Finally, she said that working in her own entity had allowed her to stay in the profession while her children grew up, had given her a lot of choice around how much work she took on and left the door open for her to return to a firm should she wish to.

It is worth noting that setting up one's own entity and working part-time has downsides. A participant (40–44) noted that it can affect the quality or kind of work that one gets. For example, her work tended to be limited to prosecutions (filings) rather than oppositions (which she had done when she was at a firm) because the latter kind of work is more likely to come up the more clients you have. This participant also spoke about difficulties related to being away from colleagues to ask questions of and to bounce ideas off, for example, if one was looking for input drafting a particularly difficult claim.

4 Concluding thoughts

Our participants spoke about many experiences in the patent attorney profession, positive and negative. These were too many and too diverse to discuss within the confines of this article. Instead, this article focused on women who moved laterally and the reasons that they spoke about for doing so.

The purpose of this article is to uncover the ways in which women's decisions to move around the profession might be gendered. This is not based on a presumption that any particular way or place of practice is preferable to another, but has the starting point that decisions should be made on grounds as free of gender bias as possible. Yet, as highlighted in this article, women often make their decision to move laterally around the profession because of inequity that they face in promotion, a lack of voice and respect in a firm or having fewer quality opportunities than their male counterparts. To increase the ability of women to make ungended decisions, employers could better ensure that measures of merit are ungended and applied fairly, and could put in place processes to more equitably allocate responsibilities and opportunities.

In addition, women with children often make decisions in reaction to negative presumptions around mothers and the need for flexibility in where and when one works. Our participants commonly reflected on how the flexibility that came with Covid-19 government measures made things easier for women who were primary caretakers. One might then see some concerns resulting from the fact that some firms are mandating that staff work from the office or reducing the ability to work when and/or where one wishes.

In any case, we note our concern that flexible working might in fact perpetuate the myth that women 'can have it all',⁴² and simultaneously push women back to the private sphere where

they will be invisible.⁴³ While it might seem like women are being provided a means to have the careers they desire, we should be vigilant that the flexibility is not a guise for expecting women to work, as well as take care of everyone and the household, and that 'women having it all' is actually 'women doing it all'. While not talking about flexible working, one participant (35–39) reflected these challenges faced by women well:

we've got a career. We've worked so hard to get to where we are. If you want to continue, you've got to make it work ... I feel like women are always going to have it harder, I feel like it's never going to be equal. I feel like we're never going to meet our match. If we're in this family situation – or whatever situation that you might have – I feel like if you've got caring responsibilities at home, it can be difficult. I find it difficult. I don't think I'm ever going to be equal to my male counterparts in my team. They're going to jump ahead, because of those opportunities, because I choose to stay at home. And the only way that can change is ... if I find someone else to care for my kids on a day-to-day basis, and I do go into the office, and I'm there, you know, after hours, waiting for those opportunities to network and get those opportunities internally.

The challenges that women face, especially as mothers, and the effect on their careers can perpetuate the presumptions around women and mothers.⁴⁴ For example, that they are caregivers and not 'ideal' patent attorneys.⁴⁵ Yet, as some participants noted, the period of time that a woman might be 'unreliable' due to child-care responsibilities is likely to be limited, and it behoves firms to support women through it rather than 'writing them off'. As one participant (45–49) opined, men will never know what it is like for women because they cannot be pregnant and give birth. However, that women get pregnant and give birth 'is something that has to be factored in for the world to survive'.

In addition, women spoke about how the construction of the 'ideal' patent attorney could change if more men took on caregiving responsibilities and went part-time for this. This could also help to level the playing field if men also took parental leave and caregiving responsibilities, as it might equalize visibility in the office, as well as the breaks that one might have from their career and hours that they have to work. Thus, employers could actively encourage male employees who are fathers to take parental leave, work part-time, work flexibly and work from home. Employers might find that their male employees appreciate this, as they might want these things,⁴⁶ but do not do them as they are contrary to the idealized patent attorney or because society nudges them away from them.

