



Australian  
Human Rights  
Commission

# Supporting Working Parents:

PREGNANCY AND RETURN TO WORK  
NATIONAL REVIEW – REPORT • 2014



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- Kate Carnell, Chief Executive Officer, Australian Chamber of Commerce and Industry (ACCI) and Peter Anderson, former Chief Executive Officer, ACCI
- Ged Kearney, President, Australian Council of Trade Unions (ACTU)
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# **Supporting Working Parents:**

Pregnancy and Return to Work  
National Review – Report

**Australian Human Rights Commission 2014**

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# Foreword



**Elizabeth Broderick**  
Sex Discrimination  
Commissioner  
Australian Human Rights  
Commission

It is fifteen years since the Australian Human Rights Commission first conducted a national inquiry into pregnancy discrimination in the workplace. That inquiry report, entitled *'Pregnant and Productive: It's a right not a privilege to work while pregnant'*, revealed widespread discrimination towards pregnant women. It also highlighted the need to examine discrimination in the workplace after pregnancy – including women's experiences while on parental leave and on returning to the workplace.

Fifteen years on, the Commission has completed a second National Review. Broader in scope, this National Review confirms that the situation has not markedly changed. We have documented the prevalence, nature and consequences of discrimination in the workplace, not only in relation to pregnancy, but also in relation to parental leave and return to work. And this second National Review confirmed that working while pregnant is still often seen as a privilege, not a right. Not only that, this view extends to parents on return to work. Discrimination continues to be widespread and has a cost – not just to women, working parents and their families – but also to workplaces and the national economy.

In fact, the National Prevalence Survey conducted as part of this Review – the first of its kind in Australia – has revealed that one in two (49%) mothers reported experiencing discrimination in the workplace at some point during pregnancy, parental leave or on return to work. What's more, it also revealed that over a quarter (27%) of the fathers and partners surveyed reported experiencing discrimination in the workplace related to parental leave and return to work as well.

This Survey, therefore, provides a benchmark from which we can measure future progress. Indeed, much progress needs to be made. Both through the Survey and a detailed consultation and submission process, the National Review heard that discrimination has enduring repercussions for many pregnant women and working mothers and fathers. Discrimination, ranging from negative attitudes through to dismissal, has an impact on the physical and mental health of individuals, their career and job opportunities, financial situations and their families. It also has consequences for workplaces. This includes higher absenteeism, lower productivity, higher staff turnover, subsequent recruitment and training costs, as well as reputational damage.

Of course, we did not only speak to employees. Employers from different sized businesses and industries reported that, despite their best intentions, they face difficulties managing business pressures when employees are pregnant, on parental leave or returning to work on flexible arrangements. Meanwhile, employees and employers identified some common challenges. These include understanding legal rights and obligations, developing effective leadership, ensuring that policies are put into practice – particularly by line managers – and dealing with a limited pool of affordable early childhood education and care services.

We also met with employers who are taking the lead in addressing these concerns. These are employers who have developed and implemented successful strategies reaping positive results for their entire organisations. The Report showcases some of these leading practices. They demonstrate that these challenges can be and are being met, with ultimate benefits for all.

What distinguishes this National Review is that it is grounded in both the voices of individuals affected by discrimination and the experiences of employers who manage these issues on a daily basis. It reflects the expertise of community organisations (including unions and working women's centres) that support individuals affected by discrimination. It also reflects the contributions of governments, in identifying and developing legal and policy solutions. Another distinguishing feature is the timing. As we now have a national Paid Parental Leave scheme, the options for disseminating guidance and educational material are much more expansive.

The National Review has been a collaboration with key representatives of business and industry peaks, unions, working women centres and academics. All have shaped its methodology and findings. At the heart of our findings are the many hundreds of individuals and organisations that contributed to the process. We are incredibly grateful for these contributions. They now serve as a foundation for our recommendations.

As this evidence base shows, pregnancy, parental leave and return to work discrimination in workplaces reveals itself to be a systemic issue, one which requires multi-faceted and effective strategies in order to find solutions. There is no one size fits all. A key principle underpinning our recommendations, therefore, has been to focus on finding practical solutions – solutions which can be customised to apply across a range of workplaces and can speak to a variety of stakeholders.

As diverse and wide ranging as these stakeholders may be, all agree that workplaces should be free from discrimination. They agree that women's equal participation in the labour force is crucial – not just to individuals and workplaces, but to the wider economy.

While this National Review is necessarily focussed on paid work, importantly, it does not seek to devalue the vital caring role undertaken by parents and carers every day. Caring work is the ultimate expression of our humanity. Hence, it is central to Australia's social and economic wellbeing. With this in mind, the outcomes of the Review should not be construed as pushing women into paid work. What it seeks to do is to ensure that discrimination is no longer the reason that women opt out of the paid workforce.

We all have families. We all want fulfilling working lives and we want these things not just for ourselves but also for our children. Can we afford to put fifty per cent of Australia's skills, creativity and talent to one side solely on the basis of child bearing and child raising?

Just as we all have a right to family, we also have a right to paid work. If we work together, we can create workplaces where pregnancy, parental leave and return to work discrimination have no place – workplaces where people can work and care. We can ensure that three years from now, when we release the next prevalence survey, the outlook it captures will be considerably brighter.



**Elizabeth Broderick**  
Sex Discrimination Commissioner  
Australian Human Rights Commission

July 2014



# Terms of Reference

## **Research project by the Australian Human Rights Commission: Prevalence of experiences of discrimination relating to pregnancy at work and return to work after parental leave**

The Sex Discrimination Commissioner, on behalf of the Commission, will conduct research to identify the prevalence of discrimination in relation to pregnancy at work and return to work after parental leave as follows:

1. A national online prevalence survey to assess the prevalence, nature and consequences of discrimination relating to pregnancy at work and return to work after parental leave. Selected phone interviews may be conducted with target groups unable to access the online survey.
2. The Commission would provide an interim report on the survey headline data.
3. The Commission would then convene a series of roundtables and consultations nationally and in regional areas, including with government, industry and employer groups, unions, workers, women's groups, relevant community and health organisations, and affected women not otherwise represented, to consider the prevalence data and its implications.
4. Based on the above, the Commission will prepare a research report, including recommendations, which identifies the prevalence of discrimination, adequacy of existing laws, policies procedures and practices, best practice approaches for addressing this, and proposed areas of focus for future activities to address any major matters of concern arising.

The Commission will seek to obtain data on the full range of family circumstances, including single parent or separating households, to determine the extent to which the impact of any discrimination may be exacerbated by family circumstances.

In conducting the research, the Commission will consider recent developments in the area (including the introduction and any initial evaluation of the paid parental leave scheme) as well as previous reports (such as the Commission's National Inquiry into Pregnancy and Work, *Pregnant and productive: It's a right not a privilege to work while pregnant* (1998)).

22 June 2013

# Methodology

The findings and recommendations in this Report are based on an independent assessment of the prevalence, nature and consequences of discrimination in the workplace related to pregnancy, parental leave and return to work. This assessment includes a detailed examination and analysis of both qualitative and quantitative research, as required by the National Review Terms of Reference.

For ease of comprehension, from this point on the Report uses the term ‘pregnancy/return to work discrimination’ to mean ‘discrimination in the workplace related to pregnancy, parental leave and return to work after parental leave’.

## National Review Reference Group

The Commission established a Reference Group comprised of representatives from business, community groups, unions and academia. The Reference Group provided counsel on the research methodology, analysis of the findings and the final report including recommendations. Led by Elizabeth Broderick, the Sex Discrimination Commissioner, the Reference Group members include:

- Innes Willox, Chief Executive, Australian Industry Group
- Kate Carnell, Chief Executive Officer, Australian Chamber of Commerce and Industry (ACCI) and Peter Anderson, former Chief Executive Officer, Australian Chamber of Commerce and Industry (ACCI)
- Ged Kearney, President, Australian Council of Trade Unions
- Thérèse Bryant, National Women’s Officer, Shop Distributive and Allied Employees Association
- Marian Baird, Professor of Gender and Employment Relations, University of Sydney
- Anna Davis, Co-coordinator, Working Women’s Centre, Northern Territory

The Reference Group convened at three intervals to assist the National Review to shape its research, analyse its findings and focus its recommendations. One-on-one meetings were also held with all Reference Group members to discuss the final report.

## Quantitative Data

The Commission contracted Roy Morgan Research to conduct a National Telephone Survey to measure the prevalence of pregnancy/return to work discrimination. Two surveys were administered.

The Mothers Survey measured the experiences of 2000 mothers. It provides the first nationally representative data on women’s perceived experiences of discrimination in the workplace as a result of their:

- Pregnancy
- Request for or taking of parental leave
- Return to work following parental leave.

The Fathers and Partners Survey measured the experiences of 1000 fathers and partners who took two weeks of leave to care for their child under the Dad and Partner Pay (DaPP) scheme available under the Australian Government’s parental leave entitlements. As only a small proportion of new fathers and partners access the DaPP scheme,<sup>1</sup> it is not representative of all working fathers who have had a child.

Please see Chapter 2 for results of the prevalence survey.

## Qualitative Data

From the outset, the National Review aimed to consult as widely as possible with all relevant stakeholders to ensure that the findings and recommendations of the National Review were informed by the experiences of individuals and organisations working on and with these issues.

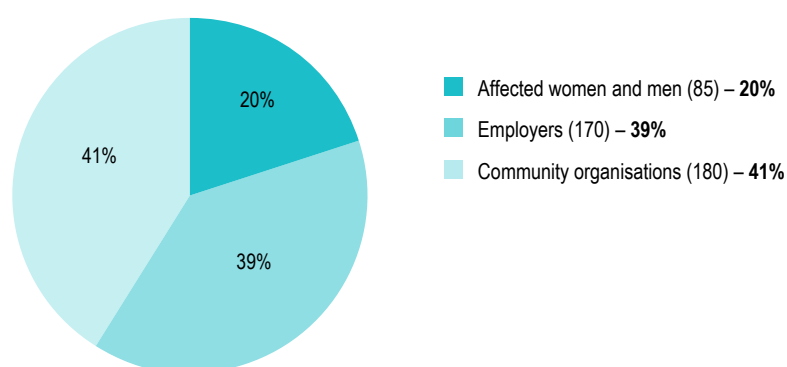
The National Review prepared a ‘Fact Sheet’ and ‘Issues Paper’ to provide background information and to help inform discussions and contributions through the consultation process.

### Group consultations

The National Review held over 50 group consultations in the capital cities of every state and territory and in several regional centres. Through these consultations, the National Review consulted with over:

- 85 individuals affected by discrimination
- 170 employers and business and industry peak bodies, including those from a range of business sizes, sectors and industries
- 180 representatives from more than 150 community organisations, including community legal centres, working women's centres, unions, health organisations and academics.<sup>2</sup>

**Figure 1: Consultations – Percentage of individuals from each stakeholder group<sup>3</sup>**



Participants in our consultations were asked to provide demographic data to enable us to ensure we were meeting with a diverse cross-section of employees and employers (including from a range of business sizes and industries). Details can be found in **Appendix A**.

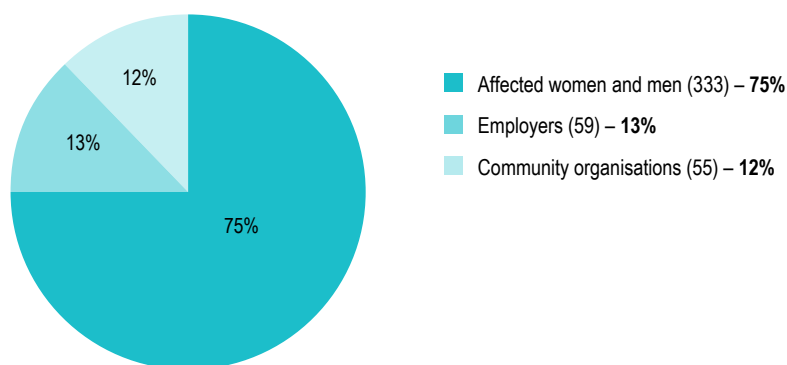
The National Review team also had one-on-one interviews with 14 individuals who were unable to participate in the group consultations.

### Submissions

In response to a call for online submissions, the National Review received a total of 447 submissions including:

- 333 submissions from individuals who had experienced discrimination
- 59 submissions from employers and from business and industry associations
- 55 submissions from community organisations

**Figure 2: Submissions – Percentage of submissions from each stakeholder group<sup>4</sup>**



When completing the submission, the National Review collected key demographic data from individuals and organisations to ensure that a broad cross-section of the community and a range of organisations were being reached. Details can be found in **Appendix A**.

Many of the submissions from community organisations incorporated the experiences of individuals. Similarly, submissions from business and industry peaks and associations represented the experiences of hundreds of their members and included results from surveys conducted with members on the issue.

### **National roundtable**

The National Review also convened a National Roundtable with representatives from business and industry groups, unions and community organisations, to consider the key findings of the data that had been collected and to discuss recommendations received from a range of stakeholders. The National Roundtable was held on 9 May 2014 in Sydney.

## **Research**

The National Review drew upon existing research and materials on the prevalence, nature and consequences of pregnancy/return to work discrimination including:

- Academic and social policy research from Australian and international sources
- Data on enquiries and complaints received by the Australian Human Rights Commission, the Fair Work Ombudsman, and State and Territory anti-discrimination and equal opportunity authorities
- Federal case law on the subject.

This research supported the Review's understanding of the issues, and helped the National Review design its quantitative and qualitative research. The research also helped to inform the findings contained in this Report.

## **Principles underpinning the Review methodology**

The methodology employed by the National Review was based on the following principles:

### *Comprehensive*

All effort was made to ensure that the information gathered and received by the National Review was as broad and extensive as possible.

### *Consultative*

All relevant stakeholders were provided with multiple avenues to contribute to the National Review and these opportunities were promoted as widely as possible. The National Review aimed to consult with a diverse range of stakeholders to ensure that the diversity of experiences of women and men and of different organisations was reflected in the National Review's findings and recommendations.

### *Voluntary*

Involvement of all participants in the National Review process was voluntary. Participants could withdraw at any time.

### *Confidential*

The National Review recorded most of the individual interviews and group consultations. Information gathered from these consultations has been de-identified and confidentiality has been strictly maintained. In addition, the National Review team ensured that individuals impacted by sharing their experiences of discrimination during the consultations had access to support services.

Similarly, all submissions from affected individuals have been de-identified. As a further precaution, no associated demographic information is reported that could be used to identify individuals.

### *Evidence based*

The National Review has based its findings and recommendations on the extensive quantitative and qualitative research it gathered through the review process, as well as on existing academic and social policy research.

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1 In the six month period following the introduction of the 'Dad and Partner Pay' scheme (January – June 2013), 26,212 fathers and partners accessed the scheme. The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *Annual Report 2012-2013*, p 40. At <http://www.dss.gov.au/about-the-department/publications-articles/corporate-publications/annual-reports/fahcsia-annual-report-2012-2013> (viewed 1 April 2014).

2 Also included under community organisations are state and territory anti-discrimination and equal opportunity authorities.

3 Note that the numbers within the chart refer to percentages of the overall number of individuals rather than the number of individuals themselves.

4 Note that the numbers within the chart refer to percentages of the overall number of individuals rather than the number of individuals themselves.

# Glossary

ABS	Australian Bureau of Statistics
AIFS	Australian Institute of Family Studies
ASX	Australian Securities Exchange
AWALI	Australian Work and Life Index
BB	Baby Bonus
CEO	Chief Executive Officer
Cth	Commonwealth
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CALD	Culturally and linguistically diverse
DaPP	Dad and Partner Pay scheme
DSS	Department of Social Services
DDA	<i>Disability Discrimination Act 1992</i> (Cth)
FWA	<i>Fair Work Act 2009</i> (Cth)
FWC	Fair Work Commission
FWO	Fair Work Ombudsman
FCCA	Federal Circuit Court of Australia
FCA	Federal Court of Australia
FMCA	Federal Magistrates Court of Australia
GDP	Gross Domestic Product
HILDA Survey	The Household, Income and Labour Dynamics in Australia Survey
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IMF	International Monetary Fund
IVF	In vitro fertilisation
NES	National Employment Standards
OECD	The Organisation for Economic Cooperation and Development
PPL	Paid Parental Leave scheme
SDA	<i>Sex Discrimination Act 1984</i> (Cth)
WHS laws	Work Health and Safety laws



# Executive summary and recommendations

In 2013, the Australian Government asked the Sex Discrimination Commissioner, on behalf of the Australian Human Rights Commission, to undertake a National Review into discrimination related to pregnancy, parental leave and return to work after parental leave.

The aims of the National Review, entitled **Supporting Working Parents: Pregnancy and Return to Work National Review** have been to:

- provide national benchmark data and analysis on the prevalence, nature and consequences of discrimination at work related to pregnancy, parental leave, or on return to work after parental leave
- engage stakeholders (including government, industry and employer groups, unions and workers) to understand perspectives and experiences, and consider the prevalence data and its implications
- identify leading practices and strategies for employers supporting pregnant employees and men and women returning from parental leave
- provide recommendations for future actions to address the forms of discrimination identified through the project.

Australia has entered binding international human rights obligations to prohibit pregnancy/return to work discrimination. Australian laws, such as the *Sex Discrimination Act 1984* (Cth), implement these obligations by prohibiting discrimination on the grounds of pregnancy, potential pregnancy, breastfeeding and family responsibilities. For ease of comprehension, the Report uses the term 'pregnancy/return to work discrimination' to mean 'discrimination in the workplace related to pregnancy, parental leave and return to work after parental leave'. The key federal laws that protect pregnant women and new parents from workplace discrimination in Australia are: the *Sex Discrimination Act 1984* (Cth), the *Fair Work Act 2009* (Cth), and Work Health and Safety laws.<sup>1</sup>

In conducting the National Review, the Commission collected quantitative data through a National Prevalence Survey. This survey provided the first representative data on the experiences of pregnancy/return to work discrimination by working mothers. It has also provided data on the experiences of discrimination of fathers and partners who have taken time off to care for their child.

In terms of qualitative data, the Commission undertook a wide-ranging consultation and submission process. The National Review team conducted more than 50 face-to-face group consultations with stakeholders (including individuals affected by discrimination, unions and community organisations, employers and business and industry peaks) in the capital cities of every state and territory across Australia, as well as in some regional areas.

Through the consultations, the National Review team met with over 430 individuals, employers, and representatives of community organisations, unions, employer associations and business or industry peaks. In addition, over 440 written submissions were received from individuals affected by discrimination, as well as from community organisations, unions, employers, employer associations and business or industry peaks. This enabled the voices of both employees and employers to be heard directly, providing an insight into their experiences and the challenges they faced in the workplace. Roundtables were also held with academics, government departments and agencies and other stakeholders.

Despite longstanding prohibitions against pregnancy/return to work discrimination, the National Review found that it is pervasive. One in two (49%) mothers reported experiencing discrimination in the workplace at some point. Further, over a quarter (27%) of the fathers and partners surveyed reported experiencing discrimination related to parental leave and return to work despite taking very short periods of leave.

Both the quantitative and qualitative data confirmed that pregnant employees and working parents experience many different types of discrimination in the workplace. These range from negative attitudes and comments from colleagues and managers, through to loss of opportunities for further training and career advancement, reduction in pay and conditions, as well as redundancy and job loss.

This discrimination has significant short-term and long-term negative impacts on individuals and their families, including effects on their mental and physical health and long-term career advancement and earning capacity. Some groups of individuals, such as sole parents and young mothers, may face particular vulnerabilities and more acute consequences.

As well as these individual effects, the National Review found that discrimination has a tangible impact on women's workforce participation. The National Prevalence Survey revealed that experiences of discrimination in the workplace during pregnancy influence whether women return to work following the birth of their child – 32% of all mothers who were discriminated against at some point went to look for another job or resigned. Further, almost one in five (18%) mothers indicated that they were made redundant or that their jobs were restructured, that they were dismissed or that their contract was not renewed during their pregnancy, when they requested or took parental leave, or when they returned to work. Such discrimination, particularly where it results in job loss or the withdrawal from the workforce, can have significant long-term effects.

Overall, the Survey's findings demonstrate that discrimination towards pregnant employees and working parents remains a widespread and systemic issue which inhibits the full and equal participation of working parents, and in particular, women, in the labour force.

Discrimination places an economic impost on employers, industries and individual organisations and on the Australian economy, particularly to the extent that it contributes to women's under-participation or withdrawal from the workforce.

It has been estimated that increasing women's workforce participation in Australia by 6% could increase the national GDP by \$25 billion.<sup>2</sup> Increased participation of women and greater gender diversity at senior levels in an organisation has tangible benefits in terms of better efficiency, performance and innovation, as well as increased access to the female talent pool and improvements to organisational reputation.

The National Review also identified the structural barriers that women and men face. These include the limited availability, affordability and accessibility of early childhood education and care services, as well as the underlying stereotypes and assumptions about childbearing, parenting and the roles of women and men in the home and in the workplace.

Workplace cultures that are informed by the existence of pervasive harmful stereotypes about 'the pregnant employee', 'the employee with family or caring responsibilities', 'the flexible worker' and stereotypes about the 'ideal worker' contribute to this discrimination.

Many employers also shared the difficulty they encountered in understanding their legal obligations – from the multiplicity of legislation with which they must comply, through to challenges in implementing their obligations. This was particularly evident in relation to accommodating the specific needs of pregnant employees, managing return to work for parents after parental leave (such as managing flexible work), and shifting ingrained stereotypes and attitudes that can impede the successful implementation of policy for, and management of, working parents.

Although the existing legal framework is reasonably comprehensive, better protection against discrimination could be provided by strengthening it in a number of areas.

However, the strategy with the highest impact in reducing discrimination in this area is to address the gap that currently exists between the law and its proper implementation within organisations. Several complementary strategies and actions are necessary to address this gap. These include ensuring employers and employees gain an increased understanding of the legislative framework, improving the clarity and dissemination of information, conducting effective training, changing workplace cultures to remove harmful stereotypes, practices and behaviours, and monitoring the implementation of policies. With strong leadership within organisations, reforms that shape more supportive and successful workplaces can occur.

Many workplaces in Australia recognise both the importance of supporting working parents and the cost of discrimination to their organisations. The National Review met with and heard from workplaces that were implementing leading practices and strategies. They agreed that removing discrimination is a business imperative.

The principal finding of the National Review is that pregnancy/return to work discrimination is pervasive and has a cost for everyone – the person affected, their family, their workplace, on employers and on the national economy. Its existence is limiting the participation of women in paid work and the productivity of organisations and the national economy. Addressing workplace discrimination in this area is therefore not only a human rights imperative, but also a business priority. Managing pregnancy, parental leave and return to work in the workplace is not a discretionary option. It is absolutely critical to the growth of a strong economy and a cohesive society.

It is up to all of us – government, employers, unions, peak bodies, community organisations and men and women in workplaces around Australia – to play a role in addressing such discrimination and preventing its continuation.

## Recommendations

The National Review's recommendations identify key strategies and actions for:

- addressing the high prevalence of discrimination
- strengthening the adequacy of existing laws, policies, procedures and practices
- promoting leading approaches
- identifying focus areas for further monitoring, evaluation and research.

The recommendations are directed towards government, workplaces and the wider Australian community, all of whom have an interest in increasing women's participation in the workforce and in shaping family supportive workplaces.

In addition to these recommendations, based on the findings, the National Review identified a number of areas requiring further consideration.

Four overarching principles frame the recommendations and provide the foundation for reform. These principles centre on strengthening the implementation of legal obligations through the development of resources and accessible information, as well as through strategies designed to help dismantle stereotypes and drive cultural change within workplaces.

## Principle 1: Understanding rights and obligations is the starting point

Employers and employees need clear, comprehensive and consistent information that will assist them to increase and enhance their understanding of their obligations and their rights and how they should be applied in the workplace.

This information needs to cover all relevant jurisdictions and explain the interaction of obligations under different laws. It should be disseminated to all pregnant women, and mothers and fathers returning to work. It should also be disseminated to employers and line managers – to people who have day-to-day interaction with, and make decisions about, the continuing role of pregnant employees and parents returning to work after parental leave.

The following government and statutory agencies should collaborate to produce this information and guidance material, and disseminate it through their agencies:

- Department of Social Services
- Australian Human Rights Commission
- Fair Work Ombudsman
- Fair Work Commission
- Safe Work Australia and relevant state and territory regulators
- state and territory anti-discrimination and equal opportunity authorities.

These agencies should work with peak bodies from business, community, unions and community organisations to develop these materials and assist with their dissemination.

For the first time in Australia, the national Paid Parental Leave scheme has created a mechanism through which information can be automatically disseminated to working mothers, fathers and employers. This should be better utilised, as should other existing mechanisms through peak employer bodies, unions, community legal organisations, working women's centres, employee advice organisations and anti-discrimination and equal opportunity authorities.

Innovative practices and strategies for preventing and addressing these forms of discrimination in the workplace can accelerate change and provide productive benefits to organisations, including reducing the loss of working parents from the workforce. Special measures are a useful tool for reducing existing inequality and for helping to drive cultural change. Other measures can include:

- developing and implementing policies and programs to support pregnant employees and working parents
- ensuring good communication and information sharing between management and employees throughout the continuum of pregnancy, parental leave and on return from parental leave
- promoting flexible work opportunities, and
- identifying and measuring key metrics, such as return to work rates and promotion rates for flexible workers.

Organisations and government should share information about leading practices and strategies that will help drive change and build productive workplaces.

### Recommendation 1:

#### For government

- **Coordinate across all relevant government and statutory agencies the production and dissemination of clear, comprehensive and consistent information about employer obligations, employee rights and leading practices and strategies.**
- **Collaborate with peak bodies from the business community, unions and community organisations, to develop these materials and assist with their dissemination.**
- **Automate the delivery of guidance material to employees and employers through the national Paid Parental Leave scheme and other existing mechanisms.**
- **Allocate funding to conduct a national education campaign on employer obligations and employee rights and highlight the benefits to the workplace and the Australian economy.**

#### For employers

- **Ensure the effective delivery and communication of guidance material and leading practices and strategies throughout the organisation, particularly to line managers who have responsibility for managing pregnant employees, employees on parental leave and those returning from parental leave.**

## **Principle 2: Dismantling harmful stereotypes, practices and behaviours about pregnant women and working parents is critical to eliminating discrimination related to pregnancy, parental leave and return to work**

The National Review found that harmful stereotypes and attitudes in the workplace about ‘the pregnant employee’ and ‘the employee with family or caring responsibilities’, ‘the flexible worker’, as well as stereotypes about ‘the ideal worker’, are pervasive in Australian workplaces.

The stereotype of an ‘ideal worker’ as someone who is male, has no caring responsibilities and is available to work 24 hours seven days a week is commonly found to operate in workplaces. Such stereotypes create unsupportive workplace cultures that are detrimental. Dismantling these stereotypes requires challenging organisational norms and culture.

Identifying and ‘calling-out’ the harmful stereotypes in operation within a workplace is the first step to dismantling them. This will bring visibility to how these stereotypes are impeding the capacity of the workplace and workforce. Leaders within an organisation play an important role in naming the harmful stereotypes that exist and taking steps to remove them from the workplace.

The second critical step is to challenge those stereotypes within the workplace, including through exposing and removing the stereotypes and unconscious bias underlying the organisation’s policies and practices for leave, flexible work, and promotion and performance indicators.

Educating and training managers and employees on stereotyping and unconscious bias is, therefore, critical to changing workplace culture. This can prevent harmful stereotypes from being perpetuated in the practical implementation of policies and programs.

Finally organisations should monitor and evaluate the implementation of legal obligations for supporting pregnant employees and working parents.

### **Recommendation 2:**

#### **For employers**

- **Leaders within organisations should make strong statements identifying the harmful stereotypes and take steps to remove practices and behaviours that perpetuate harmful stereotypes.**
- **Organisations should identify and remove harmful stereotypes and eliminate practices and behaviours that perpetuate harmful stereotypes including through:**
  - » **reviewing/auditing existing policies**
  - » **revising policies and practices**
  - » **reviewing how information is provided to managers and employees**
  - » **training all employees, including line managers**
  - » **monitoring and evaluating the implementation of policies and practices which support pregnant employees and working parents.**

### **Principle 3: Strong standards and improved implementation drives change and helps to create productive workplaces**

For both employees and employers, effective legal standards are critical to providing clarity about rights and obligations in the workplace. They also help to drive the development of social norms and to provide a framework from which to build and sustain healthy and harmonious workplaces.

While the legal framework in Australia is extensive, some key reforms would assist in strengthening protection against discrimination in the workplace and providing greater clarity for employers on their obligations.

The continuing prevalence of pregnancy/return to work discrimination illustrates that there is a significant gap between the legal framework and the implementation of the law. There is therefore a need to focus on strategies which bridge the gap between law and practice. The starting point is having strong standards and these standards need to be effectively implemented in the workplace.

#### **Recommendation 3:**

##### **For government**

**Address gaps in the protection of rights within the current legislative and policy framework. This includes:**

- **amending the *Sex Discrimination Act 1984* (Cth) (SDA) to:**
  - » extend the discrimination ground of 'family responsibilities' under the SDA to include indirect discrimination
  - » include a positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family responsibilities.
- **strengthening the 'right to request' provisions under s 65 of the *Fair Work Act 2009* (Cth) (FWA) by:**
  - » removing the qualification requirements in section 65(2)(a) of the FWA (ie the requirements for 12 months continuous service)
  - » introducing a positive duty on employers to reasonably accommodate a request for flexible working arrangements
  - » establishing a procedural appeals process through the Fair Work Commission for decisions related to the right to request flexible working arrangements to ensure processes set out in the FWA have been complied with.
- **clarifying the provisions under the National Employment Standards of FWA to:**
  - » allow employees to use existing personal/carer leave entitlements under s97 of the FWA to attend prenatal appointments (including IVF)
  - » allow employee breaks from work for the purposes of breastfeeding or expressing.

**Increase understanding of legal requirements to not discriminate on the basis of pregnancy and return to work including by:**

- **developing guidance material for employers in relation to their legal obligations and in relation to the work, health and safety needs or requirements of pregnant employees, employees undergoing IVF and employees returning to work after miscarriage or childbirth (including employees who are breastfeeding). This guidance material should be developed with a view to introducing a 'code of practice' to have effect under Work Health and Safety laws in every jurisdiction.**



## Principle 4: Ongoing monitoring, evaluation and research will help to shape effective action

At both the organisational and national levels, ongoing monitoring, evaluation and research are vital tools for assessing progress in reducing discrimination.

At the national level, prevalence surveys should be carried out at regular intervals to map our nation's progress in reducing pregnancy/return to work discrimination. This will also assist in identifying the ongoing nature and impacts of discrimination. We must also identify the benefits to workplaces of attracting and retaining pregnant women and working parents.

The collection of national data on dismissal, redundancy and retention of pregnant employees and working parents is vital to monitoring the extent to which discrimination may be contributing to the low level of women's workforce participation, particularly through the child bearing years. Such data can be collected through the existing gender equality reporting framework overseen by the Workplace Gender Equality Agency.

The National Review found that there is a need for further research including, on the costs of pregnancy/return to work discrimination, to business and other workplaces and the national economy. As a priority, further research is needed to identify the most effective mechanism for reducing the level of vulnerability to redundancy and job loss of pregnant women, employees on parental leave and working parents.

### Recommendation 4:

#### For government

- **Allocate funding to conduct a regular national prevalence survey on discrimination related to pregnancy, parental leave and return to work after parental leave (every four years)**
- **Conduct further research into identified gaps, such as the most effective mechanisms for reducing the vulnerability of pregnant women, employees on parental leave and working parents to redundancy and job loss.**

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1 The Model Work Health and Safety (WHS) Act forms the basis of the WHS laws being enacted across Australia to harmonise work health and safety laws.

2 Grattan Institute, *Game-changers: Economic reform priorities for Australia* (2012), p 39.



# Chapter 1

## The case for addressing workplace discrimination related to pregnancy, parental leave and on return to work after parental leave

### In summary

- Discrimination related to pregnancy and on return to work after parental leave is a systemic and widespread issue that places an economic impost on employers and organisations and on the Australian economy – particularly to the extent that it contributes to women's under-participation or withdrawal from the workforce.
- There is a clear business imperative to address such discrimination. An increase in gender diversity in an organisation delivers tangible benefits in terms of better efficiency, performance and innovation; increased access to the female talent pool; and improvements to organisational reputation.
- Increasing women's workforce participation in Australia by 6% could increase the national GDP by approximately \$25 billion.<sup>1</sup>

Addressing workplace discrimination related to pregnancy, parental leave and return to work ('pregnancy/return to work discrimination') is not only a priority in its own right, there is a clear business case for addressing it. Discrimination in these areas creates costs for everyone – the individual affected, their family, the workplace, and the wider economy.

Costs for individual organisations include:

- loss of talent, knowledge and skills
- lower productivity among employees
- higher staff turnover resulting in increased costs to the employer as a result of the loss on investment made in employees, as well as the additional costs for recruiting and training replacements
- a decline in the organisation's reputation.

The National Prevalence Survey discussed in the next chapter finds that discrimination has significant costs to the national economy, including through its impact on women's workforce participation:

- 32% of mothers who were discriminated against at some point resigned,<sup>2</sup> or went to look for another job.<sup>3</sup>
- 22% of mothers who reported experiencing discrimination at work during their pregnancy did not return to the workforce as an employee, compared to 14% who reported that they did not experience discrimination and did not return to work.
- 23% of mothers who reported experiencing discrimination at work during their pregnancy did not return to the 'main employer' they had before the birth/adoption of their child, compared to 13% of mothers that reported they did not experience discrimination and did not return to their previous 'main employer'.

The failure to address and prevent such discrimination is clearly a significant contributor to the lower participation rates of women in the workforce. The experiences, responsibilities and choices that women make in relation to pregnancy, parental leave and on return to work therefore have a direct impact on women's ability or decision to enter and/or remain in the labour market.

### 1.1 The gender gap in the Australian workforce

The clear and pervasive gender gap in the Australian workforce is widely acknowledged. Despite the fact that women are graduating from university at higher rates than men, with 57% of higher education students in 2011 being women,<sup>4</sup> women are under-represented in the labour market.

In 2011-12, males aged 20-74 years had a higher labour force participation rate (79%) than females in the same age group (65%), a gender gap of 14%.<sup>5</sup> This issue is more acute in Australia than in other OECD countries, with Australia ranked eighth lowest in 2005 for the workforce participation rates of child-bearing aged women (25 to 44 years).<sup>6</sup>

The Grattan Institute found that prior to women having children, young women are equally as likely as young men to be employed in paid work. Most women give birth to/adopt children during their 20s or 30s, and thereafter are much less likely to be engaged in paid work, or likely to work for shorter hours over the rest of their working lives.<sup>7</sup>

### Other gender gaps

The gender gap in workforce participation is connected to other economic gender gaps, including women's representation at leadership levels, the gender pay gap and the gender gap in retirement income and savings.

- Women are under-represented in leadership levels in workplaces:
  - » As of June 2014, women make up 18.2% of board members of Australia's top 200 companies (ASX 200). A total of 41 boards in the ASX 200 do not have any women.<sup>8</sup>
  - » In 2012, women held 9.7% of executive key management personnel positions in the ASX 200, up from 8% in 2010.<sup>9</sup>
- As of February 2014, the gender pay gap stood at 17.1% (on average, full time). This equates to women being paid \$262.50 less than men, on average, per week.<sup>10</sup>
- The average (mean) superannuation payouts for women are just over half (57%) those of men.<sup>11</sup>

Another critical contributor to the lower participation rates of women in the workforce is that women still largely shoulder the majority of caring responsibilities for children, family members or friends with disability, chronic illness or frailty due to older age.<sup>12</sup>

As women move from full-time to part-time employment to accommodate the needs of their families, their careers are interrupted, for which they pay an excessive price. Women who put their careers on hold for even a couple of years are left with risks of being on lower salaries than men; side-lined from leadership positions; and with little in the way of retirement savings.<sup>13</sup>

In making the case for addressing discrimination, the National Review does not suggest that women and men's workforce participation rates should be the same. Rather, in making the case, the National Review aims to ensure that discrimination does not become the reason why women opt out of the paid workforce.

## 1.2 The business case at the national level

The gender gap in workforce participation has been widely recognised as having detrimental effects on individual workplaces and the wider economy.

[Gender disparity in the workforce] is costing the nation billions of dollars in the form of an unrealised productivity potential.<sup>14</sup>

A significant body of research has identified the benefits of lifting women's labour force participation rates – both for individuals (ie greater individual wellbeing in terms of financial security, self-esteem and social engagement), as well as for Australian workplaces, and overall national productivity levels.

Research shows that the rise in the female employment rate since 1974 has boosted economic activity by 22%.<sup>15</sup> In fact, the Grattan Institute has estimated that if women's workforce participation in Australia increased by 6%, the national GDP would be approximately \$25 billion higher.<sup>16</sup>

The Grattan Institute has argued that an increase in women's labour force participation would not lower men's workforce participation (as when an individual enters the labour force, their household's demand tends to increase, resulting in higher market demand overall and the creation of more jobs) nor would it depress wages (ie more labour brings higher returns to capital, encouraging investment and in turn increasing capital stock, the demand for labour, and restoring wages to their original level).<sup>17</sup> Government budgets would also benefit substantially as the number of income tax payers increases.<sup>18</sup>

Further, increasing women's workforce participation has been identified as a key mechanism to securing retirement incomes for women, which could consequently reduce their reliance on the age pension. It has been estimated that a reduction of women's reliance on the age pension by 10% could conservatively save \$2 billion per annum now and \$8 billion per annum in 2050.<sup>19</sup>

Globally, the International Monetary Fund (IMF) and World Bank have recognised that closing the gender gap in workforce participation is a prerequisite for ending extreme poverty and boosting shared prosperity. Drawing on a large body of evidence, the World Bank suggests that raising female employment to male levels could have a direct impact on a country's GDP, for example, increasing it by 34% in Egypt and 9% in Japan.<sup>20</sup>

Equally, the IMF has recognised that the level of women's participation in the paid workforce has serious macroeconomic consequences. It notes that the employment of women on an equal basis with men would allow companies to make better use of the available talent pool, with potential growth implications.<sup>21</sup>

These findings are further supported by the Booz Company's findings that: there is a clear correlation between the front-end processes and policies regarding women's economic opportunities (ie anti-discrimination laws, equal pay processes and access to parental leave and early childhood education and care services etc) and the increased participation of women in the labour force; and that there is a further strong correlative relationship between women's economic participation and general economic growth.<sup>22</sup>

### 1.3 The business case at an organisational level

As well as having a significant impact on national productivity, an increase in women's participation in the workforce can have a direct and substantial impact on organisational culture and operations. It generates tangible benefits in terms of better efficiency, performance and innovation; increased access to the female talent pool; and improvements to organisational reputation. These benefits are frequently realised by increasing the retention of women.

Given the connection between the reduction in participation of women in the workforce and pregnancy and challenges faced upon return to work after parental leave, there are clear business advantages to ensuring gender equality through the creation of infrastructure and practices that focus on supporting women during childbearing years.

#### (a) Better business efficiency and performance

Current research demonstrates that gender balance has a direct positive impact on the efficiency and performance of individual organisations of all sizes and across all sectors. A diverse workforce develops a wider set of skills, expertise, and knowledge that in turn contributes to greater innovation and performance.

A field study experiment of undergraduate students in international business at the Amsterdam College of Applied Sciences found that teams with an equal mix of men and women outperformed male-dominated teams in profits and sales. Performance peaked when a team had about 55% women.<sup>23</sup>

A study by researchers from MIT, Carnegie Mellon University, and Union College documented the existence of collective intelligence in groups whose members cooperated well, and found that collective intelligence surpassed the cognitive abilities of the individual members of the group. Groups in which one person dominated were less collectively intelligent. A major factor in creating a group with the right internal dynamics for collective intelligence to emerge was the number of women. The most effective and cooperative groups exhibited high levels of 'social sensitivity.' Because women tend to have higher levels of social sensitivity, the analysis revealed that the number of women in the group significantly predicted the effective problem-solving abilities of the group overall.<sup>24</sup>

There are also reported benefits of gender diversity at both board and executive management level. One of the underlying reasons for this is that, inherent in gender diversity, is diversity of thought and leadership. These, in turn, are well established as essential elements to successful management.

Research has shown that increased gender diversity on boards is associated with better financial performance.<sup>25</sup> Through an examination of 180 publicly traded companies in France, Germany, the United Kingdom and the United States, McKinsey has reported that companies with diverse executive boards enjoy significantly higher earnings and returns on equity than those in the bottom quartiles.<sup>26</sup>

McKinsey has also shown a positive correlation between a critical mass of at least three women in a management team and stronger organisational and financial performance.<sup>27</sup>

Similarly, Forbes examined the stock performance of the 26 publicly traded companies headed by women on its '2010 Power Women 100' list and found that, on average, companies in the group outperformed their industries by 15% and the overall market by 28%.<sup>28</sup>

Since 2004, a series of Catalyst studies has shown that companies that have greater gender balance in their management and on their corporate boards attain better financial results, on average, than other companies. Catalyst's 2011 study found that companies with the most women board directors outperformed those with the least in return on sales (ROS) by 16% and return on invested capital (ROIC) by 26%. Companies with sustained high representation of women – defined as three or more women board directors for at least four of five years – significantly outperformed those with no women board directors.<sup>29</sup>

Meanwhile, companies with a higher proportion of women on boards are also more likely to have women in senior management and a smaller gender pay gap.<sup>30</sup>

Catalyst found a clear and positive correlation between the percentage of women board directors in the past and the percentage of women corporate officers in the future. Additionally, women board directors appeared to have a greater effect on increasing the percentage of line positions held by women than they did on staff positions. Line experience is necessary for advancement into CEO and top leadership positions, and Catalyst's annual Censuses show that historically women are under-represented in these roles.<sup>31</sup>

*The case for greater gender balance is obvious for Australian leaders. The opportunity to leverage untapped talent and the productivity imperative means that gender should be on the national agenda for years to come. There is just no justification for not... 'getting in the game'.*

Mike Smith, ANZ, Male Champion of Change<sup>32</sup>



## (b) Benefits of retention

Successful policies for supporting employees during pregnancy, parental leave and on return to work are essential to retaining employees, particularly female employees. Failure to support women during this period may result in their departure from the workplace or the workforce in general.

The Business Council of Australia notes, for parents with primary caring responsibilities, mainly mothers, the main issues inhibiting workforce participation include job design and workplace flexibility, specifically the lack of flexible employment options, including parental and carers' leave provisions.<sup>33</sup>

Targeted strategies such as providing breastfeeding facilities have also demonstrated benefits such as high retention levels (94%) and high loyalty levels, as well as reduced absenteeism.<sup>34</sup>

Increased retention, and correspondingly reduced turnover, is a priority for any organisation, and will result in reduced expenditure and increased savings, in relation to:

- job advertising costs
- lost time spent on interviews, clerical and administrative tasks
- use of temporary staff or lost output while waiting to fill the position
- costs associated with training the new employee
- termination pay
- loss of specialist knowledge
- loss of customers
- low staff morale and reduced productivity.<sup>35</sup>

The Australian Human Resources Institute has estimated the cost of staff turnover to Australian business to be at \$20 billion nationally.<sup>36</sup>

Both women and men are more likely to remain with an organisation where there is a proactive diversity 'climate' as they perceive a concrete payoff to themselves by staying in an organisation they view as fair.<sup>37</sup>

A human resources consulting firm analysed extensive employee opinion survey responses and found a positive and significant relationship between employees' overall job satisfaction and engagement with how fairly their company treated diverse employees and consumers.<sup>38</sup>

## (c) Accessing the talent pool

Promoting gender balance can also increase the capacity of an organisation to attract a greater proportion of the female talent pool.

Kronos Australia reported that their survey revealed a predisposition among Australian employers towards an 'ideal' profile for workers – favouring single, young, unattached, male candidates – which meant businesses missed out on a range of talent that did not fit this profile.<sup>39</sup>

The Business Council of Australia has reported that, given that talent is randomly distributed across both genders, at least half of a talented workforce is likely to be women. This means that taking 90% of company leadership from just 50% of the talent pool simply does not make sense.<sup>40</sup>

Having the best talent is obviously critical to success in competitive markets and with women increasingly becoming more highly educated than men, an organisation which is as attractive to women as it is to men will have a competitive advantage in attracting the best talent available.<sup>41</sup>

Kronos Australia notes that in the context where many industries are facing skill shortages, the competition for attracting and retaining talent means flexible work is no longer a 'nice-to-have' option, but rather it is becoming a critical component of attractive working condition packages required for attracting and retaining talent.<sup>42</sup>

Importantly, however, flexibility is an offering which appeals not only to female employees, but it is also becoming a significant marker in attracting male talent, especially younger men. According to research by the Diversity Council of Australia, a significant number of men desire greater access to flexible work arrangements than they currently experience and this is especially the case for young fathers.

The research shows that 79% of young fathers would prefer to choose their start and finish times, but only 41% actually currently do.<sup>43</sup> Around 18% of men, including 37% of young fathers, had 'seriously considered' leaving an organisation due to a lack of flexibility.<sup>44</sup> Men, especially young fathers, value flexible working highly as a job characteristic,<sup>45</sup> meaning that access to flexible work is likely to be one of the determinants among all high quality candidates.

#### **(d) Benefits to reputation**

Finally – and pragmatically – strategies which promote workplace gender equality by reducing sex discrimination can minimise a company's risk of financial and reputational loss. Discrimination can be costly, potentially involving court appearances, legal representation, settlement costs, and potential compensation and penalties payable.

By contrast, and as discussed above, an organisation with a positive reputation for promoting gender equality can benefit from being a more attractive employer. As evidenced by the strong interest among companies registering for the Workplace Gender Equality Agency Employer of Choice Awards, companies recognise the competitive value derived from having a positive reputation for gender equality.<sup>46</sup>

### **1.4 Conclusion**

It is undeniable that the interests of Australia's businesses, workplaces and the national economy lie in preventing pregnancy/return to work discrimination. The business case makes clear that the interests of Australian employers and workers are aligned in developing supportive workplaces; increasing the participation and retention of women in the workforce; and, in doing so, improving productivity and satisfaction for all.



- 1 Grattan Institute, *Game-changers: Economic reform priorities for Australia* (2012), p 39.
- 2 19% mothers who were discriminated against at some point resigned, see Chapter 2.
- 3 13% went to look for another job, see Chapter 2.
- 4 There continues to be some gender segregation in areas of study, with 13% of men, compared with 2% of women enrolled in 'Engineering and related technologies field' and 5% of men, compared with 14% of women enrolled in the Education field. Australian Bureau of Statistics, *4102.0 – Australian Social Trends, Sep 2012: Education Differences Between Men and Women* (2012). At <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features20Sep+2012> (viewed 14 June 2014). See also Graduate careers Australia, *An analysis of the gender wage gap in the Australian graduate labour market* (2014), which reported areas of gender segregation in higher education.
- 5 Australian Bureau of Statistics, *4125.0 – Gender Indicators, Australia, Jan 2013*. At <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4125.0main+features1110Janper cent202013> (viewed 14 June 2014).
- 6 J Abhayaratna and R Lattimore, *Workforce Participation Rates – How Does Australia Compare?* (Staff Working Paper for the Productivity Commission) (2006), p x.
- 7 Grattan Institute, *Game-changers: Economic reform priorities for Australia* (2012), p 39.
- 8 Australian Institute of Company Directors, at <http://www.companydirectors.com.au/Director-Resource-Centre/Governance-and-Director-Issues/Board-Diversity/Statistics> (viewed 14 June 2014).
- 9 Workplace Gender Equality Agency, *Australian Census of Women in Leadership Summary of key findings* (2012). At <http://www.wgea.gov.au/lead/australian-census-women-leadership> (viewed 20 November 2013).
- 10 Australian Bureau of Statistics *Average Weekly Full-Time Earnings data* (cat. No. 6302.0).
- 11 R Clare, *Developments in the level and distribution of retirement savings* (2011), p 10.
- 12 In Australia, it is more common for women than men to provide care between the ages of 18-74 years. In 2011, one in three women (31.8%) compared to one in four men (23.6%) were caring for children, with only 18% of mothers with children under the age of 5 years in full-time employment. (Australian Bureau of Statistics, *2011 Census of Population and Housing, Basic Community Profiles* Catalogue no. 2001.0, (2012)). Existing studies show that the gender gap in labour force participation rates is most evident when children are under the age of six years, with the labour force participation rates of female parents being 39% points lower than male parents who had a youngest child under six years (Australian Bureau of Statistics, 'Labour Force', *Gender Indicators, Australia, Jul 2012*, (2012) Catalogue, no. 4125.0) When employed, female parents are more likely to work part-time than male parents: 66% of employed females with children aged under six years worked part-time compared to 7% of employed males with children of this age (Australian Bureau of Statistics, 'Employment conditions', *Gender Indicators, Australia, Jul 2012*, (2012) Catalogue, no. 4125.0). Women are also more likely than men to have care responsibilities involving greater time and intensity. Women who are unpaid carers have considerably lower rates of employment and are more likely to work in part-time and casual jobs. Less than 23% of female primary carers were in full-time employment at any point across the age groups (Australian Bureau of Statistics, *Surveys of Disability, Ageing and Carers* (SDAC); Australian Bureau of Statistics, *Census of Population and Housing* (from 2006 onwards) in Australian Human Rights Commission, *Investing in care: Recognising and valuing those who care* (2013). At <https://www.humanrights.gov.au/investing-care-recognising-and-valuing-those-who-care> (viewed 14 June 2014)).
- 13 Ernst & Young, *Untapped opportunity: The role of women in unlocking Australia's productivity potential* (2013), p 2.
- 14 Ernst & Young, *Untapped opportunity: The role of women in unlocking Australia's productivity potential* (2013), p 2.
- 15 Goldman Sachs, *Australia's Hidden Resource: The Economic Case For Increasing Female Participation* (2009), p 2.
- 16 Grattan Institute, *Game-changers: Economic reform priorities for Australia* (2012), p 39.
- 17 Grattan Institute, *Game-changers: Economic reform priorities for Australia* (2012), p 40.
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- 20 World Bank, *Gender at Work: A Companion to the World Development Report on Jobs* (2013), p 1. At <http://www.worldbank.org/en/topic/gender/publication/gender-at-work-companion-report-to-world-development-report-2013-jobs> (viewed 5 May 2014).
- 21 International Monetary Fund, *Women, Work, and the Economy: Macroeconomic Gains from Gender Equity* (Staff Discussion Note 13/10) (2013), p 5.
- 22 Booz and Company, *Empowering the Third Billion: Women and the World of Work in 2012* (2012), pp 13-15.
- 23 Catalyst Information Center, *Why Diversity Matters* (July 2013). At <http://www.catalyst.org/knowledge/why-diversity-matters>, referencing S Hoogendoorn, H Oosterbeek, & M van Praag, 'The Impact of Gender Diversity on the Performance of Business Teams: Evidence from a Field Experiment', *Social Sciences Research Network, Working Paper Series* (April 28, 2011).
- 24 Catalyst Information Center, *Why Diversity Matters* (2013), p 10. At <http://www.catalyst.org/knowledge/why-diversity-matters>, referencing A Williams Woolley, CF. Chabris, A Pentland, N Hashmi, & TW. Malone, 'Evidence for a Collective Intelligence Factor in the Performance of Human Groups', *Science* (September 30, 2010), and 'Collective Intelligence: Number of Women in Group Linked to Effectiveness in Solving Difficult Problems', *Science Daily* (October 2, 2010). For similar reports see also: Credit Suisse, *Gender diversity and corporate performance* (2012); Deloitte & Victorian Equal Opportunity and Human Rights Commission, *Waiter, is that inclusion in my soup? A new recipe to improve business performance* (2013); Catalyst, *The Bottom Line: Connecting Corporate Performance and Gender Diversity* (2004); G Desvaux, S Devillard-Hoellinger, & MC Meaney *A business case for women* (2008), McKinsey Quarterly.
- 25 Australian Stock Exchange, *Corporate Governance Principles and Recommendations* (3rd ed, 2014); Reibey Institute, *ASX 500 – Women Leaders Research Note* (2011). At [http://www.reibeyinstitute.org.au/wp-content/uploads/2011/10/ASX500\\_Women-Leaders-2011.pdf](http://www.reibeyinstitute.org.au/wp-content/uploads/2011/10/ASX500_Women-Leaders-2011.pdf) (viewed 14 June 2014); Catalyst, *The Bottom Line: Corporate Performance and Women's Representation on Boards* (2011).
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- 27 McKinsey, *Women Matter: Gender Diversity, A Corporate Performance Driver* (2007), p 12; and McKinsey, *Women Matter 2: Female Leadership, a competitive edge for the future* (2008).
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- 30 Catalyst Information Center, *Why Diversity Matters* (2013) p 3. At <http://www.catalyst.org/knowledge/why-diversity-matters>, referencing S Terjesen & V Singh, 'Female Presence on Corporate Boards: A Multi-Country Study of Environmental Context,' *Journal of Business Ethics*, vol. 83, no. 1 (2008).
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# Chapter 2

## Results of the National Prevalence Survey

### In summary

#### *Mothers Survey*

- Discrimination in the workplace against mothers is pervasive. One in two mothers reported experiencing discrimination at some point during pregnancy, parental leave or on return to work.
- Discrimination is experienced in many different forms ranging from negative attitudes in the workplace through to job loss.
- 32% of all mothers who were discriminated against at some point went to look for another job or resigned.
- One in five (18%) mothers reported that they were made redundant, restructured, dismissed or their contract was not renewed either during their pregnancy, when they requested or took parental leave or when they returned to work.
- Discrimination has a significant negative impact on mothers' health, finances, career and job opportunities and family. 84% of mothers who experienced discrimination reported a negative impact as a result of that discrimination.
- Discrimination has a negative impact on women's engagement in the workforce and their attachment to their workplace. Many mothers reported that they resigned as a result of the discrimination or looked for another job. Mothers who experienced discrimination during pregnancy were less likely to return to their job or return to the workforce.
- 91% of mothers who experience discrimination do not make a formal complaint (either within their organisation or to a government agency).
- Several characteristics of the individual, their employment and the workplace, impacted on mothers experience of discrimination. For example, young mothers and single mothers are more likely to experience discrimination during pregnancy.
- There is limited awareness and understanding of discrimination, its nature and consequences amongst mothers.

#### *Fathers and Partners Survey*

- Despite taking very short periods of parental leave, fathers and partners face discrimination. Over a quarter (27%) of survey respondents reported experiencing discrimination when requesting or taking parental leave or when they returned to work.
- Fathers and partners experience discrimination in many forms and experience significant impacts as a result of discrimination.
- Very few fathers and partners make a formal complaint in response to the discrimination.
- There is limited awareness and understanding of discrimination, its nature and consequences amongst fathers and supporting partners.

As part of the National Review, the Commission contracted Roy Morgan Research to conduct a National Survey to measure the prevalence of discrimination in the workplace related to pregnancy, parental leave and return to work following parental leave.

This survey provides baseline data on the extent, nature and consequences of discrimination against employees in Australian workplaces related to pregnancy, parental leave and return to work following parental leave.

It is the first nationally representative survey of women's perceived experiences of discrimination in the workplace as a result of their:

- pregnancy
- request for or taking of parental leave
- return to work following parental leave.

It also offers a case study of the extent and nature of discrimination experienced by fathers and partners that have taken time off work to care for their child under the 'Dad and Partner Pay' scheme (ie 2 weeks at the minimum wage within 12 months of birth/adoption of the child).

Similar surveys have only been conducted in a small number of countries, such as the United Kingdom and Ireland.

The survey results create a benchmark for:

- measuring progress in eradicating discrimination in the workplace related to pregnancy, breastfeeding, and family responsibilities
- mapping trends over time.

This chapter details the findings and analyses it in relation to the following key areas:

- prevalence of discrimination
- type of discrimination
- impact of discrimination
- response to discrimination

- characteristics of the individual, their employment and their workplace
- understanding of discrimination
- sources of information
- issues related to leave and return to work.

## 2.1 Methodology

Two separate surveys were conducted – the ‘Mothers Survey’ and the ‘Fathers and Partners Survey’.

Respondents were interviewed by telephone (computer assisted telephone interview, CATI). The samples for each survey were drawn from Department of Social Services (DSS) databases of recipients of parental payments. As a result of the introduction of the ‘Paid Parental Leave’ and ‘Dad and Partner Pay’ schemes, there is greater access to databases of mothers, fathers and partners in Australia.

### (a) Mothers Survey

The Mothers Survey measured the experiences of discrimination of birth and adoptive mothers<sup>1</sup> in the workplace at three points in time:

- during pregnancy
- when requesting or during parental leave
- upon return to work following parental leave (including discrimination related to family responsibilities and breastfeeding or expressing milk).

The survey was developed in collaboration with Roy Morgan Research and academics working in this field in Australia.<sup>2</sup> It also draws from similar surveys conducted in the United Kingdom<sup>3</sup> and Ireland,<sup>4</sup> as well as relevant Australian surveys.<sup>5</sup> The survey questionnaire is included in **Appendix B.1**.

Existing qualitative and quantitative data on the nature of discrimination in Australian workplaces related to pregnancy/return to work after parental leave was drawn on to inform the content and structure of the questionnaire. The National Review Reference Group<sup>6</sup> also contributed to the development of the survey.

#### *Mothers Survey Sample*

Respondents to the Mothers Survey (n=2002) were randomly drawn from a DSS database of women who were recipients of either:

- Paid Parental Leave (PPL) in the four month period of July/August and October/November 2011, or
- the Baby Bonus (BB) in the five month period of May, July/August, October/November 2011.

The respondents were aged between 18 and 49 years old and in the workforce as an employee at some time during their pregnancy (or while adopting a child).

In the period in which the sample was drawn (May–November 2011), 98.5% of mothers were paid either the PPL or BB.<sup>7</sup>

The survey was conducted approximately two years after the survey respondents accessed either the PPL scheme or received the BB.

Based on ABS data on the proportion of working mothers that take PPL or receive the BB, the total sample of mothers (n=2,002) consisted of 80% PPL recipients (n=1,602) and 20% BB recipients (n=400).<sup>8</sup>

Results from the Mothers Survey have been weighted to the estimated Australian population of women, who at the time of the survey, were aged between 18 and 49 years, had been employed at some time in the previous nine months as an employee and had given birth to a child in the six month period covered by the DSS sample. This was in order to remove any bias in the sample provided by the DSS in terms of age and labour force status while pregnant.<sup>9</sup>

As such, the results of the Mothers Survey are representative of the experience of working mothers aged 18–49 years old with a child of approximately two years of age.

### (b) Fathers and Partners Survey

The Fathers and Partners Survey measured the experience of fathers and partners who had taken the new legislative entitlement of two weeks of pay (at the minimum wage) under the ‘Dad and Partner Pay’ scheme (DaPP) for leave taken to care for their child.

The Fathers and Partners Survey measured discrimination in the workplace at two points in time:

- when requesting or during parental leave
- upon return to work following parental leave (including discrimination related to family responsibilities).

The survey questionnaire was adapted from the survey used for the Mothers Survey. While there was no other comparable survey of the experiences of fathers and partners upon which to draw, existing qualitative data on fathers' and partners' experiences of discrimination in Australian workplaces related to parental leave and return to work after parental leave was used to inform content and structure of the questionnaire. The National Review Reference Group<sup>10</sup> also contributed to the development of the survey. The survey questionnaire is included in **Appendix B.2**.

### *Fathers and Partners Survey Sample*

Respondents to the Fathers and Partners Survey (n=1001) were randomly drawn from a database of DaPP recipients provided by the DSS. As this scheme has only been in place since 1 January 2013, the survey was based on the experiences of fathers and partners who:

- had a baby/adopted a child in the period February to April 2013
- were aged between 18 and 49 years old
- were in the workforce as an employee just before the birth/adoption of their child.

This sample is representative of the experiences of these 'Dad and Partner Pay' scheme recipients. However, as only a small proportion of new fathers and partners access the DaPP scheme,<sup>11</sup> it is not representative of all working fathers and partners who have had a child.

Given the results of the Fathers and Partners Survey are not representative of all new father and partners and that respondents to this survey had a baby/adopted a child within a different timeframe to the mothers interviewed, the results cannot be compared to the results of the Mothers Survey.

### **(c) Interpreting the prevalence data**

The prevalence data captures respondents' perceptions of the ways in which they were treated as a result of their pregnancy, parental leave and return to work following parental leave.

While only a court can determine whether there has been a breach of relevant legislation, the results indicate the prevalence of behaviour and action that could amount to discrimination due to an employee's pregnancy, requests for or taking of parental leave, and return to work following parental leave (which potentially enlivens the SDA grounds of sex, pregnancy, family responsibilities and/or breastfeeding discrimination). The results should not be interpreted as findings as to whether unlawful discrimination had in fact occurred.

The prevalence data may be used as 'baseline data' for comparisons in the future.

#### **Measuring the prevalence of discrimination**

The prevalence of discrimination was measured at three points in time:

- in the workplace prior to the birth/adoption of the child
- when requesting or while on parental leave
- after the birth/adoption in relation to family responsibilities and breastfeeding/expressing.

Respondents were asked, for each of these points in time, if they had ever been 'treated unfairly or disadvantaged' (the plain-English definition of discrimination) because they were pregnant; because they took or requested to take leave to care for the child; because of their family responsibilities and breastfeeding/expressing in their first job after the birth of the child – and if so, what was the nature of that unfair treatment.

All respondents were also asked if they had experienced specific behaviour and actions that can constitute discrimination (see pages 30-31).

An overall incidence of the level of workforce discrimination relating to pregnancy was calculated as the total number of individuals who identified they were discriminated against according to the plain-English definition ('treated unfairly or disadvantaged') or reported that they experienced an action or behaviour that may constitute discrimination, on at least one occasion.

The survey was designed to capture the specific experiences of particular demographic groups. Some of the socio-demographic characteristics of respondents which was collected through the survey questionnaire included data in relation to:

- age
- gender<sup>12</sup>
- whether the respondent has a disability
- whether the respondent was a sole income earner during their pregnancy/adoption, when they requested or took parental leave or when they returned to work.

Other demographic data was available through the DSS database from which respondents were randomly surveyed including data in relation to:

- Aboriginal and Torres Strait Islander status
- Culturally and linguistically diverse background.<sup>13</sup>

Given the small sample sizes of Aboriginal and Torres Strait Islander respondents, culturally and linguistically diverse respondents and respondents with a disability, the findings for these groups should be regarded as indicative only and care should be taken in extrapolating those findings to the general population.

The values presented throughout the Report have been rounded to whole numbers points (with the exception of those values between 0% and 1%). Therefore the bars on the graphs presented throughout the Report may not appear to be equal though they are reported as having the same value. Please note that this is due to rounding and is not an error.<sup>14</sup>

This chapter provides an overview of the major findings, focusing on some of the major differences between diverse groups of survey respondents.

2.2 Mothers Survey

(a) Prevalence of discrimination

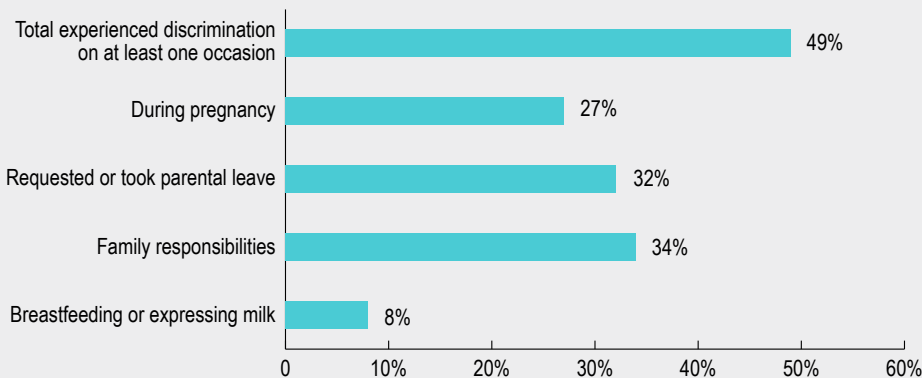
*Discrimination in the workplace against mothers is pervasive.*

**One in two (49%) mothers<sup>15</sup> reported experiencing discrimination in the workplace at some point during pregnancy, parental leave<sup>16</sup> or on return to work.<sup>17</sup>**

Discrimination was reported at all stages:

- A quarter (27%) of mothers reported experiencing discrimination in the workplace during pregnancy.
- Almost a third (32%) of mothers reported experiencing discrimination in the workplace when they requested or took parental leave.
- More than a third (35%) reported experiencing discrimination when returning to work after parental leave (34% related to family responsibilities and 8% related to breast-feeding or expressing milk).

Figure 1: Prevalence of discrimination in the workplace during pregnancy, parental leave and return to work<sup>18</sup>



**Base:** Total respondents: (n=2002); During pregnancy: mothers (n= 2001); when requested or took parental leave: mothers who took leave or would have liked to take leave (n=1902); mothers who returned to work as an employee (n=1576).

Of the 49% of mothers who reported experiencing discrimination, more than half (55%) reported experiencing discrimination at more than one point in time.<sup>19</sup>

## (b) Type of discrimination<sup>20</sup>

\* Please refer to the chart on pages 30-31 for a key to the 'types of discrimination' that are included in the categories below. Please note that respondents were allowed multiple responses.

**Discrimination is experienced in many different forms ranging from negative attitudes in the workplace through to job loss.**

**Many mothers experience more than one form of discrimination during pregnancy, parental leave and return to work.<sup>21</sup>**

One in five (18%) mothers indicated that they were made redundant/restructured/dismissed or that their contract was not renewed, either during their pregnancy, when they requested or took parental leave, or when they returned to work.

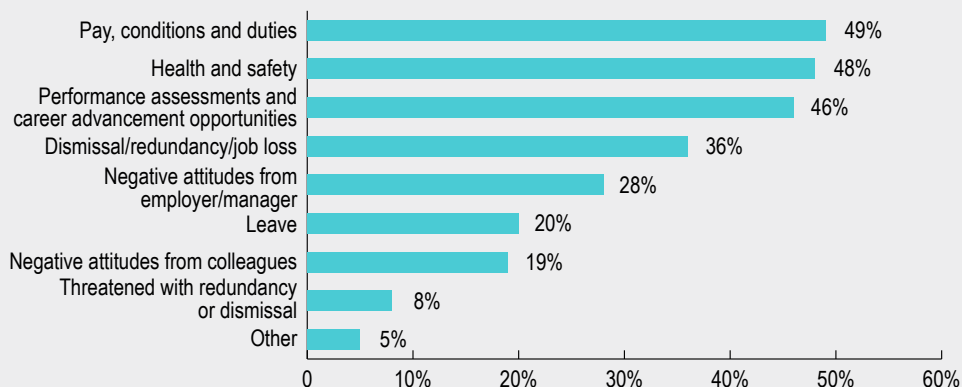
### Types of discrimination experienced during pregnancy

Of the 27% of mothers who reported experiencing discrimination in the workplace during pregnancy:

- More than a third (36%) reported that they had been made redundant/restructured, were dismissed or did not have their contract renewed.
- Half (49%) reported discrimination related to pay, conditions and duties.
- Nearly half (48%) reported discrimination related to their health and safety.
- Nearly half (46%) reported discrimination related to their performance assessment or career advancement opportunities.

Figure 2: Types of discrimination during pregnancy<sup>22</sup>

Of the **27%**  
of **mothers** who  
experienced  
discrimination  
during  
pregnancy...



Base: Mothers (n=2001): Experienced discrimination during pregnancy (n=482).

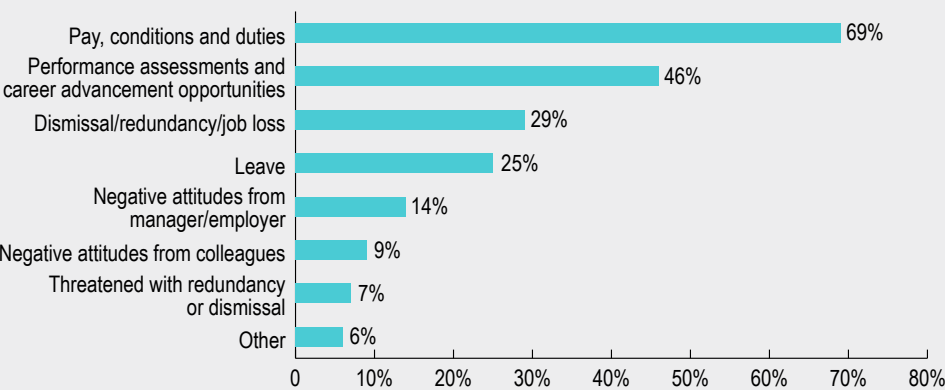
Types of discrimination experienced when requesting or on parental leave

Of the 32% of mothers who reported experiencing discrimination in the workplace when requesting or on parental leave:

- Over two thirds (69%) reported discrimination related to pay, conditions and duties.
- Almost half (46%) reported discrimination in relation to their performance assessment and career advancement opportunities.
- More than a quarter (29%) reported that they were made redundant/restructured, were dismissed or did not have their contract renewed when they requested or took leave.

Figure 3: Types of discrimination when requesting or on parental leave<sup>23</sup>

Of the **32%** of **mothers** who experienced discrimination when requesting or **ON** parental leave...



**Base:** Mothers who requested or took parental leave (n=1902): Experienced discrimination when requesting or on parental leave (n=615).



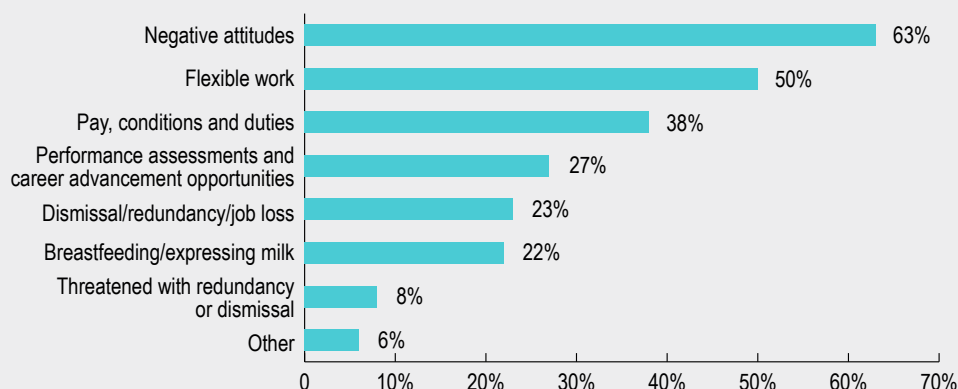
### Types of discrimination experienced upon return to work

Of the 36% of mothers who reported experiencing discrimination in the workplace when returning to work after parental leave:

- Nearly two thirds (63%) reported receiving negative attitudes or comments from colleagues or managers/employers.<sup>24</sup>
- Half (50%) reported discrimination when they requested flexible work arrangements.
- Two in five (38%) reported discrimination related to pay, conditions and duties.
- Nearly a quarter (23%) reported being made redundant/restructured, were dismissed or did not have their contract renewed.
- One in five (22%) reported discrimination related to breastfeeding or expressing milk.

Figure 4: Types of discrimination on return to work<sup>25</sup>

Of the **36%**  
of **mothers** who  
experienced  
discrimination  
on return to  
work...



**Base:** Mothers who returned to work as an employee (n=1576); Experienced discrimination in the workplace on return to work (n=578).

\* This chart provides a key to the types of discrimination within each broad category of discrimination

<b>Negative attitudes</b>	You received inappropriate or negative comments from your employer/manager about your pregnancy ( <i>pregnancy</i> )
	You received inappropriate or negative comments from your colleagues about your pregnancy ( <i>pregnancy</i> )
	You received inappropriate or negative comments from your employer/manager because you requested or took leave to care for your child ( <i>parental leave</i> )
	You received inappropriate or negative comments from your colleagues because you requested or took leave to care for your child ( <i>parental leave</i> )
	You received inappropriate or negative comments about breastfeeding or expressing milk ( <i>return to work</i> )
	You received inappropriate or negative comments about working part-time or flexible hours ( <i>return to work</i> )
	You received inappropriate or negative comments about needing time off to care for your child due to illness ( <i>return to work</i> )
	You were viewed as a less committed employee ( <i>return to work</i> )
	You were unfairly criticised about your performance at work ( <i>return to work</i> )
<b>Pay, conditions and duties</b>	Your hours were changed against your wishes
	Your roster schedule was changed against your wishes ( <i>pregnancy and parental leave</i> )
	Your duties or role were changed against your wishes
	You were made casual ( <i>pregnancy and parental leave</i> )
	You had a reduction in your salary or bonus
	You didn't receive a pay rise or bonus, or received a lesser pay rise or bonus than your peers at work
	You missed out on a salary increment or bonus ( <i>parental leave</i> )
	Your position was replaced permanently by another employee ( <i>parental leave and return to work</i> )
	Your employer did not adequately backfill your position during your parental leave and this negatively impacted you ( <i>parental leave</i> )
<b>Performance assessments and career advancement opportunities</b>	You were unfairly criticised about your performance at work ( <i>pregnancy</i> )
	You failed to gain a promotion you felt you deserved ( <i>pregnancy and return to work</i> )
	You were denied access to training that you would otherwise have received ( <i>pregnancy and return to work</i> )
	You missed out on opportunities for training ( <i>parental leave</i> )
	You missed out on opportunities for promotion ( <i>parental leave</i> )
	You missed out on a performance appraisal ( <i>parental leave</i> )

<b>Job loss/dismissal</b>	You were treated so poorly that you felt you had to leave
	You were threatened with redundancy or dismissal
	You were made redundant/restructured
	You were dismissed
	Your contract was not renewed
<b>Leave</b>	You were unfit for work due to pregnancy-related illness or because your pregnancy ended and your employer denied you special unpaid maternity leave ( <i>pregnancy</i> )
	You were denied leave to attend medical appointments for your pregnancy ( <i>pregnancy</i> )
	Your employer encouraged you to start or finish your parental leave earlier or later than you would have liked ( <i>parental leave</i> )
	You were denied leave that you were entitled to ( <i>parental leave</i> )
<b>Health and safety</b>	You were unable to take toilet breaks as you needed ( <i>pregnancy</i> )
	You were not provided with a suitable uniform ( <i>pregnancy</i> )
	Your work/workload was not adequately adjusted to accommodate your pregnancy ( <i>pregnancy</i> )
	Your health and safety were jeopardised by failure to accommodate your pregnancy ( <i>pregnancy</i> )
	You were not provided with a safe job ( <i>pregnancy</i> )
	You were transferred to a safe job but it involved a different number hours of work that you did not agree to ( <i>pregnancy</i> )
	You were transferred to a safe job but did not have the same terms and conditions of employment ( <i>pregnancy</i> )
	You were not provided with appropriate breastfeeding or expressing facilities ( <i>return to work</i> )
<b>Flexible work</b>	Your requests for flexible hours or work from home were denied ( <i>return to work</i> )
	Your requests for time off to cope with illness or other problems with your baby were denied ( <i>return to work</i> )
	You were given unsuitable work or workloads ( <i>return to work</i> )
	You were given work at times that did not suit your family responsibilities ( <i>return to work</i> )

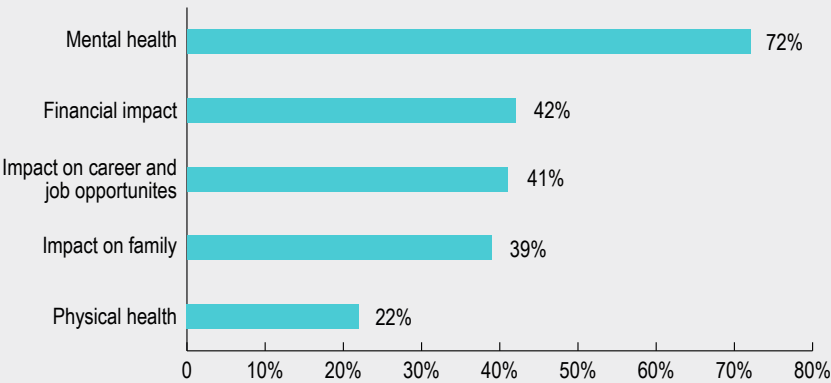
(c) Impact of discrimination

**Discrimination has a significant negative impact on mothers’ health, finances, career and job opportunities and their family.**

84% of mothers who experienced discrimination on at least one occasion reported a negative impact as a result of that discrimination.

- Two thirds (72%) reported that the discrimination impacted on their mental health. Mental health included stress and impact on their self-esteem and confidence.<sup>26</sup>
- Two in five (42%) reported that the discrimination had a financial impact on them, while a similar proportion (41%) felt that it impacted on their career and job opportunities.

Figure 5: Impact of discrimination experienced<sup>27</sup>



**Base:** Total experienced discrimination on at least one occasion (n=978).

***Discrimination has a negative impact on women's engagement in the workforce and their attachment to their workplace.***

- Of mothers who reported experiencing discrimination at work during their pregnancy, 22% did not return to the workforce as an employee. In contrast, only 14% of mothers who reported not experiencing discrimination at work during their pregnancy did not return to the workforce as an employee.
- Of mothers who reported experiencing discrimination at work during their pregnancy, 23% did not return to the 'main employer'<sup>28</sup> they had before the birth/adoption of their child. In contrast, only 13% of mothers who reported not experiencing discrimination during their pregnancy did not return to their 'main employer'.<sup>29</sup>

***Mothers who reported that their employer was supportive during their pregnancy were less likely to report that they experienced discrimination. They were also more likely to return to work for that employer.***

While 97% of mothers who did not experience discrimination during pregnancy said that their employer was supportive during their pregnancy,<sup>30</sup> only 53% of mothers who reported experiencing discrimination during pregnancy said their employer was supportive during their pregnancy.<sup>31</sup> Furthermore, while 98% of mothers who did not experience discrimination on return to work said their employer was supportive on return to work,<sup>32</sup> only 66% of mothers who reported experiencing discrimination on return to work said their employer was supportive on their return to work.<sup>33</sup>

Of the mothers who reported that their employer was supportive or very supportive of them during their pregnancy, almost nine in ten (87%) returned to the same employer after leave. This compares to just over half (53%) of mothers who reported returning to work for the same employer who was unsupportive or very unsupportive during their pregnancy.<sup>34</sup>

**(d) Response to discrimination**

Three in four (75%) mothers reported that they took action in response to discrimination they experienced on at least one occasion. These actions ranged from discussing it with friends, family or a colleague, through to making a formal complaint or resigning.<sup>35</sup>

***Nearly a third of mothers who experience discrimination look for another job or resign.***

32% of all mothers who were discriminated against at some point went to look for another job or resigned.

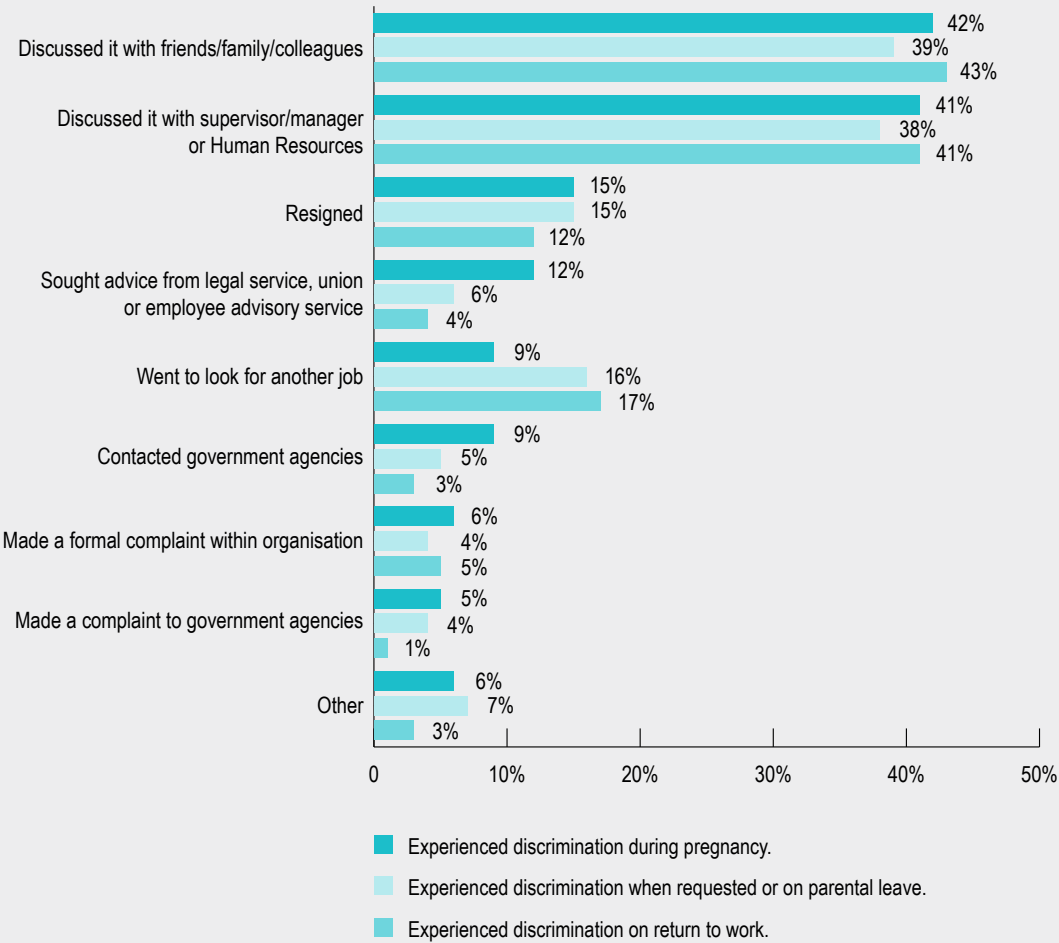
***Very few mothers who experience discrimination make a formal complaint.***

91% of mothers who experienced discrimination did not make a formal complaint.

Only 6% of mothers who experienced discrimination made a formal complaint within their organisation, only 4% made a complaint to a government agency.

There was little difference between the actions taken in response to discrimination across the stages. However it is noteworthy that those who reported experiencing discrimination on return to work were less likely to make a complaint to a government agency than those who reported experiencing discrimination during pregnancy.

Figure 6: Actions taken in response to discrimination experienced<sup>36</sup>



**Base:** Mothers who experienced discrimination during pregnancy (n=482), when requested or on parental leave (n=615), on return to work (n=578).



### ***Mothers do not take action in response to discrimination for a range of reasons.***

A quarter (25%) of mothers who experienced discrimination did not take any action in response to that discrimination. The most common reasons mothers gave for not taking action included:

- they perceived that the discrimination was not serious enough, it didn't bother them or that they sorted it out (27%)
- it was too hard, stressful or embarrassing for them to take action (24%)
- they felt that they would not be believed or nothing would change (22%).

In addition, one in ten (11%) mothers who did not take action said that they feared that taking action would impact on their job/career, while a similar proportion (9%) were not aware that they could take action, not aware how to take action or who to report it to, or were advised not to by family, friends or co-workers.

### ***The majority of mothers taking some form of action in response to discrimination reported that it did not resolve the problem.***

- Three in five (61%) mothers who took action in response to the discrimination they experienced while they were pregnant indicated that the issue was not resolved.
- Just over half (57%) of mothers who took action in response to discrimination when they requested or were on parental leave reported that the issue was not resolved.
- Just over half (55%) of mothers who took action in response to discrimination upon returning to work reported that the issue was not resolved.

## **(e) Characteristics of the individual, their employment and their workplace**

The results were examined by characteristics of the individual, their employment and their workplace (eg type of employment contract, occupation, industry and size of organisation).

The results were not able to be weighted to reflect the population of working mothers by these characteristics because ABS data on the distribution of working mothers across these variables was not available. However, the distribution of survey respondents across these variables is comparable to ABS estimates of working women and therefore the prevalence of discrimination across these characteristics can be estimated.

### ***(i) Experiences of discrimination by characteristics of the individual***

The prevalence data was analysed according to a range of characteristics of the individual. The data on Aboriginal and Torres Strait Islander identification, culturally and linguistically diverse background and disability is based on a small sample and should be treated as indicative.

#### ***Aboriginal and Torres Strait Islander identification***

24 mothers reported that they were Aboriginal and/or Torres Strait Islander, with 13 out of these 24 mothers (58%) reporting they experienced discrimination on at least one occasion.

#### ***Culturally and linguistically diverse backgrounds<sup>37</sup>***

214 mothers identified as being from a culturally and linguistically diverse background. 109 out of the 214 mothers (51%) reported experiencing discrimination on at least one occasion.

#### ***Disability***

41 mothers reported that they have a disability. 21 out of these 41 mothers (52%) reported experiencing discrimination on at least one occasion.

#### ***Age<sup>38</sup>***

***Young mothers (aged 18-24 years) are more likely to experience discrimination during pregnancy than mothers from older age groups.***

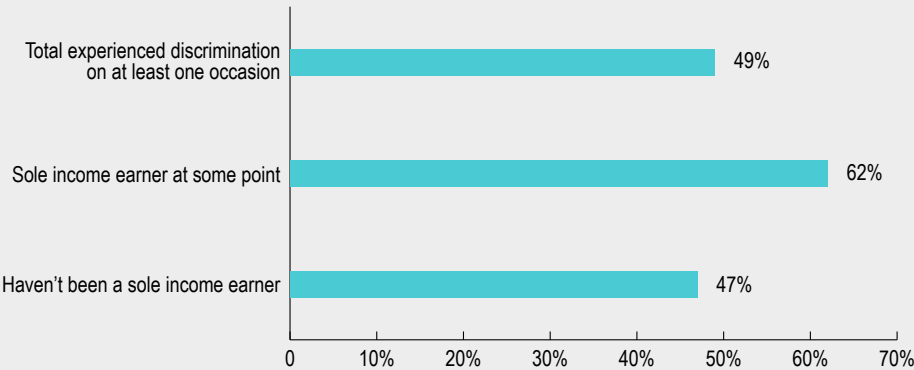
During pregnancy, almost one in two (45%) mothers aged 18-24 years reported experiencing discrimination compared to one in four (24%) of all other mothers.

Sole income earner

**Mothers who are the sole income earner at some point during their pregnancy, parental leave or return to work are more likely to experience discrimination.**

Among survey respondents, mothers who reported being a sole income earner at some stage during their pregnancy, parental leave or upon returning to work were more likely to experience discrimination (62%) when compared to mothers who were not sole income earners (47%).

Figure 7: Experience of discrimination by sole income earner status<sup>39</sup>



**Base:** Total respondents (n=2002), sole income earner at some point (n=296), haven't been sole income earner (n=1705), refused (n=1).

Experiences of sole income earning mothers<sup>40</sup>

Mothers who were sole income earners **during pregnancy** experienced different types of discrimination than mothers who were not sole income earners during pregnancy:

- pay, conditions and duties (26% vs 11% respectively)
- health and safety (24% vs 11% respectively)
- performance assessments and career advancement opportunities (23% vs 11% respectively)
- negative attitudes and comments from their employers/managers (16% vs 7% respectively).

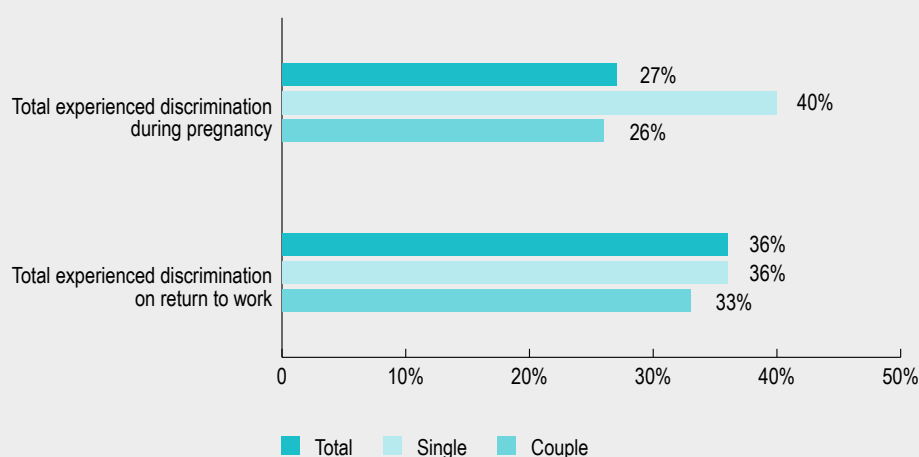
Overall, mothers who were sole income earners at some point during their pregnancy, parental leave or on return to work, were more likely to say that the discrimination they experienced caused them stress (77%) compared to mothers who were not sole income earners (64%). Mothers who were sole income earners were also more likely to say that the discrimination impacted on them financially (54%), compared to mothers who were not sole income earners (39%).

### Household arrangement

#### **Single mothers are more likely to experience discrimination during pregnancy.**

Among survey respondents, mothers who were single during their pregnancy were more likely to experience discrimination during pregnancy (40%) in comparison with mothers who were in a relationship during their pregnancy (26%).

**Figure 8: Experience of discrimination by household arrangement<sup>41</sup>**



**Base:** Mothers (n=2001): Mothers who were single during pregnancy (n=94), mothers who were in a relationship during pregnancy (n=1903), refused (n=4); mothers who returned to work as an employee (n=1576): mothers who returned to work as an employee and was single on return to work (n=66), mothers who returned to work as an employee and was coupled on return to work (n=1508), refused (n=2).

#### **Experiences of single mothers<sup>42</sup>**

Mothers who were single during pregnancy or upon returning to work were more likely to say that the discrimination they experienced impacted upon them financially (57%) when compared with mothers who were in a relationship (29%).

#### *(ii) Experiences of discrimination by characteristics of employment*

Discrimination reported by mothers during pregnancy, parental leave or on return to work was examined by whether mothers worked full-time or part-time, by whether they were employed on a permanent/ongoing, fixed-term contract or casual basis, by the length of their employment, and by their occupation.

The results revealed that part-time and full-time mothers experienced similar levels of discrimination.<sup>43</sup> However there were differences in the extent of discrimination by type of employment contract, length of employment and occupation.

Type of employment contract

Among survey respondents, mothers who were in a casual position were more likely to report experiencing discrimination during pregnancy (31%) compared to 27% of mothers on permanent/ongoing contracts and 23% of mothers on fixed-term contracts.

However mothers on fixed-term or on-going/permanent contracts were more likely to experience discrimination upon requesting or taking parental leave and upon return to work:<sup>44</sup>

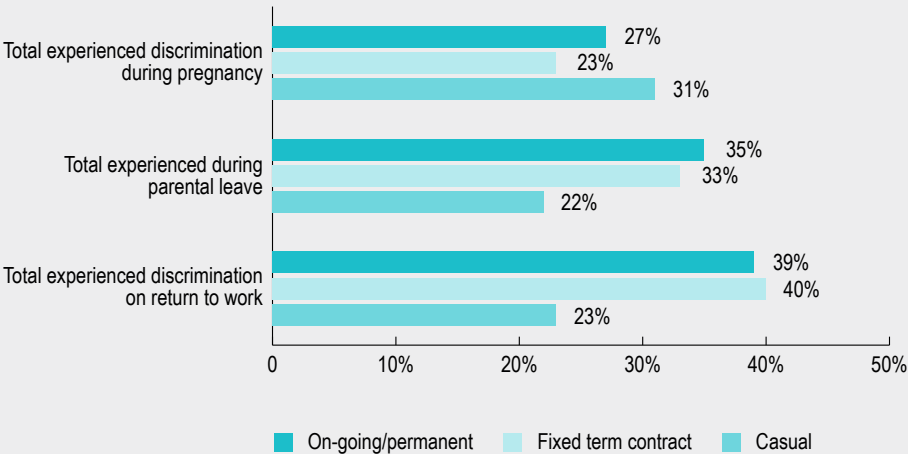
- Mothers who requested to take leave or took leave and worked in a permanent/on-going position (35%) or worked on a fixed-term contract (33%) were more likely to experience discrimination when they requested or took parental leave when compared to those who worked as a casual (22%).
- Mothers who returned to work after the birth/adoption of their child and who were on fixed-term contracts (40%) or permanent/on-going positions (39%) were more likely to experience discrimination on return to work when compared to those who were in a casual position (23%).

**Experience of casual workers<sup>45</sup>**

During pregnancy, mothers in the survey sample who were in a casual position were more likely to report being dismissed, being made redundant or losing their job (14%) compared with those in a permanent position (9%).<sup>46</sup>

Mothers who were employed on a casual basis and experienced discrimination upon return to work were more likely to resign in response to the discrimination they experienced (24%) compared with permanent employees (8%).

Figure 9: Experience of discrimination by work status<sup>47</sup>



**Base:** Mothers in on-going permanent position during pregnancy (n= 1489), fixed-term contract (n=186), casual (n=321); mothers who took or would have liked to take leave in on-going permanent position during pregnancy (n=1457), fixed-term contract (n=177), casual (n=265); mothers who returned to work as an employee in on-going/permanent position (n=1130), fixed-term contract (n=152), casual (n=289).

### *Tenure*

Mothers in the survey sample who worked for their employer for less than twelve months prior to the birth of their child, were more likely to report being discriminated against during their pregnancy (40%) when compared with mothers who reported working with their employer longer than twelve months.<sup>48</sup> Those who worked with their employer for more than ten years were least likely to report experiencing discrimination during their pregnancy (18%).

#### **Experiences of mothers who worked for their employer for less than 12 months<sup>49</sup>**

Mothers who had worked for their employer for less than twelve months prior to the birth of their child and experienced discrimination at some point were most likely to report the discrimination had an impact on them financially, on their family and their career and job opportunities.

### *Occupation*

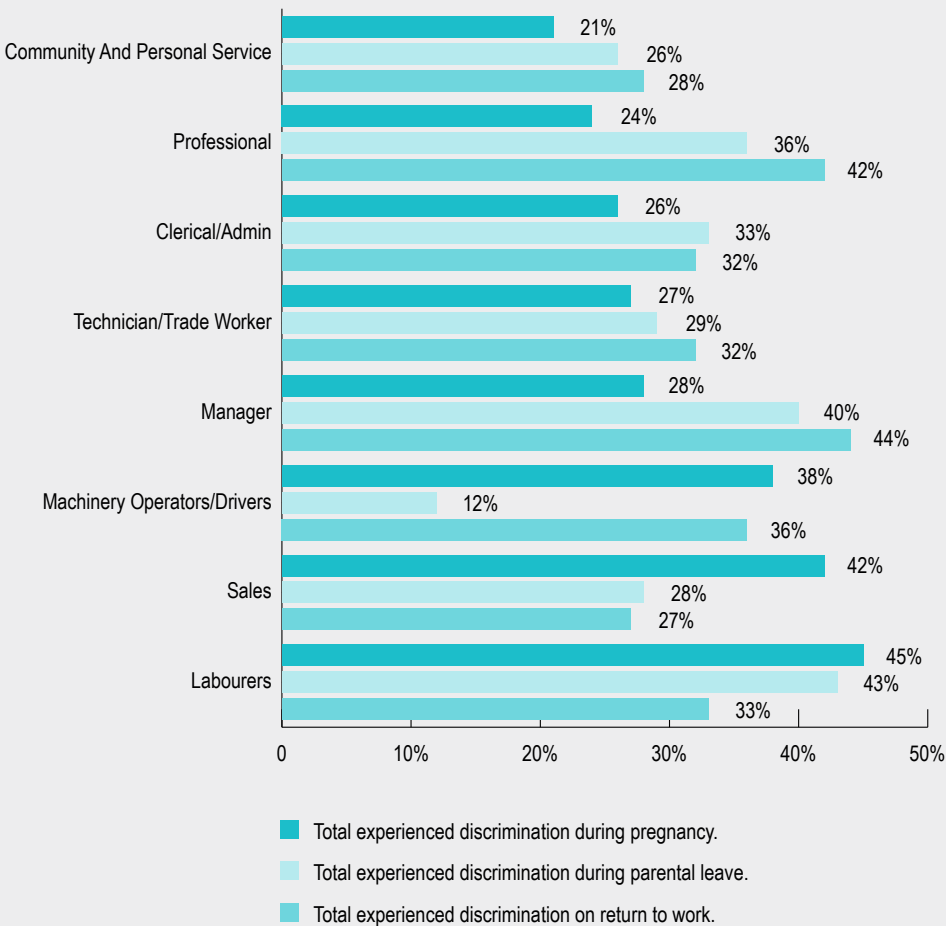
Respondents were asked to report on their occupation.

The results revealed differences in the experience of discrimination depending on the occupation of survey respondents. It should be noted however that the figures for mothers who were employed as labourers and machinery operators/drivers should be taken as indicative only given the small sample size.

During pregnancy, 42% of mothers who were employed as 'sales' workers reported experiencing discrimination compared to 28% of mothers employed as 'managers' or smaller numbers in other occupations. When requesting or taking parental leave and upon return to work however, mothers employed as 'managers' or 'professionals' were more likely to experience discrimination. Among the survey sample:

- 40% of mothers who were employed as 'managers' reported experiencing discrimination when requesting or on parental leave and 44% reported experiencing discrimination on return to work
- 36% of mothers who were employed as 'professionals' reported experiencing discrimination when requesting or during parental leave and 42% on return to work.

Figure 10: Experience of discrimination by occupations<sup>50</sup>



**Base:** Mothers (n=2001): during pregnancy: manager (n=230), professional (n=695), technician (n=75), community and personal service (n=389), clerical/admin (n=340), sales (n=206), machinery operators/drivers (n=18), labourers (n=44); total requested or took parental leave (n=1902): manager (n=222), professional (n=671), technician (n=72), community and personal service (n=373), clerical/admin (n=326), sales (n=181), machinery operators/drivers (n=18), labourers (n=35); total returned to work as an employee (n=1576): manager (n=179), professional (n=595), technician (n=56), community and personal service (n=309), clerical/admin (n=256), sales (n=136), machinery operators/drivers (n=12), labourers (n=28).



(iii) *Experiences of discrimination by nature of the workplace*

Regardless of size, sector, industry or location of the workplace, discrimination can manifest in all types of workplaces. Discrimination was more likely to be reported by respondents in large workplaces, and in male dominated industries.<sup>51</sup>

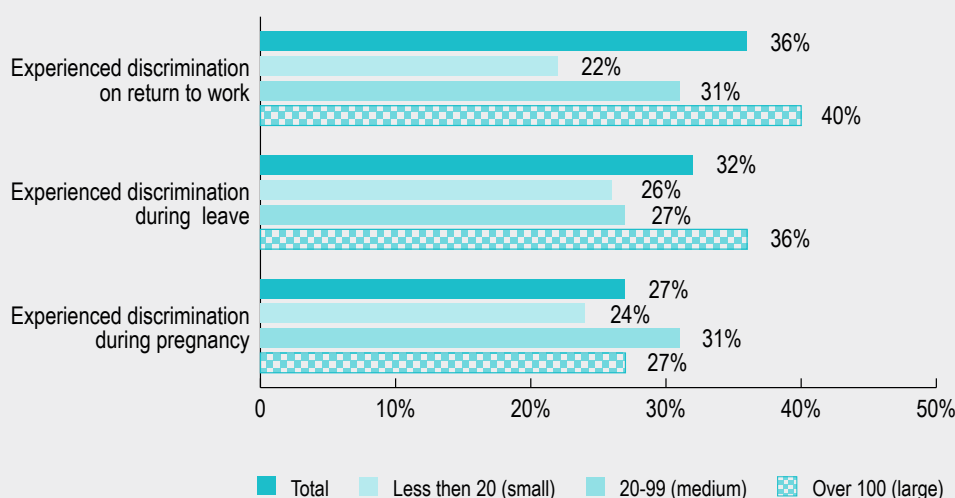
*Size of organisation*

Respondents were asked to identify the size of the organisation they worked for and these were classified as small (less than 20), medium (20-99) and large (over 100).<sup>52</sup>

Among survey respondents, two in five (36%) mothers who worked in large organisations reported experiencing discrimination when they requested or took parental leave in comparison to one in four (26%) mothers who worked in small organisation and one in four (27%) mothers who worked in medium sized organisation.

Experiencing discrimination on return to work was more likely to be reported by those who returned to work in a large organisation (40%) than those who returned to work in small (22%) and medium (31%) organisations.<sup>53</sup>

**Figure 11: Experience of discrimination by size of the organisation<sup>54</sup>**



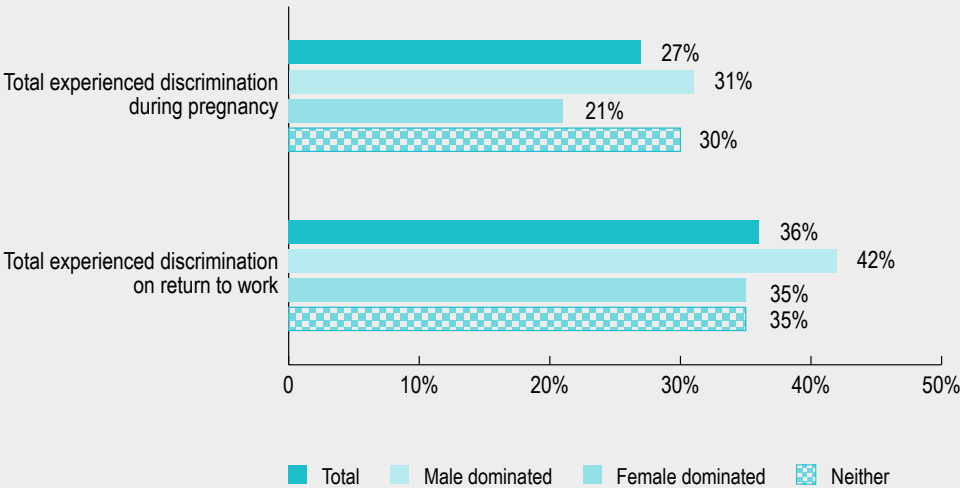
**Base:** Mothers (n=2001): small workplace size during pregnancy (n=321), medium (n=364), large (n=1265), don't know (n=51); mothers who took leave or would have liked to take leave (n=1902): small workplace during parental leave (n=290), medium (n=345), large (n=1223), don't know (n=44); mothers who returned to work as an employee (n=1576): small workplace on return to work (n=223), medium (n=270), large (n=1056), don't know (n=27).

Industry

Respondents were asked to report on their industry type during pregnancy/prior to the birth of their child and upon return to work (if they had returned to work). The industries of survey respondents were then classified into male dominated, female dominated, or neither male nor female dominated industries (see **Appendix B.4** for classifications).

Survey respondents who worked in male dominated industries during pregnancy were more likely to report experiencing discrimination (31%) than those who worked in female dominated industries (21%).

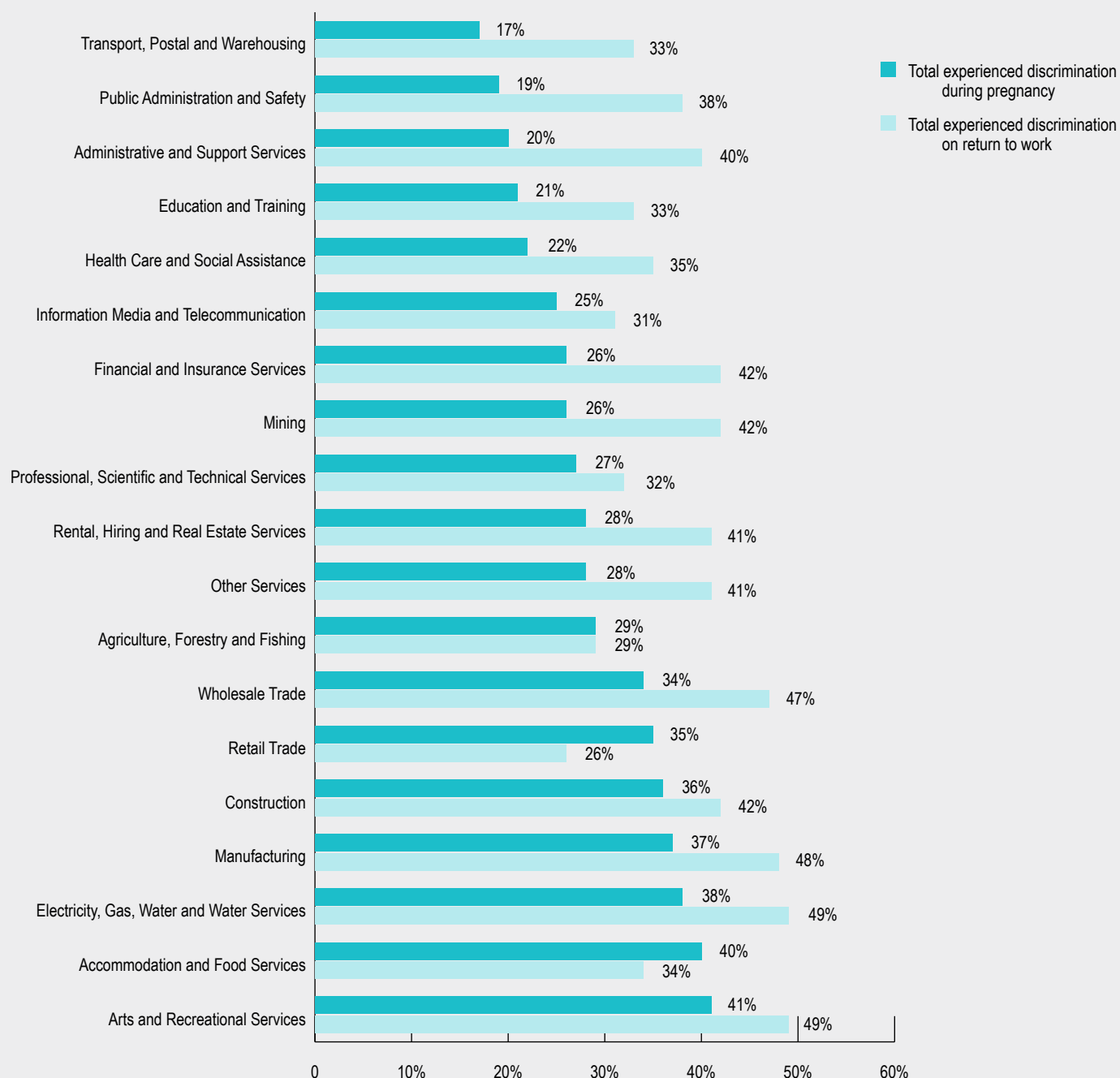
Figure 12: Experience of discrimination during pregnancy and on return to work by male/female dominated industries<sup>55</sup>



**Base:** Mothers (n=2001): worked in male dominated industries during pregnancy (n=261), female dominated (n=714), neither (n=1016), refused (n=10); Mothers who returned to work as an employee (n=1576): worked in male dominated industries on return to work (n=190), female dominated (n=598), neither (n=780), refused (n=8).

When the experience of discrimination was examined by each industry (Figure 13 below), it revealed that survey respondents who work in accommodation and food services and retail trade faced a different pattern of discrimination than mothers in other industries, with more mothers in accommodation and food services and retail trade facing discrimination during pregnancy than on return to work.

**Figure 13: Experience of discrimination during pregnancy and on return to work by industries<sup>56</sup>**



**Base:** Mothers (n=2001); Arts And Recreational Services (n=45), Accommodation And Food Services (n=100), Electricity, Gas, Water And Water Services (n=26), Manufacturing (n=72), Construction (n=38), Retail Trade (n=202), Wholesale Trade (n=17), Agriculture, Forestry And Fishing (n=31), Rental, Hiring And Real Estate Services (n=23), Other Services (n=199), Professional, Scientific And Technical Services (n=92), Mining (n=33), Financial And Insurance Services (n=155), Information Media And Telecommunication (n=71), Health Care And Social Assistance (n=452), Education And Training (n=262), Administrative And Support Services (n=47), Public Administration And Safety (n=82), Transport, Postal And Warehousing (n=44).

Mothers who returned to work as an employee (n=1576); Electricity, Gas, Water and Waste Services (n=19), Arts and Recreation Services (n=32), Manufacturing (n=53), Wholesale Trade (n=12), Financial and Insurance Services (n=125), Construction (n=27), Mining (n=22), Rental, Hiring and Real Estate Services (n=18), Other Services (n=146), Administrative and Support Services (n=37), Public Administration and Safety (n=68), Health Care and Social Assistance (n=392), Accommodation and Food Services (n=71), Transport, Postal and Warehousing (n=34), Education and Training (n=206), Professional, Scientific and Technical Services (n=78), Information Media and Telecommunications (n=53), Agriculture, Forestry and Fishing (n=23), Retail Trade (n=152).

Workplace location<sup>57</sup>

Mothers who worked in a major city on return to work were more likely to experience discrimination (37%)<sup>58</sup> compared to mothers who worked in a large regional town (31%)<sup>59</sup> or a small regional town or rural area (26%).<sup>60</sup>

(f) Understanding of discrimination

Awareness of discrimination remains limited.

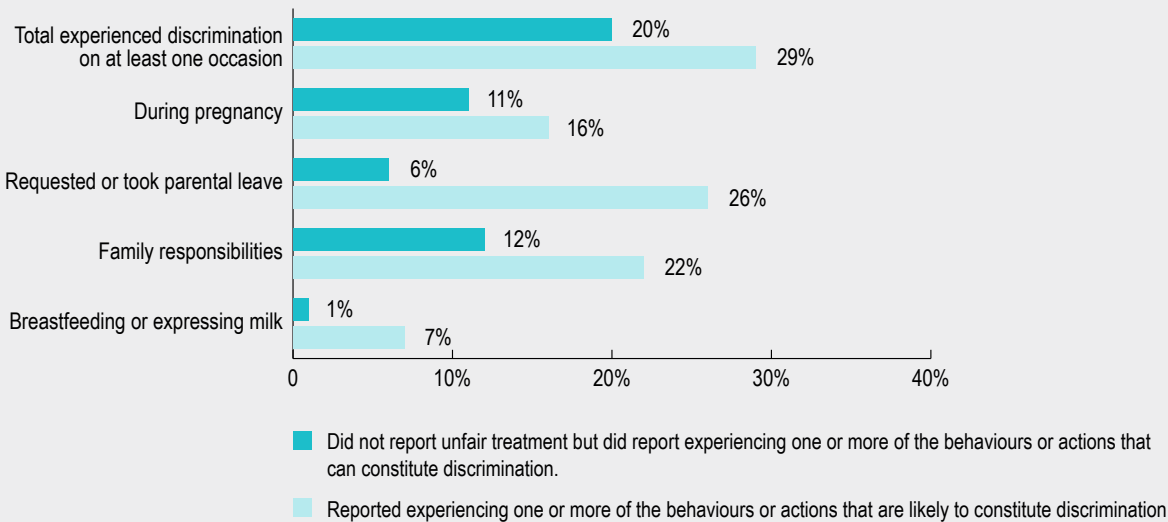
Respondents who said that they had **not** experienced unfair treatment as a result of their pregnancy, parental leave or family responsibilities were asked whether they had experienced specified actions and behaviours that are likely to constitute discrimination in the workplace related to pregnancy, parental leave and return to work under the *Sex Discrimination Act 1984* (Cth). See pages 30-31 for a list of actions and behaviours.

In addition to ensuring an accurate assessment of the incidence of discrimination in the workplace related to pregnancy, parental leave and return to work,<sup>61</sup> this approach enables an individual's understanding of discrimination to be measured.

The results reveal that a significant proportion of mothers are not aware that the actions and behaviours in relation to their pregnancy, taking leave and family responsibilities that they experienced, could constitute discrimination on the grounds of sex, pregnancy, breastfeeding or family responsibilities under the SDA.

Of those respondents who said they had not been treated unfairly because of their pregnancy, requesting or taking parental leave or because of their family responsibilities upon returning to work, one in three (36%) reported experiencing one or more actions or behaviours that could constitute discrimination related to pregnancy, parental leave and return to work.

Figure 14: Experience of discrimination in the workplace during pregnancy, parental leave and return to work by awareness<sup>62</sup>



**Base:** Total respondents: (n=2002); During pregnancy: mothers (n= 2001); when requested or took leave: mothers who took leave or would have liked to take leave (n=1902); mothers who returned to work as an employee (n=1576).

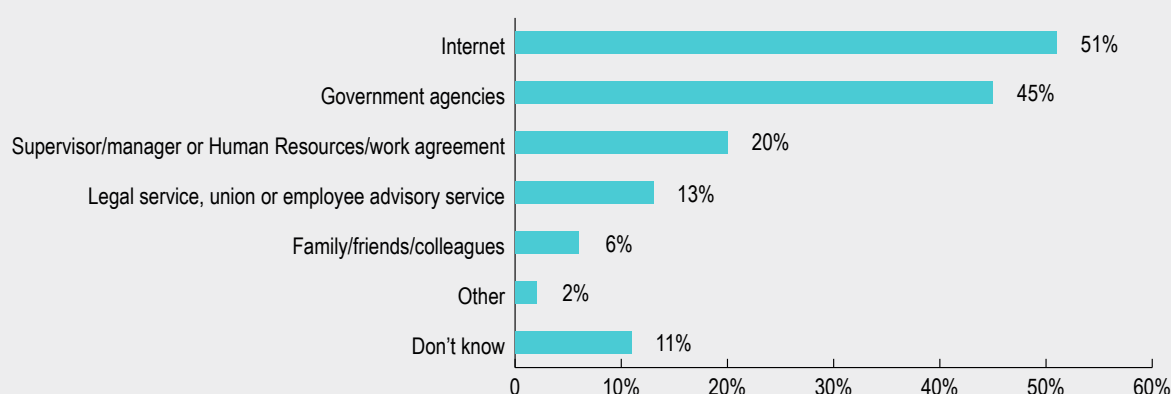
### (g) Sources of information

**The internet and government agencies were the two most commonly reported sources of information on discrimination for mothers.**

Half (51%) of mothers reported that they would use the internet to find information on their rights and entitlements relating to pregnancy, parental leave and return to work discrimination. A further 45% reported that they would get this information from government agencies.

The results also revealed that over one in ten (11%) mothers did not know where they would go to get information on their rights and entitlements about pregnancy, parental leave and return to work discrimination.