Several participants noted that some men were indeed taking up parental leave as an indication that things were slowly changing. However, many women also lamented that too few men were taking advantage of the parental leave they were entitled to.⁴⁷ In any case, a potential concern is that, even when men take on more fatherhood duties, this might not result in gender

⁴³M Thornton, 'Work/Life or Work/Work? Corporate Legal Practice in the Twenty-First Century' (2016) 23 *IJLP* 13, 35, argues that being constantly accessible virtually is negative for lawyer's wellbeing, because it dissolves the boundary between work and life.

⁴⁴M Thornton, 'Authority and Corporeality: The Conundrum for Women in Law' (1998) 6 *FLS* 147, 165.

⁴⁵*Ibid.*, 160.

⁴⁶See eg L Underwood, 'Who Are Today's Dads?' (2016) *Growing Up in New Zealand*; and L Mannix, 'A strange experience': New Dads Want to Be More Involved, But Aren't Being Taken Seriously' (3 June 2023) *Sydney Morning Herald*.

⁴⁷In New Zealand, there is no specific parental leave for men. Men are allowed 2 weeks of unpaid partner's leave, and mothers can transfer their leave to a nominated 'primary carer'. In 2020, men took 1.6% of parental leave; M Duff, 'The Dad

⁴²For critiques on women 'having it all', see N Campo, 'Having it All' or 'Had Enough? Blaming Feminism in the Age and the Sydney Morning Herald, 1980–2004' (2005) 28 *JAS* 63; C Rottenberg, 'The Rise of Neoliberal Feminism' (2014) 28 *CS* 418

equality. While women with children encounter disadvantages in the workplace (the motherhood penalty—discussed throughout this article), men who raise their children are often praised (the fatherhood premium).⁴⁸ Six of our participants spoke about having observed their male partners being lauded for things that they did all the time and for which they received no such praise. Put another way, men raising their children might change the conceptualization of the ‘ideal’ patent attorney, but this might benefit fathers in a way and to a degree that is different from how it benefits mothers.

Therefore, it is important that the profession factors, in particular difficulties that women might face because of pregnancy and maternity (as well as the multiple other biases they face, such as the presumption of lower competence in relation to technology). While moves to allow men to take paternity leave are positive and could help to ensure that everyone has the same chance to succeed, the profession needs to be aware of, and should attempt to neutralize, the bias against mothers compared to the premium fathers often receive. One possible means to achieve this is by ensuring that these (often unconscious) negative biases against mothers, and positive biases for fathers, are made conscious in unconscious bias training and during performance reviews and promotion assessments, and actively countered.

To conclude, if women are dealing with unspoken challenges that their male colleagues are not, employers should take steps to

level the playing field to ensure equity. As outlined in the foregoing, this could range from employers actively managing staff to try to ensure equitable career paths to tackling negative presumption about women and mothers. A potential avenue of future research, hinted at in this article, is looking more closely at movements around firms, including from smaller to larger firms and to firms of around the same size, and movements from in-house/government roles or own entities to established firms. We did not look at these types of movements in this article because they did not appear common from our interviews. However, we would anticipate that some themes discussed in this article would arise, and additional gendered concerns might be revealed. In addition, we would hope that some movements could be attributed to firms making the patent attorney career path more equitable for women.

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⁴⁸On the motherhood penalty and fatherhood premium, see eg MJ Hodges and MJ Budig, ‘Who Gets the Daddy Bonus?: Organizational Hegemonic Masculinity and the Impact of Fatherhood on Earnings’ (2010) 24 *GS* 717; S Benard, I Paik and SJ Correll, ‘Cognitive Bias and the Motherhood Penalty Symposium’ (2007) 59 *HLJ* 1359; L Prince Cooke, ‘Gendered Parenthood Penalties and Premiums Across the Earnings Distribution in Australia, the United Kingdom, and the United States’ (2014) 30 *ESR* 360; I Sin, K Dasgupta and G Pacheco, ‘Parenthood and Labour Market Outcomes’ (2018) Motu Working Paper 18-08, Motu Economic and Public Policy Research, New Zealand.