**Figure 15: Sources of information**<sup>63</sup>



**Base:** All respondents (n=2002).

### (h) Issues related to leave and return to work

The survey examined a range of issues related to the leave mothers took to care for their child and their return to the workplace. This section provides a snapshot of various issues related to the range of different types of leave mothers took to care for their child.<sup>64</sup>

#### (i) Length and type of leave

**89% of mothers took leave to care for their child.**

The length of leave mothers took was not a factor in the likelihood that they would experience discrimination.

**Mothers took many different kinds of leave to care for their child.**<sup>65</sup>

Three in five (60%) mothers took some form of leave other than (or in addition to) the 18 weeks leave required to be eligible for the Government's PPL scheme. One in two (48%) took employer paid parental leave while similar proportions reported taking unpaid parental leave (46%) and annual leave (41%).



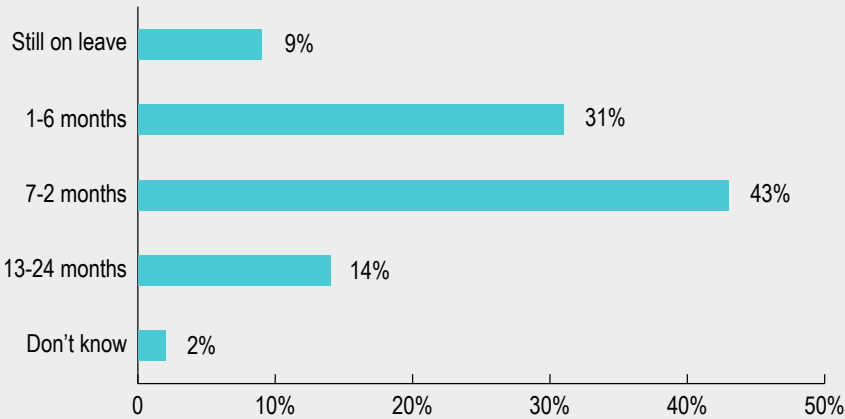
**Young mothers, mothers who worked in small business and mothers who work part-time or casually were less likely to take leave.**

- Mothers aged 18-24 years were less likely to take leave (74%) compared with mothers aged 25-34 years (93%) and those 35 years and older (92%).
- Two thirds (68%) of mothers who were employed on a casual basis during their pregnancy took leave to care for their child, while over nine in ten (95%) mothers in permanent positions took leave to care for their child.<sup>66</sup>
- Over nine in ten (94%) mothers who worked full-time during their pregnancy took leave to care for their child compared with over four in five (83%) mothers who worked part-time.
- The majority (93%) of mothers who worked in large workplaces during their pregnancy took leave to care for their child, while four in five (81%) mothers who worked in small workplaces, and nine in ten (90%) in medium workplaces took leave.

**79% of mothers who took leave to care for their child returned to work within 12 months.**

Figure 16: Length of leave taken<sup>67</sup>

Of the **89%**  
of **mothers** who  
took leave...



**Base:** Mothers who took leave (n=1837).

***The nature of mothers' employment and workplace impacted on the length of leave they took to care for their child.***

- Mothers who worked in the public sector during their pregnancy were more likely to take longer periods of leave.<sup>68</sup>
- Mothers employed on a permanent basis took longer periods of leave to care for their child than those employed on a casual basis.<sup>69</sup>
- Mothers who worked in larger workplaces were more likely to take longer periods of leave.<sup>70</sup>

***Over two in five (45%) mothers surveyed reported that they would have liked to take leave<sup>71</sup> or additional leave to care for their child.***

The shorter the length of leave taken, the more likely mothers were to say that they would have liked to take leave or additional leave.<sup>72</sup>

Seven in ten (70%) mothers who wanted to take leave or additional leave but did not take it, reported that it was because they could not afford to.

***A small proportion of mothers reported that they had not returned to the workplace as an employee.***

Nearly a quarter (23%) of mothers were still on leave or had not yet returned to work as an employee at the time of the survey.<sup>73</sup> Of this group:

- Half (49%) of mothers reported that they had not returned to work as an employee yet because they preferred to be at home, they preferred to continue breastfeeding, their partner earned enough or because they wanted to be self-employed.<sup>74</sup>
- One in six (17%) had another child or were pregnant again.
- One in seven (14%) could not find childcare or thought that childcare was too expensive.
- One in ten (11%) could not find work or could not negotiate return to work arrangements.

Three in four (75%) mothers did not plan to return to the same employer as before the birth or adoption of their child.<sup>75</sup> Of this group:

- A quarter (26%) of mothers did not intend to return because they either disliked their manager, the culture of the organisation or because their workplace did not allow flexible work arrangements.
- Nearly one in five (22%) mothers reported that the location of home/work was their reason for not returning to the same employer.
- One in six (16%) mothers reported that they did not want to return to the same employer because they were replaced, fired or made redundant or because their employer did not keep their job open.

***(ii) Being kept informed of major changes or opportunities in the workplace***

***Mothers who experienced discrimination were less likely to be kept informed about major changes or opportunities in the workplace that could affect them.***

Two in five (38%) mothers who took leave reported that their employer kept them informed of major changes or opportunities in the workplace that could affect them. A similar proportion (35%) reported that their employer did not and just over a quarter (27%) said there were no major changes or opportunities in the workplace to be kept informed about.<sup>76</sup>

Among survey respondents, mothers who reported experiencing discrimination during pregnancy or parental leave were more likely to report that their employer did not keep them informed about major changes or opportunities in the workplace that could affect them:

- Over half (57%) of mothers who experienced discrimination during pregnancy reported that their employer did not keep them informed about major changes or opportunities in the workplace that could affect them, compared to just over a quarter (27%) of mothers who did not experience discrimination during pregnancy.
- Over half (55%) of mothers who experienced discrimination when requesting or during parental leave, reported that their employer did not keep them informed about major changes or opportunities in the workplace that could affect them, compared to nearly a quarter (24%) of mothers who did not experience discrimination when requesting or during parental leave.

***(iii) Adjustments to working arrangements on return to work<sup>77</sup>***

***Most women request adjustments to their working arrangements and most requests are granted.***

Of the 84% of mothers who returned to work as an employee, just over two-thirds (70%) requested adjustments to their working arrangements.<sup>78</sup>

The most common types of working arrangements requested were part-time work or jobsharing (50%), flexible hours (32%), a change in starting and finishing times (16%) and changing shift/roster (15%).

The results revealed that the majority of requests for adjustments to working arrangements were granted (89%).

2.3 Fathers and Partners Survey

This survey provides the survey results of the experiences of discrimination of fathers and partners who took the legislative entitlement to two weeks of pay (at the minimum wage) under the DaPP scheme for leave taken to care for their child.

1001 fathers and partners were interviewed as part of this survey. While the results of the survey are representative of the experiences of fathers and partners who take DaPP, they are not representative of the experiences of all fathers and partners in Australia. Thus, unlike the Mothers Survey, the results of the Fathers and Partners do not establish national prevalence rates of discrimination for fathers and partners.<sup>79</sup> The results do however provide an important insight into the experiences of fathers and partners who took some time off work to care for their child.

**The vast majority of fathers and partners interviewed took short periods of leave. Of the fathers and partners surveyed, 85% took less than four weeks of leave.**

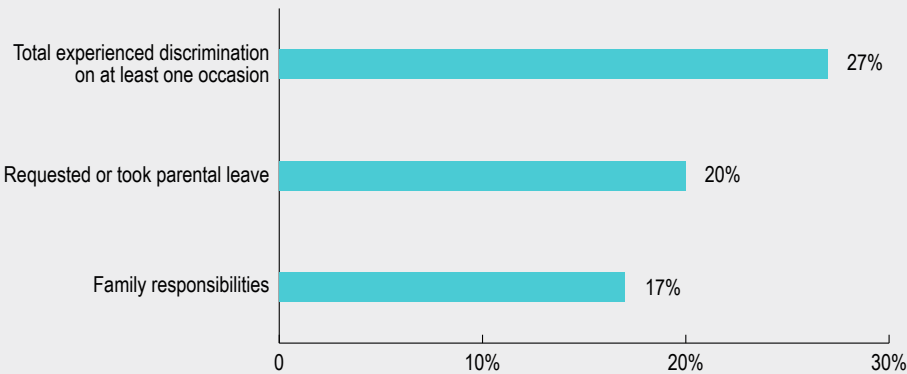
(a) Prevalence of discrimination

***Despite taking very short periods of parental leave, fathers and partners face discrimination. Over a quarter (27%) of survey respondents reported experiencing discrimination when requesting or taking parental leave or when they returned to work.***

Discrimination occurs at both stages:

- One in five (20%) fathers and partners reported experiencing discrimination when requesting or taking parental leave
- One in six (17%) fathers and partners reported experiencing discrimination when they returned to work as an employee.

Figure 17: Prevalence of discrimination in the workplace when requesting or during parental leave and return to work<sup>80</sup>



**Base:** During parental leave: all respondents (n=1001); family responsibilities: returned to work as an employee (n=977).

## (b) Type of discrimination<sup>81</sup>

\* Please refer to the chart on pages 50-51 for a key to the 'types of discrimination' that are included in the categories below. Please note that respondents were allowed multiple responses.

**Fathers and partners experience discrimination in many different forms ranging from negative attitudes in the workplace through to dismissal.**

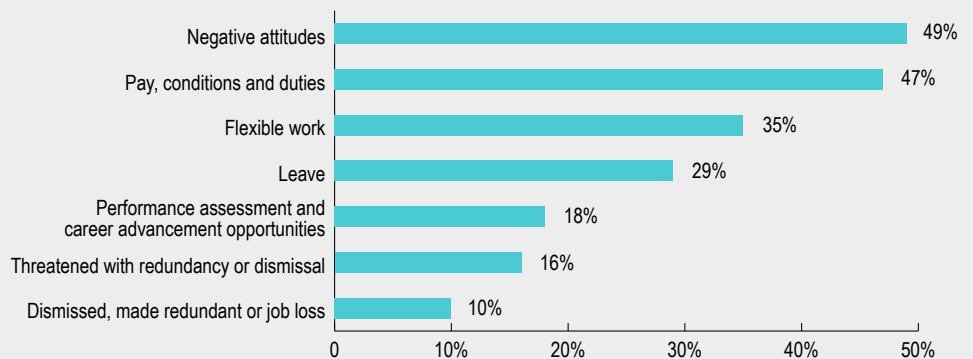
**Many fathers and partners experience more than one form of discrimination when requesting or during parental leave and on return to work.**<sup>82</sup>

Of the fathers who experienced discrimination on at least one occasion (27%):

- Half (49%) reported receiving negative comments and attitudes from colleagues or manager/employer.<sup>83</sup>
- Nearly half (47%) reported discrimination related to pay, conditions and duties.
- A third (35%) experienced discrimination related to flexible work.

Figure 18: Types of discrimination experienced<sup>84</sup>

Of the **27%**  
of **fathers** and  
**partners** who  
experienced  
discrimination...



**Base:** All respondents (n=1001); experienced discrimination on at least one occasion (n=271).

\* This chart provides a key to the types of discrimination that fall within each category.

<b>Negative attitudes</b>	You received inappropriate or negative comments from your employer/manager because you requested or took leave to care for your child ( <i>parental leave</i> )
	You received inappropriate or negative comments from your colleagues because you requested or took leave to care for your child ( <i>parental leave</i> )
	You received inappropriate or negative comments about working part-time or flexible hours ( <i>return to work</i> )
	You received inappropriate or negative comments about needing time off to care for your child due to illness ( <i>return to work</i> )
	You were viewed as a less committed employee ( <i>return to work</i> )
	You were unfairly criticised about your performance at work ( <i>return to work</i> )
<b>Pay, conditions and duties</b>	Your hours were changed against your wishes
	Your roster schedule was changed against your wishes ( <i>parental leave</i> )
	Your duties or role were changed against your wishes
	You were made casual ( <i>parental leave</i> )
	You had a reduction in your salary or bonus
	You didn't receive a pay rise or bonus, or received a lesser pay rise or bonus than your peers at work
	You missed out on a salary increment or bonus ( <i>parental leave</i> )
	Your position was replaced permanently by another employee
	Your employer did not adequately backfill your position during your parental leave and this negatively impacted you ( <i>parental leave</i> )

<b>Performance assessments and career advancement opportunities</b>	You were unfairly criticised about your performance at work
	You failed to gain a promotion you felt you deserved ( <i>return to work</i> )
	You were denied access to training that you would otherwise have received ( <i>return to work</i> )
	You missed out on opportunities for training ( <i>parental leave</i> )
	You missed out on opportunities for promotion ( <i>parental leave</i> )
	You missed out on a performance appraisal ( <i>parental leave</i> )
<b>Job loss/dismissal</b>	You were treated so poorly that you felt you had to leave
	You were threatened with redundancy or dismissal
	You were made redundant/restructured
	You were dismissed
	Your contract was not renewed
<b>Leave</b>	Your employer encouraged you to start or finish your parental leave earlier or later than you would have liked ( <i>parental leave</i> )
	You were denied leave that you were entitled to ( <i>parental leave</i> )
<b>Flexible work</b>	Your requests for flexible hours or work from home were denied ( <i>return to work</i> )
	Your requests for time off to cope with illness or other problems with your baby were denied ( <i>return to work</i> )
	You were given unsuitable work or workloads ( <i>return to work</i> )
	You were given work at times that did not suit your family responsibilities ( <i>return to work</i> )



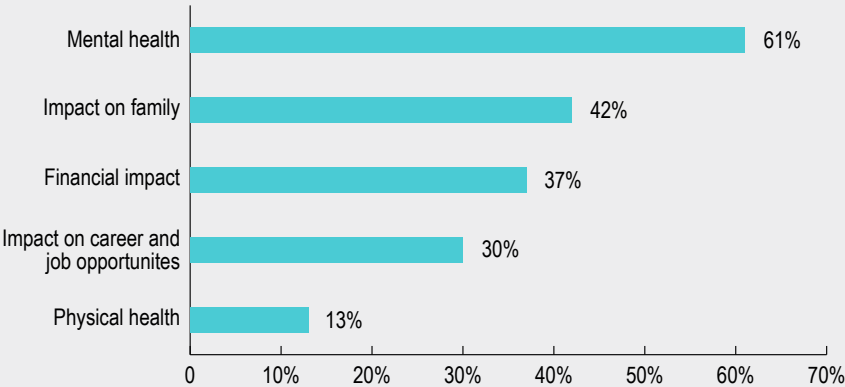
(c) Impact of discrimination

**Discrimination has a significant negative impact on fathers and partners’ mental health, family, finances and career and job opportunities.**

**76% of fathers and partners who experienced discrimination during parental leave or on return to work reported a negative impact as a result.**

- 61% of fathers and partners who experienced discrimination reported a negative impact on their mental health. This included on their level of stress and on their self-esteem and confidence.<sup>85</sup>
- Two in five (42%) reported that it had a negative impact on their families.
- Over a third (37%) said that this had a negative financial impact on them while a similar proportion (30%) felt it negatively impacted on their career and job opportunities.

Figure 19: Impact of discrimination experienced<sup>86</sup>



**Base:** Total experienced discrimination on at least one occasion (n=271).

#### (d) Response to discrimination

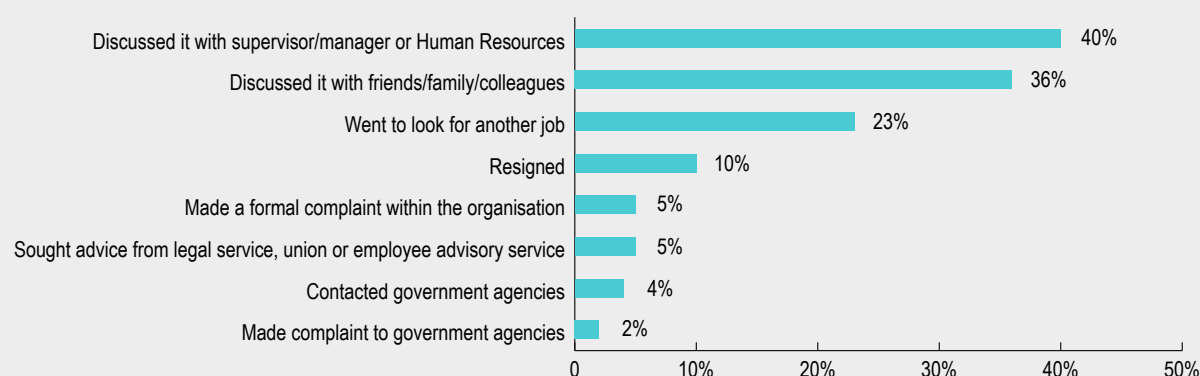
**A substantial proportion of fathers and partners who reported experiencing discrimination went to look for another job or resigned.**

62% of fathers and partners who reported experiencing discrimination at some point took action in response to the discrimination.<sup>87</sup>

A quarter (23%) of fathers and partners who reported experiencing discrimination at some point went to look for another job and one in ten (10%) resigned.

95% of fathers and partners did not make a formal complaint<sup>88</sup> in response to the discrimination. Only 14 out of 271 (5%) of fathers and partners that experienced discrimination made a formal complaint within their organisation and only 4 out of 271 (2%) made a complaint to a government agency.

**Figure 20: Actions taken in response to discrimination experienced<sup>89</sup>**



**Base:** Total experienced discrimination on at least one occasion (n=271).

**Nearly half of fathers and partners who took action in response to the discrimination said that it did not resolve the problem.**

Just under half (47%) of fathers who took action in response to the discrimination they experienced when they requested or took parental leave indicated that the issue was not resolved. Over two in five (45%) of those taking action in response to discrimination because of family responsibilities reported that the issue was not resolved.

#### (e) Characteristics of the individual, their employment and their workplace

The experience of discrimination was analysed by a range of demographic, employment and workplace characteristics.<sup>90</sup> Overall there were few differences between many of the sub-groups.

##### (i) Aboriginal and Torres Strait Islander identification, culturally and linguistically diverse background, and disability

The data on Aboriginal and Torres Strait Islander identification, culturally and linguistically diverse background and disability is based on a small sample and should be treated as indicative.

11 fathers and partners identified as Aboriginal and/or Torres Strait Islander. 5 out of the 11 (46%) reported experiencing discrimination on at least one occasion.

200 fathers and partners identified as being from a culturally and linguistically diverse background. 52 out of 200 (26%) reported experiencing discrimination on at least one occasion.

18 fathers and partners reported that they have a disability. 7 out of 18 (39%) experienced discrimination on at least one occasion.

(ii) Age

**Young fathers and partners (aged 18-29 years<sup>91</sup>) were more likely to experience discrimination than fathers and partners from older age groups.**

Nearly a third (31%) of fathers aged between 18 and 29 years experienced discrimination when they requested or took parental leave or when they returned to work, compared with 25% of fathers aged 30 years and over.

(f) Understanding of discrimination

**Awareness of discrimination remains limited.**

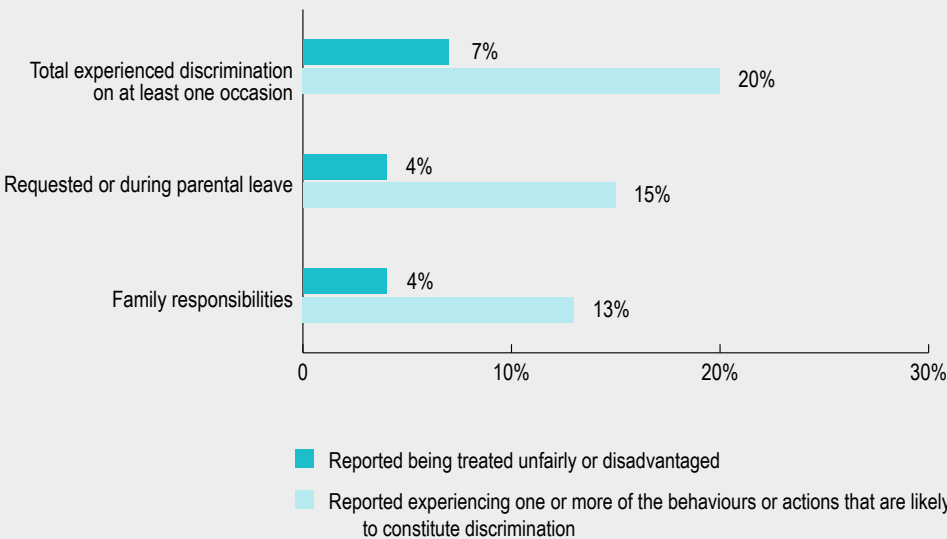
Respondents who said that they had not experienced unfair treatment as a result of requesting or taking parental leave or because of their family responsibilities, were asked whether they had experienced specified actions and behaviours that were likely to constitute discrimination in the workplace related to parental leave and return to work under the *Sex Discrimination Act 1984 (Cth)*. See pages 50-51 for a list of the actions and behaviours.

In addition to ensuring an accurate assessment of the incidence of discrimination in the workplace related to pregnancy, parental leave and return to work, this approach enables an individual’s understanding of discrimination to be measured.

The results reveal that a significant proportion of fathers and partners are not aware that the actions and behaviours in relation to taking leave and family responsibilities that they experienced, can constitute discrimination on the grounds of family responsibilities under the SDA.

Of the fathers and partners who said that they were not treated unfairly or disadvantaged because they requested or took parental leave or because of their family responsibilities on return to work, one in five (21%) reported experiencing one or more action or behaviours that could constitute discrimination on the ground of family responsibilities.

Figure 21: Prevalence of discrimination in the workplace during parental leave and return to work by awareness<sup>92</sup>



**Base:** During parental leave: all respondents (n=1001); family responsibilities: returned to work as an employee (n=977).

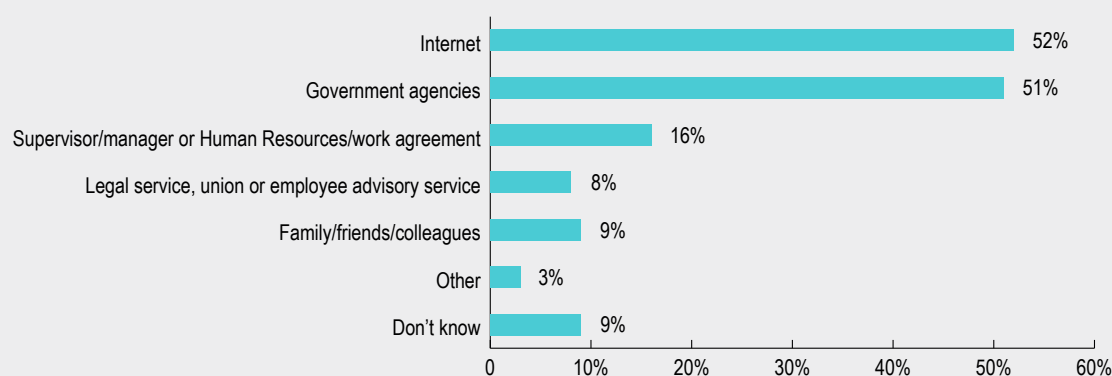
### (g) Sources of information

**The internet and government agencies were the two most commonly reported sources of information for fathers and partners.**

Half (52%) of the fathers and partners surveyed reported that they would use the internet to find information on their rights and entitlements about discrimination related to parental leave or return to work. A further half (51%) said that they would seek information from government agencies.

The results also revealed that 9% of fathers and partners did not know where to go to get information.

**Figure 22: Sources of information**<sup>93</sup>



**Base:** All respondents (n=1001).

### (h) Issues related to leave and return to work

The survey examined a range of issues related to the leave fathers and partners took to care for their child and their return to the workplace. Fathers and partners took a range of different types of leave to care for their child. This section reports on all of these kinds of leave.

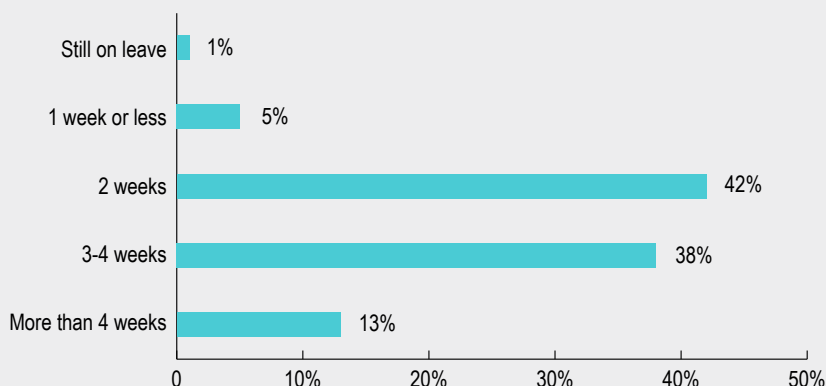
#### (i) Length and type of parental leave

**Fathers and partners took a range of different types of leave.**

Just over half (54%) of fathers and partners took some form of leave to care for their child other than leave they took to be eligible for the DaPP.<sup>94</sup> Three in five (61%) took annual leave, one in four (23%) took unpaid parental leave and one in five (19%) took employer paid parental leave.

**85% of fathers and partners took less than 4 weeks of leave.**

**Figure 23: Length of leave taken<sup>95</sup>**



**Base:** All respondents (n=1001).

***The nature of employment and workplace impacts on the length of leave taken.***

- Fathers and partners who were employed on a casual basis were most likely to take just the two weeks of DaPP leave.<sup>96</sup>
- Fathers and partners who worked in small business were more likely to take two weeks or less of leave.<sup>97</sup>

***Three in four (75%) fathers said they would have liked to take additional leave.***

Over half (57%) of the fathers and partners who wanted to take additional leave to care for their child but did not take it, reported that it was because they could not afford to. Other reported reasons for not taking additional leave included: not knowing it was possible (15%), not having enough or having used up all their annual leave entitlements (11%), not thinking it would be granted (9%).

***(ii) Being kept informed of major changes or opportunities in the workplace***

***Fathers and partners who experienced discrimination were less likely to be kept informed about major changes or opportunities in the workplace that could affect them.***

Of the survey respondents, one in four (26%) fathers reported that their employer kept them informed of major changes or opportunities in the workplace that could have affected them while they were on leave, one in six (16%) reported that their employer did not while three in five (58%) said there were no major changes or opportunities in the workplace to be kept informed about.

Fathers and partners who experienced discrimination when requesting or taking parental leave were more likely to report that their employer did not keep them informed about major changes or opportunities in the workplace that could affect them (28%) compared with fathers and partners who did not report experiencing discrimination (13%).

***(iii) Adjustments to working arrangements***

***One in five fathers and partners requested adjustments to their working arrangements on return to work.<sup>98</sup>***

Of those fathers and partners who returned to work as an employee (99%), one in five (22%) requested adjustments to their working arrangements.<sup>99</sup>

The most common types of adjustments to working arrangements requested were flexible hours (34%), a change in starting and finishing times (24%), part-time work or jobsharing (14%) and a change in shift/roster (14%).

The results revealed that four in five (80%) requests for adjustments to working arrangements were granted. However, fathers who experienced discrimination on at least one occasion were less likely (59%) than those who did not experience discrimination to have their requests granted.<sup>100</sup>



## 2.4 Further research

The National Review received submissions identifying the need for additional research on specific aspects of pregnancy/return to work discrimination, including:

- On-going data collection on the prevalence, nature and consequences of pregnancy/return to work discrimination.
- Impacts and costs of discrimination to individuals, employers and the national economy.
- The potential connections between pregnancy and redundancy.
- Effective mechanisms for reducing the level of vulnerability of pregnant women, employees on parental leave and working parents to redundancy and job loss.
- Long term economic and social benefits to employers, employees, the wider community of increased workforce participation of parents.
- The incidence and nature of modifications made in workplaces following resolution of a discrimination complaint or a finding of pregnancy/return to work discrimination.

The National Review recommends the Australian Government:

- allocate funding to conduct a regular national prevalence survey on discrimination related to pregnancy, parental leave and return to work after parental leave (every four years)
- conduct further research into identified gaps, such as the most effective mechanisms for reducing the vulnerability of pregnant women, employees on parental leave and working parents to redundancy and job loss.



- 1 Given the small number of survey respondents that reported they were an 'adoptive' mother (n=1), it is not possible to identify the specific experiences of adoptive mothers.
- 2 The Commission acknowledges the contribution of the following academics in providing expert comment on the survey questionnaire and methodology: Marian Baird, University of Sydney; Sara Charlesworth, University of South Australia; Lyn Craig, University of New South Wales; Alexandra Heron, University of Sydney; Belinda Hewitt, University of Queensland, Paula McDonald, Queensland University of Technology; Lyndall Strazdins, Australian National University; and Gillian Whitehouse, University of Queensland.
- 3 L Adams, F McAndrew and M Winterbotham, *Pregnancy discrimination at work: a survey of women*, Equal Opportunity Commission (2005). At <http://www.maternityaction.org.uk/wp/2013/11/pregnancy-discrimination-at-work-a-survey-of-women/> (viewed 1 April 2014).
- 4 H Russell, D Watson and J Banks *Pregnancy at Work: A National Survey*, HSE Crisis Pregnancy Programme and Equality Authority (2011). At <http://www.equality.ie/en/Research/Research-Publications/Pregnancy-at-Work-A-National-Survey.html> (viewed 1 April 2014).
- 5 For example, Australian Bureau of Statistics, *4913.0 – Pregnancy and Employment Transitions, Australia, Nov 2011*. At <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4913.0Main%20Features3Nov%202011?opendocument&tabname=Summary&prodno=4913.0&issue=Nov%202011&num=&view=> (viewed 1 April 2014).
- 6 See 'Methodology' for an overview of the role of the Reference Group and its membership.
- 7 In the period in which the sample was drawn (May – November 2011), 98.5 of mothers were paid either the PPL or BB as a proportion of all children born in 2011–12 based on the Australian Bureau of Statistics publication 3222.0 Series B estimates. The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *Annual Report 2011-2012*, p 50. At <http://www.dss.gov.au/about-fahcsia/publications-articles/corporate-publications/annual-reports/2012> (viewed 3 April 2014).
- 8 All respondents to the survey worked for at least some of the time through their pregnancy. The sample structure for the PPL and BB survey was calculated using the November 2011 Australian Bureau of Statistics' *'Pregnancy and Employment Transitions'*. Survey Results which estimated that amongst mothers with a child born on or after 1 January 2011, who were in the workforce as an employee, 79% reported claiming PPL and 21% reported claiming BB. Australian Bureau of Statistics, *4913.0 – Pregnancy and Employment Transitions, Australia, Nov 2011*. At <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4913.0Main%20Features3Nov%202011?opendocument&tabname=Summary&prodno=4913.0&issue=Nov%202011&num=&view=> (viewed 1 April 2014).
- 9 The Australian Bureau of Statistics (ABS) calculated that at the time of the survey 109,078 Australian women who were aged between 18 and 49 years, and were employed in the previous nine months as an employee, had given birth to a child in the six months prior to the time of the survey. This estimate was provided by ABS to the Commission for the purposes of weighting the survey data and was based on a Labour Force Survey estimate that 3.7 million women in this age group were employed as employees and that based on national age-specific fertility rates for women of this age, 109 078 of them would have given a birth to a child in a six month period. The unweighted number of respondents (N) has been reported in graphs and tables of data to indicate how many respondents answered the respective questions.
- 10 See 'Methodology' for an overview of the role of the Reference Group and its membership.
- 11 In the 6 month period following the introduction of the 'Dad and Partner Pay' scheme (January – June 2013), 26 212 fathers and partners accessed the scheme. The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *Annual Report 2012-2013*, p 40. At <http://www.dss.gov.au/about-the-department/publications-articles/corporate-publications/annual-reports/fahcsia-annual-report-2012-2013> (viewed 1 April 2014).
- 12 Two (n=2) respondents of the Mothers Survey identified as 'X (indeterminate, intersex, unspecified)'.
- 13 The data on whether the respondent was from a culturally and linguistically diverse background was incomplete for the Baby Bonus sample. It was therefore available for approximately 80% of the respondents to the Mothers Survey and all the respondents to the Fathers and Partners Survey.
- 14 For example, two bars on the same graph may be labelled as 5% but may appear to be different visually. In this instance one may represent an actual value of 4.5% while the other may represent an actual value of 5.4% (both have been rounded to 5%).
- 15 'Mothers' refers to women aged 18-49 years and in the workforce as an employee at some time during their pregnancy (or while adopting a child) with a child of approximately two years of age.
- 16 This Chapter refers to 'parental leave' (for example, discrimination experienced when requesting or taking parental leave), however it should be noted that mothers reported taking many different forms of leave to care for their child.
- 17 An overall incidence of the level of workforce discrimination was calculated as the total number of individuals who were treated unfairly or disadvantaged at least once either during their pregnancy, when requesting or on parental leave, or when returning to work following parental leave.
- 18 Survey questions: Q8, Q10/A/B, Q20, Q22/A/B, Q47, Q49, Q50/A/B.
- 19 That is, they reported discrimination at more than one of the following stages: during pregnancy; when requesting or on parental leave; or when returning to work following parental leave.
- 20 Please see Appendix B.3 for the percentage of all mothers that experienced the different types of discrimination.
- 21 The survey questions relating to type of discrimination allowed survey respondents to identify multiple types of discrimination they experienced. One in five (18%) mothers experienced more than one type of discrimination during pregnancy; One in five (21%) mothers who took leave or requested to take leave experienced more than one type of discrimination; A quarter (24%) of mothers who returned to work as an employee experienced more than one type of discrimination.
- 22 Survey questions: Q8, Q9, Q10/A/B.
- 23 Survey questions: Q20, Q21, Q22/A/B.
- 24 It was not possible to separate out 'negative attitudes' received from 'managers/employers' and negative attitudes received from 'colleagues' for the return to work stage as the response codes on the survey questionnaire combined managers/employer and colleagues.
- 25 Survey questions: Q47, Q48, Q49, Q50/A/B.
- 26 67% of mothers reported an impact on their level of stress, 44% reported an impact on their self-esteem and confidence, and 33% reported an impact on their mental health more generally.
- 27 The survey questions relating to impact of discrimination allowed survey respondents to identify multiple impacts of the discrimination they experienced. Survey question; Q11, Q23, Q51.
- 28 Main employer' refers to the job they had just prior to parental leave. If they had more than one job at the time it refers to the job for which they did the most number of hours per week.

- 29 Mothers who have finished their parental leave and experienced discrimination at work during their pregnancy were less likely to return to the main employer they had before the birth/adoption of their child (77%), compared to mothers who didn't experience discrimination during their pregnancy (87%).
- 30 The remaining respondents said that their employer was neither supportive nor unsupportive.
- 31 Of the remaining respondents (who had experienced discrimination during pregnancy), 21% said their employer was neither supportive nor unsupportive and 26% said their employer was unsupportive.
- 32 The remaining respondents said that their employer was neither supportive nor unsupportive.
- 33 Of the remaining respondents (who had experienced discrimination upon return to work), 17% reported that their employers was neither supportive nor unsupportive and 17% reported their employer was unsupportive.
- 34 Mothers who reported experiencing discrimination during pregnancy or on return to work were less likely to say that their employer was supportive during pregnancy or on return to work. For example, while 97% of mothers who did not experience discrimination during pregnancy said that their employer was supportive during their pregnancy, only 53% of mothers who reported experiencing discrimination during pregnancy said their employer was supportive during their pregnancy. Furthermore, while 98% of mothers who did not experience discrimination on return to work said their employer was supportive on return to work, only 66% of mothers who reported experiencing discrimination on return to work said their employer was supportive on their return to work.
- 35 Given the survey allowed for multiple responses in terms of the type of discrimination experienced as well as multiple responses in terms of the actions taken in response, it was not possible to analyse the particular responses of mothers to certain types of discrimination experienced.
- 36 Survey questions: Q12, Q24, Q52.
- 37 The data on whether the respondent was from a culturally and linguistically diverse background was incomplete for the Baby Bonus sample. It was therefore available for approximately 80% of the respondents to the Mothers Survey.
- 38 The survey sample was weighted by age.
- 39 Survey questions: Q8, Q9, Q10/A/B, Q20, Q22/A/B, Q47, Q49, Q50/A/B, Q60.
- 40 This analysis is based on a small number of respondents and any analysis or interpretation of the data should be generally treated with care and taken as indicative information.
- 41 Data was not collected on whether survey respondents were a sole income earner when requesting or during parental leave. Survey questions: Q8, Q10/A/B, Q47, Q49, Q50/A/B, Q61, Q62.
- 42 This analysis is based on a small number of respondents and any analysis or interpretation of the data should be generally treated with care and taken as indicative information.
- 43 During pregnancy – part-time (27%), full-time (28%); when requesting or during parental leave – part-time (31%), full-time (34%); on return to work – part-time (35%), full-time (37%).
- 44 Note, the eligibility requirements for parental leave under the *Paid Parental Leave Act 2010* (Cth) and *Fair Work Act 2009* (Cth) for casual employees are: must be employed as a long term casual (ie employed for more than 12 months on a regular and systematic basis with a reasonable expectation of continuing employment).
- 45 This analysis is based on a small number of respondents (Base: Mothers in on-going/permanent position and wanted to take leave or took leave (n=1457), fixed-term contract (n=177), casual (n=265)) and any analysis or interpretation of the data should be generally treated with care and taken as indicative information. Note, the eligibility requirements for parental leave under the *Paid Parental Leave Act 2010* (Cth) and *Fair Work Act 2009* (Cth) for casual employees are: must be employed as a long term casual (ie employed for more than 12 months on a regular and systematic basis with a reasonable expectation of continuing employment).
- 46 Only 17 mothers (13%) on a fixed-term contract reported that they were dismissed, made redundant or lost their job. This analysis is based on a small number of respondents and any analysis or interpretation of the data should be generally treated with care and taken as indicative information.
- 47 Survey questions: Q6, Q8, Q10/A/B, Q20, Q22/A/B, Q36, Q47, Q49, Q50/A/B.
- 48 For example, three in ten (30%) mothers who worked for their employer for one year but less than two years and a quarter (25%) of mothers who worked for their employer for more than two years but less than six years reported being discriminated against during their pregnancy.
- 49 This analysis is based on a small number of respondents and any analysis or interpretation of the data should be generally treated with care and taken as indicative information.
- 50 Survey questions: Q1, Q8, Q10/A/B, Q20, Q22/A/B, Q32, Q47, Q49, Q50/A/B.
- 51 The workplace sector did not impact on the prevalence of discrimination.
- 52 Survey question: Q4. How many people worked in that organization as a whole (including on different sites/locations in Australia if that applies)?
- 53 The size of workplace did not impact on the experience of discrimination during pregnancy.
- 54 Survey questions: Q8, Q10/A/B, Q20, Q22/A/B, Q47, Q49, Q50/A/B, Q4, Q35.
- 55 Survey questions: Q8, Q10/A/B, Q47, Q49, Q50/A/B, Q3, Q34.
- 56 Survey questions: Q8, Q10/A/B, Q3, Q34, Q47, Q49, Q50/A/B.
- 57 Mothers were asked what the location of their workplace was during their pregnancy and on return to work after the birth of their child: major city, large regional town, small regional town or rural area.
- 58 n = 1007.
- 59 n = 334.
- 60 n = 224.
- 61 Please see methodology above for an overview of how the discrimination data was calculated.
- 62 Survey questions: Q8, Q10/A/B, Q20, Q22/A/B, Q47, Q49, Q50/A/B.
- 63 Survey question: Q63.

- 64 The survey questionnaire asked mothers a series of questions related to 'leave to care for your child'. Mothers who took leave to care for their child may have taken many different forms of leave (such as employer paid parental leave, annual leave and unpaid leave). Given this survey examined the range of different kinds of leave mothers took to care for their child, the figures may differ from other data, including the data reported in the *Paid Parental Leave Evaluation Phase 1 report*. Department of Families, Housing, Community Services and Indigenous Affairs, *Paid Parental Leave Evaluation Phase 1 report*, Occasional Paper No. 44, 2012. At <http://www.dss.gov.au/about-the-department/publications-articles/research-publications/occasional-paper-series/number-44-paid-parental-leave-evaluation-phase-1> (viewed 13 April 2014).
- 65 62% of survey respondents from the Paid Parental Leave database took some other kind of leave to care for their child. 52% of survey respondents from the Baby Bonus database took some form of leave to care for their child.
- 66 Casual workers must work regularly for the previous 12 months to be eligible for unpaid parental leave. Some survey respondents who identified as working casually may not have met this eligibility requirement. This may account for the lower proportion of casual workers reporting that they took leave to care for their child.
- 67 Survey questions: Q17.
- 68 17% of women that worked in the public sector took between 13-24 months compared to 12% of women in the private sector and 11% in the not-for-profit sector.
- 69 42% of mothers that were casual workers took 1-6 months compared to 32% of mothers on fixed-term contracts and 29% of mothers who were in on-going/permanent. Furthermore, while only 24% of mothers that were casual workers took 7-12 months of leave, 47% of mothers who were going/permanent or fixed-term contract, took between 7-12 months of leave. As noted, casual workers must work regularly for the previous 12 months to be eligible for unpaid parental leave. Some survey respondents who identified as working casually may not have met this eligibility requirement.
- 70 51% of mothers that worked in a large workplace took between 7-12 months of leave compared to 36% of mothers in medium sized workplaces and 27% of mothers in small workplaces. Likewise, while 17% of mothers that worked in a large workplace took between 13-24 months of leave, only 10% of mothers in medium sized workplaces or small workplaces took this length of leave.
- 71 As noted above, 11% of mothers reported that they did not take leave to care for their child.
- 72 Mothers who took 13-24 months of leave were less likely to report wanting additional leave (32%) than those who took one to six months of leave (56%).
- 73 The survey was conducted approximately two years after the survey respondents accessed either the Paid Parental Leave scheme or the Baby Bonus.
- 74 Other reasons provided for not returning to work included: one in six (17%) had another child or were pregnant again, one in seven (14%) could not find childcare or thought that childcare was too expensive, one in ten (11%) could not find work or could not negotiate return to work arrangements.
- 75 Mothers who did not intend to return to the same employer as before the birth or adoption of their child were asked about their reasons for not wanting to return to the same employer. A quarter (26%) of mothers did not intend to return because they either disliked their manager, the culture of the organisation or because their workplace did not allow flexible work arrangements. Nearly one in five (22%) mothers reported that the location of home/work was their reason for not returning to the same employer. One in six (16%) mothers reported that they did not want to return to the same employer because they were replaced, fired or made redundant or because their employer did not keep their job open.
- 76 When work status was examined by employer communication, two in five (41%) mothers who took leave and were in a permanent position prior to taking leave reported that their employer kept them informed about major changes in the workplace that could affect them while just over a quarter (28%) of casual employees reported being kept informed while on leave.
- 77 Survey question: Q34. Under the National Employment Standards (*Fair Work Act 2009 (Cth)*), there is a right to request flexible work arrangements. Employers may refuse to grant a request for flexible work arrangements on 'reasonable business grounds'. This question and the series of questions around the type of adjustment requested and whether or not this was granted, were designed to capture these types of flexible arrangements. Respondents who may have entered into an 'Individual flexibility agreement' may have also responded to this question.
- 78 Three in ten (30%) mothers did not request adjustments to their working arrangements. Of this group, over four in five (82%) said it is because they already had adjustments before the birth or adoption of their child and a small group (7%) thought that their request would not be granted or possible or because of financial reasons (5%). There were roughly equal proportions of mothers who worked in the not-for-profit (67%) and private (67%) sectors who requested adjustments to their working arrangements, while those who worked in the public sector (76%) were more likely to request adjustments to work arrangements. Also worth noting is that three in four (74%) mothers who returned to work and were in an on-going/permanent position, requested adjustments to their working arrangements compared to three in five (61%) mothers who were employed on a casual basis.
- 79 See the methodology in section 2.1 above.
- 80 Survey questions: Q13, Q14, Q15, Q40, Q41, Q42.
- 81 Please see Appendix B.3 for the percentage of all fathers and partners that experienced the different types of discrimination.
- 82 The survey questions relating to type of discrimination allowed survey respondents to identify multiple types of discrimination they experienced. Of the 27% of fathers that experienced discrimination on at least one occasion, 52% experienced more than one type of discrimination.
- 83 Due to the survey questionnaire, it was not possible to divide negative attitudes and comments from colleagues and negative attitudes and comments from manager/employer.
- 84 Survey questions: Q13, Q14, Q15/A/B, Q40, Q41, Q42/A/B.
- 85 58% of fathers and partners reported an impact on their level of stress, 26% reported an impact on self-esteem and confidence, and 26% reported an impact on their mental health more generally.
- 86 Survey questions: Q16, Q43.
- 87 Of a small group of fathers and partners (n=123) who did not take any kind of action in response to the discrimination, they provided the following reasons for not taking action:
- they did not think that the behaviour they experienced was serious enough, it did not negatively affect their work or because they sorted it out (29%) (n=36)
  - they felt that it was too hard, stressful or embarrassing and would be easier to keep quiet (28%) (n=34)
  - they felt that their actions would not change things, that nothing could be done or that no one would believe them (20%) (n = 25)
  - they feared that it would impact on their job or career (17%) (n=21).
- 88 Formal complaint is defined as making a complaint within the organisation or making a complaint to a government agency.

- 89 Survey questions: Q17, Q44.
- 90 Analysis was run on all the characteristics of the individual, nature of employment and nature of the workplace, examined in the Mothers survey
- 91 Due to the smaller sample, a larger age range (18-29 years) was used for fathers and partners than the age range used in the Mothers Survey (18-24 years).
- 92 Survey questions: Q13, Q14, Q15, Q40, Q41, Q42.
- 93 Survey question: Q55.
- 94 Survey question: Q8.
- 95 Survey question: Q10.
- 96 56% of fathers and partners working casually took 2 weeks of leave compared to 41% of fathers and partners on a fixed-term contract and 40% of fathers and partners who were on-going/permanent employees.
- 97 While just over half (54%) of fathers who worked in a small workplace took two weeks of leave, a third (35%) who worked in a large workplace took this length of leave. Conversely, one in five (19%) fathers who worked in a large workplace took four weeks of leave compared to a small group (5%) who worked in a small workplace.
- 98 Survey question: Q34. Under the National Employment Standards (*Fair Work Act 2009 (Cth)*), there is a right to request flexible work arrangements. Employers may refuse to grant a request for flexible work arrangements on 'reasonable business grounds'. This question and the series of questions around the type of adjustment requested and whether or not this was granted, were designed to capture these types of flexible arrangements. Respondents who may have entered into an 'Individual flexibility agreement' may have also responded to this question.
- 99 Three in five (74%) fathers did not request adjustments to their working arrangements because they did not need them, while one in ten (11%) already had adjustments made prior to the birth or adoption of their child. A small group of fathers did not request adjustments to their working arrangements because their partner looked after their child (7%) and because they could not afford to do fewer hours or they were a single income family (6%).
- 100 Fathers were asked why their request for working adjustments was partly or not granted. Of a small group (n=45) who answered this question a third said that it was not possible. Other reasons included business reasons, because there was too much work to do, staff shortages, their manager does not like part-time/ flexible hours and because everyone else would want the same conditions.





# Chapter 3

## Experiences of employees during pregnancy, parental leave and on return to work after parental leave

### In summary

- The National Review found that there are a range of different types of discrimination at both the individual and systemic level, experienced by women at work while pregnant/return to work, and by men during parental leave/return to work.
- Discrimination towards pregnant women and parents at work can have a wide range of short and long term consequences for affected individuals, their families, and workplaces.
- In addition to experiencing discrimination, women and men face structural barriers. Gender stereotyping and a lack of awareness and understanding of employee rights and entitlements can render women and men vulnerable to discrimination. Limited availability, affordability and access to quality early childhood education and care services is another structural constraint for parents returning to work, particularly mothers.
- The nature and consequences of discrimination experienced by women and men can be shaped by other factors including their cultural background, disability, sexual orientation, marital status, age and employment status.
- Effective implementation of workplace policies targeting pregnancy, parental leave and return to work will support efforts to reduce discrimination and promote diverse workplaces.

This chapter explores the qualitative research the National Review gathered through online submissions, as well as direct consultations with affected women and men and community organisations who work with them. It also draws on other Australian and international research.

The chapter outlines the findings on the nature and consequences of discrimination experienced by pregnant women at work, women and men requesting or taking parental leave, and parents returning to work following parental leave.

It also refers to the specific experiences of vulnerable groups including people with culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander people, people with disability, single parents, young parents, and casual, contract and flexible workers.

This chapter identifies structural barriers which either led to discrimination or negatively impacted on parents in the workplace, including: gender norms and stereotypes; lack of awareness and understanding of rights and entitlements; the implementation gap in workplace policies; and limited availability, affordability and accessibility of quality early childhood education and care services.

While this chapter refers to situations of alleged discrimination, the National Review did not investigate or making findings or determinations about any individual cases of discrimination.

### 3.1 The nature of discrimination

The qualitative research suggested that discrimination was widespread. This reinforces the results of the National Prevalence Survey.

A range of different types of discrimination, including both indirect and direct forms, were experienced by women throughout pregnancy/return to work and by men during parental leave and on return to work. The types of discrimination in this chapter include:

- negative attitudes towards pregnant women and mother and fathers
- health and safety issues
- recruitment bias against working parents
- changes to salary, conditions and duties upon announcing pregnancy, while on parental leave or on return to work
- being refused leave for the purpose of caring responsibilities
- limited contact during parental leave
- missing out on career advancement opportunities during pregnancy/return to work
- being denied flexible arrangements on return to work after parental leave
- inadequate support in workplaces for women who are breastfeeding/expressing
- dismissal and redundancy.

### (a) Negative attitudes

Women and men reported they had experienced negative attitudes in the workplace because they were pregnant, requested or took parental leave, and upon their return to work. Such attitudes are often informed by gender stereotypes about the 'ideal worker' and about women and men's caring roles.

For women, this negative treatment commonly started from the moment they announced their pregnancy, and continued through to their return to the workplace following parental leave. For fathers, the negative treatment often commenced when they requested parental leave or requested time off to care for their child due to illness.

While the negative treatment frequently originated with managers, many individuals also shared experiences of negative attitudes and behaviours from their co-workers. Many affected women and men said they received negative comments and attitudes from both female and male managers and co-workers.

For example, pregnant women were perceived as an inconvenience and liability in the workplace.

When I told my supervisor I was pregnant, the response was 'well, you will need to leave – this is very inconvenient for the organisation – you should have told us that you were planning this – have you considered [an] abortion?'<sup>1</sup>

I have just announced that I am pregnant again with my second child and my manager's first words in response were 'here we go again'.<sup>2</sup>

While I was pregnant, I had worked for [my employer] for 18 years, I found it interesting that the attitudes of senior managers changed towards me, I felt like I was no longer an asset to the business, just a liability.<sup>3</sup>

Women reported receiving inappropriate and negative comments from managers with regard to their choice to continue working with a family.

It was relayed to me that now that I have a child that I should focus on that more and not be so hungry to be progressive in my career. That by offering me this lower job they were allowing me to be a better mother.<sup>4</sup>

My direct manager (female)...told me that I needed to 'decide what I wanted – a family or a senior role in the company...it's a myth you can have both'.<sup>5</sup>

When asked at a team meeting what my goals were for the new year – the manager joked 'having a baby' while other staff were encouraged to express their professional goals/ training needs/ career aspirations etc.<sup>6</sup>

Negative comments and attitudes also originated from colleagues.

One of the other men in the office had started calling me 'placenta brain' when I was pregnant.<sup>7</sup>

[One woman was told] I know where your husband can get a vasectomy.<sup>8</sup>

[One colleague] was constantly belittling me...and undermining me in product training sessions complaining that errors (of which there were none) were due to my 'baby brain'. My boss did nothing and advised that it was probably unintended.<sup>9</sup>

A few of the other people who worked there were horrible. They would make comments about how I couldn't work long hours, how I couldn't move fast enough (I was 7 months pregnant at the time), how 'useless' I was at work.<sup>10</sup>

A number of women and men said that their commitment to work was questioned upon announcing their pregnancy and on return to work. A common assumption made by employers and co-workers was that mothers would want to return to work part-time or in a role with lesser responsibilities, or not at all.

During a consultation Rita,<sup>11</sup> a medical specialist, talked of her experiences of unfair treatment upon returning to work following parental leave. She said, '[people think that] you're not really serious [about your career] if you take one full year of maternity leave...people think you're kind of weak, not a serious player'.<sup>12</sup>

The news of my second pregnancy was not handled well by partners in the same firm where I had now been working for over 12 years. They decided that my ambition and desire to maintain my career automatically went out the window upon having a second child, so much so that I was also deemed incapable of performing my current management job on a part-time basis anymore, despite having been performing that exact job four days a week. My request to return to this same job and same days was taken as a joke – suggesting I could do the job with having one child but not with two.<sup>13</sup>



My line manager had openly expressed in a team meeting...that I would be returning but that two days per week was more than enough for someone with two children.<sup>14</sup>

One of my colleagues is in exactly the same situation as me...we were both long serving staff with a combined 27 years of service. It appears that despite all of our skills, qualifications and experience, the partners' misguided view appears to be that we are no longer capable or competent employees because we are women with children who want to work part-time.<sup>15</sup>

The National Review heard that on occasion parents were sidelined, isolated or ignored in their workplace upon announcing their pregnancy or on return to work.

My employer also informed me...I would need to work in a 'behind the scenes' role when my pregnancy became physically apparent as my employer did not want customers to see me in a pregnant state...My employer said numerous negative things to me about me being pregnant including that appearing pregnant was 'not a good look', was 'not a professional look'.<sup>16</sup>

From that moment [when I announced my pregnancy] I was uninvited to meetings, my opinion was disregarded, I was stone walled by my boss on any decisions.<sup>17</sup>

Some women said that their employers became distrustful of them and closely monitored their work.

[On returning to work my manager] told me that I was affecting her other staff, whenever I took carers leave [to care for my child]. If I was on carers leave, work would ring [more than five] times per day.<sup>18</sup>

When I eventually returned to work [my manager] made things very difficult for me. An example of this would be her close monitoring of my work, negative feedback and shunning me in the office. However, one of the most embarrassing things that happened was that she requested that another staff member conduct an audit of my time sheets. This implied that I was in some way cheating the system or lying about my hours worked. This was a truly awful time.<sup>19</sup>

Some women said that they received negative attitudes and comments from their employers following a miscarriage or stillbirth.

I miscarried at six weeks gestation and took a week off work to recover. My female employer called my husband and told him I shouldn't need days off work and that after her miscarriage she went to work the next day.<sup>20</sup>

Coming back to work after [my] first pregnancy was terrible as I lost my baby after birth and work started me back during a massive baby sale. I found that very inconsiderate.<sup>21</sup>

My issue was returning to work after the loss of my pregnancy. Since returning to work I have had no support from either my boss or from management. In fact I believe I have been almost forgotten about.<sup>22</sup>

The National Review also heard from women who said that their employers regarded parental leave as a holiday or a break in someone's employment. Women were made to feel that working while pregnant, taking parental leave and returning to work was a privilege rather than a workplace entitlement.

[My manager] told me that since I chose to get pregnant I should be grateful that they've offered me an office position rather than putting me on leave without pay, because I can't do the job I was hired for.<sup>23</sup>

I think too many employers look at maternity leave as a 'break' in your employment and therefore as some sort of reasonable excuse to change the terms of your employment to better suit themselves, almost as if you're being re-employed by returning to work after having a baby.<sup>24</sup>

## **(b) Health and safety**

The National Review heard that pregnant employees were sometimes denied requests for even minor adjustments such as a stool to sit on, and extra breaks to go to the toilet or have a snack. This was particularly an issue for pregnant employees working in rosters or shift work, or where the work required physical labour or exposure to harmful substances and chemicals.

Kerry, a [pregnant] cashier was refused a request for a stool to sit on whilst checking items out behind the register to assist with the pressure and swelling of her feet. Another [pregnant] employee, Alice, was refused requests to take toilet breaks outside the allocated schedule. She [soiled] herself in front of customers and suffered humiliation and discomfort.<sup>25</sup>

Tai was suffering morning sickness and was told that she was spending too much time in the bathrooms and not enough on the shop floor. Tai complained to Human Resources but nothing was done. The Human Resources manager said to Tai 'Pregnancy is not a sickness'.<sup>26</sup>

My pregnancy was very rough. I was sick from day one with nausea, dizziness, hot flushes and vomiting. My 'morning sickness' actually lasted all day. Sometimes I was vomiting 10 times a day. My boss got angry because I took frequent toilet breaks. Even though he knew I had morning sickness, he'd text me while I was vomiting and tell me to get back onto the floor immediately. I had bad back and leg pain, but I wasn't allowed to sit down. If I did, he'd click his fingers at me like I was a dog and tell me to stand up.<sup>27</sup>

Throughout my pregnancy I suffered tremendous morning sickness, and repeatedly requested some flexibility with regards to working hours...My requests were declined by the [senior managers]. When I gave an example of two occasions where I had arrived at work only to spend 10 minutes in the bathroom I was told to enter the 10 minutes into the timekeeper as Personal Leave...By the time I commenced maternity leave, I was taking considerable amounts of Leave Without Pay, as my leave credits had been used.<sup>28</sup>

Women reported that their employers questioned and ignored medical advice provided by their doctors and that they experienced negative consequences such as warnings and threats of dismissal when they requested accommodations for their pregnancy.

Sarah was working as a correctional officer and was required to perform a range of duties that involved working with violent offenders and a risk of exposure to blood-borne diseases while pregnant. Sarah requested light duties to limit contact with prisoners. However, management took a long time to respond to the request and were reluctant to provide flexibility within a rotating roster. Her supervisors appeared to be more concerned about the disruption to other employees, rather than Sarah's health and safety concerns. The poor handling of the request was stressful for Sarah and caused financial hardship given that she had to take leave for work related stress and she was unable to continue working the same hours and receive the associated entitlements.<sup>29</sup>

I was expected as part of my job to continue to lift and manoeuvre large and/or heavy boxes and bags filled with orders...One of my regular shifts I worked was with someone who had back problems (of which the supervisor and manager were aware) and reluctant to do extra lifting, which meant I had to push the limits of what was comfortable as there was no one else to help. I spoke to both my supervisor and manager about access and safety issues, which were ignored and they would often act as if they didn't remember.<sup>30</sup>

I work in a supermarket bakery. All the smells made it very difficult to keep food down. Although I [made] my best effort, I had to call in sick a couple of times or go home before throwing up. The first time I called in sick, my manager already told me this couldn't continue and I had to do something about it...I was prescribed [medication] by a [doctor], but unfortunately it didn't help at all but made me suffer from side effects, such as dizziness, which is very dangerous when working with ovens. I discontinued the tablets and when I had to go home sick...next shift I was given a form to sign, saying it was a verbal warning.<sup>31</sup>

My doctor wrote a letter stating I was fit for work but would benefit from not standing for any length of time...When I showed my managers the letter... they said there were 'no chairs' and it seemed like my doctor is trying to wrap me up in cotton wool. I spent the rest of the time trying to take it as easy as possible as lifting/bending/squatting place a huge amount of pressure on the (cervical) stitch I had in place and I was concerned for my baby. I was forced to use most of my annual leave during this time as some days I physically could not do my job. I feel like I had to go on maternity leave early as my workplace was not accommodating at all.<sup>32</sup>

In the United Kingdom the government provides employers with comprehensive information on employer obligations with regard to the ensuring the work health and safety of new and expectant mothers and employees who are breastfeeding/expressing milk. This includes detailed guidance on the work health and safety risks associated with pregnancy and breastfeeding, and checklists for carrying out risk assessments.<sup>33</sup> By comparison, there is currently very little information available in Australian jurisdictions to assist employers and employees with addressing health and safety issues in relation to pregnancy at work.

### (c) Recruitment

Some women experienced discrimination when applying for jobs because they were pregnant or had children. During the recruitment process, women received inappropriate questioning or comments about their plans to have children and their commitment to work while caring for children. Such discrimination may be underpinned by gender stereotypes where 'women are still perceived as the main carers and therefore not primarily as workers with full employment rights'.<sup>34</sup>

When I asked about why I had missed out on the job, my manager stated that I might not handle the extra work with two children, and that I probably wouldn't want the extra stress when I was going on maternity leave soon anyway.<sup>35</sup>

She withdrew the job offer explaining that the job was complicated and by the time I was confident in the role I would be preparing to leave to have my baby. She stated that they would not continue in the recruitment process with me but she thanked me for my honesty, asking me if it had been a dilemma for me to tell them about the pregnancy. When I told her that it had been a dilemma as the pregnancy was very early and there is still a risk of miscarriage, she said, 'well I was going to say, without wanting anything bad to happen, but if your circumstances change, give me a call'.<sup>36</sup>

Throughout the interview my commitment to the role was questioned fairly aggressively and despite answering these challenges fairly well I think, it seemed nothing I could say could convince the panel of my commitment to my work and my career – what was more infuriating is that I had ruled out having another child and wanted to immerse myself in my career and work.<sup>37</sup>

Individuals working in Human Resources also witnessed negative attitudes and behaviours towards applicants on the grounds of their pregnancy or potentially pregnancy, during the recruitment process.

I am constantly surprised about the discriminatory comments made and I know firsthand despite my advice, the number of times a female employee is not recruited or promoted because she has young children or sometimes even because she might get pregnant. Many of the times these women wouldn't even know they are being discriminated against.<sup>38</sup>

When recruiting new staff it is often openly discussed about whether a person might be likely to have maternity leave in the near future and [this] has been a deciding factor not to hire women in certain roles.<sup>39</sup>

Some parents told of employers requesting private information and access to health records of potential employees even when they appeared irrelevant to the position. For example, the National Review was provided with a copy of a recruitment form which asked applicants questions about whether they had had any stillbirths, pregnancies or abortions and if their partners had been sterilised or had hysterectomies.<sup>40</sup>

#### **(d) Changes to salary, conditions and duties**

On occasion, pregnant women and mothers returning to work experienced changes to their salary and conditions, as well as changes to their workload or duties which negatively impacted on them.

The National Review heard that this would often occur either shortly after an employee had announced their pregnancy or while on parental leave. Frequently the employee was either not consulted about the changes or received very limited opportunity to negotiate with their employer.

Some women said that they felt pressured by their employers to give up their permanent status and accept casual employment in return for flexibility.

It's late into my pregnancy, so they have now put me down to eight hours from 24 hours. They said I was lucky that I didn't tell them earlier as they would have cut me back straight away if they had known about it.<sup>41</sup>

In relation to salary, some pregnant women on returning to work found that their salary was reduced, or that they did not receive a pay increment or bonus in line with their colleagues.

While I was on maternity leave...[my boss] told me that there had been a business decision that I was no longer suitable for the role I was in previously (they had offered it full-time to my maternity leave person). She said, don't worry I have managed to secure you a position in another department but it was a \$20,000 pay difference.<sup>42</sup>

Whilst I was on maternity leave and since my return to work I have had many challenges including...demoted on work grading classification and bonus qualification and entitlements (eg car parking entitlement revoked) post my first and second returns to work following maternity leave.<sup>43</sup>

Others in their absence on parental leave had their working conditions changed without their knowledge, including changes to shifts and job requirements.

I am currently on maternity leave. In mid-July I wrote a letter to my manager telling her I would like to return to work at the start of September, I gave her the letter in person and had a meeting with her to discuss the days and hours I could work...Finally she rang me 7 weeks after I first went to see her and all she said was 'sorry all we have is night hours, don't suppose that is going to suit you is it!' She knew I was still breastfeeding and that I couldn't work at night...My manager told me she isn't prepared to take my old hours off the people who got them when I went on leave.<sup>44</sup>

My boss also says that if I return to work I will be required to travel regionally and overseas at short notice and for two weeks or more, even though I didn't do this before I went on maternity leave. He said that if I don't agree to work full-time and travel with a moment's notice then I have to tender my resignation.<sup>45</sup>

In relation to duties and workload, pregnant employees and parents returning to work experienced significant reductions in responsibilities and hours.

Alejandra had been employed by a cleaning company for two years before becoming pregnant. She needed very short breaks to have a snack but her employer insisted that she only take breaks every five hours. She was given the option to reduce her hours if she wanted to take short breaks, and shortly after was removed from the roster completely.<sup>46</sup>

I strongly felt from the day I told my manager I was pregnant they were planning for me to leave. The volume and responsibility of my work was scaled down.<sup>47</sup>

When I returned after 11 months parental leave, I was put in a more junior 'secretariat' role – something I was over skilled for.<sup>48</sup>

I was told I couldn't return back to my previous work and that they were looking at a number of equivalent roles...I was left in what I would call a floating project role doing bits and pieces of work. There's no way it was the equivalent in terms of responsibility to what I was doing previously and also [I] was told that I had five months to find another role and ...then it was likely I would be made redundant.<sup>49</sup>

Conversely, some people had increased duties and workloads allocated to them, making it difficult and sometimes impossible to meet expectations, deadlines and targets.

Since I announced to my boss that I was pregnant my workload tripled. Items which...had been sitting on his desk for months were suddenly a priority and strict deadlines were expected to be adhered to.<sup>50</sup>

From my personal experience I have experienced bullying and intimidation tactics at almost every part-time discussion with pressure from management to work more hours and to work later shifts.<sup>51</sup>

Unexpected changes to salary and conditions and the imposition or reduction of duties and workloads appeared to some employees as an attempt to pressure them to resign without a formal dismissal. The term used to describe employers pressuring or forcing pregnant employees and new parents to resign has been described in other pregnancy discrimination research as 'mobbing practices'.<sup>52</sup>

## (e) Denied leave

### (i) While pregnant

Some pregnant employees were denied their requests for leave for pregnancy related sickness or to attend prenatal and IVF medical appointments. They also said that they faced negative reactions and consequences for accessing leave for pregnancy related sickness.

I was constantly told the company is suffering due to my medical issues and absences and threatened multiple times with forced unpaid maternity leave or being sacked if I didn't fix it.<sup>53</sup>

I was so sick but too scared not to go to work.<sup>54</sup>

One manager actually told me 'you know you are not really sick just pregnant'.<sup>55</sup>

[I was] actively discouraged from taking any sick days and told to avoid making any necessary doctor's appointments on work days.<sup>56</sup>

Penelope informed her supervisor that she needed a day off work to attend prenatal appointments and this was noted on the roster. The next day she went in to work and was told she was suspended for not showing up at work.<sup>57</sup>

### (ii) On return to work

Some parents returning to work said that they were provided limited access to personal leave to care for sick children, and experienced negative attitudes from managers and colleagues regarding their family responsibilities.

Whenever my son wasn't well and I'd access the carer's leave, I was always made to feel like that was a pain as well. I think I accessed it twice within a month and then I was told from then on I would have to bring certificates from the doctors, which I could do, but [it just] made feel like you're doing something wrong by using your entitlements.<sup>58</sup>

So my daughter went into day care. As [this was her first time in day care] she got all the bugs and got sick. I was on-and-off work and worked as much as I could, being made to feel guilty every time because I wasn't at work. She ended up in hospital with bronchiolitis, pneumonia and was on oxygen for four nights. All my manager could say to me was 'its stock take'.<sup>59</sup>

Australian research also found that accessing leave for caring purposes was a key concern for parents when returning to work, particularly where paid leave is taken for caring.<sup>60</sup>

## **(f) Parental leave**

### *(i) Requesting or taking parental leave*

The National Review heard that some women and men experienced unfair treatment and discrimination when requesting or taking parental leave.

Research in Canada has found that male employees believed that their employers would react negatively if they took more than one month of parental leave.<sup>61</sup> The National Review heard this was also the experience of some men in Australia, where employers were more reluctant to approve requests from men to take parental leave than from women. In addition, men said that they faced additional obstacles with accessing parental leave entitlements, in comparison to their female colleagues.

So I went back to my employer and [said], I want to take paternity leave. And he laughed! That's for the mum!...They don't want to make it easy for male employees to access it because it costs them money.<sup>62</sup>

A male colleague sought to take parental leave (in our employment terms, the same type and period of leave was available to mothers, fathers and adoptive parents). He was subjected to a protracted negotiation process and was only in the end able to take half the time (six instead of 12 weeks) not as full-time leave, but as a reduction to three days per week. This was appalling, and demeaning both to him and the women who took the leave. It imposed a double standard: the men were too valuable to take the leave as offered, but the women were dispensable. I know it also placed a lot of stress on his family because they had planned that he would take up the primary carer role for the period of the parental leave.<sup>63</sup>

I tried to take the day off on parental leave and got told I had to provide a medical certificate. When I told them my son wasn't sick, but only a few months old and required my care due to my wife's work, I was told to provide evidence from my wife's work that it was compulsory. I didn't want to do this, so instead used my flex hours to take the day off.<sup>64</sup>

In relation to women's experiences, the National Review heard that some women were pressured by their managers to take parental leave earlier than they had intended. The reasons ranged from employers citing health and safety reasons, to their employers no longer wanting them in the workplace.

I notified my supervisor of my wish to commence maternity leave three weeks before my due date...My supervisor informed me that this wasn't possible because she didn't want any unforeseen medical emergencies...As a result, I was forced to commence maternity leave six weeks before giving birth. My baby arrived ten days late...so when I was due to return to work six months later I felt robbed of those three extra weeks with my baby.<sup>65</sup>

[When] I informed my employer I was pregnant...they were not [willing] to accommodate [my] flexible [work request]...[and they] wanted me to take [parental] leave early.<sup>66</sup>

While some women were pressured to return to work earlier because of work demands, others had to extend their parental leave against their wishes due to uncertainty in their employment.

I was pressured to return to work within a shorter period of time than I was comfortable with, even though I am not using all of my paid entitlement, let alone the unpaid portion. All my colleagues were genuinely surprised when I told them how long I would be on leave.<sup>67</sup>

I felt pressure to return to work earlier than I had intended. I was allowed one year unpaid leave. I returned to work on a part-time basis after six months. This pressure I felt came from the small nature of my department, and my workplace did not replace me while I was away, they simply worked one person short. This did not make me feel valued, and placed the remaining employees under stress and caused resentment towards me. They felt I was simply on leave (holiday) as opposed to caring for a newborn.<sup>68</sup>

I'm still currently on parental leave. As I am only casual there are no shifts for me to go back to. I was due to return at the end of this month, however there is no work, therefore I have extended my leave.<sup>69</sup>

In August 2013 I notified my company of my intention to return to work. They indicated that if I returned in September they would make me redundant however if I extended my leave until January (one year) they would review the situation.<sup>70</sup>

(ii) *Contact while on parental leave*

Women said that during parental leave their employers had very little contact with them, and often the responses to emails and phone calls were delayed. This was particularly problematic when organisations had undergone a restructure or there were changes to roles while they were on parental leave. Women felt that they were treated unfairly because they were not consulted or had limited input into any changes to their roles in comparison to other colleagues who had opportunities to negotiate their positions and any other issues during a restructure.

My company underwent a restructure and I was advised three months after returning to work from my second maternity leave that my role was being made redundant in nine months' time...[there was] no discussion during the restructure of what I would like to do (career path) and my interest in increasing or decreasing my current number of days work.<sup>71</sup>

I had no contact from work other than a letter received outlining my performance review (which I never knew had taken place) and thanking me for my efforts...I received an email (from my old manager) a couple of months before I was due to return to say my job no longer existed and that I would be placed into a lesser role. Upon return to work I discovered my original position was given to somebody else...I was then working in a role being paid \$15,000 less than my offside who also had special work hours and a dedicated car space.<sup>72</sup>

When I made contact before wanting to return to work – I was told my workplace could no longer accommodate my requests for [a flexible] work arrangement...I was given no option to negotiate, no face to face contact [and] finally one week before I was due to return to work I was told my position had been made redundant.<sup>73</sup>

There was a lack of clarity on whether it was the role of managers or Human Resources to keep in contact with the employee regarding restructures or changes to roles.

I rang and spoke with the...human resources representative and explained my situation...having no access to a computer and limited access to child minding that made applying for positions very difficult. The advice I received was that I should get access to a computer and should attend a career seminar. I was told that there were another ten employees currently on parental leave who were in my situation... I scheduled a telephone call with a senior manager to discuss my unsuccessful applications and how I could improve them. He was unavailable when I rang at the appointed time.<sup>74</sup>

In addition, some people said that they were notified about changes to their roles and employment through other colleagues rather than their managers or employers.

I've been off now for eight months and not one phone call, nothing. I've since heard from other staff members that my job has been made redundant, but no one's told me, no management has told me.<sup>75</sup>

Just prior to my return to work, a restructure was announced. My manager did not let me know. I called her and emailed her 10 times wanting to understand what was going on. She never returned any calls or emails. A colleague called me and told me that my job was under threat and I should come into work to find out what was going to happen.<sup>76</sup>

There were a range of experiences relating to 'keep-in-touch' policies. Some employers provide employees on parental leave with options for staying in touch with the workplace. The options can include: access to the intranet, email accounts, and newsletters; being invited to work related functions or social events; and agreed phone or in-person contact with a manager or colleague. Some employees were also given the option of not having contact with their employers while on parental leave.

Some women said that they received little to no meaningful contact despite choosing the option to stay-in-touch, while others received unwelcomed communication while on parental leave.

The next day [after giving birth] my whole access to the internal system was cut off. I wasn't told that I would lose access to my emails. I was no longer able to access the company web for announcements, minutes...all of the industry circulars I no longer received, so everything I subscribed to maintain my own professional development, because it changes so often, I lost...I was not invited to any of the training sessions that were held at work...I was pretty much cut off from everything as soon as I had the baby...<sup>77</sup>

It's like as soon as I walked out the door I was forgotten. Since then there's been numerous staff parties. There was a Christmas party. There were people that had retired or left or gone to other stores, so they had farewells. There was my best friend that works there, she's been there for 25 years, so they did a big morning tea for her. I wasn't invited, and you're just made to feel like you're nothing, you're not even part of the team anymore. You're gone.<sup>78</sup>

On leaving the workplace to give birth...I was asked for a personal email for contact during my maternity leave – I expected that this was to contact me with organisation changes or information about my return to work from maternity leave...Within two weeks of leaving work I received numerous emails asking me to complete work for the organisation while on maternity leave.<sup>79</sup>

On leave, no one called and kept in contact with me except for automated newsletters which go to the entire company regardless. I felt very isolated. I called human resources and my manager a few times but work did not contact me.<sup>80</sup>



### **(g) Missing out on career advancement opportunities**

Women and men reported missing out on promotions and career advancement opportunities, such as training, further education and leadership development, because they were pregnant, on parental leave or have family responsibilities. As mentioned above, such discrimination was commonly informed by gender stereotypes around the incompatibility of parenthood and the ideal worker.<sup>81</sup>

I was [acting] in a senior role for over two years leading up to me taking 11 months leave to have a baby. I was leading a high performing team, meeting all my KPIs, and was always achieving outstanding in my performance reviews. Senior management decided to advertise my job towards the end of my pregnancy and despite a great interview, I was overlooked...for someone who did not have the same experience, background or expertise as I did but could commit the hours to it. I believe I was overlooked because I was about to take leave [and] rather than management wanting to back-fill me they replaced me.<sup>82</sup>

When I applied for a permanent position at the Senior Executive level, while my baby was less than one year old, I was unsuccessful...I was told by the recruitment panel that 'it was essential to be visible to get promoted to that level, and it would be difficult if I returned part-time'.<sup>83</sup>

Men's chances of being promoted are much higher, because they are much more visible. If men took the time off to care for sick children, or worked different hours to leave in time to pick children up from childcare, or shared the part-time work in the early days with their female partners, there would be a much more equitable representation of males to females in the workplace.<sup>84</sup>

In my year back from maternity leave I applied for a promotion and was unsuccessful. When asking for feedback after the interview I was told that I should lower my career ambitions during motherhood. When asked if that's the reason why I didn't get the position they denied it.<sup>85</sup>

I was the only one of my ten colleagues not promoted. I have always received extremely positive performance reviews and just prior to announcing my pregnancy received the very highest level of my performance review. As well as not being promoted, 50% of my role was taken from me and given to a male colleague. The 50% of the role that was taken related to a part of the law for which I had won industry awards, and undertaken specialised training to receive a certain level of accreditation. The male colleague had no accreditation and no experience in the area.<sup>86</sup>





In addition, some women and men missed out on having their performance assessments (often linked to reward systems) or received poor performance reviews, despite there being no performance related issues prior to announcing their pregnancy or taking parental leave. The research revealed that performance and reward systems disadvantaged pregnant workers and worked against part-time employees.<sup>87</sup> This was a result of the way in which work has been traditionally organised and rewarded to value continuity of service and constant availability.<sup>88</sup>

[I was] denied promotion and reclassification while pregnant. [I was] assured it would occur when I returned but it didn't...After three years I still haven't been reclassified as to what I was denied before [parental] leave.<sup>89</sup>

I have seen females in the firm not have performance appraisals conducted because they are pregnant and 'will be going on leave anyways'. While females are on parental leave they are usually not given a salary increase along with their peers as 'they are on leave'.<sup>90</sup>

Adrian worked full-time as a warehouse assistant for just over four years when he took three months unpaid paternity leave. Before going on leave, he felt that he had a good relationship with his employer. After he returned, his employer made him participate in a 'performance-counselling plan', gave him a long list of issues about his work performance and ultimately terminated his employment.<sup>91</sup>

Some working parents missed out on other career development opportunities such as opportunities for further education and training.

While I was pregnant, I found that I was overlooked for extra training – I volunteered for extra duties within our team but was told that I wouldn't be accepted because I would only be there a few more months so it wasn't worth training me. I was also taken off projects and not given new ones.<sup>92</sup>

While I was on maternity leave there was a highly publicised program to mentor women to promotion, however I was excluded from this while on maternity leave and there were no opportunities for me to join such a program, even though I had indicated that I wished to move into leadership positions long before my pregnancy. When I came back from [parental leave] it was clear that I would no longer be considered for promotion, without that being said verbally.<sup>93</sup>

Career support seminars were made available to all staff to attend. At no stage were alternative arrangements, such as 'mums and bubs' sessions, or online videos or one-on-one sessions offered to employees on any long-term leave and I was unable to attend.<sup>94</sup>

Georgia had been working for a large public sector employer as a teacher in a regional city for almost 10 years prior to taking six months parental leave. While on parental leave and on return to work Georgia missed out on training and other professional development opportunities. When a position for a Head Teacher role became available she expressed interest in the role. Georgia's manager advised that the position wasn't available part-time, despite her employer having flexible work policies. Georgia missed out on the Head Teacher position. She had to jobshare her existing role with a less qualified male co-worker and ended up having to carry out most of the work and responsibilities. Georgia said that she is no longer considered for career advancement opportunities.<sup>95</sup>

Katrina returned to work on a part-time basis after parental leave. The policy at her work states that part-time workers are not able to access study leave or training that exceeds their hours. Katrina is unable to access a training course that is required for her position as she works three days per week and the training course is four days. She has been told she will need to complete the fourth day in her own time and will not be paid for it.<sup>96</sup>

Employees were further disadvantaged by missing out on opportunities to work on key projects and by having their work allocated to other staff.

My project was taken from me as a precautionary measure as I may become less dependable as I had just informed my boss I was pregnant...I was told that women like me (working mothers) bleed the system.<sup>97</sup>

I am constantly losing work to other team members just because I am not there full-time. Other team members are being promoted above me, despite recognition that I am more senior and do more work...I feel like I am expected to choose my career, or my family.<sup>98</sup>

[While pregnant] I approached [my manager] to reinforce that I would really like to do the more clinical orientated work. He took me into his office, shut the door and told me that if I was going to cost him money I would work under his department and [what] they needed [was] a secretary. [My manager] said I was going to be a mother now and just had to get used to it.<sup>99</sup>

#### **(h) Denied flexible work**

The National Review heard that requests for flexible arrangements on return to work were sometimes denied without a valid reason or because flexible work arrangements were 'too hard' to implement or not possible implement due to 'operational requirements'.

The organisation has written policies in relation to part-time work, which sound great, but it...says something along the lines of part-time work can be granted, where it is operationally suitable – and hence that line is used all the time as the basis for refusal of part-time work.<sup>100</sup>

I was given all sorts of excuses about why this [part-time role] couldn't happen – he didn't want to set a precedent for other women – there were simply too many in the school on maternity leave; the students couldn't cope with more than one teacher; job sharing doesn't work – they tried it once and it was a disaster.<sup>101</sup>

Returning [maternity leave] employees were seen as a problem to be eradicated rather than an asset to be nurtured...Out of a global workforce of 35,000 employees, and a finance department workforce of 800 employees, [Human Resources] couldn't provide me with a single example of [jobshare arrangements].<sup>102</sup>

On return to work my employer advised me...that unless I was going to come back [to] work full-time, then I would be expected to take on a new position, and that position would be demoting me [two levels down]. I indicated that the role could easily be performed in a part-time capacity...or the role could easily be performed in a job share capacity. Both suggestions were refused and my employer was not willing to contemplate a trial period.<sup>103</sup>

Parents engaged in roster or shift work faced similar obstacles when requesting flexibility with their scheduled hours. Traditional rostering and shift work schedules do not match the circumstances and needs of a workforce with caring responsibilities.<sup>104</sup> In addition, there can be a power imbalance between managers and employees when negotiating flexible arrangements and hours of work, particularly when employees are much lower down the 'hierarchy'.<sup>105</sup>

[Woman who had agreed to an 8am-4pm roster with her boss]. I tried to do the right thing and gave almost two month's notice of my return to work although two weeks was all I needed to give...The day before I started work I was...told I would be starting at 9am...for my first week to be re-trained and I needed to deal with it...I had my mother take a week off to care for my son as I had organised day care for 6:30am-5:30pm...but couldn't follow through as my roster had me finishing at 6pm every night or 8pm and I had no one to pick my son up before then. I had to pay that entire week of care without him being there as the daycare required two weeks' notice of any changes. When I tried to explain this I was told, 'too bad'.<sup>106</sup>

Karen is a midwife in a public hospital. Her work involves rotating rosters and shift work. On return to work after parental leave, Karen requested to work less hours and on certain days due to limited childcare options. Her request was denied and her manager refused to be flexible with the rosters. The reason given was that rostering was hard enough to do with shift work and that there was a requirement to have certain numbers of staff working at any one time. However, Karen was aware that other departments could be flexible with their rosters.<sup>107</sup>

#### **(i) Lack of support for breastfeeding mothers**

Some mothers returning to work while breastfeeding or expressing told of not being provided with lactation breaks and adequate facilities at work.

The National Review heard that women were using their lunch breaks to express in toilets, car parks and offices with glass walls or without locks because their workplace did not provide suitable rooms and storage for breastfeeding and expressing.

The boss would not approve me breaking my lunch break up into 3 x 20 minute breaks to accommodate my need to express three times a day. Finally I spoke out and said I have some rights and if you don't accommodate my need to express I would take it further. I was [allowed] to use my lunch time [in three break periods] to express in the car park. I had to email my manager and team every time I left to express and every time I returned. My manager treated me like the enemy and like I was incompetent.<sup>108</sup>

I had to express milk in my car...I had my own office but it was all windows and I was not comfortable expressing there. The baby was not allowed in the office in case she cried, thereby causing an occupational health and safety risk. They did not offer me any room in the building to express or feed, although there were places available.<sup>109</sup>

I was still breastfeeding on return to work. We do not have a room for this – our office is glass walls and open plan. The solution was to wallpaper a glass office with typing paper (this also happened to be the server room). It had no lock and was embarrassing. I had to walk out of that room and deposit my milk in a shared fridge.<sup>110</sup>

Tiffany returned to her job after parental leave and discussed with her supervisor her plans to express milk for her baby. Her supervisor agreed that she could do this, but the only available place with privacy was the toilets. Tiffany works in a male-dominated worksite with shared bathrooms. Tiffany felt very embarrassed about expressing in the toilets, particularly since she needed to use an electric breast pump which was plugged in to the main power point at the sink area and made a loud noise that other users of the bathroom could hear.<sup>111</sup>

On return to work, I was given no support from my direct manager regarding breaks to express – he never stopped me from taking breaks, but continually forgot I needed them and often scheduled meetings...when I was due to express. I was given no support regarding expressing whilst travelling for work in developing countries – my manager left it to me to come up with a way to manage it in my own way...I ended up expressing most days in filthy backyard toilets with no running water.<sup>112</sup>

Some mothers also said that they experienced negative attitudes and treatment from colleagues because they were breastfeeding or expressing.

One of the staff had complained that the labelled bottles of breastmilk in the fridge were a 'contaminated substance' and should not be in the common fridge.<sup>113</sup>

There were negative comments about my decision to express milk at work – I was referred to as a cow openly by some colleagues, and in front of upper management.<sup>114</sup>

[One woman was told by a colleague] Don't you ever think that it's okay to pop your tits out in front of us when you come to visit us with your baby.<sup>115</sup>

Research shows that better breastfeeding facilities, including dedicated rooms and storage facilities, as well as greater understanding from managers and colleagues about the needs of breastfeeding and expressing mothers can assist mothers returning to work.<sup>116</sup>

### (j) Dismissal and redundancy

The National Review heard that some women and men were dismissed by their employers or made redundant shortly after announcing their pregnancy, while on parental leave and on return to work.

I have been made redundant twice – both times (it was at different organisations) [it was] when I was on leave to have a child. I was told there was a restructure both times, however it was only ever my role that was being restructured.<sup>117</sup>

I was told...that if I terminated my pregnancy I could get my job back, so I did and I didn't get my job back.<sup>118</sup>

My husband lost his job because of my pregnancy. He was working as a tutor at [a] University...At the beginning of the new term it was time to sign a new contract. He announced that I was pregnant and that I was due to give birth in the last week of the semester. He said he might need a substitute teacher to cover his two classes for that week if I went into labour...[His employers] said [that] they were not willing to cover him...Because he was honest with them, and told them up front that he might need to get a replacement for one week, he lost his job.<sup>119</sup>

On my return to work 12 weeks later, I was told that I was being re-assigned to a new job that was at the same level. I was given a desk and no work for the first few days, in order for me to adjust to the inevitable. On the third day, the [Human Resources] manager made me redundant.<sup>120</sup>

Women said that as most employers know it is discriminatory to dismiss an employee because they are pregnant, on parental leave or have a young child. The reason for dismissal that was commonly given was that it was due to a restructure or that it was performance related.

Some women doubted these reasons provided by employers, especially where the parental leave replacement continued to be employed and where no performance issues had been raised prior to having a child. Research suggests that some employers rationalise such dismissals and redundancies by arguing that the employees would leave anyway.<sup>121</sup>

I was targeted for a redundancy as soon as I got pregnant. This is despite there being an equivalent role available and vacant, but they clearly did not want me (who would have to leave on maternity leave soon) in it.<sup>122</sup>

When I questioned what criteria was used to choose people to make redundant, I was told it was based on performance and 'other' key areas, which were never listed. When I questioned my managers about my performance, they looked at me blankly and said that's all we can tell you.<sup>123</sup>

A restructure was announced while I was on maternity leave and I was told that I didn't have a position to return to...I was sent a letter saying this was because my performance was ranked as 2.5/5 although I was never given less than 100% on performance reviews, no concerns about my performance were mentioned and I also received a bonus that year for meeting all my performance results.<sup>124</sup>

In the last months of my parental leave I was advised via a hurried telephone call that my position was being reclassified and I would need to apply for it before I returned to work. Despite the title, position description, work accountabilities all being the same as the job that I held I was advised that it was no longer my job. Unsurprisingly the person who was acting in the role while I was on maternity leave was a candidate for the role...there was no other re-structuring in the workplace. My role was the only one being 'restructured'...I had worked in the department...approximately eighteen years. I had always received good performance feedback.<sup>125</sup>

[T]he fact that I was sort of out of sight out of mind, was an issue...the person that [was hired to] do my role on a temporary basis was still there and they've since put him into a permanent position...they've given him an equivalent role that I was qualified for.<sup>126</sup>

Gabrielle worked as the Director of a sporting organisation...[she] advised her management committee that she was pregnant. Two days later she was dismissed [and] told to leave work immediately...The letter of termination cited performance issues as the reason for her termination, but Gabrielle says that performance reasons were never brought up with her in the three years she had been employed.<sup>127</sup>

Some women and men said that, it can be difficult to demonstrate discrimination related to pregnancy and return to work after parental leave, following a redundancy or restructure. For example, they might not have the opportunity to discuss or negotiate their employment with the employer and it can be difficult to access information and documentation once out of the workplace.

Some individuals said they were victimised when they tried to assert their workplace rights and subsequently lost their jobs.

I had to fight for hours back, then take less hours to get back my job, then lost my job because I fought for my rights. Employer did not care about rules and regulations...I was penalised, judged upon, threatened, [and given] no flexible hours.<sup>128</sup>

I lost my job because I fought for my rights after maternity leave. I was threatened, singled out and pretty much [forced] to leave.<sup>129</sup>

### 3.2 The consequences of discrimination

Discrimination in the workplace in relation to pregnancy/return to work has multiple, short term and long term consequences for working parents, their families and workplaces.

The consequences of discrimination include mental and physical health impacts, financial impacts, impacts on career progression, impacts on family, and impacts on workplaces.

The National Review heard that issues which may have initially appeared to be short-term, such as feeling stressed, a decrease in salary, or missing out on a promotion, could lead to more long term impacts on an individual's mental health, financial security, and career progression.

At the end of it all I was left with no job, on the brink of losing my home, dealing with a miscarriage, lost all my friends at work, and was left just utterly broken.<sup>130</sup>

I lost my job when I was five months pregnant. The only job I could get after that was a short term contract with a former employer...I worked up until I was 39 weeks pregnant...I was offered a permanent role with my employer when my daughter was 13 weeks old, they said I needed to start straight away or they'd have to give the position to someone else. I needed the money pretty badly so I took the job. It was too difficult to continue breastfeeding after I went back to work so I stopped. I couldn't afford to put my daughter in proper daycare (there were no places anyway) so I arranged to pay my older sister...to look after her until she was 6 months old. When I eventually did get a daycare place the cost took up half my income...I felt constantly stressed and like I was never giving anyone what they needed...The first three years of my daughter's life were the hardest thing I've ever lived through and because of it I refuse to have any more kids.<sup>131</sup>

The impact [of being denied flexible work, subjected to negative attitudes and pressured to resign] has had for me and my family has been significant. Until recently, I was seeing a counsellor to help me through the emotional and psychological stress caused by the situation. Back when we were living through the situation, and until recently, the stress associated with this situation impacted on my ability to care for my son and the ability of both my partner and I to fulfil various commitments we both had outside of work and family. The impact this has had for my career has been huge. I have had to take a position in an organisation which is far from being on the career trajectory I was on because I needed part-time work and it was what I could find. I now work in a different industry...and my resume reflects a rather bizarre career diversion which was driven solely by necessity, rather than desire. I am back in a role closer to where I was five years ago, [but] in a smaller organisation...My current salary is the same that it was five years ago, too.<sup>132</sup>

Research has shown that women with children experience the 'motherhood penalty' and 'fare worse in the labour market than women without children and men'.<sup>133</sup> The term 'motherhood penalty' is used to describe the disadvantages experienced by women as a result of gendered stereotypes.

### (a) Impacts on health

#### (i) Physical health

Not providing safe working environments for pregnant employees at work can have detrimental impacts on an employee's physical health.

[I] worked very long hours [while pregnant]. I asked to cut my time back. [My employer] assured that it would happen, but not until [I had completed a particular task]. As a result, [I] got very sick...[and] ended up taking two weeks sick leave. On my return, [the] Managing Director suggested I take my maternity leave early.<sup>134</sup>

Some women said that they believed that the miscarriage they suffered resulted from not being provided reasonable adjustments to their work while pregnant and because the medical advice from their doctors had been ignored by their employers and managers.

An employee experienced bleeding after 'breaking the load' (ie unpacking cartons and boxes from pallets and placing the goods on the shelves). The employee informed her manager and was told to 'stop using your pregnancy as an excuse'. The employee succumbed to the pressure a few days later and again 'broke the load', resulting in hospitalisation and subsequently miscarriage.<sup>135</sup>

It took weeks for my employer to take my doctor's letter seriously. I needed to resort to the union to change my hours to finishing earlier and my heavy lifting job never got changed which could have added to my miscarriage.<sup>136</sup>

Siobhan suffered from severe morning sickness while pregnant as well as other complications. When Siobhan asked her supervisor if she could see the doctor she was questioned why she couldn't do it on her day off. She advised her supervisor that her condition was serious before her supervisor agreed to make arrangements for Siobhan to leave work early the next day. Siobhan worked the rest of that day despite feeling sick. She ended up miscarrying [later] that day.<sup>137</sup>

#### (ii) Breastfeeding

Difficulties about accessing flexible work arrangements, lactation breaks and adequate facilities in the workplace can affect mothers' choices and ability to continue breastfeeding or expressing.

The anxiety and stress I experienced in worrying about my employment status at this time also [impacted] on my ability to breastfeed my daughter – I didn't get breast milk at all and needed to make a concentrated effort on developing bonding and attachment with her, which would have been natural if I was able to breastfeed.<sup>138</sup>

Arguably these long days were a harder separation for mum and bub but they also had a practical ramification of affecting breastfeeding with me having to spend lots of time expressing. Combine this with some compulsory interstate travel and my breastfeeding journey was complicated, stressful and almost impossible. Expressing in public toilets and in airplane toilets is embarrassing and stressful.<sup>139</sup>

In addition, 'babies are weaned earlier than desired because of the difficulties with breastfeeding on returning to work after maternity leave'.<sup>140</sup>

It was too difficult to continue breastfeeding after I went back to work so I stopped.<sup>141</sup>

I found myself then pumping in the stalls in bathrooms. This is a disgusting practice, and unhygienic. I would be sitting on a toilet seat, listening to others pee and poo, smelly environment for at least 30 min[utes] a few times a day. A toilet seat is also a difficult place to pump – unsupported back makes holding the pump apparatus very difficult. Very quickly (after three to four weeks of trying) I gave up breastfeeding.<sup>142</sup>

The National Review heard that providing support to mothers who are breastfeeding or expressing would greatly assist with their return to work. In addition, more adequate support for breastfeeding in workplaces can help to reduce staff turnover and absenteeism, as well as improve levels of morale and concentration, which in turn strengthens the productivity of working mothers.<sup>143</sup>

### (iii) *Mental health*

Many individuals shared that the discrimination that they experienced in the workplace had negative impacts on their mental health. Women said that their pregnancies and adjustment to motherhood were made more difficult by the discrimination they experienced from employers and colleagues.

Overall, I would describe my experiences during pregnancy, whilst on parental leave and on returning to work as harrowing, disappointing and probably the worst experience of my life. I spent much of my pregnancy feeling anxious (and sometimes in tears), despite being thrilled about the pregnancy and being physically well. I felt powerless, vulnerable and fearful about my job security and couldn't understand why I was being treated so badly, especially given my unquestionable commitment to the organisation over the previous seven years.<sup>144</sup>

I felt distressed and upset, humiliated and stressed...I felt like I had a target on my back from the moment I told the company I was pregnant...I realised that the pregnancy would have been a factor leading to my selection for redundancy.<sup>145</sup>

In addition to the anxiety most mothers experience on returning to work following parental leave, I had the added fear of returning to the workplace with no job to go to and where it seemed I was neither wanted nor needed.<sup>146</sup>

I remember feeling like I was in trouble, like I did something wrong and now I needed to face the consequences.<sup>147</sup>

Women said that they were diagnosed with depression and suffered from severe anxiety, despite no previous medical history of mental health issues, following their experiences of discrimination.

I honestly believe that if I had not had a child that this is not the situation I would be in. I also honestly believe that if I had been supported correctly when pregnant and provided [with] a level of security when on leave that I would not have suffered from post natal anxiety which continues to plague me to this day.<sup>148</sup>

My Director harassed me about finding another job and openly said to my manager he was 'just going to make me redundant'. Due to this treatment I was diagnosed with severe depression and anxiety and subsequently placed on antidepressants.<sup>149</sup>

For some individuals, experiences of discrimination resulted in a loss of self-confidence and motivation in the workplace.

I feel so disempowered as an employee and as a pregnant woman to have gone from this very high intensity, action packed work role that was so crazy and stressful and wonderful, to be put in this office doing the most mindlessly repetitive task for the next five months until my maternity leave.<sup>150</sup>

I think there's nothing more demoralising when you have kids and you're willing to go back to work, you want to go back to a meaningful work. You don't actually want to be going back to some substandard role because you know spending time away from your kids, that time actually needs to count.<sup>151</sup>

I am a shadow of the employee that I used to be (both mentally and physically).<sup>152</sup>

You start doubting yourself and your ability. You start thinking well, maybe I was that bad and you were so determined to get rid of me.<sup>153</sup>

Research shows that mental health conditions also have direct and indirect costs to business.<sup>154</sup> Direct costs include absenteeism, reduced productivity while at work, and workers' compensations claims. Indirect costs relate to poor work performance; poor morale; high turnover; early retirement; work complaints; as well as litigation and penalties for breaching work health and safety legislation.<sup>155</sup>

Ensuring that pregnant women and parents do not suffer from negative impacts on their mental health as a result of discrimination in workplaces is an imperative for employers who are concerned about the general health and well-being of employees; about meeting obligations under work health and safety and anti-discrimination laws; as well as about productivity in the workplace.



## (b) Financial impacts

### (i) Short term

Women and men reported a financial impact on individuals and their families including loss of income or insecure income, as well as financial stress.

I had my first child in 2011 and at the end of 2011, after realising that I needed to return to part-time work for financial reasons, my Principal said that there were no part-time opportunities at my school for 2012...I obtained a casual position at a [retail] store chain. This didn't provide much relief as the hours were irregular. I advised my Principal that I would like to return to work in 2013, but again was advised, no part-time positions. I then fell pregnant with my second child...Because I was not able to return to work in 2012 as I originally wished to, I suffered financially as I was not [eligible for] further paid maternity leave. My superannuation was not contributed to [during the time I was not employed], I obtained casual work which did not pay as much as my teaching job would have and I was put under undue financial and emotional stress.<sup>156</sup>

I was made redundant while on maternity leave...As I am the breadwinner, and as we had used all our savings so that I could be on maternity leave for six months and give our son the best start in life by breastfeeding for six months, I was absolutely devastated. We were fast running out of money and we had (and still have) a horrific mortgage to pay. We had calculated how long I could remain on leave for but it was never expected that I would lose my job.<sup>157</sup>

Some families were placed under serious financial pressures and struggled to pay regular household expenses. Some families said that they resorted to selling their family homes.

My husband and I had to put a pause on our mortgage repayments with the bank so we can keep our house! We had to rely heavily on the generosity and support of our family and friends.<sup>158</sup>

My workplace rejected my [request for a] flexible work arrangement, rejected my application to continue part-time and only extended my part-time hours for another three months. After this extension my manager told me that under no circumstance can I ask for part-time hours again. In anticipation of not having work my partner and I have just sold our house as we could not afford the mortgage with one income.<sup>159</sup>

Some individuals lost their entitlement to either their government funded or employer paid parental leave schemes, following dismissal or redundancy after announcing pregnancy. Casual and contract workers were particularly affected by this issue due to the insecure nature of their work and the eligibility criteria for the paid parental leave schemes available through employers or the Australian Government.

Renata worked for a large not-for-profit organisation in the community sector for six years. She was dismissed after informing her employer that she was pregnant. Renata suffered a miscarriage and found it impossible to find permanent part-time work and a role at the same level. She later found out that she was pregnant again but will not be eligible for the government funded paid parental leave scheme because she had not been working.<sup>160</sup>

Being made redundant when I had just discovered I was pregnant had the double effect of disintitling me to paid parental leave – both from my employer as well as the government paid maternity scheme – as I must have been employed for 10 months out of the preceding 13 months in order to qualify for this payment.<sup>161</sup>

I worked at a medical centre as a permanent part-time employee for six years with hours which let me drop off and pick up my child from school...A few months into my pregnancy my manager reduced my hours and told me that I was now a casual employee...Soon after, just over three months before my due date, my manager fired me for no good reason...I was not eligible for the Paid Parental Leave Scheme because I had been fired just one week shy of the 10 month mark.<sup>162</sup>

### (ii) Long term

The initial financial impacts of lost income, underemployment and exclusion from the paid workforce can also have long term financial impacts on lifetime earnings, retirement incomes and savings, and the 'accumulation of poverty'<sup>163</sup> in later years.

The National Review heard from a small number of women who were aged 50 years and over, and who shared the long term financial impact of discrimination that they had experienced in the workplace while pregnant, on parental leave and on return to work.

When I had children I was made to either resign or return to work full-time after six weeks. I felt I had to resign and felt very discriminated against. I [am] now [approaching] retirement and will have to live on \$20,000 a year compared to the \$70,000 a year I could have been earning under the old super scheme if I had been allowed leave without pay for a little longer than 6 weeks. Once out of the system, it was impossible to get back into it for many years...I have felt this discrimination...[throughout] my career.<sup>164</sup>



Carol took parental leave from a permanent full-time position in 1999. When Carol returned to work in 2002 she wanted a temporary part-time appointment before returning to full-time work but was forced to choose between a full-time or a permanent part-time appointment 'because the manager at the time insisted the period of temporary part-time leave for maternity leave could not be extended beyond two years'. Carol told the National Review:

I am still in the same position with [employer's name] and am still working part-time as a result of the discrimination at the time being forced to either work full-time or accept permanent part-time work. For financial reasons I have wanted to return to full-time work and have asked my managers for increased hours who say 'now is not the time'...As a result I am facing historical discrimination and economic hardship.<sup>165</sup>

Women of older age experience higher rates of poverty and financial hardship than men.<sup>166</sup> A major factor for this is the movement of women in and out of the paid workforce due to their caring responsibilities, including parental leave. Studies of lifetime earnings losses comparing women with children and women without children show that the impact of having two children on lifetime earnings forgone is almost 40% for highly educated women, and nearly 60% for women with lower levels of education. Women with children have been found to earn around \$1.3 million between the ages of 25-64 years, almost half that of men with children (\$2.5 million).<sup>167</sup>

Similarly in relation to superannuation losses, the research shows, for example, a 32 year old woman (on a \$65 000) salary leaving the workforce for two years to care for young children, and intending to retire at age 65, will reduce her superannuation savings by \$28 000.<sup>168</sup>

Research into unpaid care has highlighted that Australia's superannuation system is designed around male patterns of workforce participation.<sup>169</sup> Interrupted patterns of work are a key barrier for mothers with young children trying to accumulate sufficient super.<sup>170</sup> Estimates from 2009-10 suggest that the average superannuation payouts for women are 57% that of men.<sup>171</sup>

### (c) Impacts on employment and career opportunities

Research suggests that pregnancy discrimination has significant impacts on the employment outcomes and opportunities for employees contemplating a family.<sup>172</sup> It found that 'women who reported being demoted or denied promotions, pay rises or access to training, effectively had their career opportunities abruptly halted by their employers or managers'.<sup>173</sup>

Many working parents' said their careers took a step backwards or stalled following their experience of discrimination related to pregnancy or on return to work.

I strongly believe that my decision to have a child was a career killer...I am reminded every day of the limitations of working part-time...I have not been given challenging work, [the work is] well below my skills and qualifications [and I am] reporting to graduates even though I had been working in the company for more than seven years before going on maternity leave. My career has not progressed since I got pregnant.<sup>174</sup>

What I have found is that my career progression is non-existent and has come to a halt as various sections within my department will not take on part-timers, despite our organisation claiming to be family friendly. The only way I can see my career progressing is by going full-time or leaving the organisation to seek other job opportunities.<sup>175</sup>

I know that having a family has hurt my career and earnings progression with the organisation that I have worked exceptionally hard for over seven years.<sup>176</sup>

I am now in a position that bores me to tears and I continuously ask for more responsibility. I have even offered to return full-time if needs be as it appears that is the only way they'll even consider giving me any type of more stimulating work like I used to. It is incredibly frustrating when your enthusiasm is shot down continuously because you now 'have kids at home'.<sup>177</sup>

Daniel has been working at a telecommunications company for the last 10 years. Daniel's company provides eight weeks paid parental leave for secondary carers. Since joining the company, Daniel has taken two extended periods of parental leave to care for his three young children.

After both periods of leave Daniel returned to work on flexible arrangements. He worked from home and flexible hours three or four days per week.

Daniel shifted to a different role within the company in order to access flexible work arrangements. While the new role afforded Daniel the flexibility he wanted, the trade-off has been that the new role offers fewer opportunities for career advancement.<sup>178</sup>

Belinda worked as a paramedic and was advised that she could not take parental leave because she was a group manager. She asked what could be done given that she was going to have a baby. She was told that she'd have to be taken out of the role.<sup>179</sup>

Some women said that they felt that they needed to re-establish or prove themselves to their managers and co-workers, especially on return to work after parental leave.

Since returning from maternity leave...I feel like ...I have to start from scratch and compete with more junior staff members on work that should be allocated to me as the senior member of the team. It seems like they just expect me to be pregnant again soon and be on leave again, so take a why bother attitude.<sup>180</sup>

I had to work very hard to re-establish myself and the trust of my co-workers that I was still able to pull my weight despite the change in my working hours.<sup>181</sup>

The National Review heard that individuals taking parental leave and returning to work lost autonomy over their careers as a result of limited career options provided by their employers and managers while pregnant, on parental leave and on return to work. Research suggests that women face both normative and structural constraints when making choices around work and family.<sup>182</sup> A further study has found that, while some women were able to act on their employment preferences, others could not due to a combination of lost opportunities and constraints.<sup>183</sup>

[The] effect on my career has been significant. I feel underutilised in my new role where I have previously been involved in higher level planning and strategy I am being locked out of this and frustrated. I would like to look for alternative employment but it is hard to find when you need to have some form of flexible arrangements regarding hours (part-time). There are very few part-time roles that I would find rewarding and challenging at my level and if I apply for full-time roles I get knocked back when I inquire about potential to work part-time. But also because I have been demoted in my role I have less contemporary examples of the higher level work I have been doing to provide as examples.<sup>184</sup>

The careers of working parents are also being affected because of poor performance reviews received either while pregnant or while working in flexible arrangements on their return to work.

Jane and her partner both worked in the same industry as paramedics. Their work involved rotating rosters and their employer provided limited flexibility around this. When their child was sick and childcare was not available they had no other choice but to take sick leave to care for their child. Her partner's performance reviews began to suffer as a result of taking increased amounts of sick leave and this was affecting his career.<sup>185</sup>

I was subjected to quite a few discussions about [my poor performance and] how 'I was dropping my game' and 'was letting them down as I wasn't available all the time'...I no longer received any acting opportunities.<sup>186</sup>

Casualisation of employment is common for women such that they represent 55% of casual workers.<sup>187</sup> This can happen to mothers as well as fathers when employers refuse to return employees to their pre-parental leave positions or deny requests for flexibility.

The National Review heard that some women either voluntarily returned to a casual work position in order to access flexible work and obtain family friendly working conditions, or felt pressured by their employers to return to a casual work position, despite being employed permanently prior to taking parental leave. As a result, these women are left in insecure work and lose entitlements enjoyed by permanent workers.

While I was on maternity leave...I was offered to return to a full-time job or take a 'targeted separation' payment and work casually. I 'chose' the targeted separation as I really had no choice – three kids under six years old, no family in town, husband travels for work a great deal. Foolishly I assumed it would make no difference to my standing in the organisation whether I was permanent part-time or casual. I have worked casually since then, but as well as losing all my entitlements to leave, public holidays etc. I find I have no status in the organisation anymore.<sup>188</sup>

[While on parental leave] I applied...to extend my leave. The manager declined [and] suggested I apply to work as a casual employee. This meant losing my...specialist classification. As I was...under pressure I agreed. In hindsight this was not the wisest choice...If I could have extended my leave and then had a later start date I would have been able to arrange to go back. As it is my daughter is now seven...and I am still working casually to retain my registration.<sup>189</sup>

In *Ucchino v Acorp*<sup>190</sup> involved a series of misconduct allegations by the employer, who ran a childcare centre, against Ms Ucchino, a pregnant employee who was a childcare centre manager. The employer had not raised most of these misconduct allegations with Ms Ucchino prior to her disclosing her pregnancy to them and taking some unpaid family leave. The Court found the poor performance allegations unconvincing overall. The Court accepted that there was evidence of the employer's hostility to Ms Ucchino's pregnancy. For example, the employer had said, 'you know you're going to make it hard for me, being pregnant in your position, for the business.'<sup>191</sup> The Court held that the employer dismissed the applicant because of her pregnancy and family responsibilities.<sup>192</sup>

The National Review heard that job loss has long term impacts on some people, such as no longer being able to continue their careers in the same field. Some individuals said that they had to study or re-train to find work in another profession.

I was embarrassed and ashamed that this occurred to me and my confidence as a result of the firm's discrimination still suffers. I no longer work in the legal arena because of a lack of confidence and feeling of guilt/shame.<sup>193</sup>

The greatest impact for me has been the career. I have never been able to find a job in that domain ever again.<sup>194</sup>

The greatest impact for me has been obviously I've got no career now. I don't work in the sector that I trained for five years at university.<sup>195</sup>

Samantha was working for a company in a male dominated industry. When her employer found out that she was pregnant she was fired, provided a lump sum payment and forced to sign a confidentiality deed. To support herself and her child, she worked in part-time and casual jobs and eventually secured a permanent part-time position. Samantha then went through a second complicated pregnancy in which her doctor advised that she was unfit for work. Her employer did not allow her sufficient time off and threatened her with dismissal if she did not report back to work. Given the risk to her health and that of her unborn child she did not return to work. Once again Samantha lost her job, received a small payment from her employer and was made to sign legal paperwork. Samantha said that she feels that she's 'got no career now'. She no longer works in the same industry as she did prior to having children and is working in a contract role.<sup>196</sup>

As mentioned in the case study above, the National Review heard that some women had signed confidentiality agreements following experiences of discrimination in workplaces. An additional consequence for such individuals is that they are unable to explain why their employment with a former employer ended, in turn affecting their future prospects of employment.

#### (d) Impacts on family

The National Review became aware of the extent to which discrimination towards mothers and fathers in the workplace can also have negative impacts on their families, adding to difficulties in managing work-life balance and time spent away from home. Mothers frequently spoke of being unable to enjoy time with their babies.

I am still devastated that I was not able to fully enjoy the once in a lifetime opportunity I had to share in the first twelve months of my newborn son's life.<sup>197</sup>

That's probably what made me most angry. It was the year that I was supposed to enjoy most but it was the hardest year of my life...I totally didn't enjoy my child.<sup>198</sup>

[My] child was very sick and the stress and anxiety of the work worries and having to attend interviews played a damaging role in my ability to enjoy what time was left of my leave with my baby.<sup>199</sup>

I had to put my child in full-time day care, earlier than planned, at two different day care centres whilst still job hunting so that I had care lined up for when I started. I felt and still do, that the company and the interim manager cheated me out of my maternity leave and peace of mind and effectively stole from me time with my newborn.<sup>200</sup>

Discrimination also caused stress and pressures on other family members.

I had to look for another job...I felt like I had to start again. Initially it took much time away from my son and [put] stress on my husband to take time off while I was looking for jobs/applying/and going for interviews. I really didn't want to have to go for other jobs and wanted to return to my workplace.<sup>201</sup>

The emotional and financial strain on my marriage and family has been both life and life style changing.<sup>202</sup>

### 3.3 Structural barriers

Working parents reported facing a number of structural barriers which either led to discrimination or negatively impacted on their experiences within workplaces throughout pregnancy/return to work. These include: gender norms and stereotypes; lack of awareness and understanding of rights and entitlements; the implementation gap in workplace policies; and limited availability, affordability and accessibility of quality early childhood education and care services.

#### (a) Gender norms and stereotypes

Prevailing gender stereotypes persist in some workplaces in relation to the 'ideal worker' and the roles of women and men as carers. It is recognised under international human rights law that differences in treatment based on stereotypical expectations, attitudes and behaviour may constitute discrimination, particularly against women.<sup>203</sup> International human rights law places obligations on governments to 'modify and transform gender stereotypes and eliminated wrongful gender stereotyping'.<sup>204</sup>

Social norms relating to the gender roles of women and men operate inside workplaces and may manifest in harmful stereotypes. Research shows that perceptions about pregnant women and mothers in the workplace, as well as assumptions about their competency while pregnant and on return to work, result from a historical construction of women as nurturers and primary caregivers.<sup>205</sup> Due to perceptions that pregnant women are in a certain 'state' or 'condition', they are thought of as being forgetful, less rational and disordered in their thinking and behaviour.<sup>206</sup> Similarly, mothers returning to work face harmful stereotypes around the perceived incompatibility of being an effective caregiver and committed worker.<sup>207</sup>

Some women said that they encountered the view that women should stay at home to look after their children and that they needed to make a choice between work and motherhood.

I was told I was both a bad mother and a bad employee for working while having a young family.<sup>208</sup>

While seeking feedback from the panel and members of the executive of my Department I was repeatedly told 'but surely your priorities are elsewhere now.' There was clearly an automatic assumption that because I was a young mother that my career aspirations had been somewhat diminished and that it would no longer be a priority for me.<sup>209</sup>

Fathers were also subjected to stereotyping from their managers and colleagues in relation to their caring responsibilities and requesting flexible work. Whereas stereotypes about women's role as caregivers operate in such a way that women can never meet the requirements of the 'ideal worker', these same stereotypes operate in harmful ways on men who step outside of the traditional role of 'breadwinner' and 'the ideal worker' by having visible caring responsibilities and seeking to work flexibility. In other words, the 'flexibility stigma' can affect men as well as women.<sup>210</sup>

United States' research highlights that while some studies show that fathers are seen as better prospective employees than mothers, other studies found that fathers who seek time off for family caring reasons experience discrimination including being viewed as less committed, and given fewer rewards and lower performance ratings.<sup>211</sup> Men are penalised more than women for requesting flexibility at work because the act of doing so makes them viewed by employers as 'deviating from their traditional role of fully committed breadwinners'.<sup>212</sup> This could explain men's reluctance to request flexible work arrangements, as well as men's low uptake of these kinds of options, even where they are available.<sup>213</sup>

[Most of the female] staff presumed ...I would never understand what it takes to become a parent...After returning to work I am still subject to a lot of doubt, unsavoury remarks and assumptions from the usual critics. I feel that the stigma attached to men not playing a rightful role as a father throughout the antenatal and maternal period definitely does exist.<sup>214</sup>

My husband spoke with his bosses about our plans to have a family and he was told that there is no such thing as a part-time business development manager. Their attitude to men taking time off for children is 'men work, women stay at home'.<sup>215</sup>

Within my workplace very few new fathers work part-time, and there is definitely a mentality that part-time/flexible arrangements are for mothers not fathers.<sup>216</sup>

The National Review heard how both women and men were disadvantaged by stereotypes, including those pertaining to the 'ideal worker'. The 'ideal worker' is perceived to be an employee who works in the office; doesn't have any visible caring responsibilities; hasn't had any breaks in his/her employment; and is available 24 hours a day, seven days a week. In organisations where this stereotype continues to underpin the workplace culture, employees who don't fit into this 'ideal worker' mould 'may be labelled as uninterested or unengaged'.<sup>217</sup>

These perceptions create barriers for parents in the workplace which can manifest as unfair treatment and discrimination towards mothers who are pregnant, on parental leave or returning to work, as well as fathers requesting or taking either parental leave or flexible working arrangements.

I believe having children is a huge impediment for women wanting to move up the corporate ladder themselves. The only women in higher management positions (and there are not many of them) either have no children, or came to work here once their children were already grown up.<sup>218</sup>

My workplace is essentially managed as a production line. Production lines need to run at full capacity for efficiency. Consequently, there is a degree of inflexibility around absences regarding children in the organisation as a whole.<sup>219</sup>

A majority of the time I was able to perform overtime work. However, the times I was unable to do so I was belittled and degraded and my colleagues spoke out at meetings that I was letting the team down and could not perform my role.<sup>220</sup>

I believe there is a prevailing culture that women (but not men) with young children are unreliable and/or will not be available on demand.<sup>221</sup>

Harmful stereotypes are reinforced by individuals and can also be ingrained in organisational cultures through policies, systems and processes, including performance reviews, assessments, parental leave policies, hours of work and denials of requests for flexible work. Where this is the case, strategies need to be put in place to challenge these stereotypes at the individual, organisational and systemic level.

These stereotypes are based on the assumption that the existing model of work is immutable rather than a human construct which, if shaped more effectively, will allow both men and women to thrive. Harmful stereotypes need to be disrupted in order to change workplace cultures and create an environment where working parents are accepted as equally committed employees.

The National Review recommends:

- Leaders within organisations should make strong statements identifying the harmful stereotypes and take steps to remove practices and behaviours that perpetuate harmful stereotypes.
- Organisations should identify and remove harmful stereotypes and eliminate practices and behaviours that perpetuate harmful stereotypes including through:
  - » reviewing/auditing existing policies
  - » revising policies and practices
  - » reviewing how information is provided to managers and employees
  - » training all employees, including line managers
  - » monitoring and evaluating the implementation of policies and practices which support pregnant employees and working parents.

## **(b) Awareness and understanding of rights and entitlements**

The National Review frequently heard that employees lacked awareness and understanding not only of internal workplace policies, but also of legal employment rights and obligations in relation to pregnancy, parental leave and return to work.

Some employees said that they were not provided or had limited access to information on internal workplace policies and their legal rights and entitlements while pregnant, on parental leave and on return to work. The National Review was told that employees would often have to seek out information themselves.

During my pregnancy, I never received any support or documentation about my rights...My employer never asked about my safety during my pregnancy or cautioned co-workers to assist me in loading sometimes heavy medical equipment into the car.<sup>222</sup>

I just think that people need information as well that's accessible, not hidden, like in a manager's drawer, and not be made to feel that you were doing something wrong by asking for that information.<sup>223</sup>

I was not given any information on [parental leave] etc. but looked them up in the employers code of conduct. I had to take photos of the pages, as another lady had told me, the book 'magically' disappeared while she was pregnant and wanted to look it up.<sup>224</sup>

In addition, in some cases, employees ended up having to provide relevant information to their own managers or Human Resources departments.

I was not given any information on my rights and entitlements, but I had access to my workplace policies on our intranet, so I looked them up for the relevant information and provided this to my line manager.<sup>225</sup>

I feel that my director was/is not aware of flexible workplace conditions. His background is as a health professional, not managing people in [an office] environment.<sup>226</sup>

[My manager] was very supportive of me during my pregnancy. It was [Human Resources] who were not very supportive...They told me that they don't even have to give me my job back...one of the [Human Resources] staff told me that I would not even be eligible for [the] government paid parental leave because I had not been there long enough (this was untrue!).<sup>227</sup>

In particular, there appeared to be a lack of awareness in some workplaces about the needs of women undergoing IVF. A small number of women who were trying to become pregnant through IVF said that they felt unable to discuss the issue with their employers and consequently experienced difficulties accessing leave and flexible work arrangements.



I didn't feel that I could tell my employer that I was undergoing IVF or take any leave for the procedures. This meant that my employer was unaware of my subsequent miscarriages and I felt I couldn't take leave for those either. I was worried that if people knew I was trying to become pregnant, it would adversely affect my employment prospects. While I was on IVF, I was asked whether I would be interested in another position within the same organisation, but told that there was concern that I might want to take an extended period of leave at some point and that it wouldn't work for this particular job. I knew they were trying to find out whether I was intending to have children.<sup>228</sup>

I am about to start IVF next year and have faced nothing but trouble about appointments and time off.<sup>229</sup>

Many individuals who reported that they had experienced discrimination suggested that public and workplace education and awareness raising campaigns about the rights and obligations of both employees and employers would assist in preventing discrimination and facilitate an understanding about the needs of pregnant employees and working parents.

### (c) Gaps between workplace policies and practice

Despite the presence of good policies, ineffective implementation and unsupportive workplace cultures can undermine these policies.

The part-time nature of mothers returning to the workforce was openly encouraged in policy but realistically frowned upon. The internal culture was quite different to the policy.<sup>230</sup>

Our enterprise agreement states that if a woman goes on maternity leave they must be returned to the same position when they come back but I have rarely seen this occur in practice.<sup>231</sup>

As senior leaders from the Male Champions of Change have noted, 'While we all have flexible work policies in place and provide options for women and men who are balancing work and family life, it remains unusual for men to take advantage of them, or for women to take advantage of these policies at senior levels. This suggests that there remains a prevailing bias in our organisations, that you cannot be successful as a senior executive on a flexible program. There may be fear among men and women that choosing a flexible work arrangement creates the perception that they are no longer serious—that they are 'opting out'.'<sup>232</sup>



The National Review heard that the gap in implementation was sometimes because of a decision or the attitude of direct or line managers. The Male Champions of Change, refer to this as the 'leadership lottery'.<sup>233</sup>

Research found that support from direct managers was often more important than an organisation's policies and procedures.<sup>234</sup> 'Good employers' were identified as those who understood parental responsibilities, such as child sickness and school holidays, and not just those with good written policies.<sup>235</sup>

My workplace has very good leave conditions for maternity and parental leave. They also have flexible work arrangements in place, which I was told I could access if necessary/wanted on return to work. The problem is that all flexible work arrangements are at manager's discretion and despite several attempts to discuss the issue, all meetings with my manager ended with him coming to the conclusion that it was just too hard to implement in my role. There is a disconnect between the policies that are in place to support pregnant women and new mothers returning to work ...and the cultural practices that actually go on...in my workplace...implementing flexible work arrangements often just seems to be 'too much bother', and you end up feeling like a burden and think twice about raising concerns.<sup>236</sup>

I thought the certified agreement would help me but the manager just kept saying 'I have no work for a two day per week manager' – there was no flexibility and I had offered numerous options/opportunities but she just couldn't/wouldn't consider.<sup>237</sup>

[Female employee denied flexible arrangements on return to work] My experience also highlighted some staff have rights and some don't. Often this was about your relationship with the people in power...and your own position and the power it affords you.<sup>238</sup>

In addition, women and men said that issues sometimes arose when new managers failed to honour parental leave or return to work arrangements previously agreed with a former manager.

I found childcare for my daughter and arranged to meet my manager the week before I was due back at work as we had verbally agreed I could work part-time when I returned. However, I discovered my old boss had left and there was a new marketing manager. He told me yes, I was welcome back but it had to be full-time or not at all. I could not find full-time childcare and I had to resign.<sup>239</sup>

Before I went on maternity leave...my previous manager was really good. When I first came back...he said, we want to keep you, what can we do? I said I'd like to go part-time and... I'm happy to go casual. He said to me, no, you should choose part-time because you'll get all your entitlements, you'll need that with kids...we had a new manager come in ...and he's been very opposite...made it really hard...no flexibility.<sup>240</sup>

Zhi had a two year old son with a disability and negotiated part-time work in order to be able to take him to his various appointments. She was then told that the arrangement was being reviewed as there was a new manager. She felt very anxious about this meeting and thought about resigning so she didn't have to go through it.<sup>241</sup>

Dina worked in a position which involved the use of a work car. She had been there for five years. When she returned from parental leave with her second child, she arranged to bring him to work with her so that she could breastfeed him, which was supported for approximately four months. When a new manager started, Dina was asked to sign her contract and was told it was just paperwork as it was not on file. Dina did not have time to read what she was signing, and the manager was standing over her with a pen. The next day the manager told Dina that she could no longer bring her baby to work, that part of the contract was a vehicle policy stating that only company employees could be taken in company vehicles, and that her baby did not count as a company employee. Dina explained that her baby was too small for childcare and was exclusively breastfed. Her manager said 'That is your parenting responsibility, not ours. There is always formula'. Her manager said that if she couldn't leave the baby at home she would have to be demoted to a different position.<sup>242</sup>

In essence, an employer can have 'best practice policies' which, if not well implemented, they can undermine an organisation's efforts to develop an inclusive and diverse workforce.



#### (d) Early childhood education and care services

The National Review frequently heard of issues relating to early childhood education and care services as a constraint on returning to work after parental leave. Many concerns were raised regarding the limited availability, accessibility, affordability of quality early childhood education and care services in Australia.

Working parents said that their availability to return to work and the arrangements under which they did so depended on the availability and cost of early childhood education and care services. Further, a survey of 720 Human Resource professionals by the Australian Human Resource Institute found that one in five respondents (20%) reported local affordable childcare as the single most significant support that would assist in accommodating parents returning to work, with another 13% indicating a preference for onsite childcare.<sup>243</sup>

The Australian Work and Life Index 2012 survey found that one of the key reasons for women and men requesting flexible work arrangements is to meet childcare needs.<sup>244</sup> It also found that 'mothers are much more likely to request flexibility to meet childcare needs (34.1% compared to 20.7% of fathers)'.<sup>245</sup>

I appealed to the company to allow fulltime flexible hours by requesting to work on fixed days rather than rotating roster. It was near impossible to find childcare overnight and to cover a full 12 hours shift while I worked on changing days every week and on weekends.<sup>246</sup>

After one year of working at only five hours a week I was told I had to return to three or five days, no childcare was available in the town I live and work in, so hence I resigned.<sup>247</sup>

Due to my relatively low wage, working full-time would not be worth it when I factor in childcare costs.<sup>248</sup>

I would like to point out the particularly difficult position teachers are placed in in regards to childcare and part-time work... Even at 0.5FTE I was working across five days, which meant my daughter had to be enrolled in full-time childcare and I had to pay full-time childcare rates whilst doing part-time work. This is another barrier to returning to work...childcare becomes unaffordable and women [can be] forced to remain at home.<sup>249</sup>

In addition, some women and men said that their employers lacked awareness and understanding of the practicalities with securing childcare and making any changes to arrangements. Lack of support from employers sometimes generated resentment and impacted on workplace relationships.

[On return to work] I advised my employer that it would be difficult for me to work full-time due to the [limited] availability of childcare, and that it was my preference to work four days per week. This request was rejected, at which time I asked for a flexible working arrangement that would see me working the hours of a five day week over four days, which was also rejected.<sup>250</sup>

I have been unsuccessful in gaining childcare for a particular day and my manager has refused my leave applications on these days to care for my children knowing that I had no childcare available for them.<sup>251</sup>

Childcare is notoriously hard to juggle as we the parents have to fit in with the childcare centre ie shuts down on Christmas holidays for several weeks, can't take kids early if have an early start at work etc. If you bring these dilemmas to work they just tell you to handle it. I would rather quit my job than have to deal with the difficulties in juggling both, and really reaping no monetary rewards as all of my pay now goes to childcare.<sup>252</sup>

In some cases the days available in the early childhood education and care service do not align with the work days required by employers, or the hour restrictions of early childhood education and care services may impact an employee's work hours. Further, after-hours care services can be very expensive or hard to find, making night shifts or weekend work difficult for parents. In other cases, the high costs of childcare mean that employees elect not to return to work for financial reasons. According to employers:

One of the key challenges is the availability of childcare when the parent is ready to return to work. Childcare is then often unaffordable – meaning the parent cannot resume work or does not stay for long.<sup>253</sup>

[When employees can't find childcare], that's when we find people don't return...It just doesn't work...They've done the maths and it's better not to come back. Just working to pay someone to look after the child isn't worth it so they might as well look after the child themselves.<sup>254</sup>

[We] have a security service which is 50% female but they start to self-select out because they can't find the childcare for the afternoon shifts.<sup>255</sup>

The cost of childcare has been identified as a significant barrier to higher female workforce participation in Australia.<sup>256</sup>

### 3.4 Nature and consequences of discrimination for specific groups

The experiences of people from culturally and linguistically diverse (CALD) backgrounds, Aboriginal and Torres Strait Islander people, people with disability, same-sex parents, single parents, young mothers, and casual, contract and part-time workers highlighted the additional barriers and impacts faced as a result of the intersection of pregnancy, parental leave and return to work discrimination with other factors including cultural background, disability, sexual orientation, marital status, age, and the nature and status of employment.

#### (a) Parents from culturally and linguistically diverse (CALD) backgrounds

People from CALD backgrounds, particularly newly arrived migrants and refugees, can face heightened vulnerability to discrimination throughout pregnancy/return to work, due to language barriers and a lack of experience and knowledge of workplace rights and entitlements. Language barriers can also make it difficult for them to assert their workplace rights.

American research has highlighted the intersection of race and pregnancy discrimination for mothers with low incomes. Women of colour in the United States may be treated less favourably than white women with similar caregiving responsibilities.<sup>257</sup> An example included being denied accommodations routinely granted to other co-workers of a different race.<sup>258</sup>

In Australia, during the early years, newly arrived migrant and refugee women tend to be in insecure employment, such as contract or casual work. While long term casual and contract employees are able to access entitlements to paid parental leave and flexible work, casual employees with inconsistent patterns of work are not. As a result, migrant and refugee women working less regularly were not able to access any form of parental leave entitlements, including guarantees to return to their jobs after having a baby.

Migrant and refugee women hesitated to raise concerns in relation to their pregnancy and some just left their jobs when they had their babies. Their experience is made even more difficult given that some migrants and refugees are unable to access welfare entitlements if they have been living in Australia for less than two years.

Marla was employed as a casual factory worker and has limited English language skills. She feared the loss of her job, as was experienced by previous pregnant colleagues, and so concealed her pregnancy and worked in unsafe conditions until she could no longer conceal her pregnancy. Her employment was ultimately terminated.<sup>259</sup>

Migrant and refugee fathers were also reluctant to request flexible work because they did not want to risk losing their jobs and potentially leaving both parents unemployed.

The National Review heard some employers may assume migrant and refugee workers were not aware of their rights.

When I was pregnant my boss asked me to cut down my hours, even though my doctor said it was OK to keep working. When I finished work to have the baby my boss told me that they couldn't guarantee that I would get my job back after I had my baby, effectively firing me...Other women were lied to by management about their pregnancy rights, for example, one lady was told that the hotel doesn't 'do Paid Parental Leave'...The hotel hires migrant women thinking that they don't know their rights. The exploitation of migrant women is widespread in the hotel industry in Australia and pregnant migrant women suffer the most.<sup>260</sup>

During a consultation, Sopheap, a young migrant woman said that she had found information online that employers were not allowed to ask applicants whether they had any children. However, during a job interview this was one of the first questions asked by the potential employer. She also said that it was only after the potential employer was convinced that she would be available to work full-time did she continue to proceed with the interview. She got the job but felt too scared to request flexible arrangements to look after her daughter.<sup>261</sup>

The need for newly arrived migrants and refugees to secure and retain paid work, compounded by 'their lack of Australian experience and sometimes-limited English',<sup>262</sup> exposes women from this sector of the community to an increased risk of discrimination throughout pregnancy/return to work. This highlights the need to provide targeted information in other languages on the rights and entitlements of migrant and refugee parents in the workplace.

### **(b) Aboriginal and Torres Strait Islander parents**

The key issues Aboriginal and Torres Strait Islander people highlighted in their submissions and during consultations included insecure employment and access to paid parental leave, culturally appropriate early childhood education and care services and accommodation of kinship caring responsibilities.

With regards to employment and access to paid parental leave, research shows that workforce participation rates of Aboriginal and Torres Strait Islander women while pregnant with their first child are comparably low.<sup>263</sup> In addition, Aboriginal and Torres Strait Islander mothers had higher rates of exiting employment and relatively low rates of re-entering employment when compared with non-Indigenous mothers.<sup>264</sup>

Many Aboriginal and Torres Strait Islander women said they already have children by the time they start work.<sup>265</sup> Some women in insecure employment, particularly within the community sector, were unable to access employer and government paid parental leave.<sup>266</sup> This put financial pressure on women to return to work early.

Further, the consultations identified the need for increased access to Aboriginal community and on-site childcare, including in urban areas.<sup>267</sup> Research shows that early childhood education and care services which affirmed and celebrated Aboriginal and Torres Strait Islander culture were of great importance to Aboriginal and Torres Strait Islander mothers.<sup>268</sup>

A particular need was identified for flexible work arrangements to accommodate the kinship responsibilities which Aboriginal and Torres Strait Islander employees may have to care for the children of other family members as well as for their own.<sup>269</sup> Leave and flexible work arrangement provisions did not always accommodate such obligations, as there is a lack of understanding in workplaces about these wider kinship responsibilities.<sup>270</sup>

Very few Aboriginal and Torres Strait Islander men take parental leave. It is also not common for Aboriginal and Torres Strait Islander fathers to take leave or work flexibly to care for children. Some fathers who do take leave or work flexibly to care for their children reported being stigmatised by female colleagues. One man was questioned, 'What do you know about being a father?'<sup>271</sup>

### **(c) Parents with disability**

There is limited research available on the experiences of pregnant women with disability and parents with disability in employment.<sup>272</sup> A contributing factor to this could be the higher levels of underemployment and unemployment amongst people with disability. In 2009, the labour force participation rate for people with disability aged 15 to 64 years was 54%, compared with 83% for people without a disability.<sup>273</sup> In addition, women with disability (49%) are less likely to participate in the labour force than men with disability (60%).<sup>274</sup>

Mothers with a disability or medical conditions were less likely to enter employment, if not working, as were those in families with at least one disabled child, or families including someone else with a disability. Higher rates of exiting employment were also apparent for mothers with children or other household members with a disability. Mothers with a disability were slightly more likely to exit employment than other mothers.<sup>275</sup>

In addition, women with disability can face significant social pressure from the community and families not to have children<sup>276</sup> and not to exercise their reproductive rights.<sup>277</sup> Financial constraints have also been identified as a deterrent for women with disability having children.

Lack of financial support, coupled with the higher cost of parenting with a disability has been identified by a number of researchers as a significant barrier to women with disabilities who are parents, or seeking to become parents.<sup>278</sup>

Clearly, gender and disability intersect in a number of ways. Women with disability are more likely to be engaged in low paid, casual work, with no job security or access to entitlements such as paid parental leave. Under the *Disability Discrimination Act* (Cth) (1992) employers are required to make reasonable adjustments for employees with disability, including making reasonable adjustments for pregnant employees with disability and parents with disability. A lack of clarity exists in the National Disability Insurance Scheme as to the available coverage for pregnant women with disability, as well as what adjustments can be provided to support people in work.

The lack of local accessible early childhood education and care services, as well as before and after-school care, also poses practical limitations for mothers with disability, impinging on their capacity to be in employment.<sup>279</sup>

To increase the participation of pregnant women with disability and parents with disability in the workplace, consideration needs to be given to accommodating specific needs during pregnancy and on return to work, including offering flexible work arrangements.

#### (d) Same-sex parents

Same-sex parents are still a small minority in Australia and there is limited research and literature about the experiences of same-sex parents in workplaces in relation to pregnancy, parental leave and return to work.<sup>280</sup>

While a range of legal amendments have been made, recognising equal enjoyment of employment conditions, including accessing leave entitlements to care for family members and parental leave to care for a newborn child,<sup>281</sup> prevailing stereotypes around parenthood continue to limit understanding of non-stereotypical situations and impact on women and men in same-sex relationships.<sup>282</sup>

[After returning from leave following an IVF miscarriage] I informed [my manager] that I had a 'mrs' and not a husband [and] he didn't know what I meant. When I again stated I have a 'mrs', my partner is female he exclaimed 'no-one told me that'...I have since found out...that he has referred to my miscarriage as an abortion, which is grossly inaccurate.<sup>283</sup> My employer did not believe I had a right to request flexible working conditions because I was not the birth mother of our children. I had to challenge their decision and attitudes and threaten to take the matter further. Reluctantly, flexible working conditions were approved but I experienced repercussions in the form of snide comments and bullying as a result.<sup>284</sup>

When I was three months pregnant, I told my manager and he was very supportive of me during my pregnancy...It was Human Resources who were not very supportive...Instead I was met with serious tones, uncordial attitudes, shortness and procedure...I caught up with my manager a couple times during [that] leave to check in about work and the project. We discussed me returning to work part-time to do a job-share so that I could spend time home. He said he thought this sounded like a great idea...when the time came to notify work that I wanted to return, I put in the request as discussed with my manager.... It was rejected right away...I was forced to resign. ...Neither my partner nor I like that this system we live in requires there to be a 'primary' parent. We are both primary, we are equally important parents, we both need to spend quality time with our daughter, we both have interesting and rewarding careers, we both need to make money.<sup>285</sup>

#### (e) Sole parents

Sole parents said they faced longstanding stigmas and stereotypes about sole parenthood, which manifested as negative attitudes from managers and colleagues in relation to their ability to juggle work and care for a child without a partner.<sup>286</sup>

Staff question the legitimacy of a manager working four days a week. They have advised me that they think it is inappropriate that someone with a child – particularly a single parent – be in my position...I also experience heavy criticism from staff when I have to take time off if my daughter is sick...My concern is that I...feel I have to compensate for these views...that I am somehow a burden on the organisation and therefore should give more to prove my worth.<sup>287</sup>

When I informed my direct line manager (the CEO) of my pregnancy...he was less than enthused...he proceeded to inform me that I would 'not be able to do my job with a child, as it was not as if there was a stay at home father to look after it'.<sup>288</sup>

Sole parents also experienced discrimination during the recruitment process. Applicants were asked about their marital status and if they had children. Those that responded truthfully felt that they were then seen as less attractive applicants but found the discrimination difficult to prove.<sup>289</sup>

I thought...singing out my praises as a single mother who completed a law degree was a good thing to do on my job applications...interestingly enough as soon as I took that sentence out...I actually started getting responses.<sup>290</sup>

Some sole parents were denied flexible work arrangements. Lack of access to early childhood education and care services and workplace inflexibility placed extra pressures on sole parents on return to work.<sup>291</sup>

Jon has been employed as a bus driver for over six years on a permanent full-time basis. When he originally went for the job he was told that he would be required to work every second weekend. Jon's employer is now claiming he has to work every weekend. He can't do this as he has custody of his children every second weekend. Jon has asked the employer to explain why the change is required and he has again explained that he still needs every second weekend off but he has not received any response from the employer.<sup>292</sup>

Katie works on a casual full-time basis as a console operator at a service station. She is a single parent and her child is in childcare when she is at work. Katie's childcare provider is closed over the Christmas period and as a result she is not able to work because she has to look after her son. The employer has told Katie that if she isn't available on a full-time basis over the Christmas period, she is of no use to him and she won't be getting offered shifts in the future.<sup>293</sup>

Sole parents said that they were denied leave to care for their children and did not have access to adequate leave. It was common practice to conserve leave, even when unwell, in case they needed to take leave to look after their sick children.

The single most discriminatory workplace issue, from my experience as a single parent with children, is that personal leave quotas encompass both sick leave for the employee as well carer's leave. This means for someone like me, I have the same leave quota as a person with no carer responsibilities, but my quota has to cover off four people...I have had to attend work when I have been ill because I needed to preserve enough leave for my children if they became ill or had an accident. It has been a constant struggle.<sup>294</sup>

I recently was denied leave to care for my daughter who was home from school sick, as a single mother I have very limited resources for care for my daughters if they are home from school unwell if my mother is unavailable.<sup>295</sup>

Single mothers reported having high work-life pressures which can add to heightened levels of stress for sole parent households.<sup>296</sup>

As a single parent without family in my city I have limited childcare options, so I cannot work full-time. Therefore issues like my lower superannuation savings than childless or male colleagues continue. I work five days a week, and higher hours than I can reasonably sustain, in order to keep my standing in the workplace good and maximise my career opportunities. As a result, I am constantly exhausted, and I cannot pay the attention to my children's school work, health needs or my health needs than I would like.<sup>297</sup>

[After returning to work following parental leave] I wanted to come back part-time...I'm a single parent, so I said I can't work shift work. [The employer] said, no worries, you can go to the front office as a uniformed member...which is a loss of money, loss of position and entitlement and whatever.<sup>298</sup>

I'm a sole parent caring for a toddler that gets recurring viruses and has been diagnosed with acute asthma...I have no family support as they live interstate. Currently I have agreed to work one late shift a week on a Monday until 6pm...I feel extremely pressured to work this shift.<sup>299</sup>

#### (f) Young parents

The lack of experience and knowledge of employment rights can make young parents vulnerable to discrimination, such as receiving less shifts or hours after announcing pregnancy, being refused flexible arrangements on return to work, and job dismissal.

After being at my full-time job two years before falling pregnant with my first son, I was told I would be able to return to work part-time. I took 1 year maternity leave. A few weeks prior to my return, my boss phoned me and told me that I could no longer return part-time, it was to either return full-time or resign. Being only 19 years old and in and out of support houses/programs this was very scary and I was caught off guard...The cost of childcare for my two children five days per week is more than the cost of my rent per week...that's with the childcare rebate! ...I don't want to have to rely on government funds and tax payers money, I like to earn my way but it's just so difficult to do so. It's tough for young mothers trying to return to work.<sup>300</sup>

Research shows that younger mothers had lower employment rates than other mothers, were more likely to be in casual jobs, less likely to be employed while pregnant with their first child, and are at greater risk of remaining out of employment later.<sup>301</sup> Despite being less likely to be employed, younger mothers worked more hours than other mothers.<sup>302</sup>

Greater understanding of rights and entitlements could contribute to better employment outcomes and reduced vulnerability to discrimination for young working parents.

#### (g) Casual and contract workers

In 2012-13, women represented 55% of casual workers.<sup>303</sup> A large proportion of parents working in insecure work in Australia are women. Casual and contract employees are vulnerable to redundancies and job loss while pregnant and on return to work. The impact of this was lack of job and financial security, and stress on the individuals and their families.

I am currently 24 weeks pregnant working casually at a retail company who has decreased my hours from the second I told them I was pregnant at 12 weeks...I have tried explaining I needed the hours for more money, to build hours to receive paid leave and to help other stores cover shifts. Still nothing has changed...every team member received extra shifts except for myself. I feel like I am being pushed out of my job which I need to support my family...It makes it much harder for myself to find another job as retailers won't hire a pregnant woman.<sup>304</sup>

My pregnancy cost me my job. I had been working in Government Departments on contracts for eight years and the contract was always extended with no questions asked...I was only notified of the decision not to extend me on the day before the end of my contract...The stress of starting my motherhood journey with no job to return to placed me and my husband under enormous stress and I suffered debilitating post-natal depression.<sup>305</sup>

I am now due to go back after 6 months on mat and annual leave, but my contract expires in two weeks...I was advised to take annual leave to the end of my contract, as there was no position for me to go back to. Once my contract expires I won't be able to apply for any internal government positions, I will also lose any continuity of service, long service and the sick leave. I am extremely disappointed as well as concerned as I still have the mortgage to pay!<sup>306</sup>

The job insecurity really put the brakes on our family plans...My biggest concern was the fact I wouldn't have a guaranteed part-time role to come back to. No matter how much I tried to talk myself into just jumping in, I couldn't get past the need to provide any children we have with some level of financial security. It caused me a fair amount of anxiety and I spent a lot of time looking for a permanent role... I just wanted to make this submission to highlight how job insecurity can impact on this issue.<sup>307</sup>

My contract is not being renewed because I am pregnant, and this has been clearly stated by the organisation...I have been faced with distinct unwillingness to even think of allowing me unpaid maternity leave, and my contract renewed when I am able to return to work. As far as my work is concerned, I wrote my resignation when I told them I was pregnant.<sup>308</sup>

Koula has worked as a casual for three years in a community care facility. She has worked 15-30 hours per week during this time. Last month a new manager commenced, and Koula announced her pregnancy. The new manager cut Koula's hours to three per week and has refused to guarantee her any hours at all. When she questioned this she was told she was a casual worker and they wouldn't guarantee hours.<sup>309</sup>

Minna was employed by a labour hire company on a casual basis working almost full-time hours in factories for three years. After Minna advised her employer that she was pregnant her employer stopped offering her shifts on the grounds that there was no light work available. Minna had to move back in with her parents, sell all her belongings and considered having an abortion because she was no longer receiving an income.<sup>310</sup>

Given that young mothers, women from CALD backgrounds and Aboriginal and Torres Strait Islander women are more likely to be in casual jobs the challenges and negative impacts that casual and contract workers experience are also likely to be especially relevant to these groups.

## (h) Flexible workers

Separate from casual and contract workers, the National Review heard that employees on flexible work (ie part-time work, jobshare, working from home, changes to start and finish times etc) experienced negative attitudes from managers and colleagues (eg perceived as being less committed, capable and serious about work in comparison to full-time employees), unconscious bias as well as direct forms of discrimination because they did not work full-time.

I continuously have had to deal with prejudiced statements on what a part-time person can do. There is still very much a culture of 'part-time person: part-time brain'.<sup>311</sup>

The company has recently confirmed that there will be no possible career progression within the company for any part-time senior staff. They have raised this on the grounds that because I am not able to participate in late afternoon events such as Friday evening staff drinks I am not able to fully mentor junior staff and am hence not supportive of the existing office culture. The management of my company have coined this in the following terms: 'that part-time staff are not a constructive part of the current office culture'. Given this recent position statement I have been forced to resign from my job.<sup>312</sup>

My husband is a manager in the department and there appears to be the view that flexible working arrangements are not appropriate for managers. When he approached his boss about the possibility of working four days a week...he was given reluctant verbal approval to his request. He was told how working four days a week would negatively impact on the workplace. He was made to feel guilty about requesting flexible working arrangements.<sup>313</sup>

Flexible workers also said that they were threatened with dismissal by their employers if they did not work the hours specified. Further, there was a common perception that part-time work reduces the likelihood of reaching top management creates additional barriers for women reaching leadership positions.<sup>314</sup>

The company was going through a 'restructure' and were making people redundant. Three people from my team were made redundant, a father who came back from 12 months parental leave, a female part-time worker with two children and myself, part-time and pregnant...all three of us sat in the top 10 of high performers, but people who were full-time and under-performing kept their jobs.<sup>315</sup>



As explored earlier, the National Review further heard that, while employers granted parents flexibility on return to work, this sometimes resulted in a reduction in role and salary and poor performance review; 'Part-time employment represents a trade-off for many women, whereby in return for the opportunity of reduced hours, they tolerate poor conditions'.<sup>316</sup>

I approached my previous employer to see if there would be part-time work. He offered me part-time hours, doing my old job, but two levels lower in the salary scale. He said I had been 'out of the saddle' a while and this was all that was available part-time...I have tried to sell the advantages of part-time workers working harder and I have seen the evidence of job share arrangements producing massive productivity. But still the baseless discrimination against flexible work arrangements persists.<sup>317</sup>

I was still granted flexibilities, ie work from home, reduced hours etc but they were in a demoted position and not the one I held immediately before commencing parental leave.<sup>318</sup>

Since I have returned to work part-time I have been treated very differently. My performance review was marked down due to being part-time as my boss is concerned that I can't be given large tasks as I am only here three days a week. I also get lectured when I ask for any additional time off as I am 'only here three days a week as it is'.<sup>319</sup>

On the other hand, some flexible workers said that their workloads had not been adjusted to their part-time hours and that this caused higher levels of stress.

I have been carrying a full-time workload for a number of years now despite part-time hours. But I still cannot keep up with colleagues without children who work way greater than full-time hours, and work on weekends or later at night as they don't have childcare duties.<sup>320</sup>

Following my return from maternity leave, during the next three months of part-time work, I was given a full-time workload with no concessions given for working three days per week.<sup>321</sup>

The National Review frequently heard that flexible workers missed out on career advancement and training opportunities. They also said that they felt pressure to 'prove themselves', despite no issues in performance and being fully committed to their work prior to, and after, having children.

Although I have many skills, much experience and have asked again and again for opportunities to contribute to the workplace, I am told that, because I work part-time, I am unable to take on extra responsibilities... I now run the risk of losing my skills, not keeping up with current trends in leadership and not being as employable in the future because I can't get a part-time leadership job now.<sup>322</sup>

Since taking parental leave, having children and reducing my hours by one day a week, I believe that I have lost significant professional standing – something that I worked very hard for – and have spent the past six years desperately trying to hold onto.<sup>323</sup>

Whilst our organisation reimburses full-time staff for study costs...part-time staff are only reimbursed pro-rata. The argument is that the organisation is only getting for example two days a week worth of their degree so they will only pay 2/5...<sup>324</sup>

Clearly, greater access to flexible work and the creation of more supportive workplaces would not only improve the experiences and job satisfaction of pregnant women and all parents trying to balance their work and family lives, but also shift attitudes away from unhelpful 'ideal worker' models which disadvantage workers and organisations alike.

### 3.5 Conclusion

The National Review's findings reveal that discrimination towards pregnant women and parents is pervasive in Australian workplaces, with employees often experiencing more than one form of discrimination at a time. These various forms of discrimination have negative impacts not only on affected individuals and their families, in the short and long term, but also on organisations.

Good workplace policies alone are not enough. For most, the difference between a positive and a negative experience lay in the effective implementation of workplace policies by managers and Human Resource departments, and in supportive colleagues and workplaces.

Efforts to dispel assumptions and stereotypes about working parents, parenthood, and the ideal worker will require a change in such systems and cultures. This cultural shift will require countering conscious and unconscious biases, grounding organisational structures and working models on the assumption that men and women at all levels can equally work flexibly to meet their dual obligations at work and at home, and making diversity a part of an organisation's DNA.<sup>325</sup>

As the following chapter explains, the majority of employers do not set out to discriminate, but instead struggle to balance their legal obligations with the immediate pressures of running a business. Where employers and employees are better able to communicate and understand each other's needs, they are more likely to be able to develop solutions which work well for all.



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- 2 Individual submission no. 42.
- 3 Individual submission no. 17.
- 4 Individual submission no. 165.
- 5 Individual submission no. 317.
- 6 Individual submission no. 263.
- 7 Individual submission no. 133.
- 8 Individual submission no. 216.
- 9 Individual submission no. 235
- 10 Individual submission no. 235.
- 11 This name is a pseudonym; no real names are used in case studies.
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- 13 Individual submission no. 286.
- 14 Individual submission no. 167.
- 15 Individual submission no. 296.
- 16 Individual submission no. 319.
- 17 Individual submission no. 38.
- 18 Individual submission no. 184.
- 19 Individual submission no. 244.
- 20 Individual submission no. 65.
- 21 Community organisation submission no. 54 (Shop, Distributive and Allied Employees' Association).
- 22 Individual submission no. 115.
- 23 Consultation 4A (Affected women and men and community organisations).
- 24 Individual submission no. 98.
- 25 Community organisation submission no. 40 (Australian Council of Trade Unions).
- 26 Community organisation submission no. 7 (National Working Women's Centres).
- 27 Community organisation submission no. 14 (Victoria Legal Aid).
- 28 Individual submission no. 61.
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- 141 Individual submission no. 265.
- 142 Individual submission no. 1.
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# Chapter 4

## Experiences of employers in managing pregnancy, parental leave and return to work

### In summary

Employers identified several challenges in managing pregnancy/return to work issues, including:

- Confusion and uncertainty about their legal obligations, and about employee rights
- Managing the uncertainty that can surround pregnancy/return to work issues, especially regarding timeframes, employees' return to work and employees' requests to work flexibly or part-time
- Limiting the direct costs associated with training a temporary replacement employee
- Accommodating the specific needs of pregnant employees and employees returning from parental leave and ensuring a safe working environment. This was particularly an issue in highly physical industries or roles
- Deeply held negative stereotypes, attitudes and behaviours among managers, line managers and other staff about pregnant employees, parents returning to work after parental leave and flexible work.

Through the consultations and online written submissions employers reported a number of challenges they faced in managing pregnancy/return to work.

The National Review heard that the experiences of employers varied depending on their circumstances, including the size of business, industry and sector.

The National Review heard that small businesses may face particular issues, ranging from lack of resources and capacity to manage working parents, to financial constraints, and difficulties managing parental leave or transferring an employee to a safe job.

### 4.1 Understanding employer obligations

In order to offer and implement comprehensive pregnancy/return to work policies, as well as a positive experience for employees who seek to use these policies, employers agreed that having an accurate and detailed understanding of their legal responsibilities and employee rights was critical. However, the National Review heard that, for various reasons, including the plethora of regulation in this area, organisations are often unsure as to what these obligations are.

Depending on where the organisation is based, there are several applicable legal jurisdictions that impact on an employer's obligations in this area, including anti-discrimination laws (federal and state and territory); employment law; and work health and safety regulations (federal and state and territory). Multiple legal jurisdictions can cause confusion and uncertainty about which laws apply in which circumstances and what employers need to do to comply with all their obligations.

The first issue [for employers] is understanding their obligations and entitlements for the employee, to ensure they handle parental leave in the correct manner according to legislation.<sup>1</sup>

[We receive constant feedback] that there is currently a lot of 'red-tape' that employers/business owners have to deal with. As we can see with the laws that govern pregnancy and return to work, there are at least three pieces of legislation that businesses need to be familiar with to understand their obligations in this area.<sup>2</sup>

Employers spoke about the multiple demands on their time and identified that, in focusing on running their organisation, they have limited time to read multiple pieces of legislation to learn how the laws in this area impact on their operations. This is particularly the case for small organisations that commonly do not have a human resources department or legal expertise. As a result, employers may fail to fulfil their legal obligations, either because they are not aware of them, or because they simply do not understand them.

[M]ost of the shortcomings obviously have just been a lack of education. In fact, I think most employers get it wrong because they just don't know.<sup>3</sup>

While most employers understand that pregnant employees are generally entitled to parental leave, they do not appreciate the detail such as notice requirements, keeping in touch, flexible working arrangements on return to work, obligations in relation to replacement workers, etc.<sup>4</sup>

Finally, employers told the National Review that there is a lack of clear, easily accessible information available, as well as more tailored advice. They reported a need for a 'step by step' guide and a user-friendly 'one-stop-shop' for information about rights and responsibilities relating to pregnancy, parental leave and return to work.

[I] started with google to search paid parental leave when an employee said she was pregnant.<sup>5</sup>

We have not had training or support other than what can be found on the Internet. We rely on keeping up to date through websites like Fairwork [Ombudsman/Commission].<sup>6</sup>

I think [small organisations] need somewhere to get advice from that is reliable and is really straight forward...like black and white, hard to misinterpret, or a hotline so they can talk to a real person who can interpret [the laws] and apply it to their situation.<sup>7</sup>

The National Review finds that accessible, comprehensive information (covering all relevant legal jurisdictions) on employer obligations and employee rights relating to pregnancy, parental leave and on return to work after parental leave, needs to be developed and disseminated. The dissemination should include tailored formats for small organisations.

## 4.2 Balancing competing demands

Employers reported that it is sometimes difficult to reconcile the needs of employees with the needs of the organisation.

You're in a very tough environment, a very competitive environment, where you're absolutely having a hell of a lot of pressure coming down on you globally on costs. So it's a balancing act and I think it's what creates the difficulty.<sup>8</sup>

Employers have to do a risk analysis on whether or not to invest in retaining and supporting the needs of an employee [who is pregnant or on parental leave].<sup>9</sup>

Another issue raised was that Key Performance Indicators for managers are often based on organisational performance (such as output or sales targets), which are required to be met within a workforce planning structure based on 'headcount' (rather than 'fulltime equivalent' positions). This limits the capacity of managers to include part-time workers within a workforce structure they require to meet their targets.

Further, some employers reported that whilst they supported pregnant and flexible workers, their clients may not be familiar or comfortable with dealing with multiple contact points or people within an organisation. Therefore, it may be difficult to allocate to these clients to workers who may need to go on parental leave or work flexibly.

## 4.3 Managing parental leave

### (a) Operating under uncertainty

With the best intentions in the world not to discriminate in any way, how can you avoid being concerned: How am I going to run this company and meet my objectives in the next year or two?<sup>10</sup>

Uncertainty of any type is difficult for business operations and staffing.<sup>11</sup>

[E]mployers are forced to guess when employees are returning, and [under] what arrangement.<sup>12</sup>

The National Review heard that employers find it challenging to operate with the uncertainty of the terms of the parental leave taken by employees, including in relation to:

- the length of parental leave that the employee will take
- whether the employee will return to work following parental leave
- what sort of work arrangement the employee will request upon return from parental leave
- whether an employee returning from parental leave will stay or leave after a short period.

These challenges are exacerbated in situations where there are pre-existing problems in the employer/employee dynamics.

Conversations that are difficult are the ones where the relationship is already [strained]...[and the] manager's struggling to cope with [the] dynamic.<sup>13</sup>

Even when issues are discussed and agreed upon, employers may still face the uncertainty of not knowing if an employee will be able to fulfill the agreement or will change their mind.

What happens when employees say they don't think they're coming back but aren't 100% sure and don't want to give you a formal resignation letter?<sup>14</sup>

[I] feel cheated that [I] accommodated the needs [of a pregnant employee] and held a fulltime position for somebody that ends up leaving.<sup>15</sup>

However, the National Review also heard that good communication between employers and employees can assist greatly in reducing the issues of uncertainty. This was particularly the case in small organisations, where due to the small number of staff, there can be a close connection between the employer and employee, enabling more thorough communication and consultation.



## **(b) Backfilling during parental leave**

The first thing is that you try to be very excited on behalf of the person who's telling you [that they are pregnant]. Secretly what you're [thinking] is how the hell am I going to replace this person for the next year?<sup>16</sup>

Employers told the National Review that they have two options: backfill internally or recruit externally, and both options pose challenges.

Some employers noted that when backfilling internally, either an additional workload is placed on employees with existing fulltime responsibilities, or roles and functions are at risk of being neglected.

Typically, when employees are replaced there is still [an] additional workload on existing staff.<sup>17</sup>

We are a small business and the burden on other workers, especially if they do not have the skills of the worker on [parental] leave, is stressful.<sup>18</sup>

In a business with five to ten employees, the person taking parental leave commonly is the only person with the required skills and qualifications for a particular role. [This makes] it difficult for tasks and duties to be reallocated to others during the period of parental leave.<sup>19</sup>

Several periods of consecutive parental leave can raise longer-term backfilling requirements, which may be difficult and costly to fill.

[An employee] was on [parental] leave three years straight...[this] was very disruptive.<sup>20</sup>

She's had...consecutive pregnancies and she comes back and tells us, 'Yeah I want that job I had four and a half years ago', yet we've got this person who doesn't quite get that we're not the same business we were four and a half years ago and we don't have that same job.<sup>21</sup>

In light of the short-term and sometimes uncertain timeframe of the backfill position, it can be difficult to find qualified individuals from external sources willing to accept a short-term engagement. Employers also told the National Review that managing the expectations of the replacement employee is often complicated since the duration of the position may be unknown.

[Replacement employees] have no rights in terms of their employment obligations because if "Jo Blow" says [they] want to come back [after their parental leave] then we have to get rid of [the replacement] and let [them] come back.<sup>22</sup>

The biggest difficulties are in recruiting suitable staff especially for professional roles with specific requirements and the uncertainty of when or if the person on parental leave will return.<sup>23</sup>

Our main challenge with parental leave is where an employee wishes to take a short absence – for example five months. As a small business it is difficult to cover such an absence.<sup>24</sup>

Some employers explained that training and up-skilling the replacement (internal or external) can also be difficult, especially training casual or short-term employees for highly skilled roles.

Specialist academics – [We] can't replace them or [they are] expensive to source from interstate – the research stops while they are on leave.<sup>25</sup>

At one of our centres, there's a six month training required to do the job. The investment in training means there are no casual people. Most people don't want it because of the amount of training required.<sup>26</sup>

Employers reported that when there are several employees on parental leave at the same time, these positions can be more difficult to backfill. There may be no additional individuals in the organisation to step in and cover the absences internally, and recruiting multiple short-term replacements externally can be timely and costly, especially if the positions are high-skilled roles.

[If] we had a number of...mums go off at the same time, that could really impact [the organisation] and [filling the positions] would be then something serious that you would have to consider.<sup>27</sup>

[They're] all falling pregnant at the same time which creates...a problem for the business...[We'd] love to accommodate [them] all, but how do we do it?<sup>28</sup>

Employers told the National Review that the notice requirements for employees wishing to return to work is insufficient for planning. Under the FWA the notice period for return to work after parental leave is four weeks.

The Act is constructed so that employees can make a decision as to when and how they want to return...but includes little obligation for the employee to actually think about how and when they will return, in advance...[which would give] the employer sufficient time to [make arrangements].<sup>29</sup>



### (c) Costs

Employers also reported that they often face direct costs associated with backfilling or recruiting a replacement to cover employees on parental leave.

Employers identified costs such as additional workload on Human Resources administrators, the cost of recruiting replacement staff, costs of paying casual rates to attract a short-term replacement or to attract a highly qualified replacement for a short period.

Employers relayed to the National Review that a Human Resources member (or owner/manager in the case of small organisations with no Human Resources department) must dedicate time to planning for the parental leave with the employee, identifying replacement staff, whether internal or external, and ensuring a smooth transition. This may include, for example, the recruitment process, training, equipment handover, new email addresses and business cards.

Training for replacement staff, including handover periods, can also be an added expense. The National Review was told that in some cases this can be a loss-incurring exercise when the costs of training are higher than the value added by the replacement.

As our positions require specific training and qualifications by the time you train someone, the parental leave period has expired and you do not get value for money.<sup>30</sup>

In a small business, which specialises in the design, manufacture and retail of jewellery, it takes a long period of time to train employees to the level required – at least six months for an experienced individual and at least one year for an inexperienced person. This makes it unfeasible to train another individual for the term of parental leave.<sup>31</sup>

You've got your wind up and wind down when people are going on leave. You're not going to give them new referrals because they're about to go on leave next week. Their caseloads are getting lower, so they're not able to bring in as much revenue as what they normally would, so...it's not just the paid salaries, it's the lack of income during that time that really hits us.<sup>32</sup>

Employers reported that there can also be costs associated with administering the government Paid Parental Leave (PPL) and Dad and Partner Pay schemes, as well as any employer paid parental leave schemes.

Some of the challenges are the collection of Paid Parental Leave. At the moment the forms that need to be filled in are too long and the payments take too much time for an employer to administer.<sup>33</sup>

[Government] Paid Parental Leave is paid fortnightly. This doesn't work for small business that pays weekly.<sup>34</sup>

Payroll systems have to be adjusted...however a few small businesses don't know that they need to adjust their systems.<sup>35</sup>

However, other employers reported that registering for and administering the PPL scheme was not overly demanding. The PPL Evaluation Phase Two Report revealed that the majority of employers did not find administering the scheme difficult or costly.<sup>36</sup>

While some costs were identified with accommodating employees on parental leave, the National Review found that research has also shown that there are financial and other benefits to retaining employees following parental leave, including retaining their skills and corporate knowledge (see Chapter 1).

#### **(d) Managing the employee while on leave**

Although there may be no intention to discriminate against employees on parental leave, the National Review heard that discrimination may still occur if the parental leave is not appropriately managed.

Some employers struggle to maintain contact with employees who are on leave for an extended period of time. The practical reality is often 'out of sight, out of mind', with employers unintentionally failing to maintain contact and keep the employee updated on events and changes in the workplace.

Not inviting people to Christmas parties or keeping them in the loop is often just an oversight without any ill intent...It's about the fact that we just have to change the mindset and process which will prompt people to think about getting back in touch.<sup>37</sup>

Some employers said they may be unsure of the degree to which an employee on leave wants to 'be bothered by work' during parental leave. Even where there may be an agreement in place to stay in touch, some employees don't always use the opportunities to keep in contact.

It is not uncommon that...employees on parental leave wish to keep any contact with their employer to a minimum.<sup>38</sup>

It is challenging to ensure the employee does not lose touch with the workplace or the industry as they have other priorities...It is not uncommon that parents want to focus on their child rather than keep in touch with the workplace.<sup>39</sup>

Long period of parental leave without consistent communication may pose challenges when the employee returns to work.

Some of the biggest challenges are ensuring that any company wide changes are effectively communicated to those on parental leave so they are aware of decisions that have been made that will impact them on their return.<sup>40</sup>

The National Review heard that, in situations where there is a positive working relationship between the employee and employer, including good and ongoing communications and a high degree of trust, many of the challenges related to managing leave can be addressed.

#### **(e) Redundancies in the context of parental leave**

Employers told the National Review that where during parental leave, genuine restructures or redundancies are made, it is important that employees on parental leave are not disadvantaged by the restructure.

[A challenge] experienced by employers includes managing situations where the position of an employee on parental leave becomes genuinely redundant. In such circumstances the original position held by the employee no longer exists.<sup>41</sup>

Small businesses tend to restructure as a result of an employee taking parental leave and then invariably discover that they no longer need the person to do the job in the same way as they previously did. While they may not be making the position redundant...there may be a perception that they have deliberately altered the working environment to disadvantage them.<sup>42</sup>

As set out in Chapter 6, some organisations are putting in place checks and balances to ensure that there is no disproportionate impact on employees on parental leave.

## 4.4 Managing other leave during pregnancy and on return to work

Pregnant employees may need to take sick leave or personal leave for pregnancy-related medical issues on several occasions during their pregnancy. Such leave is often unpredictable and therefore difficult to plan for.

Further, as the circumstances pertaining to the medical leave are often personal and confidential, employers said that they can sometimes face challenges having conversations with employees and planning for the leave from a management perspective.

Employers also told the National Review that they needed direction and support in having productive and sensitive conversations regarding pregnancy-related medical leave.

[It's the issue] of what are you allowed to ask, what aren't you allowed to ask?<sup>43</sup>

Employers reported that such conversations are even more difficult in the context of issues such as IVF and miscarriage. There is a widespread lack of knowledge among managers and Human Resources personnel about how to conduct conversations concerning such circumstances. The personal and confidential nature of these issues makes frank discussions difficult.

People who are on IVF within [the] workforce don't really want to talk about it. [It's very hard] when you have to ask for permission [to take time off] without wanting to specify exactly why.<sup>44</sup>

Miscarriage has been a taboo topic for so long, employers don't know how to deal with it.<sup>45</sup>

[Miscarriage] I think it needs to be taken on a case by case basis because some people...want to take the time off to grieve... but others just want to get back straight into it. So it's hard to...have a blanket policy.<sup>46</sup>

Employers also told the National Review that after an employee has returned from parental leave, they may need to take personal/carers leave on several occasions to care for their child, particularly if the child is in an early childhood education and care services and may tend to get sick more often.

Some staff spend more time at home with sick kids than they do at work especially in the first year, even if [they are working] part-time.<sup>47</sup>

## 4.5 Challenges of implementing flexible work

### (a) Managing the part-time/flexible worker

Employers told the National Review that accommodating flexible work can pose a significant challenge. Many managers often do not fully understand what flexible work means or how it works.

Flexibility [is] still seen as part of the 'too hard' basket.<sup>48</sup>

What's more, managing a part-time/flexible worker can be perceived as difficult for several reasons. First, negotiating work arrangements requires open and honest communication on both sides. This can be challenging if employees feel reluctant to share their requests for flexible work upon return to work for fear of appearing uncommitted to their job.

Similarly, employers may be reluctant to outline the organisation's needs, for fear of alienating the employee or failing to meet their legal obligations. When the needs on both sides do not perfectly align, it can sometimes be difficult for employers to manage employee expectations appropriately.

[Employees] come at you with 'what they've heard' or 'group think' information that's not necessarily accurate and you as the employer [must try] to reset their expectations to [the] reality [of flexible work options] and that can be a real problem.<sup>49</sup>

There is this real...apprehension perhaps to approach an employer about flexible work arrangements, [parental leave], or return to work. So people then go around, seek all their advice from well informed family members and friends and union reps or whatever else, and come in almost a bit 'guns blazing' rather than having a conversation...Most employers' intentions at least [are] to do the right things.<sup>50</sup>

There is a distinct difference in employees between their expectations. Some people come back with a high expectation of 'I'm entitled to this and you're going to give it to me,' versus the person that says 'actually I'm part of this organisation.'<sup>51</sup>

Secondly, employers told the National Review that flexible work requires a high degree of trust and reciprocity between the employee and the manager. There is a danger that the manager or employee feels that they are being taken advantage of through the work arrangement.

Trust is an issue – the business needs to feel confident that the employee will not abuse the trust of flexibility.<sup>52</sup>

[Flexible arrangements] only work because [I have] absolute trust in that particular person...[I] would not be able to allow such flexibility with every member of [the] team. [I need to] trust [that they] will deliver regardless of where [they] work from.<sup>53</sup>



Employers noted how such issues can also manifest with regard to performance management in the context of flexible work. Cases of poor performance which are not managed well by line managers as they arise can become an issue after an individual returns from parental leave and requests flexible work. If a poor performer returns from parental leave and requests flexible work, the manager may struggle to approve the request because there is a lower level of trust.

The trouble is [when performance issues are] only raised [when pregnancy is announced]. That then becomes a discrimination issue and that's when it could have been dealt with earlier.<sup>54</sup>

These challenges can be overcome if managers confront performance issues in a timely and efficient manner. If poor performance is addressed swiftly and appropriately, it should not have an impact on the employee's return to work subsequently.

## **(b) Challenges related to specific industries**

The National Review heard that there are structural impediments that have not yet been addressed in some industries that make part-time/flexible work arrangements difficult for some employers. These could include the nature of work or schedule limitations within the organisation. For example,

[In a legal environment] it's about the billable hours. The more you are available the more you add value...[A] person who is there just three days a week doesn't get the juicy work because it's easier to give that work to someone who can work around the clock, five days a week. Some people come back and feel that they aren't getting the good stuff.<sup>55</sup>

## **(c) Challenges related to specific roles**

Some employers reported that some roles are hard to perform in a part-time/flexible capacity. For example, employers explained that customer facing/sales roles can be difficult to perform flexibly when client demands are unpredictable and immediate. The concern is that there may be an impact on the customer experience, or the customer will have expectations that cannot be met regarding timing and/or availability.

In Australia we all assume the ideal worker is someone who's available 24/7 [with] no caring responsibilities.<sup>56</sup>

In other cases, employers said that some roles traditionally require a minimum amount of time to complete. This can mean that unless a jobshare arrangement can be made, it may be difficult to accommodate part-time or flexible requests. This is common in manufacturing roles.

In a manufacturing environment, you have to think about productivity. There is no flexibility at manager level to redefine the time it takes for output...You may be able to accommodate someone working on a different task which is flexible but if [it relates to] your core work...it wouldn't enhance productivity to have flexible arrangements.<sup>57</sup>

## **(d) Challenges for the organisation**

Employers told the National Review that flexible work can sometimes pose added challenges to an organisation's operations. Where flexible work results in a significant number of people working from home, this can impact on maintaining regular interactions between colleagues and with customers. It can also affect general workforce camaraderie.

[The] pendulum swung a bit too far. [There were] too many people working from home and [this caused] team building issues. [We needed] to have conversations about needs and expectations.<sup>58</sup>

It is only government and large organisations that can accommodate workplace flexibility, not the majority of Australian employers...who need consistency in roles to keep the organisation alive.<sup>59</sup>

Some employers also noted that productivity may suffer if colleagues are bearing an extra workload as the result of an employee working part-time.

All of our female employees who have come back from parental leave have asked for and been granted permanent part-time work. This results in additional people being employed or other employees absorbing some of the workload.<sup>60</sup>

When an employee is coming back from maternity leave and [requests] to work part-time, this means that we are missing [somebody to cover] the other days [when they are not in the office], which has a huge effect on productivity.<sup>61</sup>

### (e) Challenges related to shift work or rosters

Flexible work may present a unique challenge in cases of shift work or rosters. It can be difficult to accommodate flexibility if the hours requested are less than what the organisation needs.

If you have one person who wants to do shorter shifts, someone has to do longer shifts. Legislation around [the] right to request makes it an absolute headache for the manager. If there aren't enough resources to do the work and we don't meet the deadline, we get penalised. There is reputational damage etc. It's a knock-on effect.<sup>62</sup>

At the health service there [are] very set shifts and it's sort of a 7am to 3pm shift. Working parents [may] request school hours, to work from 9am to 3pm. In theory, yes, there [are] patients here [to attend to], but what do you do from 7am until 9am when you've had someone working night shift? They can't stay another two hours, you've got minimum engagement periods of four hours.<sup>63</sup>

Furthermore, some rosters require fulltime work for certain periods, followed by breaks (for example four weeks on, one week off), particularly in industries that work in remote areas and through 'fly-in/fly-out' arrangements. This can make accommodating flexible work arrangements difficult.

[With] site based roles we are talking four weeks away, one week home...The issue of a partner and a family...that's really where we have an issue with return to work...[The opportunity for] flexibility is really site based.<sup>64</sup>

Even if you move somebody to live on-site...their partner might not be able to find work on-site.<sup>65</sup>

Some employers highlighted that catering for the demands of flexible workers in rosters/shift work can cause resentment from other employees and complaints regarding unfair preferential treatment.

Everyone wants the morning shift. [It] creates questions and raised eyebrows when those requiring [flexibility] always get it. It is meant to be a rotating roster.<sup>66</sup>

While there is a strong business case for accommodating flexibility and retaining employees who take parental leave, organisational systems and structures need to be in place to support managers to do this. As will be outlined in Chapter 6, the National Review learnt through consultations about some of the policies and initiatives which help to enable successful flexible work arrangements. These include flexibility coaching for managers; promoting flexible work models by showcasing senior role models who work flexibly; and leveraging technology to support flexible work (for example lap tops, smart phones, video conferencing).

## 4.6 Managing health and safety issues

### (a) Finding a safe role

A few employers told the National Review that they may find it difficult to find alternative duties for pregnant employees if the role involves some exposure to health and safety risks, particularly in specific industries or occupations.

Finding alternative duties is particularly challenging when the industry is generally physically demanding.

In a store, it's a physical job where you're on your feet all day every day. With only one or two people per store in some instances, there is next to no opportunity for alternate or light duties.<sup>67</sup>

Acute nursing care requires nurses to be able to undertake clinical care and light or clerical duties don't work.<sup>68</sup>

A major challenge faced by electrical contracting businesses is the limited safe work options available for pregnant female electricians. This is particularly problematic for micro businesses that may only employ one or two electricians and perform the administrative side of the business themselves or engage a family member.<sup>69</sup>

Organisations with few administrative roles can struggle to accommodate the safe work needs of pregnant employees.

One such case occurred in a small to medium sized business where a pregnant casual employee provided a medical certificate to state she was unable to lift cartons of wine. This proved to be problematic for the employer because the employee was engaged to work in the [wine cellar] door (ie customer sales), where lifting cartons of wine is an inherent part of the role. The employer liaised with the employee to try to find alternative duties, but was unable to provide sufficient work or alternative duties to maintain the hours that were similar to the average weekly hours that the employee had previously been working.<sup>70</sup>

We do not have very many administration positions that people can be shifted into and even then most people are not qualified to fulfill those positions.<sup>71</sup>

The challenge of finding safe alternative roles is particularly acute for small businesses that may have a limited number of roles and employees.

Finally, a few employers told the National Review that there are instances where a pregnant employee wants to continue their job but employers are concerned about the health and safety risks. This may cause tension and conflict if the employer places the employee in an alternative role or on 'no safe job' leave where this may not be the preference of the employee.



### **(b) Providing facilities for breastfeeding/expressing**

The National Review heard that many employers struggle to provide a work environment that provide for women to breastfeed or express in privacy. This is particularly the case in workshops, worksites, or retail shop floors, where there is no physical space to accommodate privacy and other requirements.

I couldn't even [imagine what I'd do] if I had a staff member who was...breastfeeding. What I would do in a workshop environment? Like where would they go?<sup>72</sup>

But a lot of the trouble is space, and in our case we're bursting at the seams, we don't have any spare space.<sup>73</sup>

The whole place is just filthy. It's just grease everywhere...You wouldn't chuck them in the toilets [or] the lunch rooms upstairs on the men's deck...It's just physically not possible.<sup>74</sup>

Overall, the National Review found that employers need further guidance and support on how to accommodate the health and safety needs of pregnant employees and employees returning to work from parental leave.

## 4.7 Organisational culture: stereotypes, attitudes and behaviours

### (a) Stereotypes, attitudes and behaviours of managers

Employers reported that a key obstacle to implementing successful policies was ingrained stereotypes, attitudes and behaviours in the workplace, particularly among line managers.

As a result, organisations and employees alike may be dependent upon a ‘management lottery’ where the success of policies is influenced by individual managers’ assumptions, beliefs, attitudes and behaviours. Lack of awareness and knowledge of obligations and skills to implement policies can also contribute to gaps between laws and policies and actual practice.

Some managers do it well, some don’t.<sup>75</sup>

[Success is] dependent on your own relationship with your manager, and their own personal views on flexible arrangements.<sup>76</sup>

Conscious and/or unconscious bias among managers about pregnancy, parental leave, and flexible work can lead to discriminatory behaviour. Managers may lower an employee’s workload, for example, due to the false assumption that a pregnant woman cannot handle extra stress or perform as well as others.

Nothing gets done in the last 6 months [of pregnancy].<sup>77</sup>

Unconsciously, managers start writing off people because they won’t be there [during parental leave].<sup>78</sup>

Employers told the National Review that managers may need training on their obligations with regard to pregnancy, parental leave and return to work, as well as the organisation’s policies.

Many organisations still face a strong culture of ‘presenteeism’ and are reluctant to accept that flexible workers can be productive.

Managers [don’t want] to provide flexible working arrangements for employees returning to work and try...to find ways around it so the employee has to return fulltime.<sup>79</sup>

[We have] flexible working arrangements...and support from senior management. But the middle managers are still difficult. We had one this week say, ‘there’s no way the caseworker can be part-time.’ We are really working on getting middle management to think outside the box. They are just so reactive. It’s about getting them to think through the options and showing them how it can be done.<sup>80</sup>

### (b) Organisational culture

The National Review heard that, as with managers, bias and resentment among colleagues may exist. Organisational culture can impact on the success of pregnancy, parental leave and return to work policies if it does not promote an accepting and supportive environment for pregnant women and parents.

The bigger issue for us is this overall cultural and gender bias.<sup>81</sup>

Different arrangements, such as work from home, flexible hours etc. during [pregnancy/return to work] tend to upset others who would like the same consideration but have no ‘case’ to justify this.<sup>82</sup>

There are high levels of resentment apparently coming from other staff, who feel like the pregnant employee gets a free ride, ‘not pulling their weight’, and that they have to pick up the slack.<sup>83</sup>

The National Review found that information, training and coaching regarding return to work and flexible/part-time work is required for managers and employees.

Managers, as well as employees, need to be supported by structures and an organisational culture which can help them implement successful pregnancy/return to work policies. In addition, establishing structures which encourage managers to prioritise the implementation of policies, and linking this to Key Performance Indicators are equally important.

## 4.8 Conclusion

The National Review was keen to hear from employers about the issues and pressures they face when managing pregnancy, parental leave and return to work.

On occasion, there may be tensions between the needs of pregnant employees and parents returning to work and an organisation's operational requirements. Given the business imperative to ensure women's equal participation in paid work, the vast majority of employers understand the importance of finding a way through.

A first step to reducing discrimination is identifying competing demands and working together to ensure both the employer and employee can implement effective policies and practices for pregnancy, parental leave and return to work, while continuing to achieve organisational goals and output.

While some of the obstacles identified are external to organisations, there can be many internal barriers. It is these internal issues that organisations are able to tackle themselves – such as lack of awareness of employer obligations, lack of training for managers, wrongful stereotyping about pregnancy and flexible work, and unsupportive workplace cultures.

As much as this chapter reflects the pressures and hurdles that Australian employers face, the following Chapter 6 highlight the strong and pragmatic leadership from organisations in overcoming these challenges.

Chapter 6 outlines successful initiatives and policies developed for the benefit of employees and employers alike. These leading practice approaches are based on providing support to managers and employees by providing information and training or coaching, as well as by ensuring that processes are standardised, to create a workplace supportive of work and family.

- 1 Employer submission no. 4 (HR Business Direction).
- 2 Employer submission no. 8 (South Australian Wine Industry Association Inc).
- 3 Consultation 1K (Employers).
- 4 Employer submission no. 4 (HR Business Direction).
- 5 Consultation 8B (Employers).
- 6 Employer questionnaire no. 18.
- 7 Consultation 1O (Employers).
- 8 Consultation 8E (Employers).
- 9 Consultation 3C (Employers).
- 10 Consultation 8E (Employers).
- 11 Employer questionnaire no. 3.
- 12 Consultation 4C (Employers).
- 13 Consultation 8E (Employers).
- 14 Consultation 8B (Employers).
- 15 Consultation 3C (Employers).
- 16 Consultation 8E (Employers).
- 17 Employer questionnaire no. 32.
- 18 Employer questionnaire no. 20.
- 19 Employer submission no. 7 (Business SA).
- 20 Consultation 6A (Employers).
- 21 Consultation 8E (Employers).
- 22 Consultation 1O (Employers).
- 23 Employer questionnaire no. 30.
- 24 Employer questionnaire no. 17.
- 25 Consultation 6A (Employers).
- 26 Consultation 1A (Employers).
- 27 Consultation 1O (Employers).
- 28 Consultation 8E (Employers).
- 29 Employer questionnaire no. 7.
- 30 Employer questionnaire no. 17.
- 31 Employer questionnaire no. 33.
- 32 Consultation 1O (Employers).
- 33 Employer submission no. 2.
- 34 Consultation 3C (Employers).
- 35 Consultation 8B (Employers).
- 36 University of Queensland, *Paid Parental Leave Evaluation: Phase 2 Report* (January 2013), p 124-125.
- 37 Consultation 8E (Employers).
- 38 Employer submission no. 7 (Business SA).
- 39 Employer questionnaire no. 32.
- 40 Employer questionnaire no. 4.
- 41 Employer submission no. 5 (Australian Industry Group).
- 42 Employer submission no. 1 (Master Electricians Australia).
- 43 Consultation 1O (Employers).
- 44 Consultation 8E (Employers).
- 45 Consultation 6A (Employers).
- 46 Consultation 1O (Employers).
- 47 Employer questionnaire no. 30.
- 48 Consultation 1R (Employers).
- 49 Consultation 1O (Employers).
- 50 Consultation 1O (Employers).
- 51 Consultation 8E (Employers).
- 52 Consultation 1C (Employers).
- 53 Consultation 5B (Employers).
- 54 Consultation 8E (Employers).
- 55 Consultation 1B (Employers).
- 56 Consultation 8E (Employers).
- 57 Consultation 1A (Employers).
- 58 Consultation 1R (Employers).
- 59 Employer questionnaire no. 14.



60 Employer questionnaire no. 8.  
61 Employer questionnaire no. 26.  
62 Consultation 1A (Employers).  
63 Consultation 1O (Employers).  
64 Consultation 5B (Employers).  
65 Consultation 5B (Employers).  
66 Consultation 4C (Employers).  
67 Employer questionnaire no. 12.  
68 Employer questionnaire no. 13.  
69 Employer submission no. 1 (Master Electricians Australia).  
70 Employer submission no. 8 (South Australian Wine Industry Association Inc).  
71 Employer questionnaire no. 18.  
72 Consultation 1O (Employers).  
73 Consultation 1K (Employers).  
74 Consultation 1O (Employers).  
75 Consultation 5B (Employers).  
76 Consultation 5B (Employers).  
77 Consultation 8B (Employers).  
78 Consultation 1B (Employers).  
79 Employer submission no. 6 (Australian Human Resources Institute).  
80 Consultation 1B (Employers).  
81 Consultation 2D (Employers).  
82 Employer questionnaire no. 11.  
83 Consultation 8B (Employers).



# Chapter 5

## The legal and policy framework

### In summary

- Australia has entered binding international human rights obligations to prohibit pregnancy/return to work discrimination.
- Australian laws, such as the *Sex Discrimination Act 1984* (Cth), implement these obligations by prohibiting discrimination on the grounds of pregnancy, potential pregnancy, breastfeeding and family responsibilities.
- The National Review found that while the existing legal framework is reasonably extensive, it identified a small number of areas still requiring reform in relation to the *Sex Discrimination Act 1984* (Cth), the *Fair Work Act 2009* (Cth) and the Work Health and Safety laws.
- The National Review found that the biggest gap in the adequacy of the existing legal and policy framework is in its implementation.
- Several complementary strategies are needed to address the gap in implementation, including:
  - » information, guidance and support for employers on how to fulfil their obligations
  - » clear, accessible information for employees on their rights and entitlements
  - » innovative, leading practices by employers on how to implement the laws and policies
  - » changing stereotypes, practices and behaviours that impede the effective implementation of laws and policies.

The National Review heard a range of views from stakeholders on the adequacy of the existing legal and policy framework aimed at protecting employees from pregnancy/return to work discrimination.

Whilst this National Review has identified further legislative reforms that would assist in strengthening workplace protection and clarifying obligations, the main finding of the National Review is that there is a significant gap between the law and its implementation.

Several complementary strategies are needed to address this gap. Employers need further information, guidance and support on how to fulfil their obligations, whilst employees need clearer and more accessible information on their rights and entitlements. Workplaces can also take the lead in changing workplace cultures by implementing innovative, leading practices and strategies.

This chapter focuses on assessing the adequacy of the legal framework that provides protection to employees from discrimination in the workplace, and identifies areas that may require strengthening to address:

- barriers to access to justice
- gaps in protection
- gaps in implementation.

In assessing the adequacy of the legal framework and considering areas of possible reform, it is essential that the principles of non-discrimination and substantive equality underpin such an analysis.<sup>1</sup>

### 5.1 International human rights obligations

Australia has an obligation to implement international human rights standards, set out in Conventions which it has ratified. This includes implementing legislative measures and other measures, prohibiting discrimination against women and establishing legal protection for the rights of women. These obligations extend to the regulation of the actions of non-state actors, including private entities.

Discrimination related to pregnancy and return to work after parental leave can potentially result in violations of a range of human rights including:

- the right to access decent work
- the enjoyment of just and favourable conditions of work
- the right to equal remuneration for work of equal value
- the right to safe and healthy working conditions
- the right to health
- the right to an adequate standard of living.<sup>2</sup>

A range of international legal instruments set out the obligations to protect women's rights in employment. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obligates countries to pursue appropriate legislative measures and legal protection mechanisms, prohibiting discrimination against women. This obligates Australia to take appropriate measures in relation to women in the field of employment, across a range of areas relating to pregnancy, parental leave and on return to work after parental leave, including:

- to prohibit...dismissal on the grounds of pregnancy or of maternity leave [or] marital status
- to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances
- to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of childcare facilities
- to provide special protection to women during pregnancy in types of work proved to be harmful to them.<sup>3</sup>

Obligations to prohibit discrimination related to pregnancy and return to work after parental leave also arise in a range of International Labour Organization (ILO) conventions ratified by Australia (see **Appendix C**).<sup>4</sup>

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) obligates States parties to guarantee the right to work without discrimination and to ensure women's equal enjoyment of the right of work.<sup>5</sup> The Committee on Economic Social and Cultural rights has recognised that, under ICESCR, States have an obligation to respect the right of women to have access to decent work and thus to take measures to combat discrimination and to promote equal access and opportunities.<sup>6</sup> In particular, pregnancy must not constitute an obstacle to employment and should not constitute justification for loss of employment.<sup>7</sup>

The Committee on Economic Social and Cultural Rights has also noted that States are required to avoid any measure that results in discrimination and unequal treatment in the private and public sectors.<sup>8</sup> It further recognises that all members of society – individuals, local communities, trade unions, civil society and private sector organisations – have responsibilities regarding the realisation of the right to work.<sup>9</sup>

Further, any person or group who is a victim of a violation of the right to work should have access to effective judicial or other appropriate remedies at the national level. All victims of such violations are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction or a guarantee of non-repetition.<sup>10</sup>

The *Beijing Declaration and Platform for Action* (1995) also calls on governments to eliminate discriminatory practices by employers such as the denial of employment and dismissal due to pregnancy or breastfeeding, or requiring proof of contraceptive use, and to take effective measures to ensure women are not discriminated against (para 165c).<sup>11</sup>

## 5.2 The legislative framework

The key federal laws that protect pregnant women and new parents from workplace discrimination in Australia are: the *Sex Discrimination Act 1984* (Cth) (SDA), the *Fair Work Act 2009* (Cth) (FWA), and Work Health and Safety laws (WHS laws).<sup>12</sup>

All states and territories have anti-discrimination laws that prohibit sex discrimination and that either implicitly or explicitly prohibit discrimination on the basis of pregnancy or breastfeeding. Prohibition of discrimination on the basis of family responsibilities also exists in most Australian jurisdictions. However, there are variations in the protections provided across these jurisdictions.<sup>13</sup>

The different procedural frameworks for pursuing complaints under the SDA and the FWA are provided in **Appendix D** to this report. An overview of the enquiries and complaints data of the Australian Human Rights Commission, the Fair Work Ombudsman, work health and safety regulators, and state and territory anti-discrimination and equal opportunity authorities, is provided in **Appendix E**. An analysis of the federal case law highlighting the range of workplace discrimination issues experienced by pregnant women and working parents is then provided at **Appendix F**.

### (a) The Sex Discrimination Act 1984 (Cth)

The SDA seeks to implement Australia's obligations in relation to CEDAW, bringing these human rights standards and principles into Australian domestic law. The SDA also implements a number of Australia's obligations under relevant ILO Conventions.<sup>14</sup>

The SDA prohibits discrimination on the basis of sex, pregnancy, potential pregnancy, marital/relationship status, family responsibilities or breastfeeding, among other grounds.<sup>15</sup> Except for family responsibilities, where only direct discrimination is prohibited,<sup>16</sup> both direct and indirect discrimination are prohibited on all these grounds. These grounds are known as protected attributes.

Each of these grounds also prohibits discrimination due to a characteristic which 'appertains generally to' or is 'generally imputed to'<sup>17</sup> those with any of the above attributes. This means that treatment of an individual employee by an employer based on the characteristics of a protected attribute, or a characteristic they are presumed to have, may be unlawful discrimination. For example, in *Thomson v Orica Australia Pty Ltd*,<sup>18</sup> the Court found that taking maternity leave is a characteristic belonging generally to pregnant women and to women in general.<sup>19</sup>

The SDA prohibits discrimination on the above grounds in many areas of public life including employment, education, and provision of goods, services and facilities among others.<sup>20</sup> Discrimination on the ground of family responsibilities is only prohibited in the area of employment.

In the area of employment, the SDA covers a wide range of workers or job applicants:<sup>21</sup>

- employees
- a person working under a contract for service such as individual independent contractors
- a commission agent
- a contract worker (someone who works for another person because of a contract the contract worker's employer has with that other person, eg a labour hire situation).

Discriminatory conduct is also prohibited by partnerships of six or more, by employment agencies and others.

Examples of behaviours and actions which may constitute discrimination in the workplace related to pregnancy/potential pregnancy, parental leave and return to work include situations, among others, where a person has been:

- refused employment
- dismissed
- denied a promotion, transfer or other employment related benefits
- given less favourable terms or conditions of employment
- denied equal access to training opportunities<sup>22</sup>
- experienced another employment related detriment. This could include being unreasonably denied part-time or flexible work.

The SDA provides for special measures to be taken to achieve equality between women and men, and in relation to pregnancy or potential pregnancy, breastfeeding, and family responsibilities.<sup>23</sup>

The SDA also contains specific exemptions relating to the grounds of sex, marital status, pregnancy, potential pregnancy, breastfeeding or family responsibilities, including 'rights or privileges in connection with pregnancy, childbirth or breastfeeding',<sup>24</sup> which operate in specific areas such as accommodation, charities, religious bodies, or an act done under statutory authority.<sup>25</sup>

#### (i) *Direct discrimination*

Direct discrimination occurs when a woman is treated less favourably because she is pregnant, or because she may become pregnant or takes or may take parental leave, or because she is breastfeeding or needs to breastfeed over a period of time. It also happens when a woman or a man is treated less favourably because they have family responsibilities or because of their sex.

In order to demonstrate direct discrimination on the grounds mentioned above, the applicant needs to show that they:

- have suffered a form of unfavourable treatment
- that this treatment is *less favourable* than that which has been or would be given to someone *in similar circumstances* (making a comparison to show a difference in treatment)
- the treatment is *by reason* of the applicant's sex,<sup>26</sup> breastfeeding<sup>27</sup> or family responsibilities<sup>28</sup> or *because of* her pregnancy or potential pregnancy.<sup>29</sup>

An action may be discriminatory even if it is not the 'dominant or substantial reason'. This means that, if an act or treatment is performed for two or more reasons, it may be unlawful if a relevant ground of discrimination is one of those reasons, even if it is not the only reason.<sup>30</sup>

#### (ii) *Indirect discrimination*

Indirect discrimination occurs when there is a rule, policy, requirement or practice which appears gender neutral on its face but reproduces disadvantage for a particular group, including women who are or may become pregnant or who are breastfeeding/expressing. However, it is not unlawful where the rule, policy, requirement or practice is reasonable in the circumstances.



Indirect discrimination may occur on any of the grounds mentioned above, except for family responsibilities, where an applicant proves:

- a condition, requirement or practice (referred to below as a ‘condition’) exists or is to be imposed
- it has the effect of disadvantaging (or is likely to disadvantage) persons of the same sex as the applicant, or women who are pregnant or potentially pregnant, or breastfeeding.

If the employee establishes these two threshold issues, the burden of proof then shifts to the employer who can show that the condition is not discriminatory *if it is reasonable in the circumstances*. A non-exhaustive list of considerations for determining if the condition is reasonable includes:

- the nature and extent of the disadvantage resulting
- the feasibility of overcoming or mitigating the disadvantage
- whether the disadvantage is proportionate to the results sought by the employer in imposing it.<sup>31</sup>

In assessing whether a condition is reasonable, the section below from *Secretary, Department of Foreign Affairs and Trade v Styles*<sup>32</sup> has been described as the ‘starting point’:<sup>33</sup>

[T]he test of reasonableness is less demanding than one of necessity, but more demanding than a test of convenience...The criterion is an objective one, which requires the Court to weigh the nature and extent of the discriminatory effect, on the one hand, against the reasons advanced in favour of the requirement or condition on the other. All the circumstances of the case must be taken into account.<sup>34</sup>

Indirect sex, pregnancy or breastfeeding discrimination can occur where a condition or policy exists at a workplace that applies to everyone, but causes difficulties for persons of the same sex as the employee complaining of discrimination or for others who are pregnant, potentially pregnant or breastfeeding, *and* is unreasonable. One example may be a requirement to stand for long periods of time to serve customers, as it may have a particularly negative or disadvantageous effect on pregnant women. Another example may be a requirement for full-time work or to work certain hours. In several cases, the Courts have accepted that a requirement to work full-time disadvantages women because they undertake most of the childcare responsibilities within a family. It has been found that this may constitute indirect sex discrimination.

It is not possible, however, to claim indirect discrimination on the ground of family responsibilities.<sup>35</sup> Thus a father or partner with family responsibilities cannot argue that his employer discriminates against him in this role because the employer has imposed a condition of (for example) inflexible or full-time hours or particular shift patterns which disadvantages (or is likely to disadvantage) persons who have family responsibilities.

### (iii) Strengthening the Sex Discrimination Act 1984 (Cth)

#### Implementing outstanding recommendations from the 2008 Senate Inquiry

The SDA has been the subject of a number of inquiries and has been amended on several occasions since it was introduced in 1984.<sup>36</sup> The most significant review was the 2008 Senate Inquiry. The *Sex and Age Discrimination Legislation Amendment Act 2011* implemented some of the recommendations from the 2008 Senate Inquiry.

The National Review heard from stakeholders that many of the unimplemented recommendations from the 2008 Senate Inquiry remain current issues for addressing these forms of discrimination.<sup>37</sup> One example is the recommendation that “family responsibilities” be expanded to include indirect discrimination.<sup>38</sup>

Unlike the protection afforded to every other protected attribute, the SDA does not prohibit *indirect* discrimination on the ground of family responsibilities. While both men and women are able to make complaints of direct discrimination on the ground of family responsibilities; only women will be able to bring complaints of *indirect* discrimination related to family responsibilities, by making a complaint of indirect discrimination on the ground of sex under s 5(2) of the SDA.<sup>39</sup>

Enabling women but not men to make complaints of indirect discrimination on the ground of family responsibilities may actually serve to entrench traditional domestic arrangements as the responsibility of women and discourage a more equal sharing of caring and domestic work. This in turn may limit women’s workforce participation. Equal use of family friendly work arrangements by men and women is important in promoting the SDA’s object of gender equality.

For this reason the National Review recommends amending the SDA to ensure that discrimination on the ground of ‘family responsibilities’ includes ‘indirect discrimination’.

Implementation of several other outstanding recommendations from the 2008 Senate Inquiry would assist in addressing pregnancy/return to work discrimination including those relating to costs, comparator and the role of the Commission.

Further analysis and information on the relevance to the focus of the National Review of each of these outstanding recommendations from the 2008 Senate Inquiry is provided in **Appendix G**.



### **Positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family responsibilities**

In an effort to work towards substantive equality, the National Review received submissions proposing that the SDA be amended to include a positive obligation on employers to take all reasonable and appropriate measures, including special measures, to provide a workplace free of pregnancy/return to work discrimination.

The National Review received several submissions to include within the SDA an express duty on employers to reasonably accommodate or make reasonable adjustments for persons (including employees and prospective employees) who are pregnant or who have family and caring responsibilities, including requests for flexible working arrangements to accommodate family or carer responsibilities.

Whilst in practice, the existing indirect sex discrimination provision under the SDA already requires that policies and practices do not unreasonably disadvantage people with a particular attribute, it would be clearer to have an express provision to this effect. This provision would require reasonable accommodation, except where those adjustments would cause unreasonable hardship to the employer. This would also align the SDA with similar obligations under the *Disability Discrimination Act 1992* (Cth) relating to reasonable accommodation of persons with a disability.<sup>40</sup>

The National Review recommends including under the SDA a positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family/carer responsibilities.

### **Prohibiting employers from collecting information not related to the job and/or using information collected to discriminate against an employee**

The SDA prohibits collection of information relating to pregnancy, potential pregnancy, or marital or relationship status, if it is being collected for a discriminatory purpose (ie the information will be used to treat that person less favourably than someone without the protected attribute). However, the National Review received submissions noting that some employers do collect such information, on the basis that it will not be used for a discriminatory purpose and it is difficult to prove otherwise. The National Review found that consideration could be given to producing guidance materials to assist organisations to minimise the unnecessary collection or recording of information in recruitment and employment processes, relating to pregnancy (including miscarriage, stillbirths and abortions), potential pregnancy, and marital or relationship status.

### **(b) The Fair Work Act 2009 (Cth)**

The FWA protects employees from discrimination by prohibiting adverse action related to pregnancy and parental responsibilities through a number of provisions, including a specific prohibition on discrimination on the basis of sex, family or carers' responsibilities and pregnancy.<sup>41</sup>

The FWA also provides certain specific rights for pregnant employees and new parents which are contained in the National Employment Standards (NES). The NES are statutory minimum employment rights for employees. Some of the NES provisions, discussed below, provide a different (and complementary) way of protecting employees' core work rights during pregnancy, parental leave and/or on return to work.

For example, there is provision for unpaid parental leave and a return to work guarantee. Employers cannot contravene the NES provisions and to do so is a contravention of the FWA,<sup>42</sup> regardless of whether the contravention is *because of* a discriminatory reason which is prohibited, such as pregnancy or family responsibilities.

Employer conduct can result in findings of both unlawful adverse action and contraventions of the NES.<sup>43</sup>

The general protection provision relating to adverse action under the FWA and the specific rights under the NES are outlined below, together with a summary of other relevant workplace rights that are also protected under the FWA.

#### **(i) Unlawful adverse action**

The FWA prohibits employers from taking *adverse action*<sup>44</sup> against an employee or prospective employee,<sup>45</sup> 'because of' their sex, family or carers' responsibilities and pregnancy.<sup>46</sup> If an action is not unlawful under any anti-discrimination law in force in the place where the action is taken, proceedings cannot be brought under the FWA adverse action provision.<sup>47</sup>

Unlawful adverse action includes workplace situations where a person has: been refused employment; been dismissed; been injured in their employment; or had their position as an employee altered to their prejudice. It also includes situations where the employer has discriminated between the employee and other employees; or where the employer has threatened to do any of these things.<sup>48</sup>

The Fair Work Ombudsman has stated that behaviour which may amount to unlawful adverse action includes doing, threatening or organising any of the following:

- not giving an employee legal entitlements such as pay or leave
- changing an employee's job to their disadvantage

- discriminating between one employee and other employees (because of their sex, pregnancy, family or carer's responsibilities etc)
- not hiring someone
- offering a potential employee different (and unfair) terms and conditions for the job, compared to other employees.<sup>49</sup>

Under the FWA, no express distinction is made between direct and indirect discrimination,<sup>50</sup> ie less favourable treatment generally does not need to be demonstrated.<sup>51</sup>

The reason for an action may be unlawful even if the prohibited reason is only one of several reasons for the action.<sup>52</sup> The burden of proof is different to that under the SDA. If an applicant proves that the employer took adverse action against them (such as by dismissing them) and alleges that this was because of a prohibited attribute such as pregnancy,<sup>53</sup> then (provided that they can show they have the attribute) it is assumed that the alleged reason is the reason. It is then for the employer to prove that their reasons for acting did not include a prohibited attribute.<sup>54</sup>

(ii) *National Employment Standards*<sup>55</sup>

The NES apply to employees<sup>56</sup> but the coverage is more restricted than for the adverse action provisions under the FWA and the anti-discrimination protections under the SDA. For example, for certain entitlements, length of service eligibility requirements exist for permanent employees, meaning that casuals have fewer rights.<sup>57</sup> As noted above, the NES provisions provide a different (and complementary) way of protecting employees' core work rights during pregnancy, parental leave and/or on return to work. Employer conduct can result in findings of both discrimination and contraventions of the NES.<sup>58</sup> Under the NES the following rights exist:

**12 months unpaid parental leave** is available to an employee with 12 months continuous service with their employer.<sup>59</sup> This includes casuals with a reasonable expectation of continuing employment on a regular and systematic basis. Leave must be associated with the birth or adoption of a child under 16 years of age. Written notice of intention to take leave and its dates must usually be given at least 10 weeks in advance and confirmed (or altered) four weeks in advance.<sup>60</sup> If it is not practicable to provide 10 weeks written notice of intention to take leave, or to provide four weeks' notice confirming (or altering) the leave, then written notice must be provided as soon as is practicable (which may be a time after the leave has started).<sup>61</sup>

Where both parents in a relationship are employees,<sup>62</sup> including same-sex partners, they are entitled to up to 24 months between them, usually in one unbroken period.<sup>63</sup> Up to eight weeks may be taken by parents concurrently.<sup>64</sup> A right to request<sup>65</sup> up to a further 12 months exists for each parent but any leave taken by the other is deducted from this so that only a total of two years is available for a couple between them.<sup>66</sup>

Up to two days unpaid pre-adoption leave is also available.<sup>67</sup>

**Unpaid special maternity leave** is available to an eligible employee who cannot work because of pregnancy-related illness or if the employee has been pregnant and the pregnancy ends within 28 weeks of the expected date of birth of the child, otherwise than by the birth of a living child.<sup>68</sup> Any leave taken under this provision does not reduce the entitlement of an employee to unpaid parental leave.

**Keeping in touch provisions** ensure that during unpaid parental leave, an employee may agree with their employer to work for up to 10 days to keep in touch with their job and workplace. They are entitled to be paid for this.<sup>69</sup> Provided the provisions of the FWA are complied with, someone working in this way during their unpaid parental leave will not break the requirement that unpaid parental leave is to be taken as one continuous period. If an employee extends their period of unpaid parental leave beyond 12 months, an additional 10 days can be taken.<sup>70</sup>

**Transfer to a safe job or 'no safe job' leave** is available where a pregnant employee is able to work but cannot do so in her job for reasons associated with the pregnancy or hazards related to her position.<sup>71</sup> Appropriate evidence must be provided. The safe job must be for the same hours (unless otherwise agreed), conditions and full pay as in the original job. If no such job is available, paid (at base pay) 'no safe job leave' is available for those eligible for unpaid parental leave.<sup>72</sup> 'No safe job leave' is available unpaid for those without a right to unpaid parental leave.<sup>73</sup>

**Consultation rights while on unpaid parental leave.** Where an employer of an employee on unpaid parental leave makes a decision that will significantly affect the status, pay or location of the employee's pre-parental leave position, the employer must take all reasonable steps to give the employee information about, and an opportunity to discuss, the effect of the decision on the position.<sup>74</sup>

**Return to work guarantee** exists at the end of unpaid parental leave<sup>75</sup> so that an employee may return to their pre-parental leave position (that is the job they held before moving to a safe job, taking 'no safe job leave' or reducing their working time due to pregnancy). However, if the job no longer exists, the right is to an available position for which the employee is qualified and suited, nearest in status and pay to the pre-parental leave position.

**A right to request flexible working arrangements** exists for an employee (including a long term casual employee employed on a regular and systematic basis) with 12 months continuous service with their employer<sup>76</sup> who is a parent, or has responsibility for the care of a child of school age or younger, to assist the employee to care for a child.<sup>77</sup> The request must be in writing and set out the details of the change sought and the reasons for the change. The employer must give the employee a written response within 21 days stating whether the employer grants or refuses the request. A request may be refused only on 'reasonable business grounds' and, if refused, details of the reason for refusal must be provided in writing.

(iii) *Workplace rights*<sup>78</sup>

Employees are also protected from adverse action in relation to a 'workplace right', or where they have exercised a 'workplace right' or plan to do so.<sup>79</sup> Workplace rights include, for example, the express rights which pregnant employees and parents have under the NES.<sup>80</sup> Cases under the FWA alleging pregnancy and family responsibilities discrimination may also allege breaches of related workplace rights.<sup>81</sup>

(iv) *Strengthening the Fair Work Act 2009 (Cth)*

Since the FWA has been in force, it has been reviewed (in 2011-12)<sup>82</sup> and undergone several amendments to enhance its effectiveness and strengthen its protections.<sup>83</sup>

In 2013, *Fair Work Amendment Act 2013* (Cth):

- extended the right to request to care for a child who is school age or younger and to other employees<sup>84</sup>
- set out a non-exhaustive list of what may constitute reasonable business grounds and that such grounds will be determined having regard to the particular circumstances of each workplace and the nature of the request made
- expanded the right for pregnant women to transfer to a safe job, to be available to women with less than 12 months consecutive employment
- enabled both parents to take up to 8 weeks of concurrent unpaid parental leave, and ensured that any special maternity leave taken will not reduce an employee's entitlement to unpaid parental leave
- required employers to consult with employees about the impact of changes to regular rosters or hours of work, particularly in relation to family and caring responsibilities
- amended the modern awards objective to require that the Fair Work Commission take into account the need to provide additional remuneration for employees working overtime; unsocial, irregular or unpredictable hours; working on weekends or public holidays; or working shifts.<sup>85</sup>

A bill to amend the FWA is also currently before parliament<sup>86</sup> and a Productivity Commission review of the FWA is proposed to take place in the near future.<sup>87</sup>

There were a range of views on the adequacy of the existing provisions in the FWA to protect employees from pregnancy/return to work discrimination. Some submissions suggested amending existing rights under the FWA and others considered the inclusion of new rights under the FWA to clarify employer obligations and strengthen protections for employees was necessary.

### **Amendments to existing entitlements and protections**

Several key amendments to existing entitlements and protections may assist in addressing the forms of discrimination examined by the National Review.

» **Right to request flexible working arrangements**

While the research shows there is a relatively low awareness of the right to request a flexible working arrangement amongst employees,<sup>88</sup> the results of the National Telephone Survey showed that 89% of requests for adjustments to their working arrangements (by mothers on their return to work after parental leave) were granted. However, 18% of mothers who returned to work following the birth of their child reported experiencing discrimination related to requests for flexible work.

Despite some challenges faced by businesses in accommodating flexibility in the workplace (see Chapter 4), business and industry groups generally supported the 'right to request' provisions in their current form, but did not support amendments to include provisions for enforcement.<sup>89</sup>

On the other hand, the National Review received many submissions from individuals who had experienced discrimination, as well as submissions from unions and community organisations, that the right to request provisions lacked ‘teeth’ and that employers were using the ‘reasonable business grounds’ provision<sup>90</sup> as a basis for refusing requests without a genuine attempt to accommodate employees’ requests. Given there is currently no right to appeal, this leaves employees with no recourse. The National Review received submissions with the following suggestions to strengthen the ‘right to request flexible working arrangements’:

- remove the qualification requirements relating to length of employment in s65(2)
- include a positive obligation on employers to reasonably accommodate an employee’s request for flexible work arrangements (including part-time work)
- strengthen the enforcement mechanisms by: providing for an appeal process against a refusal to make reasonable adjustments or a failure to respond with reasons within 21 days; or removing the exemption of the ‘right to request’ flexible work arrangements from the civil remedy provisions under the FWA (s44)
- include a ‘right to work part-time or flexibly’ until a child is two years of age.

The Commission has previously recommended amendments to the provisions on the right to request flexible working arrangements.<sup>91</sup>

The National Review recommends amending the FWA to strengthen the implementation of the right to request a flexible working arrangement by:

- removing the qualification requirements in section 65(2)(a) of the FWA (ie the requirements for 12 months continuous service)
- introducing a positive duty on employers to reasonably accommodate a request for flexible working arrangements
- establishing a procedural appeals process through the Fair Work Commission for decisions related to the right to request flexible working arrangements to ensure processes set out in the FWA have been complied with.

#### » Right to request additional unpaid parental leave

The National Review received similar submissions to those made in relation to the ‘right to request’ flexible work, (eg in relation to qualification requirements and enforcement) around the right to request additional unpaid parental leave.

The proposed amendments to the FWA currently before parliament propose an amendment to subsection 76(5) which would allow an employee to request an extension of unpaid parental leave and a requirement that an employer must not refuse the request unless the employer has given the employee a reasonable opportunity to discuss the request.<sup>92</sup>

### **Inclusion of new entitlements and protections**

The inclusion of new entitlements and protections may also be necessary to address these forms of discrimination in the workplace.

#### » Dismissal, non-renewal of contracts and redundancy during pregnancy, parental leave and on return to work

The National Review heard that some employers may use redundancies and restructures as a pretext for dismissing employees who are pregnant, on parental leave or have family and caring responsibilities.

Even in situations of genuine redundancy, employees on parental leave or who have returned from parental leave may face an increased likelihood of being selected for redundancy. One reason for this can be that their performance review (on which a decision may be based) may be out of date (compared to other employees); or they may be just ‘out-of-sight-out-of-mind’.

Whilst most employers will make every effort to retrain and redeploy returning employees in these circumstances, and comply with the statutory requirement to offer suitable alternative employment, they may inadvertently discriminate against pregnant women and women and men on parental leave.

In some countries in Europe, specific protections from redundancy and dismissal have been provided for pregnant workers, workers on parental leave and on return to work after parental leave. For example, Switzerland imposes a restriction on termination of a contract during an employee’s pregnancy and for a period of 16 weeks after the birth.<sup>93</sup> This restriction applies regardless of the reason for termination and forms an absolute ban. This period of protection begins from the first day of the pregnancy, regardless of knowledge of the pregnancy by the employee or the employer.<sup>94</sup> In Germany, there is also a prohibition against dismissal of an employee on parental leave and for a period of four months following the birth.<sup>95</sup> Termination of employment by an employer is invalid if the employer has knowledge of the pregnancy at the time of dismissal, or is informed of the pregnancy within two weeks of announcing the dismissal. Dismissal during this period is only lawful as a special exception if the employer is undergoing unusually severe difficulties.

*ILO Convention No. 183* sets out standards, which require members to make it 'unlawful for an employer to terminate the employment of a woman during her pregnancy, absence on leave or during a period following her return to work except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing'.<sup>96</sup>

The National Review heard of leading strategies implemented by organisations to overcome these concerns including: conducting audits to assess if pregnant employees, employees on parental leave or employees with family or caring responsibilities were over-represented in redundancies; and introducing a 'special measure' such as an automatic review by senior leadership of any decision to make someone redundant who is pregnant, on parental leave or has family and caring responsibilities (See Chapter 6).

Serious consideration should be given to developing mechanisms for protection from redundancy, dismissal and non-renewal of contracts for employees who are pregnant, on parental leave or have family and caring responsibilities.





» Use of paid personal leave to attend reproductive health appointments

There is confusion among employers and employees about the use of paid personal leave entitlements (or unpaid leave) to attend pregnancy related appointments such as prenatal appointments. There is also a need for fathers and partners to access paid personal leave entitlements or unpaid leave to attend prenatal appointments (including IVF) and to take time off following miscarriage.

When I fell pregnant I was really sick – throwing up all the time. So I called them to say I was unable to come to work. But the manager would say she really wanted me to come because she was short staffed. So I would go to work no matter how sick I was because I wanted to keep the job. One day she saw me at the checkout and she said ‘oh you look really wasted’. Then she made an appointment to see me about leave arrangements. She said that I cannot go on sick leave but I could take my annual leave days for my morning sickness.<sup>97</sup>

I am about to start IVF next year and have faced nothing but trouble about appointments and time off.<sup>98</sup>

Other jurisdictions, such as the UK, provide for ‘reasonable paid time off’ to attend antenatal care.<sup>99</sup> The National Review received submissions relating to time off to attend prenatal care and reproductive health appointments (such as those associated with IVF). Submissions included suggestions that: the FWA be amended to include additional paid leave to attend such appointments; and that s 97 of the FWA on personal leave be amended to state that employees can use this leave to attend reproductive health appointments such as prenatal appointments as well as to take time off following miscarriage.

The National Review recommends allowing employees to use existing personal/carer leave entitlements under s97 of the FWA to attend prenatal appointments (including IVF).

» Breast-feeding/lactation breaks and provision of adequate facilities

Lack of explicit provision under the FWA for breastfeeding or expressing breaks creates uncertainty for both employers and employees and may give rise to discrimination against women who are breastfeeding or expressing.

The lack of provision for breaks and adequate facilities can cause enormous stress for employees and can result in mothers ceasing to breastfeed or having to leave the workplace.

The National Review received a range of submissions suggesting: dedicated paid leave for breastfeeding or expressing be provided under the FWA; or explicitly allow for personal leave or unpaid leave to be used for the purposes of breastfeeding or expressing. Submissions also noted the need for adequate facilities to be provided in workplaces for mothers to breastfeed or express milk.

The National Review recommends that the FWA be clarified to allow employee breaks from work for the purposes of breastfeeding or expressing.

» Unpaid parental leave as active service

The National Review received several submissions that noted the disadvantage women faced as a result of unpaid parental leave not being recognised as active service, for the purposes of accruing entitlements related to annual salary increments, superannuation, personal/carers leave and long service leave.

Some businesses have implemented leading strategies to ensure women undertaking parental leave are not further disadvantaged in this way by recognising parental leave as active service for the purposes of accruing salary entitlements and superannuation (see Chapter 6).

The National Review found that serious consideration should be given to recognising unpaid parental leave (and any paid parental leave) as active service, for the purposes of accruing entitlements related to annual salary increments, superannuation, personal/carers leave and long service leave.

### (c) Work Health and Safety laws<sup>100</sup>

Laws to protect workers’ health and safety exist in all Australian jurisdictions. While WHS laws do not specifically cover workplace discrimination,<sup>101</sup> they impose important obligations on employers to ensure that the workplace is safe for all employees, including pregnant or potentially pregnant employees and women returning to work after childbirth.

WHS laws, based on a model law developed by Safe Work Australia, have been enacted by the Commonwealth and all states and territories except Victoria and Western Australia. However, both these states have similar legislation to the model law. Model Work Health and Safety Regulations and Codes of Practice (for example in relation to manual handling and hazardous chemicals) expand on the statutory obligations and provide practical guidance for employers and workers.

Broadly, workplace health and safety provisions throughout Australia require organisations/employers to:

- do what is reasonably practicable to ensure their workers’ health and safety while at work
- consult so far as is reasonably practicable with workers who are or are likely to be directly affected by a matter relating to health and safety while at work.



These requirements apply in relation to all workers – including pregnant or potentially pregnant women in the workplace or women returning to the workplace after having children.

Given the adverse impact that discrimination has on the mental health of most workers who experience it, workplaces that conduct or permit pregnancy/return to work discrimination are also potentially in breach of their work health and safety obligations pertaining to eliminating or minimising safety risks of psychological injury.

The employer<sup>102</sup> must provide, so far as is reasonably practicable, a work environment without risks to health and safety, which includes:

- safe systems of work
- safe use handling and storage of plant and structures and substances
- adequate and accessible facilities and amenities
- information training and supervision necessary to protect workers' health and safety
- monitoring workers' health and workplace conditions to prevent illness or injury occurring through the conduct of work.<sup>103</sup>

To assist employers in assessing what it is reasonably practicable for them to do regarding their workers' health and safety, the WHS laws states that this means what is reasonably able to be done under the circumstances.<sup>104</sup> This involves taking into account and weighing up all relevant matters including:

- the likelihood of a particular risk<sup>105</sup> occurring – this should include any specific risks to women of reproductive capacity and new or expectant mothers
- the degree of harm which might result from a particular risk
- what the employer<sup>106</sup> knows, or reasonably ought to know, about the risk and ways of eliminating or minimising it
- the availability and suitability of ways to eliminate or minimise the risk
- after assessing the above, the costs associated with eliminating or minimising the risk, including whether that is grossly disproportionate to the risk.<sup>107</sup>

Workers are entitled to stop unsafe work in certain circumstances and are protected against discrimination for trying to exercise their work health and safety rights.<sup>108</sup>

These obligations apply to and protect all workers, including pregnant or potentially pregnant women and women returning to work after having children (including those who are breastfeeding). However, no explicit reference to these categories of workers is made in the WHS laws, except in relation to workers engaged in certain lead-risk processes. The obligations also protect workers against conduct that is psychologically harmful. Such conduct includes bullying and harassment, and could arguably include discrimination.

The model Work Health and Safety Regulations do provide explicit protections for workers engaged in certain lead-risk processes who are pregnant or may become pregnant.<sup>109</sup> These have been adopted in all states and territories, except in Victoria and Western Australia, which have comparable legislation.

Safe Work Australia has also devised model Codes of Practice. Model Codes of Practice in relation to manual handling and hazardous chemicals include references to pregnant workers, however no model Codes of Practice specifically address pregnancy risks. WorkCover NSW does provide guidance on the kinds of measures that need to be put in to place to ensure the health and safety of pregnant or potentially pregnant women in the workplace, however it was issued in 2002 and has not been updated since.<sup>110</sup> WorkSafe Western Australia and the Northern Territory WorkSafe provide guidance on 'manual handling and pregnancy'.<sup>111</sup>

#### (i) *Strengthening Work Health and Safety laws*

There can be a lack of understanding among employers about how to accommodate the work health and safety needs of women during pregnancy and when returning to work after childbirth (including breastfeeding).

The National Review heard from many individuals who were denied toilet breaks, breaks to eat or drink, or use of a stool during their pregnancy. The National Review heard from some women that upon return to work they were denied breaks to breastfeed or express milk. This has a significant impact on the health and safety of employees and their capacity to perform their job.

While pregnant I was lectured about pregnancy not being a 'valid reason' for not being able to perform some duties such as lifting or mopping flights of stairs.<sup>112</sup>

While I was pregnant and working as a full time English teacher, there were no allowances made for me being pregnant in terms of workload, taking time off for obstetric appointments or even going to the toilet more frequently.<sup>113</sup>

Currently, businesses must assess unassisted,<sup>114</sup> reasonably practicable measures to safely accommodate pregnant and potentially pregnant employees and those returning to work after childbirth (including breastfeeding mothers). Workers can also lack clarity as to their rights under WHS laws, such as their rights to be consulted, the adjustments they might reasonably expect and when they are entitled to stop work. Additionally, there is the complexity of understanding how these laws interact with the anti-discrimination legislation and employee rights under the FWA, particularly in relation to safe work and no safe job leave.<sup>115</sup>

While some stakeholders told the National Review that the existing work health and safety framework was sufficient, many others identified gaps in the WHS laws.

Some of the submissions underscored the importance of including in relevant Work Health and Safety Regulations direct reference to the reproductive health of workers, pregnant workers, workers who have recently given birth, who are breast feeding and/or returned to work, including provisions relating to identification of hazards, management of risk and control measures and existing Codes of Practice.<sup>116</sup>

The absence of specific reference to pregnant women and women returning to work from childbirth in WHS laws and codes of practice is a gap and one which contributes to the lack of effective implementation of the existing laws to protect the health and safety of these specific groups of workers.

Many of the recommendations relating to the work health and safety framework made by the Commission in *Pregnant and Productive: It's a right not a privilege to work while pregnant*, have not been implemented. There remains a pressing need for clear and practical guidance for employers on how to meet their obligations to protect the health and safety of pregnant employees, post-parental leave employees and breastfeeding mothers. Especially useful would be centralised, clear guidance that covers all overlapping workplace obligations applying to pregnant women in the workplace or parents returning to work after parental leave.

The National Review heard that WHS laws may on occasion be misused by some employers and may result in discrimination against employees. For example, employers may not understand the health and safety needs of pregnant women, or how to assess the health and safety of a workplace for a pregnant employee. Consequently employers may discriminate against pregnant employees by forcing them to change roles unnecessarily, or by forcing them to commence parental leave early. Some stakeholders cautioned that strengthening of the WHS laws, such as through the introduction of any 'risk assessment', needs to address the potential for misuse.

Discrimination can have a negative impact on the mental and physical health of employees and therefore undermine the work, health and safety of employees in the workplace. The results of the National Telephone Survey showed that of the:

- mothers who experienced discrimination, 72% reported that it had an impact on their mental health and 22% reported it had an impact on their physical health
- fathers and partners who experienced discrimination, 61% reported it had an impact on mental health and 14% reported it had an impact on their physical health.

The mental health impacts of discrimination for mothers may in turn have a physical impact such as on their capacity to breastfeed or express milk, and, in some cases miscarriage.

Lin,<sup>117</sup> who worked for a supermarket chain, began to experience stomach pain, so she told her line manager that she could not work her usual shift.

He suggested she speak to the Store Manager. The Store Manager shouted: 'you are pregnant, not sick.' The employee explained that she didn't want to lose her baby after it had taken years to become pregnant.

Lin told the Store Manager that she would like to take leave, asking for unpaid leave so the store would not be affected. The Store Manager said that Lin had to give a week's notice so the store could arrange a replacement.

The Store Manager did not offer to move her to another role, and being newly arrived in Australia the employee wanted to keep her job, so she continued working 6.00 am – 3.00 pm shifts, lifting heavy sacks.

One evening that week, Lin started bleeding heavily, and went to hospital where the doctor told her that she had miscarried. Lin stayed in hospital for two nights and needed blood transfusions. She then took leave and went back to the same job some weeks later.<sup>118</sup>

The National Review also heard of employers not adhering to the medical certificates provided to them by employees, including in relation to safe work during pregnancy. Suggestions on how to address these concerns included:

- requiring an employer to adhere to medical certificates from medical practitioners
- creating an offence, with penalty provisions, where an employer has ignored a medical certificate
- requiring employers to respect the choice of patients to be treated by their own doctor
- requiring employers to respect the rights of patients to doctor/patient confidentiality by respecting private medical appointments without the presence of third parties
- prohibiting employers from approaching a patient's doctor seeking clarification of advice or suggesting alternative treatment, without the patient's full and informed consent (in breach of a patient's right to doctor/patient confidentiality).

The National Review recommends development of guidance material for employers in relation to their legal obligations and in relation to the work health and safety needs covering the requirements of pregnant employees, employees undergoing IVF and employees returning to work after miscarriage or childbirth (including employees who are breastfeeding) is critical. The National Review recommends that this guidance material is developed with a view to introducing a 'code of practice' to have effect under WHS laws in every jurisdiction.

Safe Work Australia should play an important role in leading these reforms to strengthen the laws and develop codes of practice and practical guidance under the WHS laws and regulations, to ensure the health and safety of pregnant or potentially pregnant women in the workplace and women returning after having children.

State and territory regulators should also develop and implement a comprehensive 'compliance strategy' which includes education and guidance components (consistent across the state and territories), monitoring and enforcing activities and the sharing of information between regulators.

### 5.3 Other issues related to the adequacy of the legal framework

#### (a) Guidance and information on the interaction of laws

The laws described above interact to create a framework of protection for employees against pregnancy/return to work discrimination. Employees and employers alike consider that the interaction of legal jurisdictions creates complexity and may cause confusion. Small businesses in particular often lack capacity to understand the legal requirements. This lack of understanding may contribute to discrimination in the workplace, as well as inhibit employees' capacity to seek redress when occurs.

The National Review received submissions from employers and employees on the need for clear, comprehensive and consistent information that will assist them to increase and enhance their understanding of their obligations and their rights and how they should be applied in the workplace. This information needs to cover all relevant jurisdictions and explain the interaction of obligations under different laws.

The National Review also received submissions that emphasised the need for greater coordination across relevant government and statutory agencies in providing clear and comprehensive information and guidance to employers and employees.

The agencies suggested include: the Department of Social Services (DSS), Australian Human Rights Commission, the Fair Work Ombudsman (FWO), the Fair Work Commission (FWC), Safe Work Australia and state and territory anti-discrimination and equal opportunity authorities.

The need for information to be translated into different languages was also identified.

For the first time in Australia, the national Paid Parental Leave (PPL) scheme has created a mechanism through which information can be automatically disseminated to working mothers, fathers and employers. The PPL is likely to be widely accessed.<sup>119</sup> Given, parents can apply up to three months before they are due to have the baby, the application stage provides a useful point through which to target dissemination of materials to both employees and employers.

The PPL, along with other existing mechanisms through peak employer bodies, unions, anti-discrimination and equal opportunity authorities and community legal centres, can be utilised to ensure widespread dissemination of such materials.

Organisations should also ensure that the information and guidance material is passed on to all relevant personnel, including line managers. Beyond communicating the material, organisations should ensure that it is actually understood by all employees. This will require a range of strategies, including comprehensive communication strategies and regular analysis to ensure employees understand and apply the policies correctly.

The National Review recommends government:

- coordinate across all relevant government and statutory agencies the production and dissemination of clear, comprehensive and consistent information about employer obligations, employee rights and leading practices and strategies
- collaborate with peak bodies from the business community, unions and community organisations, to develop these materials and assist with their dissemination
- automate the delivery of guidance material to employees and employers through the national PPL scheme and other existing mechanisms
- allocate funding to conduct a national education campaign on employer obligations and employee rights and highlight the benefits to the workplace and the Australian economy.

The National Review recommends employers ensure the effective delivery and communication of guidance material and leading practices and strategies throughout the organisation, particularly to line managers who have responsibility for managing pregnant employees, employees on parental leave and those returning from parental leave.

## (b) Access to justice

Whilst the National Telephone Survey identified a high prevalence of pregnancy/return to work discrimination, it also confirmed that only a small proportion of individuals make a formal complaint either within their organisation or to a government agency.

While 49% of women reported experiencing discrimination on at least one occasion during pregnancy, parental leave or on return to work, of this group, only 6% made a formal complaint within their organisation and only 4% made a complaint to a government agency.

The low levels of reporting identified in the National Prevalence Survey are confirmed by the data on the number of complaints received by the Commission, FWO and State and Territory anti-discrimination authorities as set out in **Appendix E**.

The National Review heard that there are several compounding reasons for the small number of complaints relative to the prevalence of discrimination revealed by the National Prevalence Survey, including, lack of resources and capacity to take action for certain complaints, the uncertainty surrounding remedies, the risk of high costs in pursuing litigation, lack of awareness of what constitutes discrimination, and fear of negative consequences in the workplace as a result of taking action against discrimination.

### (i) Lack of resources and capacity

Pregnancy/return to work discrimination takes place at a point in parents' lives when they are dealing with the demands of the pregnancy or a new baby and do not have the time, resources or capacity to pursue a discrimination matter.

For fear that the stress of taking further action could have a detrimental effect on my pregnancy I chose to take no action.<sup>120</sup>

I did not take any action against any of the parties... – I was so desperate to find a job. That was my focus.<sup>121</sup>

It is a very stressful time in someone's life which discourages someone pursuing it...this is the reason [there is not much case law], not because [the discrimination] doesn't happen.<sup>122</sup>

Community organisations including unions and legal services also confirmed this:

Many clients said that it was too difficult to bring a claim against their employer – the...process was too complex, time consuming and stressful.<sup>123</sup>

In our experience, women going through this type of discrimination often do not have the time, confidence, psychological strength, [economic] security and resources to pursue complaints.<sup>124</sup>

The National Review heard that the 21 day time period for pursuing certain complaints under the FWA can be too short for pregnant employees and working parents to make a complaint.

The National Review found that to assist women who are experiencing discrimination to make a complaint to the FWC, the FWC General Protections Bench Book could clarify under s366(2): the FWC be allowed to provide a further period for applications (beyond 21 days), where the reason for the delay includes IVF treatment, pregnancy, miscarriage, child birth and early child rearing.

### (ii) Costs

While the vast majority of complaints under the SDA are satisfactorily conciliated in a cost free process, the National Review heard that the high costs of pursuing legal action through the courts is a significant barrier to women pursuing formal action if a matter cannot be resolved at conciliation.

The most significant barrier for employees experiencing discrimination is the risk of an adverse costs order. By pursuing a discrimination complaint in the federal court system...pregnant women are at a stage of their lives where they already feel economically vulnerable...The stress alone of the potential of adverse costs is enough to dissuade women to pursue this option.<sup>125</sup>

Under the FWA, each side generally bears their own costs. However, even bearing their own costs may still be a deterrent to an applicant even with a good case given that these costs may amount to a significant proportion of any money awarded by the Court.<sup>126</sup>

[Taking a case to the Federal Court] is hugely expensive and prohibitive for most – my lawyer advises this will cost [me] in excess of \$100,000 in legal fees, and as this is a no cost jurisdiction I can't claim legal fees from my employer even if I were to win the case. In reality any money awarded by the Court goes directly to the lawyers, and I am left in a situation where I have invested a huge amount of time and effort, and while getting a moral victory I am still in dire straits financially with no job, no maternity benefits and with an extra mouth to feed.<sup>127</sup>

The Senate Standing Committee on Legal and Constitutional Affairs considered the issue of costs in its *Inquiry into the effectiveness of the Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality in 2008* (2008 Senate Inquiry).<sup>128</sup> The issue of costs was also considered in the Consolidation of Federal Anti-Discrimination Laws.<sup>129</sup>

To address the issue of costs the 2008 Senate Inquiry also recommended: increasing funding to working women's centres, community legal centres, specialist low cost legal services and Legal Aid to ensure they have the resources to provide advice for sex discrimination and sexual harassment matters.<sup>130</sup>

The National Review finds that to increase access to justice for employees who have experienced pregnancy/return to work discrimination, serious consideration should be given to:

- amending the SDA to make 'each party bears their own costs' and grant the courts powers to award costs 'in the interests of justice'
- increasing funding to working women's centres, community legal centres, specialist low cost legal services and Legal Aid to provide free legal advice and representation.

### (iii) Remedies

Compounding the concern related to costs, the National Review heard that uncertainty about the type and quantum of remedies awarded in discrimination matters may be a deterrent to women pursuing their matter.

The great majority of people with legitimate complaints under Australian anti-discrimination law do not report the conduct or make a complaint...It is our experience that clients are deterred by...the poor cost-benefit of litigation (even if the complaint is successful) due to the significant time, energy and cost involved in pursuing a complaint of discrimination (at a period in life when applicant is energy and time poor and has dependent children) and the fact that compensation payments are low.<sup>131</sup>

The payments awarded in this jurisdiction (SDA)...do not reflect the serious and extensive impact the discriminatory conduct has had on the complainant, her family and her career. The complainant is usually left without employment and financially disadvantaged.<sup>132</sup>

In conciliations under the SDA, the terms of settlement may be very broad.<sup>133</sup> If a matter before the Commission does not settle, and the complainant commenced Court proceedings, under the SDA the Court has powers to make a broad range of orders which it sees as appropriate.<sup>134</sup>

However, the remedies awarded by courts under the SDA are usually limited to financial remedies and while the amounts vary, they can be quite low. Total damages awards<sup>135</sup> in SDA cases have ranged between \$1,338 – \$44,701.90.<sup>136</sup> Given the risk of incurring costs in making a claim, the National Review heard that the low quantum of costs may be an added disincentive for the employee to pursue action.

In *Cincotta v Sunnyhaven Ltd*<sup>137</sup> over \$44,701.90 was awarded. This included damages for economic loss and pre judgement interest. Lost wages were calculated as if Ms Cincotta had been a permanent employee at the time of dismissal as her acceptance of casual status was partly due to the unlawful discrimination she suffered.<sup>138</sup>

Other remedies which have been ordered in SDA cases include apologies,<sup>139</sup> injunctions,<sup>140</sup> or awards of aggravated damages. In one discriminatory dismissal case an order for reinstatement was made together with a variation of the employee's lunch hour to facilitate her caring responsibilities.<sup>141</sup> The focus of remedies awarded by the courts is on providing redress to the employee applicant. Deterrence is relevant when the Court assesses penalties along with a range of other factors.<sup>142</sup>

Under the FWA, broad remedial powers exist where there have been contraventions of the adverse action provisions or contraventions of the NES (and workplace rights).<sup>143</sup> The Court 'may make any order the Court considers appropriate'.<sup>144</sup>

As with the SDA, remedies awarded under the FWA are usually limited to financial remedies. Penalties in the FWA cases examined in this report have ranged between \$4,950<sup>145</sup> – \$61,000.<sup>146</sup> The range of damages awarded (that is, not including penalties) has been between \$2207.42<sup>147</sup> and \$174,097.<sup>148</sup>

In the FWA case of *Ucchino v Acorp*,<sup>149</sup> economic loss (including interest) of nearly \$9,000 was awarded, the sum partly being due to unexplained reasons preventing the employee's return to work for the foreseeable future. The employee's embarrassment at questions asked by those in her 'close community' about why she was no longer employed was not found to amount to distress justifying an award for non-economic loss. The Court found her feelings were of a type which accompany most terminations.<sup>150</sup> The Court found that 'the contraventions in this case are no trivial or technical breach' and imposed a penalty of \$5500 paid to the employee.<sup>151</sup>

This contrasts with the enforceable undertakings which the FWO has entered into with employers who have admitted contraventions of the FWA.<sup>152</sup> Five of the FWO's ten enforcement activities in relation to pregnancy and family responsibilities discrimination resulted in enforceable undertakings. Apart from financial remedies for the individual applicant, these arrangements impact the employer's treatment of current and future employees and community awareness of such discrimination. Terms of the undertakings included:

- Ensuring workplace policies and processes are appropriate in relation to parental rights, informing staff of these rights and avoiding discrimination.
- Ongoing management training on discrimination and pregnancy and parental leave rights.
- Informing staff (for example through the employee newsletter or a workplace notice) about the breaches of workplace rights which the employer has admitted to and remedies.
- Ensuring publicity in print media about the breaches.
- Donations to not-for-profit legal advice organisations to assist with their educational/advice work on employees' parental rights and related issues.<sup>153</sup>

The first enforceable undertaking relating to pregnancy discrimination obtained by the FWO in 2011 was with Coles Supermarkets Australia. An employee who gave her employer a medical certificate relating to lifting restrictions while she was pregnant, was demoted from her manager role to the role and lower pay of a service assistant. This breached the FWA NES requirement that an alternative safe job should be at the same pay. Coles' commitments in the enforceable undertaking included:

- identifying and repaying other affected employees
- widely publicising these employee rights
- training line managers to educate them about employee rights<sup>154</sup>

The National Review finds that Courts could place a greater emphasis on deterrence of discrimination by imposing greater financial and other consequences on the employer for breaches.

(iv) *Lack of awareness of what constitutes discrimination*

The results of the National Telephone Survey highlighted the gap in individuals' awareness of the behaviours and actions that are likely to constitute discrimination. Of the 49% of women who reported experiencing discrimination in the workplace, more than half of them did not immediately recognise the behaviour or action they experienced as unfair treatment or disadvantage (because of their pregnancy, parental leave, family responsibilities or breastfeeding).<sup>155</sup>

The National Review also heard from individuals, who considered that in their workplace, attitudes and practices that could be discriminatory may be so widespread that they are considered 'normal'. Accordingly, individuals may not recognise them as potentially discriminatory or as something for which they could seek redress.

The culture in firms such as this has always been the same and is therefore just accepted.<sup>156</sup>

I was told that the firm had an unwritten rule – that when a woman had two children she didn't come back.<sup>157</sup>

Further information and guidance, as well as a broad national information campaign, is an important avenue for addressing the lack of awareness of employees and employers about their respective rights and obligations.

(v) *Fear of negative consequences as a result of taking action*

The National Review heard from many individuals that they did not complain about the discrimination they experienced, or take any form of action, because they feared negative consequences as a result of taking action. They feared these negative consequences could have an impact on their relationship with their employer/manager/colleagues, their job security, and their career (both within the organisation as well as more broadly within their industry or occupation).

I have considered making a complaint to AHRC regarding my treatment but that would be a career suicide and I will be branded a trouble maker.<sup>158</sup>

The reason no-one submits formal complaints is because [this city] is very small and most people remain in the same industry moving from one firm to the other. If you were to submit a complaint as serious as this [discrimination relating to pregnancy and return to work after parental leave] things would be made very difficult for you.<sup>159</sup>



I decided not to pursue any sort of claim because the niche in which I work has only a couple of work opportunities in the state, and I knew my life would be made very difficult.<sup>160</sup>

I decided not to pursue this as I was in fear of retribution and for fear of future bullying when I returned to work following my maternity leave.<sup>161</sup>

The unfortunate thing is that if you pursue your rights you will have a black mark against your name and it will make getting a job in the future very difficult as people talk.<sup>162</sup>

The National Review heard that this situation may be exacerbated for workers who are in temporary or insecure employment including casual and contract workers.

Much of the discrimination seems to be unreported and much of it is hard or impossible to prove. Casual workers have no recourse if the discrimination comes from their boss, even if they work for large organisations, because their only assurance of continuing employment is their good relationship with their boss. Many primary care givers of young children are attracted to part time and casual work.<sup>163</sup>

Although the SDA includes a provision prohibiting 'victimisation' for making a claim under the SDA, the National Review heard that the reality in workplaces is often that pursuing a formal complaint either within the organisation or with a government agency jeopardises good relationships within the organisation and may also jeopardise an employee's reputation within their profession.

The National Review finds that there needs to be increased awareness about the provisions under the SDA prohibiting 'victimisation', and the creation of safe reporting environments in workplaces.

### (c) Strengthening the Paid Parental Leave Act 2010 (Cth)

In 2010, the Australian Government enacted the *Paid Parental Leave Act 2010* (Cth), which established Australia's first national PPL scheme.

Key objectives of the scheme are to 'promote equality between men and women and balance between work and family' and to 'encourage women to continue to participate in the workforce'.<sup>164</sup> The Dad and Partner Pay scheme was also introduced in 2013, which aims to support fathers and other partners to take time off work to care for their new born children.

The National Review received many submissions from stakeholders related to aspects of the PPL scheme that may contribute to pregnancy discrimination in the workplace or compound the impact of such discrimination on women, including:

- Some women who experience discrimination and who are dismissed or have to leave their employment may not meet the work test requirements<sup>165</sup> for PPL. For example, women who have their employment terminated due to pregnancy discrimination (including women on fixed-term contracts whose contract is not renewed as a result of their pregnancy), or women who are unable to work because there are no 'safe' duties they can perform while pregnant.
- Women may be less inclined to take action against pregnancy discrimination if they are fearful that their employment may be terminated (or shifts reduced) as a result of taking action and thus prevent them from meeting the work test requirements for PPL.

The National Review considers that the current PPL scheme could be further improved by:

- Including superannuation contributions under the PPL scheme and the Dad and Partner Pay scheme.
- Ensuring the administration of the scheme supports the framing of PPL as a workplace entitlement not a welfare payment. This would be facilitated by retaining employer administration of the scheme.
- Increasing the duration of the paid leave available under the PPL scheme to 26 weeks. International evidence suggests that approximately six months paid leave per person is the period of leave that 'is advantageous, but not harmful, to women's labour-force attachment and longer-term employment trajectories'.<sup>166</sup> The Productivity Commission found: 'Overall, there is compelling evidence of child and maternal health and welfare benefits from a period of absence from work for the primary carer of around six months and a reasonable prospect that longer periods (of up to nine to 12 months). With the evidence pointing to a period of around six to nine months as being the optimal period of exclusive parental care'.<sup>167</sup>
- Increasing the period of leave available under the Dad and Partner Pay scheme.<sup>168</sup>
- Increasing the PPL pay rates with a view to moving towards providing full replacement wage payments.
- Increasing and improving the early childhood and care services, including out of school hours care, alongside the PPL scheme.

The current government has proposed further amendments to the PPL scheme.<sup>169</sup>

#### (d) Workplace gender equality reporting framework

The reporting framework supported by the Workplace Gender Equality Agency (WGEA) plays an important role in assisting organisations to achieve gender equality in their businesses.

In 2013, the objectives of the *Workplace Gender Equality Act 2012* (Cth) were reformed to promote, amongst employers, the elimination of discrimination on the basis of gender in relation to employment matters (including in relation to family and caring responsibilities).<sup>170</sup> The government is also currently conducting consultations on the WGEA reporting framework.

Within the existing gender equality indicators under the reporting framework, there is scope to collect and monitor data relating to:

- Number of dismissal and redundancies of employees while they are pregnant, on parental leave, or soon after return to work from parental leave.
- Return rate of employees from parental leave (for government or employer schemes).
- Retention rate of employees working flexibly (including part-time) on return to work from parental leave.
- Promotion rate for employees who are pregnant or working flexibly (including part-time) on return to work from parental leave.

This would assist organisations to identify gender gaps and then develop or adjust measures to support working parents. The data could also assist WGEA to usefully guide businesses in how to reduce pregnancy/return to work discrimination and promote gender equality.

#### (e) Incentivise employers

The National Review received several submissions promoting the use of incentives to encourage employers to recruit and retain pregnant employees and employees returning to work after parental leave, including accommodating flexible work.

It was proposed that employers be 'incentivised' by a direct payment or tax incentive that meet best-practice criteria. Such initiatives were highlighted as being particularly attractive for small and medium sized businesses.

Submissions were also made in relation to expanding non-monetary incentives, such as the WGEA 'Employer of Choice' designation.

#### (f) Early childhood education and care services

As outlined in Chapter 3, the lack of adequate and affordable early childhood education and care services is a key structural impediment to parents' transition back to the workplace following parental leave. Research has demonstrated that affordable early childhood education and care services would boost women's participation across all industries. As the price of such services increases, the number of hours that women are in paid employment decreases.<sup>171</sup>

The National Review considers the provision of accessible, affordable, flexible and quality early childhood education and care services as essential to facilitating women's workforce participation.<sup>172</sup>

The Productivity Commission is currently undertaking a review into childcare and early childhood learning and is due to report in October 2014.

#### (g) Ratification of conventions

Australia has ratified several of the international conventions that provide standards for the protection of employees from discrimination related to pregnancy, parental leave and return to work. However there are other conventions that Australia has not ratified including:

- *Convention 183 on Maternity Protection* (2000)
- *Convention 103 on Maternity Protection* (1952, revised)
- *Optional Protocol to the Covenant on Economic Social and Cultural Rights* (2008).

Ratifying these conventions would assist to strengthen the protections available in Australia and serious consideration should be given to doing so.

## 5.4. Conclusion

Strong legal standards are critical to providing clarity about rights and obligations in the workplace. While the legal framework in Australia is extensive, some key reforms would assist in strengthening protection against discrimination in the workplace and providing greater clarity for employers on their obligations.

The biggest gap, however, in the adequacy of the existing legal and policy framework is in the implementation. The starting point for addressing this gap is having strong standards that are effectively implemented in the workplace. Alongside this employers and employees also need an increased understanding of their obligations and rights.

The implementation can be further advanced through several complementary strategies and actions including disseminating information at the earliest possible time, conducting effective training, changing workplace cultures to remove harmful stereotypes, practices and behaviours, and monitoring the implementation of policies. With strong leadership within organisations, reforms that shape more supportive and successful workplaces can occur.

- 1 Applying these principles requires any proposed reforms to be examined on the basis of their direct or indirect discriminatory impact on individuals. This must also be done with a view to addressing systemic discrimination faced by particular groups and ensuring that any reforms will further the substantive equality of women. Reforms that do not consider these factors may have the unintended effect of discriminating against pregnant women, and parents with family responsibilities, and will have a detrimental impact on workplaces and the Australian economy.
- 2 *International Covenant on Economic Social and Cultural Rights*, Articles 6 and 7.
- 3 *Convention on the Elimination of All Forms of Discrimination against Women* (1979), Article 11.
- 4 While not creating any obligations for Australia, it is noteworthy that within the European Union there are also laws to protect pregnant workers, those on and returning from maternity and parental leave and for gender equality. The amended *Directive 76/2007 on Equal Treatment, the Parental Leave Directive and the Pregnant Workers Directive* are particularly significant laws made under the Treaty on the Functioning of the European Union, binding EU member states to certain minimum standards. For a description of European Union legislation and case law in these areas, see A Masselot, E Caracciolo D Torrella and S Burri, *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood: The application of EU and national law in practice in 33 countries*, report for the European Commission Directorate-General for Justice. At [http://ec.europa.eu/justice/gender-equality/files/your\\_rights/discrimination\\_pregnancy\\_maternity\\_parenthood\\_final\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/your_rights/discrimination_pregnancy_maternity_parenthood_final_en.pdf) (viewed 1 June 2014).
- 5 *International Covenant on Economic Social and Cultural Rights*, Article 3.
- 6 Committee on Economic, Social and Cultural Rights, *General Comment 18: The Right to Work* (2005), UN Doc E/C.12/GC/18, para 23.
- 7 Committee on Economic, Social and Cultural Rights, *General Comment 18: The Right to Work* (2005), UN Doc E/C.12/GC/18, para 13.
- 8 Committee on Economic, Social and Cultural Rights, *General Comment 18: The Right to Work* (2005), UN Doc E/C.12/GC/18, para 31.
- 9 Committee on Economic, Social and Cultural Rights, *General Comment 18: The Right to Work* (2005), UN Doc E/C.12/GC/18, para 52.
- 10 Committee on Economic, Social and Cultural Rights, *General Comment 18: The Right to Work* (2005), UN Doc E/C.12/GC/18, para 48.
- 11 Under the *Beijing Declaration and Platform for Action* Governments are also called on to:
  - ensure that full and part-time work can be freely chosen by women and men on an equal basis
  - eliminate discriminatory practices by employers on the basis of women's reproductive roles and functions, including refusal of employment and dismissal of women due to pregnancy and breast-feeding responsibilities
  - develop policies, inter alia, in education to change attitudes that reinforce the division of labour based on gender in order to promote the concept of shared family responsibility for work in the home, particularly in relation to children and elder care (paras 179 b, c and d).Further, Governments, the private sector and non-governmental organizations, trade unions and the United Nations are called to
  - design and provide educational programmes through innovative media campaigns and school and community education programmes to raise awareness on gender equality and non-stereotyped gender roles of women and men within the family; provide support services and facilities, such as on-site child care at workplaces and flexible working arrangements; (paras 179 b).See the *UN Beijing Declaration and Platform for Action* (1995) at: <http://www.un.org/womenwatch/daw/beijing/platform/economy.htm> (viewed 14 June 2014).
- 12 The Model Work Health and Safety (WHS) Act forms the basis of the WHS Acts being enacted across Australia to harmonise Work Health and Safety laws. The protections available under the statutes vary as to which workers they cover, including job applicants. For simplicity, this report refers to employers and employees but coverage may be wider or narrower depending on a particular provision.
- 13 N Rees, S Rice and D Allen, *Australian Anti-Discrimination Law* (2nd ed 2014), p 239 and 386. Only the Northern Territory prohibits parenthood discrimination. For an overview of the Commonwealth and State/Territory anti-discrimination statutes, noting the differing protections provided by them for pregnancy and caring related discrimination, see A Chapman, *Australian Anti-Discrimination Law, Work, Care and Family* (2012) pp 6-10. At <http://www.law.unimelb.edu.au/files/dmfile/WPN051FINAL.pdf> (viewed 4 June 2014).
- 14 See Appendix D. The *Fair Work Act 2009* (Cth) also implements relevant ILO obligations.
- 15 Other grounds also prohibited under the SDA include sexual orientation, gender identity and intersex status. Sexual harassment is also prohibited under the SDA. It occurs where certain unwelcome conduct occurs 'in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated,' *Sex Discrimination Act 1984* (Cth), s 28 (A).
- 16 *Sex Discrimination Act 1984* (Cth), s 7A.
- 17 See *Sex Discrimination Act 1984* (Cth), s 5(1)(a) and (b) for example, in relation to sex discrimination.
- 18 *Thomson v Orica Australia Pty Ltd* [2002] FCA 939.
- 19 *Thomson v Orica Australia Pty Ltd* [2002] FCA 939 [165 and 167].
- 20 Other areas of public life covered by the SDA include: accommodation and housing, buying or selling land, clubs and the administration of Commonwealth laws and programs. *Sex Discrimination Act 1984* (Cth), Part II, Division 1 and 2.
- 21 *Sex Discrimination Act 1984* (Cth), Part II, Division 1
- 22 *Sex Discrimination Act 1984* (Cth), s 14(1) and (2).
- 23 *Sex Discrimination Act 1984* (Cth), s 7D.
- 24 *Sex Discrimination Act 1984* (Cth), s 31.
- 25 *Sex Discrimination Act 1984* (Cth), Part II, Division 4. See Australian Human Rights Commission, *Federal Discrimination Law Online*, 2011, ch 4, pp 59-66. At [https://www.humanrights.gov.au/sites/default/files/content/legal/FDL/2011/4\\_SDA.pdf](https://www.humanrights.gov.au/sites/default/files/content/legal/FDL/2011/4_SDA.pdf) (viewed 1 June 2014).
- 26 *Sex Discrimination Act 1984* (Cth), s 5.
- 27 *Sex Discrimination Act 1984* (Cth), s 7AA.
- 28 *Sex Discrimination Act 1984* (Cth), s 7A and s.4A.
- 29 *Sex Discrimination Act 1984* (Cth), s 7 and s. 4B.
- 30 *Sex Discrimination Act 1984* (Cth), s 8 states: 'A reference in subsection 5(1), 5A(1), 5B(1), 5C(1), 6(1), 7(1) or 7AA(1) or section 7A to the doing of an act by reason of a particular matter includes a reference to the doing of such an act by reason of two or more matters that include the particular matter, whether or not the particular matter is the dominant or substantial reason for the doing of the act.'
- 31 *Sex Discrimination Act 1984* (Cth), s 7B.
- 32 (1989) 23 FCR 251.
- 33 *Commonwealth Bank of Australia v Human Rights & Equal Opportunity Commission* (1997) 80 FCR 78, 111.

- 34 *Secretary, Department of Foreign Affairs and Trade v Styles* (1989) 23 FCR 251, [263] per Bowen CJ and Gummow J at [263], cited in Australian Human Rights Commission, *Federal Discrimination Law Online*, 2011, ch 4, pp 36-37, which also provides a summary of case law principles which assist in guiding how to determine what is reasonable. At [https://www.humanrights.gov.au/sites/default/files/content/legal/FDL/2011/4\\_SDA.pdf](https://www.humanrights.gov.au/sites/default/files/content/legal/FDL/2011/4_SDA.pdf) (viewed 1 June 2014).
- 35 In state and territory jurisdictions such a claim is possible, for example under the *Anti-Discrimination Act 1977 (New South Wales)* and *Equal Opportunity Act 2010 (Victoria)*.
- 36 The Senate Legal and Constitutional Affairs Committee has conducted the following inquiries since 1984:
- Inquiry into the Sex Discrimination Amendment Bill (No 1) 2000;
  - Inquiry into the effectiveness of the *Sex Discrimination Act 1984* (Cth) in eliminating discrimination and promoting gender equality in 2008;
  - Inquiry into the Sex and Age Discrimination Legislation Amendment Bill 2010;
  - Inquiry into the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013.
- The Commission made submissions to all of the inquiries. The amendments to the SDA to date include:
- *Sex Discrimination Amendment Act 1995*. The amendment introduced: potential pregnancy as a ground of discrimination; tests for indirect discrimination and direct pregnancy discrimination; and special measures to achieve equality between women and men, people of different marital status, and women who are pregnant or could potentially be pregnant;
  - *Sex Discrimination Amendment (Pregnancy and Work) Act 2003*. The amendment recognised breastfeeding as a characteristic that appertains generally to women and prohibited requests for information used for the purpose of a discriminatory act that is unlawful;
  - *Sex and Age Discrimination Legislation Amendment Act 2011*. The changes prohibited direct discrimination against male and female employees on the ground of family responsibilities and strengthened protections against sexual harassment in workplaces, schools and conducted through new technologies;
  - *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013*. This amendment provided new protections against discrimination on the grounds of sexual orientation, gender identity and intersex status.
- 37 Submissions noted the need to amend the SDA with regard to costs, comparator, causation, burden of proof, and the role of the Commission.
- 38 Senate Standing Committee on Legal and Constitutional Affairs, *Report on the Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (2008). At [http://www.aph.gov.au/binaries/senate/committee/legcon\\_ctte/sex\\_discrim/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/legcon_ctte/sex_discrim/report/report.pdf) (viewed 28 June 2014).
- 39 Women are able to make these complaints because courts have accepted that,
- the present state of society shows that women are currently the dominant caregivers to young children. While that position remains (and it may well change over time), s 5(2) of the SDA operates to protect women against indirect discrimination in the performance of that care giving role.
- Howe v Qantas Airways Ltd* (2004) 188 FLR 1, 147 [117] (Driver FM).
- 40 Similar provisions also already exist in some state and territory jurisdictions, for example, *Equal Opportunity Act 2010* (Vic), s 19. The 2008 Senate Review recommended the SDA be amended to impose a positive duty on employers to reasonably accommodate requests by employees for flexible working arrangements, to accommodate family or carer responsibilities. Senate Legal and Constitutional Affairs Committee, *Report on the Inquiry into the effectiveness of the Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality* (2008), para 11.34. At [http://www.aph.gov.au/binaries/senate/committee/legcon\\_ctte/sex\\_discrim/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/legcon_ctte/sex_discrim/report/report.pdf) (viewed 28 June 2014).
- 41 *Fair Work Act 2009* (Cth), s 351.
- 42 *Fair Work Act 2009* (Cth), s 44.
- 43 For example, in *Fair Work Ombudsman v Tiger Telco Pty Ltd (in liq)* [2012] FCA 479 and *Fair Work Ombudsman v A Dalley Holdings Pty Ltd* [2013] FCA 509.
- 44 As defined in *Fair Work Act 2009* (Cth), s 342 (1).
- 45 *Fair Work Act 2009* (Cth), s 351.
- 46 *Fair Work Act 2009* (Cth), s 351(1).
- 47 *Fair Work Act 2009* (Cth), s 351(2)(a). The other exemptions to this provision are for actions taken due to the inherent requirements of the job and in certain situations actions against staff members of religious institutions, *Fair Work Act 2009* (Cth), s 351(2)(b) and (c).
- 48 *Fair Work Act 2009* (Cth), s 342. It's unlawful for a person to take adverse action against another person for having or using a workplace right (s340), belonging or not belonging to a union (s346), taking or not taking part in industrial activity (s346) or having a protected attribute (s351).
- 49 Fair Work Ombudsman, *Workplace Discrimination*. At <http://www.fairwork.gov.au/About-us/policies-and-guides/Fact-sheets/rights-and-obligations/workplace-discrimination#adverse-action> (viewed 7 July 2014). See further, Fair Work Commission, *General Protections Benchbook*. At <http://benchbooks.fwc.gov.au/generalProtections/> (viewed on 1 June 2014).
- 50 The FWO states that the discrimination prohibitions outlined above are 'broad and do not differentiate between indirect, direct and systemic discrimination nor do they require the discrimination to be deliberate.' The FWO interprets the prohibitions as covering both direct and indirect discrimination. See Fair Work Ombudsman, *Guidance Note No. 6 on Discrimination Policy*, para 5.4. At: <http://www.fairwork.gov.au/About-us/policies-and-guides/internal-policies-and-plans> (viewed 1 June 2014).
- 51 Note that adverse action where the employer discriminates between the employee and other employees can contain a comparator element, *Fair Work Act 2009* (Cth), s 342.
- 52 *Fair Work Act 2009* (Cth), s 360 states: 'For the purposes of this Part, a person takes action for a particular reason if the reasons for the action include that reason'. In *Turnbull v Symantec* [2013] FCCA 1771, the Court, citing Gummow and Hayne JJ in *Board of Bendigo Regional Institute and Technology and Further Education v Barclay* (2012) 86 ALJR 1044 [104], decided a reason for the adverse action complained of must be a 'substantial and operative' one [32-33] and [35].
- 53 Or because they have a particular workplace right such as rights under the NES (see above).
- 54 The High Court in *Board of Bendigo Regional Institute and Technology and Further Education v Barclay* (2012) 86 ALJR 1044 examined the evidence an employer needs to bring to rebut this assumption. It held that reliable evidence from a person who made the decision about the adverse action as to their reason (including an assertion the protected attribute was not the only reason for their action) can amount to sufficient proof of why the action was taken. The Court notes such evidence may be shown to be unreliable because of contradictory evidence that person gives or because other 'objective facts [are] proven which contradict the decision-maker's evidence', para 45, cited in N Rees, S Rice and D Allen, *Australian anti-discrimination law* (2nd ed 2014), p 877.
- 55 This section draws on the FWO fact sheet on Parental leave and related entitlements and the National Employment Standards. At <http://www.fairwork.gov.au/ArticleDocuments/2221/FWO-Fact-sheet-Parental-leave-and-related-entitlements-and-the-NES.pdf.aspx?Embed=Y> (viewed 24 May 2014).
- 56 Parental leave and related entitlements apply to all employees (subject to service qualifications and employment status) even if they are not in the national workplace relations system. *Fair Work Act 2009* (Cth), s 744 extends the rights to unpaid parental leave and related entitlements to all employees. See FWO overview. At <http://www.fairwork.gov.au/ArticleDocuments/2221/FWO-Fact-sheet-Introduction-to-the-NES.pdf.aspx?Embed=Y> (viewed 14 May 2014).

- 57 The SDA and FWA anti-discrimination protections are available to casual and permanent employees (and job applicants) at the start of their employment.
- 58 For example, in *Fair Work Ombudsman v Tiger Telco Pty Ltd (in liq)* [2012] FCA 479 and *Fair Work Ombudsman v A Dalley Holdings Pty Ltd* [2013] FCA 509.
- 59 *Fair Work Act 2009* (Cth), s 70, 67.
- 60 *Fair Work Act 2009* (Cth), s 74.
- 61 *Fair Work Act 2009* (Cth), s 74.
- 62 Different rules apply where one employee only takes leave.
- 63 *Fair Work Act 2009* (Cth), s 72.
- 64 *Fair Work Act 2009* (Cth), s 72(5).
- 65 This request may be refused by the employer on reasonable business grounds. See s 76 of the *Fair Work Act 2009* (Cth).
- 66 *Fair Work Act 2009* (Cth), s 76(6).
- 67 *Fair Work Act 2009* (Cth), s 85.
- 68 *Fair Work Act 2009* (Cth), s 80. Special provision is made for miscarriage, stillbirth or infant death.
- 69 *Fair Work Act 2009* (Cth), s 79A.
- 70 *Fair Work Act 2009* (Cth), s 79A(4).
- 71 *Fair Work Act 2009* (Cth), 81 and 81A.
- 72 *Fair Work Act 2009* (Cth), s 81A. The conditions for such paid leave change in the six weeks prior to the expected date of birth.
- 73 *Fair Work Act 2009* (Cth), s 82A.
- 74 *Fair Work Act 2009* (Cth), s 83.
- 75 *Fair Work Act 2009* (Cth), s 84.
- 76 *Fair Work Act 2009* (Cth), s 65(2).
- 77 *Fair Work Act 2009* (Cth), s 65. Eligible employees also have a right to request a flexible work arrangement where they are a carer; have a disability; are 55 years or older; are experiencing violence from a family member; or are providing care or support to an immediate family or household member, who requires care or support because the member is experiencing violence from the member's family.
- 78 Where an employee's employment is terminated and they cannot make an application under the FWA general protections provisions *Fair Work Act 2009* (Cth), Part 3-1, (which include the adverse action provisions and the workplace rights provisions), they may be able to bring a claim for unlawful termination for reasons including sex, family and carer's responsibilities, or pregnancy under the *Fair Work Act 2009* (Cth), Part 6-4.
- 79 *Fair Work Act 2009* (Cth), s 340 FWA. The provision also prohibits adverse action for other reasons including to prevent an employee using a workplace right.
- 80 *Fair Work Act 2009* (Cth), s 341.
- 81 For example, *Sagona v R & C Piccoll Investments Pty Ltd* [2014] FCCA 875 [3] (a demand to work unreasonable hours); *Wilkie v National Storage Operations Pty Ltd* [2013] FCCA 1056 [59-62] (a warning for using personal leave for an unexpected childcare emergency)
- 82 *Post-Implementation Review of the Fair Work Act* (2011-12). At <https://employment.gov.au/fair-work-act-review> (viewed 12 June 2014)
- 83 *Fair Work Amendment Act 2013*. At <http://www.comlaw.gov.au/Details/C2013A00073> (viewed 25 June 2014).
- 84 Including employees who are carers as defined in the *Carer Recognition Act 2010* (Cth), employees with a disability and employees 55 years or over. *Fair Work Act 2009* (Cth) s 65.
- 85 *Fair Work Amendment Act 2013* (Cth).
- 86 *Fair Work Amendment Bill 2014*. At [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r5174](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5174) (viewed 25 June 2014).
- 87 *The Coalition's Policy to Improve the Fair Work Act* (May 2013). At <http://www.liberal.org.au/improving-fair-work-laws> (viewed 29 June 2014).
- 88 The Australian Work and Life Index (AWALI) 2012 Survey found that two years after the introduction of the right to request provisions under the FWA the majority of employees were not aware of the right to request flexible working arrangements. In particular, there were lower levels of knowledge of the right to request amongst mothers with children of pre-school age, young people under the age of 25, low paid workers and workers employed in the private sector, particularly in small businesses. N Skinner, C Hutchinson and B Pocock, *AWALI 2012 The Big Squeeze: Work, home and care in 2012*, Centre for Work + Life, University of South Australia (2012), p 71. These findings concurred with the FWC's findings which found that approximately 48% of employees were aware of the right to request and that awareness was higher among females (49% of females compared with 46% of males). Fair Work Australia, *General Manager's report into the operation of the provisions of the National Employment Standards relating to requests for flexible working arrangements and extensions of unpaid parental leave 2009-2012* (November 2012), p 30. At: <http://www.fwc.gov.au/documents/documents/NES.pdf> (viewed 20 June 2014).
- 89 [We] support the educative and facilitative nature of the right to request provisions in the *Fair Work Act* as they encourage dialogue between employees and employers about achieving meaningful flexibility in the workplace that works on both a personal level for the employee and an operational level for the employer...[We] strongly oppose the introduction of compulsory arbitration to deal with 'right to request disputes'...Employers generally report that the best flexible working arrangements are those that are discussed and negotiated freely and openly with the employee...Prescriptive and 'dispute-oriented' approaches would most likely perpetuate an adversarial, negative response from employers when dealing with requests for flexible working arrangements from employees returning to work. Employer submission no. 5 (Australian Industry Group)
- 90 *Fair Work Act 2009*, sections 65(5) and 65(5A).
- 91 Australian Human Rights Commission, *Submission to the Post-Implementation Review of the Fair Work Act* (2009). At <http://www.humanrights.gov.au/post-implementation-review-fair-work-act-2009> (viewed 12 June 2014); Australian Human Rights Commission, *Submission to the House Standing Committee on Education and Employment on the Fair Work Amendment Bill 2013* (2013); Australian Human Rights Commission, *Submission to the Senate Employment, Workplace Relations and Education Legislation Committee on the Fair Work Amendment Bill 2013* (2013). See also the discussion of these issues in the Commission's report, *Investing in care: Recognising and valuing those who care* (2013).
- 92 *Fair Work Amendment Bill 2014*. At [http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r5174](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5174) (viewed 25 June 2014).
- 93 State Secretariat for Economic Affairs, *Pregnancy: Employee Protection*, Swiss Labour Directorate (2010), p 16. At <http://www.seco.admin.ch/dokumentation/publikation/> (viewed 09 July 2014).
- 94 The employee must have successfully completed a trial employment period of up to three months for this protection from dismissal law to be applicable.



- 95 Eurofound, Maternity Protection – Germany, <http://www.eurofound.europa.eu/emire/GERMANY/MATERNITYPROTECTION-DE.htm>, (viewed 09 July 2014).
- 96 International Labour Organization, *Convention 183 on Maternity Protection* (2000), article 8.
- 97 Individual submission no. 148.
- 98 Individual submission no. 115.
- 99 Government of UK, *Pregnant employees' rights*. At <https://www.gov.uk/working-when-pregnant-your-rights> (viewed 2 July 2014).
- 100 This section draws on material from Safe Work Australia including their website. At <http://www.safeworkaustralia.gov.au/sites/swa/pages/default> (viewed 1 June 2014), and A Stewart, *Stewart's Guide to Employment Law* (4th ed, 2013).
- 101 Except in so far as protecting an employee from discriminatory conduct for trying to exercise their work health and safety rights. Part 6 of the *Work Health and Safety Act 2011* (Cth).
- 102 The definition of who is under a duty under the Model Work Health and Safety Act 2011 extends wider than an employer, see s 19.
- 103 *Work Health and Safety Act 2011* (Cth), s 19(3).
- 104 *Work Health and Safety Act 2011* (Cth), s 18.
- 105 Usually also includes hazards.
- 106 Or other person under a duty under the *Work Health and Safety Act 2011* (Cth), s19.
- 107 *Work Health and Safety Act 2011* (Cth), s 18.
- 108 *Work Health and Safety Act 2011* (Cth), s 84 and ss104-106.
- 109 Model Work Health and Safety Regulations, reg 415.
- 110 NSW WorkCover, *Pregnancy and Work Guide*, (2002). At [http://www.workcover.nsw.gov.au/formspublications/publications/Documents/pregnancy\\_and\\_work\\_693.pdf](http://www.workcover.nsw.gov.au/formspublications/publications/Documents/pregnancy_and_work_693.pdf) (viewed 16 May 2014).
- 111 Work Safe WA, website guide on 'Manual tasks for pregnant workers' at <https://www.commerce.wa.gov.au/worksafe/manual-tasks-pregnant-workers> (viewed 28 June 2014); NT Work Safe Manual handling issues for new or expectant mothers in the workplace, At <http://www.worksafe.nt.gov.au/Bulletins/Bulletins/06.02.02.pdf> (viewed 28 June 2014).
- 112 Individual submission no. 98.
- 113 Individual submission no. 142.
- 114 General guidance is available from Safe Work Australia. See Safe Work Australia *Interpretive Guideline – Model Workplace Health and Safety Act. The Meaning of 'reasonably practicable'*. At <http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/607/Interpretive%20guideline%20-%20reasonably%20practicable.pdf> (viewed 1 June 2014).
- 115 Fair Work Act 2009 (Cth), s 81.
- 116 Other submissions included proposals to upgrade the *Work Health and Safety Guide for Preventing and Responding to Workplace Bullying to a Code of Practice*.
- 117 This name is a pseudonym; no real names are used in the report.
- 118 Consultation 1E (Affected women and men).
- 119 The Department of Social Services reports that with the replacement of the Baby Bonus for births/adoptions with the lower level payment of the Newborn Supplement from 1 March 2014, it is likely that a greater number of parents will apply for the PPL.
- 120 Individual submission no. 258.
- 121 Individual submission no. 222.
- 122 Individual submission no. 10.
- 123 Community organisation submission no. 39 (Employment Law Centre of WA).
- 124 Community organisation submission no. 7 (National Working Women's Centres).
- 125 Community organisation submission no. 18 (Kingsford Legal Centre).
- 126 A Stewart, *Stewart's Guide to Employment Law* (4th ed, 2013), p 176.
- 127 Individual submission no. 130.
- 128 Senate Standing Committee on Legal and Constitutional Affairs, *Report on the Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (2008). At [http://www.aph.gov.au/binaries/senate/committee/legcon\\_ctte/sex\\_discrim/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/legcon_ctte/sex_discrim/report/report.pdf) (viewed 28 June 2014).
- 129 Attorney-General's Department, *Consolidation of Commonwealth Anti-Discrimination Laws: Discussion Paper* (2011). At <http://www.ag.gov.au/Consultations/Pages/ConsolidationofCommonwealthanti-discriminationlaws.aspx> (viewed 12 June 2014).
- 130 Senate Standing Committee on Legal and Constitutional Affairs, *Report on the Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (2008). At [http://www.aph.gov.au/binaries/senate/committee/legcon\\_ctte/sex\\_discrim/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/legcon_ctte/sex_discrim/report/report.pdf) (viewed 28 June 2014).
- 131 Community organisation submission no. 14 (Victoria Legal Aid).
- 132 Community organisation submission no. 54 (Shop, Distributive and Allied Employees' Association).
- 133 The terms of settlement in a conciliation under the SDA can include a range of outcomes including financial compensation, an apology or acknowledgment of wrong-doing, changes to policies within the respondent organisation and training and awareness-raising within the respondent organisation in relation to discrimination in the workplace.
- 134 The SDA sets out a non-exhaustive list of possibilities including:
- Compensation for loss or damage (damages award)
  - Order requiring the employer to employ or re-employ the applicant
  - Order that the employer not continue or repeat the unlawful discrimination (where a findings of unlawful discrimination has been made)
  - Order that the employer undertake a reasonable act / course of conduct to remedy the applicant's loss / damage.
- Australian Human Rights Commission Act 1986* (Cth), s 46PO(4).
- Academic commentators have described those available under federal anti-discrimination legislation generally as 'remarkable' in their breadth, but underdeveloped, N Rees, S Rice and D Allen, *Australian anti-discrimination law* (2nd ed, 2014), p 810.

- Financial compensation for discrimination may include damages to compensate for financial loss such as lost earnings (economic loss) or damages for hurt, humiliation and distress (non-economic loss). Other claims may be heard at the same time as the discrimination proceedings such as for breach of contract. Aggravated damages may be awarded to compensate for damage caused by particularly high-handed, malicious, insulting or oppressive conduct by the employer, but the availability of exemplary (punitive) damages remains unclear (Ronalds C and Raper E *Discrimination Law and Practice* (4th ed, 2012) p 214; Australian Human Rights Commission *Federal Discrimination Law Online* (2011), Ch7, p 13 suggests the Court may be able to make such an order). Interest may also be awarded up to the date of judgment and from that date (Legal practitioners and authors, Ronalds and Raper have commented in *Discrimination Law and Practice* (4th ed, 2012), in relation to cases in the federal anti-discrimination jurisdiction generally that 'Applicant's legal costs of \$80,000 for a damages award of \$15,000 are not unusual' (at p 212). They note that damages for hurt and humiliation are often within the 'relatively modest' range of \$12,000-\$20,000, at p 216 and for economic loss rarely exceed \$50,000 (at p 215).
- 135 This is damages payable for the discrimination, not in relation to other claims brought at the same time.
- 136 This is the range in the decided cases examined in Chapter 1 of this report. The first award was made in *Fenton v Hair & Beauty Gallery Pty Ltd* [2006] FMCA 3 and the second in *Cincotta v Sunnyhaven Ltd* [2012] FMCA 110 (plus post judgement interest). An exception is with regard to *Poniatowska v Hickinbotham* [2009] FCA 680 that awarded \$463,000. The award of over \$100,000 in total made in *Burns v Media Options Group Pty Ltd & Ors* [2013] FMCA 79 was a combined award under the *Disability Discrimination Act 1992* (Cth) and the SDA.
- 137 *Cincotta v Sunnyhaven Ltd* [2012] FMCA 110.
- 138 *Cincotta v Sunnyhaven Ltd* [2012] FMCA 110 [346-347].
- 139 For example, *Cincotta v Sunnyhaven Ltd* [2012] FMCA 110 [357-360].
- 140 *Gardner v the National Netball League Pty Ltd* [2001] FMCA [50, 58, 84]. The pregnant applicant obtained an interim injunction to prevent the League from banning her from competing in the then running season of the National Netball League competition, or from disciplining her in relation to her participation while pregnant.
- 141 See *Song v Ainsworth Game Technology Pty Ltd* [2002] FMCA 31 [31, 87]. Ronalds C and Raper E *Discrimination Law and Practice* (4th ed, 2012) p 219 suggest that other orders which could be made include granting a promotion or an opportunity to apply for the next promotion where they have lost out due to their employer's discriminatory conduct. In *Morgan v Dancen Enterprises Pty Ltd (Anti-Discrimination)*, brought under the the *Equal Opportunity Act 1995* (Vic) Senior Member Lyons ordered under section 125(a)(i) that the respondents undertake training provided by the Equal Opportunity Commission of Victoria. In making the order Senior Member Lyons held that that the training would 'provide Ms Morgan with a measure of redress; limit the risk of Ms Morgan being subjected to further unlawful discrimination...and minimise any future risk of the...Respondents engaging in conduct which might contravene the Act'. *Morgan v Dancen Enterprises Pty Ltd (Anti-Discrimination)* [2006] VCAT 2145. Similar remedies may be awardable under the SDA which allows for a broad range of remedies.
- 142 These include the extent of loss caused, any similar previous behaviour by the employer, the size of the business, whether the breach was deliberate, any contrition, corrective action or cooperation with investigators, any involvement by senior management and any need for specific and general deterrence. See, for example, as summarised in *Sagona v R & C Piccoll Investments Pty Ltd* [2014] FCCA 875 [362].
- 143 These are all civil remedy provisions and *Fair Work Act 2009* (Cth) s 545 enables the court to make orders where it is satisfied a person has contravened or proposes to contravene a civil remedy provision. This power does not usually extend to employer refusals of a request for flexible working arrangements or extended unpaid parental leave, *Fair Work Act 2009* (Cth) s 44(2).
- 144 *Fair Work Act 2009* (Cth) s 545(1). A non-exhaustive list states such orders may include: Interim and full injunctions to prevent, stop or remedy a contravention; compensation for loss; reinstatement of the employee concerned (*Fair Work Act 2009* (Cth) s 545(2)). The Court may additionally impose a penalty on the employer for a contravention (including one for which an order as described above has been made) of a civil remedy provision, which includes unfair dismissal and discriminatory adverse action on the basis of an employee's sex, pregnancy or family or carer's responsibilities. For an individual who has committed such a breach, the maximum penalty is \$10,200 and for a body corporate five times that amount (\$51,000) (As at May 2014, FWA s 546(2) and *Crimes Act 2014* (Cth) s 4AA).
- 145 *Aitken & Vandeven v Virgin Australia Airlines* (No.2) [2013] FCCA 2031 [28].
- 146 This range is drawn from the decided cases considered in Chapter 1. *Sagona v R & C Piccoll Investments Pty Ltd* [2014] FCCA 875 [378-380]. In this case, this was the total of penalties imposed on the business itself and each of the individual employers.
- 147 *Fair Work Ombudsman v Wongtas Pty Ltd (No 2)* [2012] FCA 30. At: <http://www.fairwork.gov.au/About-us/news-and-media-releases/2012-media-releases/February-2012/20120202-wongtas-penalty> (viewed on 2 June 2014).
- 148 *Sagona v R & C Piccoll Investments Pty Ltd* [2014] FCCA 875 at 358-359.
- 149 *Ucchino v Acorp Pty Ltd* [2012] FMCA 9.
- 150 *Ucchino v Acorp Pty Ltd* [2012] FMCA 9 [79].
- 151 *Ucchino v Acorp Pty Ltd* [2012] FMCA 9 [75-83].
- 152 The FWO may bring legal proceedings in the FCCA or the FCA against an employer for contravening the adverse action discrimination provision under the FWA (*Fair Work Act 2009* (Cth) s 351) or, where the employer has admitted a contravention, may accept from the employer an enforceable undertaking (*Fair Work Act 2009* (Cth) s 715) setting out how the employer is going to remedy the contravention and the timeframe for doing so (Fair Work Ombudsman Enforceable Undertakings Policy, Guidance Note No. 4. At <http://www.fwo.gov.au/about-us/publications/policies-and-procedures/Pages/default.aspx> (viewed 12 June 2014).
- 153 These were \$20,000 by Coles to Jobwatch Australia and \$10,000 by Guardian Early Learning Centres to the South Australian Working Women's Centre.
- 154 Links to the five cases of enforceable undertakings are contained in the list of cases in Appendix F.
- 155 See Figure 14 in Chapter 3.
- 156 Individual submission no. 205.
- 157 Individual submission no. 296.
- 158 Individual submission no. 65.
- 159 Individual submission no. 205.
- 160 Individual submission no. 85.
- 161 Individual submission no. 245.
- 162 Individual submission no. 248.
- 163 Individual submission no. 154.
- 164 *Paid Parental Leave Act 2010* (Cth), Chapter 1, Division 1A, s 3A.

- 165 The work test refers to the number of days an eligible PPL claimant is required to have worked prior to the birth of the child. *Paid Parental Leave Act 2010* (Cth), ss 32-36B.
- 166 *Paid Parental Leave Amendment Bill 2014* (Cth). The Bill aims to amend the *Paid Parental Leave Act 2010* (Cth) to remove the requirement for employers to make payments to employees under the PPL scheme from 1 July 2014. Instead, employees would be paid directly by the Department of Human Services (DHS), unless the employer chooses to make the payments and the employee consents to this arrangement.
- 167 Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children* (2009), 4.53. At <http://www.pc.gov.au/projects/inquiry/parental-support/report> (viewed 18 February 2014).
- 168 See Australian Human Rights Commission, *Investing in care: Recognising and valuing those who care* (2013).
- 169 The Government's proposed amendments to the PPL scheme include:
- Payments at replacement wage (capped at the \$100,000 salary level).
  - Payments for up to a total of 26 weeks, including any time taken by a secondary carer.
  - Dedicated Paternity Leave – allows two weeks of paid leave at replacement wage, capped at a maximum salary of \$100,000.
  - The Family Assistance Office will administer the payment in order to reduce the compliance cost to employers.
- Coalition Paid Parental Leave Policy (18 August 2013). See also Sydney morning Herald, Tony Abbott to lower cut-off for paid parental leave scheme: report (30 April 2014). At <http://www.smh.com.au/federal-politics/political-news/tony-abbott-to-lower-cut-off-for-paid-parental-leave-scheme-report-20140430-zr1ly.html#ixzz36rwluYIQ> (viewed 2 July 2014).
- The Paid Parental Leave Amendment Bill 2014 (Cth), currently before parliament, aims to amend the *Paid Parental Leave Act 2010* (Cth) to make the payments payable by the Department of Human Services, rather than the employer, unless the employer chooses to make the payments and the employee consents to this arrangement.
- 170 *Workplace Gender Equality Act 2012* (Cth), s 2A. The Act was further amended in 2014 through the *Workplace Gender Equality (Minimum Standards) Instrument 2014* to include minimum standards for relevant employers with 500 or more staff.
- 171 Ernst & Young, *Untapped opportunity: The role of women in unlocking Australia's productivity potential* (2013), p 10 (citing: J Jeremenko, 'Give childcare a tax break', *The Australian Financial Review* (2012) pp 1-2).
- 172 See also Australian Human Rights Commission, *Submission to the Productivity Commission Review on Childcare and Early Childhood Learning* (2014). At <https://www.humanrights.gov.au/submissions/inquiry-childcare-and-early-childhood-learning> (viewed 2 July 2014).



# Chapter 6

## Leading practices and strategies in the workplace

### In summary

- Many organisations, small, medium and large, are implementing leading practices and strategies to support and retain pregnant employees and working parents.
- Organisations are actively communicating the benefits of these practices and strategies. This serves to enhance understanding and support of the practices and strategies throughout the organisation.
- Many of these practices and strategies do not require substantial financial investment or a significant shift in the way an organisation operates.
- Critical to the success of these practices and strategies is firstly establishing the foundations for success, including:
  - » that the right policies and practices are in place
  - » leaders within the organisation are vocal and committed to supporting pregnant employees and working parents within the organisation
  - » policies and practices are monitored and evaluated
  - » information is provided to enable informed and open discussions
  - » managers and employees are empowered and supported
  - » flexible work arrangements are facilitated.
- Secondly, success requires effectively implementing the strategies and practices. This requires managing pregnancy/return to work related issues in a holistic manner including: developing a plan from the time an employee announces her pregnancy; through to preparing for an employee's parental leave; staying connected during parental leave; reintegrating after parental leave; and career acceleration upon their return.

The National Review met with and received submissions from over 220 employers, business associations and industry peaks across Australia who represented organisations with a range of sizes, as well as from across a range of industries and sectors. These consultations and the submissions highlighted innovative and successful policies and practices which many organisations are implementing to support their employees and their business objectives alike.

This chapter provides a compilation of the leading practices and strategies reported to the National Review, as well as research from Australia and around the world. It also offers examples, ideas and guidance that may assist employers to ensure that their organisations support employees who are pregnant, on parental leave, or returning to work; as well as to create successful, comprehensive infrastructures and programs to accommodate employee needs.

Not all of the information in this section necessarily applies to every organisational setting. For example, some points may be more relevant for small businesses than for large ones and vice versa. Noting the specific contexts for small businesses and organisations also highlighted in this chapter are specific leading strategies for these organisations.

The first section of this chapter outlines the steps necessary to laying a successful foundation. It highlights the value of employers knowing and communicating their responsibilities; establishing and monitoring comprehensive policies; as well as empowering managers and employers through leadership and support.

The second section focuses on implementation. This includes implementation of management plans, outlining effective and constructive ways to manage employees who are pregnant, on parental leave or returning to work, adopting methods that may ultimately benefit all concerned.



## 6.1 Establishing the foundations for success

A strong organisational foundation is critical to successfully support employees during pregnancy/return to work. This includes a thorough understanding of employer obligations, the development of robust policies, as well as informed and empowered managers and employees. It also includes laying a basis for relevant strategies and policies to be embedded into the culture of the organisation and as such, ensuring they are sustainable into the future.

Outlined below are the steps necessary to laying a successful foundation. Each component of the foundation is illustrated with examples of leading strategies used by organisations in Australia and overseas.

**Table 1: Establishing the foundations for success: Getting your policies and systems in place**

What	How	Examples
Think big picture: understanding 'what' and 'why'	Know your legal responsibilities as a business; understand and communicate the reasons; approach the pregnancy and parental leave process as a continuum.	Utilise existing resources and advice from government and industry peak bodies; communicate policy and procedures; promote awareness and understanding.
Lead the way: Role modelling behaviour	Ensure that senior leaders in the organisation are vocal and visibly committed.	Senior leaders vocally champion the value of pregnant employees and employees on return to work; senior leaders vocally support and model flexible work arrangements.
Get the right policies in place: Establishing effective programs	Ensure that policies regarding pregnancy, parental leave and return to work, are comprehensive, effective and in line with your legal responsibilities.	Education and coaching for managers and employees; review of all decisions on dismissal or redundancy while an employee is pregnant, on parental leave or on return to work; flexible work policies; employer funded parental leave (for primary and secondary carers); employer funded early childhood education and care options; special measures to accelerate change.
Track success: Monitoring and Evaluating policies and practices	Gain a clear understanding of the state of implementation of policies in your organisation; assess and review existing programs and practices at regular intervals to identify where improvements or changes need to be made.	Regular audits of retention rates; regular surveys and consultations with staff who intend to use/have recently used parental leave or have returned to work; actively track career progression post-parental leave; regular implementation of relevant feedback into policies and practices.
Enable informed and open decisions: Providing the information	Use a guide/toolkit; make the information accessible.	Hardcopy guides/toolkits/brochures for soon-to-be/recent parents and line managers; make information available for download from intranet and internet; allocation of staff positions responsible for ensuring information accessibility of information.



What	How	Examples
Empower managers: Providing support for management	Ensure that all managers are aware and informed of policies; support managers with coaching and resources; ensure that the organisation's structures encourage managers to support pregnant women and working parents.	Formal training and coaching for all managers; checklists for managers to assist in implementation of a formal frameworks and procedures; monitor and reward managers, eg performance criteria and repercussions for managers who discriminate; conduct surveys to assist in performance feedback.
Empower individuals: Providing support for employees	Offer internal and/or external coaching and/or training; create internal networks of support; establish a robust return to work support infrastructure; provide anti-discrimination and unconscious bias education.	Education and training; workshops; mentoring, coaching and buddy systems; establish online networks as a conduit for advice and guidance; establish support groups and programs.
Facilitate return to work: Establishing flexible work arrangements	Design flexible jobs and flexible careers; promote flexible work and embed flexibility into the organisation's culture.	Establish a 'results focused' culture; Increased schedule control for employees; create jobshare registers; IT equipment purchases to enable remote work.

#### (a) Think big picture: Understanding 'what' and 'why'

**Know your legal responsibilities as a business.** Employers must be aware of the laws that govern this area in order to fulfil their responsibilities adequately. Employers should seek advice from government, business associations and industry peak bodies, who have many resources available that provide this information.

##### Further information: Useful resources on legal obligations

- Australian Human Rights Commission: <https://www.humanrights.gov.au/publications/pregnancy-guidelines-2001>
- Fair Work Ombudsman: <http://www.fairwork.gov.au/leave/parental-leave/Pages/default.aspx>
- ASX Corporate Governance Council: <http://www.asx.com.au/regulation/corporate-governance-council.htm>
- Australian Industry Group BizassistInfoline: 1300 78 38 44
- Australian Chamber of Commerce and Industry (and state and territory Chambers of Commerce): <http://www.acci.asn.au/>
- Workplace Gender Equality Agency: [https://www.wgea.gov.au/sites/default/files/2013-05-10\\_branded\\_ppl.pdf](https://www.wgea.gov.au/sites/default/files/2013-05-10_branded_ppl.pdf)
- Some state and territory anti-discrimination and equal opportunity authorities have developed resources for employers and employees. For example, Victorian Equal Opportunity and Human Rights Commission: <http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/know-your-rights-brochures/item/283-pregnancy-and-work-know-your-rights-and-obligations-oct-2012>
- Some state and territory governments also have resources specific to their respective jurisdictions. For example, NSW Industrial Relations: [http://www.industrialrelations.nsw.gov.au/biz\\_res/oirwww/pdfs/Maternity\\_at\\_Work.pdf](http://www.industrialrelations.nsw.gov.au/biz_res/oirwww/pdfs/Maternity_at_Work.pdf)

**Understand and communicate the reasons** for establishing infrastructure, policies and programs to support employees who are pregnant, on parental leave or returning to work. Awareness of employee rights is crucial to ensuring that these policies are integrated into the organisation's values, operations and culture.

It is also important to communicate to the organisation the critical value of working parents and being able to manage work and life responsibilities. This may be done through seminars or workshops for managers and employees alike to promote awareness and understanding of what it means to be a working parent. Embedding a clear understanding of the reasons for – and advantages of – supporting pregnant women and working parents in the organisation empowers managers to execute policies and programs successfully.

**Approach the parental leave process as a continuum** from pregnancy to parental leave and on return to work. To establish a successful and enduring program, it is important that policies take into account the journey in its entirety. Employees do not experience the phases in isolation; they are innately linked and are experienced collectively as part of an individual's professional career and personal life. Employers must also develop their policies and practices to reflect the continuum, focusing on providing support during all phases to ensure successful transitions. The better the policies are integrated, the more successful the employer/employee relationship is likely to be.

### (b) Lead the way: Role modelling behaviour

**Ensure that senior leaders in the organisation are vocal and visibly** committed to supporting pregnant women and parents. This support is essential to the success of policies and initiatives, setting the position and tone 'from the top' and giving weight to the importance of the issues. Profiling senior role models who have taken/are taking extended absences and are working flexibly is an effective way to promote policies and demonstrate senior support.

#### Leading Practice: Impact of senior leadership<sup>1</sup>

The CEO of Taj, a French law firm, personally tackled the lack of gender diversity in his organisation.

He was involved in every promotion discussion. 'What I have done is promote people on performance. If someone works 50% of the time, we adjust that performance to its full-time equivalent. When you adjust performance on a Full-Time-Equivalent (FTE) basis, maternity issues stop being an indicator.'

He insisted on gender parity from the beginning. He personally ensured that the best assignments were evenly awarded between men and women. He tracked promotions and compensation to ensure parity. If there was a gap, he asked why. He put his best female lawyers on some of his toughest cases. When clients objected, he personally called them up and asked them to give the lawyer three months to prove herself. In every case, the client was quick to agree and managed to overcome the initial gender bias.

#### Leading Practice: Leadership role modelling<sup>2</sup>

As part of Telstra's 'All roles flex' initiative, some leaders at Telstra added a message that is automatically included at the end of emails stating 'We work flexibly at Telstra. I am sending this message now because it suits me, but I don't expect that you will read, respond to or action it outside of regular hours'.

### (c) Get the right policies in place: Establishing effective programs

**Ensure that policies regarding pregnancy and parental leave are comprehensive, effective and in line with your legal responsibilities.** Employers should assess and review existing policies by asking:

- Does the policy meet the legislative requirements?
- Is the policy in writing?
- Have you sought advice from your employer or employee association or other advisor?
- Does the policy meet the needs of employees and your organisational/business environment?
- Are there provisions to enable flexible work arrangements to meet the needs of employees?
- Is there a mechanism for constant review of the policy to ensure its continued relevance?
- Can the policy be used to attract potential staff?<sup>3</sup>

Make sure that policies are flexible taking into account the specific and diverse needs of employees, such as special maternity leave, IVF, miscarriage, terminations and still birth. There are a number of ways to help accommodate these needs. For example, access to leave for medical appointments and opportunities to work from home during times of difficult personal circumstances.

### **Consider special measures to facilitate participation of pregnant women and working mothers within the organisation**

The *Sex Discrimination Act 1984* (Cth) provides for Special Measures which can be introduced for the purpose of achieving substantive equality between:

- women and men
- women who are pregnant and people who are not pregnant
- women who are potentially pregnant and people who are not potentially pregnant.<sup>4</sup>

Organisations can design targeted programs, policies and mechanisms around pregnancy, parental leave and return to work that fits within the special measures provisions. Such strategies would not be discriminatory if they are designed to achieve substantive equality between women and men in workplaces. Special measures can help to assist with overcoming systemic and cultural barriers experienced by women in employment.

In 2013, superannuation consulting firm Rice Warner offered a special measures package to its female employees to achieve substantive equality between men and women, to address the impact of unpaid caring work on retirement incomes and savings. The measures included: flexible working conditions, generous paid parental leave, superannuation payments and long service leave accrued during parental leave, access to an educational program – and an additional superannuation payment of 2% of salary.<sup>5</sup>

### **Leading Practices: Ensuring that jobs and opportunities remain current while women are on parental leave<sup>6</sup>**

The Commonwealth Bank of Australia (CommBank) has a strong commitment to leading practices related to women during pregnancy, parental leave and returning to work.

Organisations ensure that they comply with all legal obligations during restructures and downsizing, but parental leavers can sometimes be overlooked for promotions and development opportunities, and over-represented in layoffs.

To address this challenge, CommBank monitors changes to the roles of employees on parental leave and proposed changes must be approved by the head of Human Resources, or relevant senior leaders. This ensures there is appropriate consideration given.

CommBank wants to make sure it retains its talented women whilst on leave so for now this centralised measure will ensure they can do that.

The organisation is also currently updating its extensive parental leave toolkits and resources to ensure employees have the best possible experience as they transition to and from parental leave with the support of their managers. In addition, it supports parents by offering a broad range of flexible work and leave options, that includes working from home or another location, part-time or jobshare, flexible start and finish times and purchasing additional leave to cover school holidays.

The Fair Work Ombudsman has identified the following best practices to help employers develop and monitor their own policies:

- Extended periods of employer-funded paid leave
- ‘Topping up’ an employee’s pay during the period of Government-funded Parental Leave Pay to their full rate of pay
- Continuing to pay an employee’s superannuation contributions while on unpaid leave
- A return-to-work bonus, payable after an employee has returned to work following parental leave
- The option of taking paid leave at half pay
- Non-primary carer (usually paternity) leave provisions to be taken at the time of birth or placement of a child
- Allowing the non-primary carer to access other existing leave entitlements, including annual leave and long service leave, for extended periods around the birth of a child
- Allowing employees to purchase and repay longer periods of paid leave
- Providing employees with sick/carer’s leave for pregnancy-related illness as well as caring for sick children
- Staying in touch days.<sup>7</sup>

The practices of many employers already exhibit a number of these characteristics.

#### Leading Practices: Sample parental leave pay policy<sup>8</sup>

- ANZ provides 12 weeks paid parental leave at full pay (with no qualifying period) for the primary care giver; and up to eight weeks leave (one week of which is paid) for co-parents.
- A total of up to 12 months unpaid leave is provided to each parent (with the option to extend for up to 24 months), inclusive of the paid parental leave/co-parents leave. Periods of parental leave do not break continuity of employment, and the first 12 months continuous service for severance pay, long service leave and sick leave. Long service leave and annual leave may be taken in lieu of, or in conjunction with, parental leave, however this must be taken at the beginning of the period of parental leave.
- \$4,000 Child Care Allowance (CCA) is provided to the primary care giver. Eligible employees will receive a CCA payment of \$4,000 (pre-tax) which can be used in the way that best suits their needs. The payment aims to support primary care givers transition back to work and help them manage their family and professional commitments in that critical first year. This allowance became available on 1 October 2010. To be eligible for CCA, an employee must be a permanent employee who has taken parental leave as per ANZ's Australian Parental Leave policy of at least 18 weeks where they are the primary caregiver. To receive the allowance returning parents cannot have a partner at home who is caring for their child full-time. If both parents work at ANZ, only one child care allowance is payable. The child care allowance is available to same-sex couples. To apply for the allowance, employees need to let their line manager know that they wish to apply for the CCA during their return to work discussion. The allowance is paid over four instalments, with the first payment to be made within one month of the primary care giver returning to work. The following payments are made in monthly instalments. The allowance incurs tax and cannot be salary sacrificed.
- Superannuation is included on parental leave payments. ANZ provides a minimum of a 9.5% superannuation guarantee on all forms of parental leave payments, including the Australian Government's Paid Parental Leave Scheme (except for the Australian Government Dad and Partner Pay Scheme). The Superannuation Guarantee (SG) contribution will be paid throughout the ANZ 12 weeks paid parental leave assistance. The payment will be made at the SG rate of the employee's notional salary and is on top of the parental leave payment. The payment will be paid at the SG rate of the minimum wage and is on top of the Government's payments. Superannuation will also be paid to anyone who takes one week paid co-parent leave. As a result of these payments, employees on parental leave will receive up to 30 weeks of superannuating payments.
- Employees at management level or above may retain and use their work provided laptop for the duration of parental leave to stay in touch if they choose.
- ANZ's Performance and Remuneration Review Eligibility Policy states that women who have been at work nine months of the year should be assessed as normal, with any short term incentive calculated pro-rata. Guidance is provided to line managers on how they should use their discretion to increase salaries so that women on Parental Leave do not fall behind on pay relative to their peers, as this is one of the main contributors to pay disparity between men and women.

#### Leading Practice: Above and beyond with parental leave pay<sup>9</sup>

Laing O'Rourke, a large Australian, privately owned construction company, has introduced a paid parental leave policy as well as a suite of policies to assist employees return to work after parental leave.

The company conducted an extensive consultation with their employees and found that, in order to achieve a level playing field across their workforce, particularly for carers, its focus needed to be broader than just financial support.

The company is now offering primary carers – who have been employed by the company continuously for 12 months – 26 weeks of paid leave, 18 weeks at full pay and eight weeks at half pay. Secondary carers (after 12 months' ongoing employment) are entitled to four weeks of parental leave, two weeks at full pay and two weeks unpaid.

The organisation is also focusing on the support and connection aspects of their scheme, including keep-in-touch programs, return-to-work coaching and flexible work options for all employees.

### **Leading Practice: Alternate payment options for parental leave<sup>10</sup>**

Monash University, a large employer, provides three options:

#### **Option 1**

- Lump Sum or fortnightly allowance.
- Employees may choose to return to work and receive payment in lieu of the 60% paid maternity leave they would otherwise have received.
- Employees may choose to take this payment in one of two forms:
  - » a single lump sum payment
  - » fortnightly payments as if they were still on maternity leave and receiving 60% of their ordinary pay for the number of weeks to which they are entitled. (This is in addition to the salary that they are earning on their return to work).
- Superannuation is not paid on the lump sum or fortnightly payments.

#### **Option 2**

- Employees can have child care fees paid in lieu of their 60% paid parental leave.
- Employees may choose to return to work and have childcare fees paid through salary sacrificing. This is up to the value that they would have received through their 60% paid parental leave entitlement. If employees choose this option:
  - » they must use a Monash childcare facility
  - » the end date of their childcare cover must be no later than 52 weeks after they commenced parental leave.
- Staff are not entitled to superannuation paid on the money used for childcare benefits.
- If staff choose this option and the value of the childcare is less than what they would have been entitled to had they not returned to work, the University will not make up the shortfall.

#### **Option 3**

- Employees may choose to return to work on a reduced fraction (subject to the agreement of the University) and top up their salary (up to 100% of pay) with the unexpired portion of their 60% maternity leave entitlement, provided that they have already taken at least 26 weeks' paid parental leave and remain on a reduced fraction.
- If they choose this option, the end date of this must be within 52 weeks of the first day of parental leave.
- Superannuation is paid on the 'top up' amount so long as the top up does not exceed the substantive fraction.

### **Leading Practice: Superannuation contributions during parental leave<sup>11</sup>**

- In June 2010, the Westpac Group introduced a new entitlement which pays its employees a 9.5% superannuation contribution, in line with the Superannuation Guarantee Legislation, on unpaid parental leave for up to 39 weeks. Westpac Group employees are also entitled to an additional 13 weeks' employer-provided PPL, with full superannuation payments, meaning employee superannuation contributions will now be paid for the full year of their parental leave.
- National Australia Bank (NAB) employees receive up to 40 weeks of superannuation contributions on unpaid parental leave at a rate of 10%, in addition to the 12 weeks of paid leave and superannuation already provided to parents by the bank. NAB has reported increases in its return-to-work rate of employees on parental leave from 65% in 2006 to over 85% in 2013.
- CommBank and Bankwest both contribute their superannuation payment for the 40 weeks of unpaid parental leave, once an employee has returned from parental leave for a minimum of six months.

### Leading Practice: Return to work bonus

Three years ago, Caltex Australia found that women were twice as likely to choose to leave Caltex compared to their male counterparts, with female turnover being significantly higher at the point of returning from parental leave. One of the common barriers for women returning to work was accessing appropriate childcare. The company responded by creating the BabyCare Bonus initiative.

- BabyCare Bonus: A 3% bonus each quarter (a total of 12% per year on base salary) is awarded to the primary carer once they return to work, up until their child's second birthday.

In addition to being an inducement for returning to work, this payment is aimed at assisting to offset the additional costs to the employees, in particular, paying for childcare.

Since its introduction in 2012, Caltex has extended the initiative to a full package of initiatives, which aims to support the happy and effective return to work for primary carer employees. In addition to the BabyCare Bonus, the BabyCare Package now includes:

- Emergency BabyCare: Access to Dial-an-Angel mothercraft nurses or carers. This service is available for up to five times each year, to the value of \$299 per session, until the child turns two.
- Help identifying appropriate childcare: Caltex partnered with Families at Work – Work/Life Specialists to provide a specialist service that assists parents locate the type of childcare they want for their baby.
- Nursing Facilities: Comfortable nursing rooms are available at the three major Caltex facilities, and are equipped with an armchair, sink, refrigerator and lockable door.

Parental Transition Group: A group to support new and soon-to-be parents and grandparents, which meets monthly. Employees can attend in person or by video conference. The group also has a dedicated presence on Caltex's internal social media platform, Yammer.

Initial indicative findings show that since the introduction of the BabyCare package, the company now holds significantly higher retention rates around staff taking parental leave. 93% of Caltex employees who took parental leave since the BabyCare Package was introduced in late 2012 have returned to work.

## (d) Track success: Monitoring and evaluating policies and practices

**Gain a clear understanding of the state of implementation** of pregnancy and parental leave policies in your organisation. One way to measure the success of current programs is through auditing retention rates or tracking career progression post-parental leave. This information should be included in standard reporting processes (for example when reporting to the organisation's board) to ensure that it is prioritised.

**Assess and review existing programs and practices at regular intervals** to identify where improvements or changes need to be made. Identify any implementation challenges through surveys or consultations with staff, particularly those who are pregnant, on leave or recently returned, to understand barriers to success.

[We] introduced retention stats that are specific to role types – reviewing the reasons for leaving – trying to discover if there are extra pressures on those leaving for child care.<sup>12</sup>

We've recently done a parental leave kit review. We interviewed [employees] 3 months after return to identify what are their challenges.<sup>13</sup>

### Leading Practice: Example of disclosure of gender related measurable objectives<sup>14</sup>

*ASX Corporate Governance Council Principles and Recommendations on Diversity:* Commit to 'developing a diverse pool of talented employees to ensure that we have the talent pipeline to fill critical roles now and into the future':

- Increase the percentage of women in management roles to 40% by 2015.
- Increase female participation in Executive Leadership Development Program to 50% by 2015.<sup>15</sup>



### (e) Enable informed and open decisions: Providing the information

A survey of 720 human resources professionals conducted by the Australian Human Resources Institute revealed that nearly half the respondents (47%) believed that open communication and consultation before, during and after parental leave is the best way for the organisation to retain the services of pregnant employees and parents returning to work.<sup>16</sup>

**Use a guide/toolkit** designed to give new and expectant parents relevant and practical information. This provides clarity and transparency to employees as well as to managers. This is key to combatting uncertainty that may surround pregnancy, parental leave and return to work. Guides/toolkits should include information on:

- Employee rights and eligibility
- The process for applying for leave, including key dates
- Being on leave and keeping in touch
- Returning from leave, including return to work notification requirements
- Career planning with extended leave
- Early childhood education and care options (eg directory of early childhood education and care services in the area, vacation care programs)
- Further information sources (government websites, external agencies etc).

**Make the information accessible** by publishing and circulating your organisation's policies. Provide written copies, or post it on the intranet (if your organisation has one) and on the internet to inform prospective employees and clients. Conduct workshops/seminars on the policy and ensure that all employees – men and women – are invited.

#### Leading Practice: Sharing information on parental leave<sup>17</sup>

The Westpac Group's parents@work program provides both mothers and fathers with the knowledge, confidence and support to transition successfully to and from parental leave, and to help them thrive as working parents. The program provides parents and their managers with access to a suite of options including:

- The parents@work interactive portal, accessible by all staff, where employees can access information about flexible work, company policies and government entitlements and a dedicated Q&A section supporting parents and carers. The portal also includes information about:
  - » Childcare resources
  - » Preparing for parental leave
  - » Staying in touch,
  - » Returning to work, and
  - » Managing your career as a working parent
- Training courses – parents@work program seminars
- Personalised coaching

#### Leading Practice: Sharing information on parental leave<sup>18</sup>

The 'My Parental Leave' guide for employees and the 'Managing Parental Leave' guide for line managers are the two key sources of 'self-service' information housed on ANZ's intranet, which help the employee and their line manager navigate through every aspect of parental leave. They contain key facts, policy detail, timelines, checklists, sources of external information, benefits and processes.

The My Parental Leave Guide for Employees includes information relevant to the employee concerning eligibility, applying for leave, being on leave, and returning from leave – whether they are the primary care giver, the mum, dad, partner, co-parent, guardian or carer.

The Managing Parental Leave Guide for Line Managers includes information to help managers support their employees in checking eligibility, applying for leave, keeping in touch whilst on leave, and enabling a smooth transition when returning from leave. These guides also include signposts to government websites, and other external agencies.

### (f) Empower managers: Providing support for management

**Ensure that all managers are aware and informed of parental leave policies.** This can include information sharing and training.

**Support managers with coaching and resources.** Managers face an array of issues when managing pregnancy/return to work, and may need support in executing their organisations' policies. It may be helpful, for example, to provide anti-discrimination and unconscious bias education for managers, as well as internal and/or external coaching on managing uncertainty; managing employees on parental leave; and managing employees returning after parental leave.

It may be useful to offer specific resources or tools for managers, to support them in managing employees on parental leave. These may include:

- Toolkits/guides including information such as: checking eligibility, applying for leave, keeping in touch while on leave, and enabling a smooth transition when returning from leave.
- Checklists on what to discuss with or provide to employees, and when is best to do so.
- IT systems, for example calendar alerts, notifying managers when to contact employees on leave.

[We provide] coaching [for] managers on [having] the conversation – because of difference between managers, [we] need the policies and rules in place.<sup>19</sup>

[The organisation] has a framework or guide that steps through the process for managing people on long term leave, for example: how to develop a communication plan. It also includes suggestions regarding at what stage and for what reasons you should contact an employee who is on leave. In addition, there's an email reminder that goes out to managers who are responsible to remind them that they have to stay in touch.<sup>20</sup>

**Ensure that the organisation's structures encourage managers** to support pregnant women and working parents by, for example:

- Including retention of staff who are pregnant, on parental leave or on return to work, in managers' performance criteria
- Establishing formal repercussions for managers who do discriminate
- Profiling managers (in newsletters or intranet or at staff meetings) who are effectively managing a number of staff who are pregnant/on return to work or

[I]t's about education. Educating...the managers and making them accountable for the policies and our expectations of how they're going to deal with the situation.<sup>21</sup>

The other thing is we've developed a survey for every employee two months before they are due back and then three and six months after they come back. We notify the manager that they will be evaluated on their performance of managing that parental leave process and we survey the manager as well.<sup>22</sup>

It is important that managers are supported in creating a positive and responsive culture in the team from which the employee has taken parental leave and in the team to which the employee returns after parental leave. Managers should ensure that the employee's team is fully aware of the arrangements regarding her/his return to work and the valuable contribution that he or she will provide. The team's approach to that employee will significantly contribute to the success of the arrangement.

### (g) Empower individuals: Providing support for employees

**Offer internal and/or external coaching and/or training** on career progression, managing absences, and managing work/life responsibilities to support employees to understand the impact of work on a parent and vice versa.

Sometimes there is a lack of knowledge in some of these employees about the options available...You know, oh I'll just apply for 12 months – well, why don't you apply for six months, and then come back and see us, and then decide whether you want to extend it? And then work out whether you want it.<sup>23</sup>

[We offer a] workshop every quarter for women who are on leave and due to return called 'Reignite your career' – [it involves] women speaking to other women about their experiences.<sup>24</sup>

We've had workshops for women for a while now and then the men started to say: 'What about us?' We started a workshop for New Dads and Secondary Carers and it's about their experience, how to maintain [their] career and handle new complexities of parenting in the workplace. They love it! The feedback was phenomenal. The facilitator in the workshop said she had never seen a group of men opening up so much. She said they talked about everything from lack of sex to the difficulties juggling work and family life. There needs to be more support for men.<sup>25</sup>

**Create internal networks of support**, such as an employee support network with information for parents and parents-to-be. This can be web-based and/or in person. Where appropriate, it may be useful to establish formal and informal mentoring programs to support and guide pregnant women and parents.

We have an online portal that provides pre-leave coaching, post-leave coaching, so that it's not dependant on the specific manager.<sup>26</sup>

We've also set up a parenting network. Because we are an organisation of 50,000 people that's difficult, so it's online. We've had an amazing response and there are hundreds of people accessing it every day. People ask for advice about kids' lunches, holiday care, tips for coming back from work. People connect from all across the country.<sup>27</sup>

[We have] an information portal for pregnant employees [and the] feedback [is] positive so far.<sup>28</sup>

**Establish a robust return to work support infrastructure** through a formal return to work process including a re-induction or re-orientation program for those returning from leave, as well as interviews on return and subsequently (eg every three months) to learn what is working well and what needs to be changed.

The biggest revolution for us is the return to work interviews which have given us insight into how the employee feels, how the manager is working and it helps us identify key issues. I read every interview and so does my managing director...It has allowed us to come up with new things and enable us to profile successful women returning to work and flexible arrangements.<sup>29</sup>

Identify a return to work coordinator or establish a 'buddy system' to ensure that there is an individual in the organisation who is responsible for remaining connected with the employee on leave, and facilitating return to work.

We have a reconnect program where [employees on leave] can be assigned a buddy to help stay connected to the organisation.<sup>30</sup>

**Provide anti-discrimination and unconscious bias education** to address intentional and unintentional negative behaviour/attitudes from other employees.

It requires education to address resentment from other employees – why are women getting additional services?<sup>31</sup>

Now that there is a national scheme, it amazes me how many people don't actually understand it, and they don't draw a line between: is this the employer giving this person some favourable treatment, or is this the employer just following the law? So I think it's important to articulate what the law is and make sure everyone's aware of it.<sup>32</sup>

#### **Leading practice: Transitional coaching<sup>33</sup>**

Supporting the career development of employees on parental leave and facilitating their return to work through:

- One-on-one customised service for individuals preparing to return to work that recognises individual needs and circumstances
- Monthly 'development and opportunity reviews' with parents on leave to ensure career plans are understood and to identify opportunities to reignite career plans upon return
- A career coaching service including an information portal and seminars for parents within the organisation.

#### **(h) Facilitate return to work: Establishing flexible work arrangements<sup>34</sup>**

**Better efficiency and performance results related to flexible work practices.** Flexible work may refer to a range of different arrangements, such as changing hours of work (for example, working fewer hours or changing start or finish times), changing patterns of work (for example, working 'split shifts' or jobsharing) or changing the place of work (for example, working from home). Employers and employees work together to establish mutually agreeable arrangements as organisational and individual needs change.

Beyond the legal provision for eligible employees to request a flexible work arrangement under the FWA, a strong business case exists for providing flexible work options to employees because it can strengthen retention and productivity.

The vast majority of employees returning to work after parental leave choose to return in a part-time or flexible capacity. Without clear and supported flexible work options, employees simply will not return.

### Benefits of accommodating requests for flexible work arrangements

Research from Australia and internationally shows that access to flexible work practices has a number of benefits for workers and employers alike, including increased efficiency; reduced absenteeism and turnover; reduced worker stress; increased job satisfaction; and increased capacity to attract and retain valued employees.

Designing flexible roles which focus on output and results, as opposed to 'presenteeism', is often more effective and has the added benefit of helping to retain employees who are unable to work full-time or need to work flexibly.

Contrary to the 'ideal worker' stereotype, research has found that employees in flexible roles tend to be more productive than their full-time colleagues simply by using their time more wisely.<sup>35</sup>

In terms of total time of work, they're producing the total number of hours they're being paid for but if they're at work working a nine to five...the normal Monday to Friday role they say that they look back at the history of their work and they were not as producti[ve] in those 37½ hours...because you spend time having a chat [etc.]. [B]ut overall if they're part-time they're performing every minute of those hours that they're being paid for so the productivity is greater. I've not seen a decline, in fact we've had increases in productivity over those five years and they're all measurable [as] we measure them at the end of every year.<sup>36</sup>

[W]omen in flexible roles (part-time, contract or casual) have been found to be the most productive members of our workforce. Women in flexible roles waste only 11.1 per cent, compared to an average of 14.5 per cent for the rest of the working population. Given 43.2 per cent of women in the workforce work part-time, compared to 13.5 per cent of men,<sup>37</sup> this translates into an important productivity bonus that few employers recognise.<sup>38</sup>

Studies have shown that different forms of flexible work have generated different benefits, namely a compressed work week nearly doubled productivity and telecommuting increased productivity by 40%; flexible work schedules reduced turnover from 50% to 6% and companies that support flexible work arrangements showed 3.5% higher market value.<sup>39</sup>

This means that, contrary to common erroneous assumptions about women in flexible roles 'not pulling their weight', the reality is that introducing or expanding flexible work options can lead to greater efficiencies and outputs in the workplace.

As workplaces change their ways of working, therefore, they are increasingly seeing that developing a flexible work force is becoming a business imperative.

The relentless pursuit and development of the best people must become part of everyday life for us. Flexibility is both a productivity and people imperative.<sup>40</sup>

The FWO has identified the following 'enablers' to support the facilitation of work/life balance and encourage this return, including:

- Accessing annual leave in single day periods or part days
- Taking time off in lieu of overtime payments
- Working additional hours to make up for time taken off
- Accessing accrued rostered days off in part days or more flexibly
- Working part-time or creating part-time work opportunities
- Jobshare arrangements, telecommuting or home-based work.<sup>41</sup>

Certainly, a range of employers already endeavour to provide enablers of this kind in their workplaces.

It is also important to note that flexible work should be promoted as being accessible to both men and women and not be seen as merely a 'women's issue'. The increase over time of dual working parent households where there are dependent children has led to men requiring and wanting greater work/life balance. Research by Diversity Council Australia suggests that flexibility at work is critical to employment decisions and job performance for men and women, including male managers, young men, men approaching retirement and especially younger fathers.<sup>42</sup>

Significantly, research also suggests that once men start adopting a flexible work arrangement, flexible work becomes normalised, including in the workplace.

'Men and flexibility' constitutes an important enabler of mainstreaming flexibility in Australian business, through its capacity to assist organisations:

- Promote flexible work and careers as legitimate for and available to all, rather than merely the domain of mothers with young children, working at lower levels and in lower paid roles.
- Encourage leaders, who are disproportionately men, to lead 'the charge' in making flexible work and careers standard business practice.
- Make and communicate a broader business case for mainstreaming flexibility, which sees the connection between flexibility for men and organisational productivity and sustainability.<sup>43</sup>



#### **Leading Practice: Flexible work at a Not-for-Profit organisation<sup>44</sup>**

The Northern Territory Working Women's Centre (NTWCC) Enterprise Agreement and policies provide the following:

All employees have the right to flexible work arrangements to assist them to meet their personal needs and/or family responsibilities. This right is particularly highlighted for staff returning from parental leave. The NTWWC will make all efforts to accommodate such requests, and can only refuse the request on reasonable grounds related to the impact of the Centre (which includes, but is not limited to cost, lack of adequate replacement staff, loss of efficiency and the impact on client service).

The Enterprise Agreement contains the model dispute resolution clause which means that if an employee's request for flexible work has been refused, and other dispute resolution procedures have been exhausted, the employee may take the dispute to the Fair Work Commission for a binding resolution.

#### **Leading Practice: Shared leave pool<sup>45</sup>**

A professional services firm created a shared leave program. Employees with serious illnesses or other emergencies can receive up to 12 weeks of additional paid personal leave from other employees who donate their unused time off. The company reports that fully 100% of needs for donated time are met by employees, usually within minutes of an employee making an anonymous request.

#### Leading Practice: Jobshare register<sup>46</sup>

A large public sector organisation created a jobshare register to help staff and managers negotiate jobsharing arrangements.

This helped to address the common limitation of jobshare arrangements where an employee wishes to work part-time in a full-time role and cannot be matched up with another appropriate part-time employee within their direct work area.

The jobshare register will be promoted internally on the organisation's intranet, and relevant employment guidelines and fact sheets will be developed to support its implementation, along with the toolkit.

#### Leading Practice: Schedule control<sup>47</sup>

An American retail store chain Best Buy's flexible work program, known as the 'Results Only Work Environment (ROWE)' provided workers with autonomy to determine when and where they worked based on individual needs and job responsibilities as long as they worked effectively. Flexible work options included work from home and increased schedule control such as self-rostering. Analysis of ROWE found that increased schedule control was responsible for positive outcomes including improved health of staff and reduced work-family conflicts.<sup>48</sup> In addition, voluntary turnover rates reduced as much as 90% within teams implementing ROWE, resulted in savings of \$2.2 million over the course of two years for one particular team, and increased productivity within teams by an average of 41%.<sup>49</sup>

The following are suggestions for ways in which employers can 'mainstream flexibility' and create sustainable flexible work options for employees.

#### Strategies for embedding flexible work<sup>50</sup>

Diversity Council Australia, a workplace diversity advisor, has identified key strategies for implementing flexible work successfully.

1. **Get designing:** Integrate flexibility into job descriptions, job and work design, and teams; integrate flexibility into performance reviews & development plans; assess performance on outcomes, and recognise outcomes can be met in different ways; treat flexibility as a management deliverable; explore possibilities of technology and alternative work strategies.
2. **Get cultural:** Ensure those who work flexibly are "accepted"; base relationships and expectations on trust; ensure flexible work is seen as the way things are done around here; challenge the stigma of working flexibly.
3. **Get leading:** Senior leaders genuinely commit to flexible work; leaders lead by example – they are effective role models for flexibility; leaders have an active approach to mainstreaming flexibility; leaders have the capabilities to manage a majority flexible workforce; all staff have the necessary skills to engage in flexible work.
4. **Get talking:** Show the business benefits; redefine flexible work by bringing it to life with examples; illustrate success stories – provide the details to enable others to copy; show how flexible work arrangements work on a practical level.
5. **Get strategising:** Identify flexible work as a business need; have a long term business commitment to flexible work; create a strategy for a majority flexible workforce – this is part of workforce planning; report progress and outcomes as part of standard business reporting.
6. **Get universal:** Foster a genuine acceptance of flexible work by all; ensure flexible work is available to all, regardless of job type or level; educate clients/customers and the community about flexible work.
7. **Get resourced:** Equip people with the tools they need (eg IT, team-based processes); provide appropriate resourcing for flexibility; review policy and systems that may impede flexibility implementation; explore new ways of meeting clients' needs and consult clients and customers about this.
8. **Get ROI:** Engage in risk (eg not being flexible) vs return (eg retaining a skilled workforce) discussions; make the connection between flexibility and increased individual, team and organisational performance; measure the impact of flexible work and show the financial returns.
9. **Get proactive:** Look for opportunities to integrate flexibility into day-to-day business operations; focus on 'why not flexibility' rather than looking for reasons to 'block' flexibility.
10. **Get team-focussed:** Consider the impact of flexible work on the whole team; focus on support from within and across teams; welcome team-based feedback on the impact of flexibility; create flexibly autonomous teams.
11. **Get career-focussed:** Create flexible career opportunities; integrate flexibility into senior roles.



**Make flexibility a priority by identifying flexible work as a business need.** Make the connection between flexibility and increased individual, team and organisational performance. If possible, highlight this to the organisation by measuring the impact of flexible work on productivity and showing the financial returns. Finally, report the progress and outcomes of flexible work initiatives as part of standard business reporting.

[We have] set up a flexibility committee which is driving change – each committee member is from different parts of the business.<sup>51</sup>

#### **Leading Practice: Flexible work<sup>52</sup>**

Service in the Army has not historically been considered compatible with flexibility. In 2012, the Chief of the Australian Army set a goal of quadrupling the number of flexible workers by 2016. In order to achieve this, the Army:

- released the Flexible Work Arrangements for Commanders and Soldiers Guide, outlining a commitment from Army to be an employer which has the flexibility to provide its people with a satisfying and sustainable work-life balance
- held workshops nationwide for commanders to understand the benefit of flexibility, how to manage flexible teams and to consider how to implement flexible arrangements in their workplaces
- instituted policy requiring commanders to consider Flexible Work Applications with an open mind and to better appreciate the personal circumstances underpinning the request for flexibility
- purchased IT equipment to enable flexible work, including laptops, remote access tokens and 3G cards
- established a flexible work section to assist junior members of the organisation to better understand what flexible work was, how the policy worked and how to apply for flexible work arrangements.

As a result of these initiatives, Army achieved a baseline of 495 informal and formal flexible workplace arrangements in September 2013. Army's improved use and understanding of flexibility was demonstrated in the Defence 'YourSay' survey where respondents indicated that the use of informal flexible work arrangements increased over 2013, from 49 per cent in February, to 63 per cent by October and the use of formal flexible work arrangements also increased slightly, from 15 per cent in February 2013, to 18 per cent in October 2013.

**Design flexible jobs and flexible careers.** When assessing the viability of flexibility for a particular role, ask 'why not' instead of 'why'.

Gathering input from employees helps employers to understand the needs of different groups. Flexible careers can also be enhanced by integrating flexibility into performance reviews and development plans, ensuring that performance is assessed on outcomes and recognising that these outcomes can be met in different ways.

Technology can be very useful in supporting flexible work. Lap tops, smart phones and video conferencing can all be leveraged to enable working remotely.

[There are] ways for us to be innovative and try and find ways in which [employees] can work from home, or do the reduced hours, do the pick-up. [Working remotely] they [can] pick up computers at night after the kids have gone to bed...do a couple of hours.<sup>53</sup>

### Leading Practice: All roles flexible<sup>54</sup>

Telstra has implemented a policy of making all roles flexible within its organisation.

Our purpose with 'All Roles Flex' was to adopt a new and disruptive position around mainstreaming flexibility that would amplify productivity benefits, lift engagement, establish a clear market proposition and also enable a new way of working, with technology linked very strongly to enabling this.

Early on, we had very strong and visible senior level – including CEO – support to make 'All Roles Flex' our standard, so this was really helpful in positioning the work.

To test our ideas first, we piloted the 'All Roles Flex' approach in our (then) Customer Sales and Service business unit (TCS&S), which contains roles in account management, contact centre and retail environments, among others.

The results of our three month pilot were compelling. In TCS&S overall, comparing roles not sourced as 'flexible' with those sourced as 'flexible', we saw:

- female representation among applicants increase from 28% to 32% (28% to 30% for external applicants, and 28% to 37% for internal applicants)
- female representation among offers accepted increase from 37% to 50% (38% to 55% for external applicants and 36% to 44% for internal applicants).

The stage was therefore set for a more extensive adoption of 'All Roles Flex'. Accordingly, as part of our symbolic actions to support the launch of Telstra's new Purpose and Values in September 2013, it was announced that we would adopt 'All Roles Flex' in all Business Units at Telstra by the end of March 2014.

'All Roles Flex' at Telstra means that flexibility in some form is something we're open to discussing for all our jobs. We have adopted a very broad definition of 'flexibility' in this regard, recognising that the practice will mean different things for different people and different work types.

Flexibility can include part-time work, different working hours, or working from different locations, instead of the traditional full-time '36.75 hour week', and is practised in different ways across our many types of roles within both scheduled and non-scheduled environments. Flexibility in a scheduled work environment (such as a Telstra store) could mean the ability to express a preference to work certain scheduled shifts. Flexibility in a non-scheduled work environment could mean different working hours (ie later starts or earlier finishes depending on your situation); working at other locations (ie from home or another Telstra office if it's more convenient); being open to hiring candidates in different locations; and reduced hours (ie part-time).

As with current practice, we will continue to expect our leaders to proactively engage their team members on ways of working that include flexibility to make sure that work and life can be balanced, and so aspirations and different life stages and events can be factored in. This is an ongoing expectation.

Our leaders will encourage team members to give flexibility a go by talking to their people, and modelling and trialling new ways of working.

We have zero tolerance for potentially unlawful discriminatory behaviour or anyone unreasonably refusing requests for flexible work. This is why a consistent and long term view is required to affect change, with ongoing focus on leader education, a spotlight on successful flexible working, and visible modelling of flexibility at all levels of the organisation, and in a variety of circumstances.

In 2014, Telstra ran the Employee Engagement Survey which asked employees to agree whether or not 'at Telstra they are able to access flexibility and balance their work and personal life'. 84% of employees responded positively, an increase of 4% from the previous year, where the positive response rate was 80%.

The same survey also saw a positive change in employees' views of their ability to manage work pressure.

**Promote flexible work and embed flexibility into the organisation's culture.** There may be biases among some employees and managers against flexible work. For example, individuals may assume that an employee working reduced hours is not committed to her/his career. It is important to challenge the stigma of working flexibly by visibly profiling role models, especially senior role models and business leaders, who are embracing flexibility. Employers can do this by illustrating success stories; providing the details of flexible work arrangements to enable others to replicate; and showing how flexible work arrangements work on a practical level. Employers can also educate clients/customers and the community about flexible work.

[We] gathered examples of role models throughout business – male and female – people on flexible working arrangements. Communicating these case studies [is] helping people to understand realities.<sup>55</sup>

It may also be useful to create a toolkit for flexible arrangements to communicate the options.

### Leading strategies for small businesses and organisations

Implementing strategies about pregnancy, parental leave and return to work can pose some particular challenges for small businesses and organisations. The National Review consulted with employers from small businesses and organisations who shared some practical, no-cost strategies to effectively manage pregnancy, parental leave and return to work. The small number of staff and tight-knit work environments can foster closer relationships and greater understanding between employer and employee.

Some positive workplace practices and strategies of small businesses and organisations include:

- **Recognising that parents are an asset:** Many small businesses provide niche goods and services and thus require staff with specific skills and experience. By valuing all employees as an asset to their organisation, small businesses understand that retaining pregnant women and parents is an imperative for the long term success of the business.
- **Having open conversations:** Open communication directly between an employer and employee, instead of through Human Resources, can facilitate trust and help to avoid confusion and uncertainty when an employee is pregnant, on parental leave and returning to work on flexible arrangements. Similarly, open conversations with all staff help to manage expectations and encourage a supportive work environment.
- **Keeping in touch:** A small business employer<sup>56</sup> provided employees on parental leave advanced notice of any changes to their work or opportunities for training and professional development, such as working on projects from home. Employees on parental leave are sometimes invited to bring their baby to work and to team meetings and social gatherings.
- **Simple, no-cost solutions:** One small business owner<sup>57</sup> allocated a spare room in the office to enable his employee to breastfeed her baby and express on return to work.
- **Providing some leeway:** Flexibility with shifts and allowing employees to cover for each other to accommodate early or later start and finish times.

## 6.2 Implementing policies and managing the process comprehensively and efficiently

Beyond ensuring that a strong organisational foundation exists for supporting employees who are pregnant, on parental leave or returning to work (as detailed above), employers need to manage and implement the policies and programs with diligence and care. The following points were identified by employers and in research as being crucial to successful implementation.

### (a) Start off right: Establishing arrangements for work during pregnancy

**Enable a positive and productive conversation about working during pregnancy by offering resources** to managers and employees, including guides regarding what to discuss and information on where to turn for advice and support (for example a Human Resources representative in a large organisation or a business leader in a small business).

Communicating and providing information. I think that makes a huge, huge difference to people...it's such an exciting but also very daunting time for women who become pregnant.<sup>58</sup>

Discuss issues that may be relevant for a pregnant employee, for example:

- Expectations for work arrangements during pregnancy.
- Planning for pre-natal visits (frequency and duration).
- Pregnancy related illness, including morning sickness, and how to approach associated absence.
- Workplace safety and any accommodations that will be made, if relevant.
- Planning for parental leave including scheduling a separate meeting to discuss details.

**Take measures to ensure a safe working environment for pregnant employees.** If the role cannot be made safe, identify an alternative role for the employee. There are particular workplace health and safety issues to consider for pregnant employees, as well as employees who are breastfeeding and returning to work after a caesarean section. Certain workplace environments may also have an impact on reproductive health.

We actually have a form developed called a task analysis form, for different jobs...[I]t breaks [tasks] into the muscle groups, the part of the body, the rotation, bending, whatever is required in that role. We send that [to pregnant employees so they can take it] along with them to the doctor.<sup>59</sup> And one of the things that we offered to her as time went on in her pregnancy, would you like to change locations? Because she had steps to go up to the offices and we offered her the option that at any stage if you feel that you don't want to be working upstairs, we'll change locations, etcetera.<sup>60</sup>

### Health and safety issues to consider<sup>61</sup>

#### Risks and Hazards – Pregnancy

- Manual handling – lifting and twisting, muscles are often weaker during pregnancy as ligaments are more relaxed.
- Heavy workloads and work intensity – bending, stretching, working on ladders.
- Slips, trips and falls – centre of gravity changes when pregnant.
- Low or high blood pressure – due to increased production of blood in the body when pregnant, can lead to light headedness and fainting.
- Prolonged standing – varicose veins, swelling of legs, ankles and feet, pelvic floor prolapse, lower back pain. Higher risk of blood clotting.
- Hazardous chemicals – can affect both mother and foetus through skin absorption, ingestion, and inhalation. A pregnant woman will breathe more frequently and deeply making her more vulnerable to the effects of the chemicals.
- Exposure to infections and viruses eg Rubella (German measles), chicken pox.
- Fatigue.
- Shift work – irregular work hours may be associated with a slight increase in the risk of spontaneous abortion and reduced fertility.
- Heat stress – lack of air-conditioning and dehydration, especially concerning when toilet breaks are refused by the employer so employees do not drink enough water for fear of needing to go to the toilet.
- Biological hazards – occupational exposure, such as nurses who are at a greater risk of being exposed to Hepatitis B and HIV.
- Hygiene practices – exposure to salmonella, toxoplasmosis (veterinary sciences).
- Gestational diabetes- special requirements, such as regular and frequent rest breaks, will be needed.
- Bullying and harassment – increased likelihood of experiencing bullying and harassment when pregnant and returning to work.
- Stress and depression.
- Morning sickness – nausea, vomiting, sensitivity to smells and foods.
- Injury during pregnancy and birth – hip and back injuries.

#### Risks and Hazards – Breastfeeding

- Exposure to chemicals which can pass through into the breast milk and into the infant.
- Work patterns, irregular hours, long hours, effect on supply.
- Fatigue and shift work can affect supply.
- Exposure to heat and cold in the workplace – heat stress and dehydration can affect supply of breast milk.

#### Risks and Hazards – Returning to Work

- Post caesarean recovery and complications – heavy lifting.
- Stress and post natal depression.
- Bullying.

#### Risks and Hazards Reproductive health – Fertility of women and men

- Exposure to hazardous chemicals (for example insecticides – farming, pharmaceuticals, factory workers, fruit pickers and packers).
- Radiation.
- Lead exposure.
- Fatigue.
- Shift work/night work – effect on fertility.

### Leading Practice: Risk assessment checklist<sup>62</sup>

Hume Bank, one of Australia's leading regional mutual financial institutions, developed a Risk Assessment Checklist which details the risks associated with working conditions for pregnant women and women returning to work after giving birth.

The Checklist covers:

- Movement and posture
- Manual handling
- Protective equipment and uniforms
- Hazardous substances – infection risks and chemicals
- Working time (eg long hours)
- Work related stress
- Extremes of cold or heat
- Work at heights (eg risk of fainting)
- Work related violence
- Welfare issues (eg hygiene and storage for expressed breast milk)

The checklist is completed periodically throughout the pregnancy by the employee with her manager to promote conversation between both parties ensuring that any concerns can be openly discussed. The form is sent to Human Resources to action any issues which have been identified. For each of these issues, the Checklist outlines the nature of the risk and what questions employers should ask themselves in order to establish whether the work is safe.

- Does the woman have to stand for periods of eg more than 2-3 hours without a break?
- Does she have to sit for periods of more than 2-3 hours?
- Can the equipment and workstation be adjusted to fit the worker?
- Does the job involve awkward twisting or stretching?
- Are there space restrictions? Will these cause more restricted movement as the pregnancy develops?
- Does the job involve twisting, stooping or stretching?
- Does the job involve rapid repetitive lifting (even if lighter objects)?
- Does the job involve lifting objects that are difficult to grasp or are awkward to hold?
- Is the woman wearing the right size uniform replacement?
- Is the uniform replacement comfortable?
- Are there any infection risks at work?
- If so, are hygiene precautions adequate?
- Is the woman expected to work long hours/overtime?
- Does she have some flexibility or choice over her working hours?
- Does the work involve early starts or late finishes?
- Are there tasks which are known to be particularly stressful eg working with irate customers?
- Are colleagues and supervisors supportive towards the pregnant worker?
- Is the pregnant worker aware of what to do if she feels she is being bullied or victimised?
- Has the individual risk assessment taken into account of any concerns the woman has about her own pregnancy?
- Does the work involve exposure to temperatures that are uncomfortably cold or hot?
- Is the worker exposed to cold draughts even where the average temperature is acceptable?
- Are there arrangements for frequent breaks and access to hot/cold drinks?
- Does the work involve a lot of climbing up and down steps or ladders?
- Does the work involve carrying items or boxes up or down steps or ladders?
- Is the job one which is perceived to have a high risk of violence?
- Is there always support at hand to help staff who may be threatened or abused by customers?
- Are managers and supervisors aware of the extra risk for pregnant women?
- Is there somewhere quiet for pregnant workers to rest?
- Are they given easy access to toilets and more frequent breaks than other workers if needed?
- Is there a clean, private area for breastfeeding workers to express breast milk?
- Is there somewhere safe for them to store expressed milk?

## **(b) Prepare for the absence: Negotiating a mutually beneficial parental leave arrangement**

**Discuss important relevant details upfront.** Leading employers suggest that it is important to have a comprehensive and open discussion with employees early on.

### **Leading Practices: Tips for the initial planning meeting**

- Have the right attitude. Good relationships between manager and staff member allow the best negotiations
  - » Offer congratulations.
  - » Be understanding that decisions impacting family choices are important and can sometimes be emotional.
- Be open and honest in terms of needs and expectations. Discuss the need to balance individual and organisational needs right up front. The more that the arrangement is set up as a partnership, the more successful it will be.

- Be prepared and informed. Create a check list that covers off onkey issues. Issues to consider for an initial planning meeting include:<sup>63</sup>
  - » Employment rights and obligations, including Health and Safety (if relevant).
  - » Policies relating to maternity leave (duration and pay).
  - » The employee's plans and expectations, including 'unknowns' (such as exact return to work date and whether the employee will want to return part-time or to flexible working arrangements).
  - » Options for cover during maternity leave.
  - » How to keep in touch during maternity leave, including frequency and type of communication.
  - » Access to equipment such as mobile phones or laptops.
  - » Access to professional development opportunities while on leave eg training, job opportunities.
  - » Options for returning to work, including how to identify flexible working options if required.
  - » Timeframes for decision making (eg when will she make a decision regarding return to work date) and key dates and potential reasons for changes in dates and decisions (eg return date may be dependent on availability of childcare).
- Involve the right people. In addition to the employee and his/her direct manager, make sure any relevant individuals are involved or aware, for example, the Human Resources department, or in the case of small businesses and organisations, the owner or general manager.

Negotiating return to work is done by [the] line manager. Human Resources gets involved when [the] employee gets no support...Human Resources does [a reasonableness] test and tries to work out reasonable arrangements.<sup>64</sup>

**Be efficient.** Ensure a quick turn around on paper work and consistent follow up. A quick process signals to the employee that she/he is valued and facilitates planning ahead. For example, if an employee has requested a part-time work arrangement upon return to work, receiving a timely response may be essential so that she/he can organise child care arrangements to enable her/his return.

**Enable a productive conversation by offering resources to managers and employees including guides/checklists** on what to discuss (see *Leading Practices: Tips for initial planning meeting*) and information on where to turn for advice and support, such as a Human Resources representative in a large organisation or an owner of a small business.

### (c) Manage the transition: Staying in touch with an employee on leave

**Discuss the details of leave in advance.** It is important to plan in advance and discuss backfill arrangements and commitments before the period of leave commences. Relevant information for discussion includes key contacts during the leave period; handovers of work or clients; and important dates and milestones during the leave.

It is useful to discuss what level of contact and communication there should be with the employee during parental leave, including what keeping-in-touch measures will be in place.

It is also useful to arrange a pre-determined time to get in touch with an employee on leave, so that the employee's expectations and preferences concerning contact during parental leave can be considered and managed.

[It's] also about preparing people before they take leave so that they can play an active role in helping the manager work through things. We try [to structure] part-time arrangements as agreements between equal parties as to how they are going to work and how to be evaluated over time. There's no panacea, it's a case by case.<sup>65</sup>

**Maintain good communication while on leave.** The following are some examples of ways to do this:<sup>66</sup> Make sure a particular person in the workplace is given responsibility to forward important information about the workplace to the employee on leave, such as any important changes to the structure of the employee's workplace:

- Forward staff newsletters, updates and important emails to the employee's home email account where appropriate, or arrange for them to have remote access to their work email account where practical and where the employee has agreed.
- Invite all employees on parental leave to attend any social events (for example holiday functions), planning days, training or team building days which occur during their leave.
- Arrange for contact with the employee when they are nearing the end of their leave to discuss the return-to-work expectations of the employee and the employer, such as hours of work, flexible working arrangements, or any adjustments that will need to be made to their role.
- Make development and/or training programs available to employees on parental leave.
- Ensure that employees on leave do not miss out on performance reviews and salary increments or bonuses while on leave.
- Encourage the use of paid 'keep in touch' days, if the employee so chooses.



- Allow employees on parental leave who have agreed to retain technology, such as mobile phones and laptops.

The National Review heard that many employers already recognise the value of maintaining contact and relationships with employees while they are on leave:

One thing we have done is [offer] employee development programs for those who have just returned to work because they feel like their careers aren't developing at the rate they would like.<sup>67</sup>

The other thing we are doing more of, which has good feedback, is paying for courses and training for people on leave...People [are] filling in some of their time and keeping their brain fresh while they are on leave. It helps support the expectation that they are coming back and we fully pay for that.<sup>68</sup>

We give full internet and intranet access whilst people are absent. They are still employed by the business so therefore our intention is to keep them aware.<sup>69</sup>

#### Leading Practice: Communication plan for employees on leave<sup>70</sup>

Telstra has developed a communication plan for managing employees on leave.

##### PLAN YOUR LEVEL OF CONTACT

Level of importance		High	Average	Low
<b>Essential</b>	<ul style="list-style-type: none"> <li>• Catch-ups to discuss (phone, email, online or face -to-face?):               <ul style="list-style-type: none"> <li>– general updates</li> <li>– specific project updates</li> <li>– key decisions (team and Telstra)</li> <li>– current contact arrangement.</li> </ul> </li> </ul>	Weekly	Monthly	As needed
	<ul style="list-style-type: none"> <li>• Employment status and consultation updates in event (phone, email, online or face-to-face?):               <ul style="list-style-type: none"> <li>– restructures</li> <li>– change of managers</li> <li>– promotion opportunities.</li> </ul> </li> </ul>	As needed	As needed	As needed
<b>Desirable</b>	• Contact details kept up to date in People Express.	✓	✓	✓
	• Subscribe/unsubscribe to email distribution lists, as appropriate.	✓	✓	✓
	• Have discussions to plan a smooth return to work (covering timing, training, new products, new systems, staff changes, etc).	✓	✓	✓
	• Continue receiving minutes for any meetings by email.	✓	–	–
	• Dial-in or attend roadshows, conferences and team building events.	✓	–	–
	• Continue receiving selected office emails and notices (Telstra or private email address).	✓	–	–
<b>Optional</b>	• Buddy or mentor assigned to keep you up to date.	✓	✓	✓
	• Invitations to social events (Friday drinks, work lunches) in addition to manager updates.	✓	✓	–
	• Occasional visits to workplace, to maintain personal contacts.	✓	–	–

#### (d) Manage the return process: Supporting and encouraging return to work

**Support employees to return to work** through initiatives that ease the transition back to work. For example, in light of the financial pressures that many new parents face, some organisations offer financial incentives to return (for example a bonus for early childhood education and care services).

Another option for helping employees return to work is through supporting affordable and accessible early childhood education and care services, for example:

- Subsidising the cost through salary package.
- Identifying services close to work.
- Providing in-house care.
- Enabling children to access the work place (where safe) or providing a carer's room.

Different employers find different ways to do this:

We had a room on our ground floor and it was set up with a computer that you could use to log in and work and it had a cot [and] a change table. So you booked it through a central IT resource, and I used it a few times when my son was sick and my wife couldn't look after him, and that worked really well.<sup>71</sup> One of the things we do is...support [parents who] go to conferences with child care costs...We say on all the letters, that it is for men and women, and it covers broader carer stuff.<sup>72</sup>

A male [business] owner who had [a] good female employee [working] part-time, and [he] was willing to [allow her to] have the baby in the office...She fed the baby and planned her breaks around feeding the child, and was able to work and have her baby in a cot or stroller in the office.<sup>73</sup>

##### **Leading Practice: Employer provided childcare<sup>74</sup>**

'The Treehouse' is a Stockland built childcare centre, managed by KU Children's Services and located in its Sydney Head Office in the heart of the Sydney CBD.

It is a fully equipped, state of the art childcare facility licensed for 56 children, and provides long day care for children from birth to school age. Limited occasional care is also available.

Stockland's PPL policy, support with childcare, flexible working arrangements and leading edge parental transitions program, has resulted in a significant increase in parental leave return rates – to 92%.

##### **Leading practice: Child care resources<sup>75</sup>**

ANZ has downloadable 'child care kits' which provide employees information about child care facilities and fees, government assistance and rebates and options for child care (ie a Child Care Directory), looking after children when they are sick, vacation care programs and shift work.

##### **Leading Practice: Return to work incentives<sup>76</sup>**

Beginning in April 2013, Insurance Australia Group (IAG) introduced new entitlements which pay all new mothers double wages for their first six weeks back at work as part of a 20-week paid parental leave package. The company, which owns CGU and NRMA Insurance, has offered the package to all eligible employees of its 10,000-strong workforce from April 2013.

Women applying for parental leave at IAG will receive 14 weeks' paid leave, which was formerly the standard offering, and now an additional six weeks' worth of double pay upon their return to work.

### Leading Practice: Children's room at work<sup>77</sup>

One small organisation created a 'Family Room' at work, with a bed, chairs, a computer with games, and a TV and DVDs. The room allows parents to bring their children back after school or have them attend themselves, so that the parents can complete their work day. The room can be used on occasion if a child is unable to go to day care or school, and is utilised nearly every day.

Another organisation created a 'Parenting Room', where employees can bring a sick child to work with them when child care options aren't available. The room is booked online through the organisation's portal, and is set up with a cot, change table and computer. The parenting room is large enough to fit several children and a working parent, if required.<sup>78</sup>

**Highlight flexible return options**, so that employees are aware of the possibilities. Managers who are proactive in helping employees 'think outside the box' may help in developing mutually beneficial work arrangements that encourage employees to return to work.



### Leading Practice: Flexible work arrangements<sup>79</sup>

#### As of May 2012, Australian Defence Force members had access to the following flexible work arrangements:

- Temporary Home located Work (THLW): THLW enables a Defence Member to complete work at a specified location outside their normal workplace. It can be utilised in a temporary or occasional arrangement, or as an ongoing arrangement for a specified time, on a part-time or full-time basis.
- Variable Working hours (VWH): This policy allows Defence Members flexibility with their start and finish time as well as any periods of absence from the workplace. This may be utilised as a one-off or as an ongoing arrangement.
- Part-time Leave Without Pay (PTLWOP): PTLWOP enables Defence Members to work a reduced number of days or work part days in a fortnight pay period. PTLWOP may include jobsharing.

**Establish a clear process for requesting and granting flexible work requests.** Make the process straightforward and well documented by creating a standard application form for flexible work requests. Establish clear timeframes for submitting, processing, changing or cancelling requests. Larger organisations may consider establishing a 'Flexibility Committee' or 'Flexibility Manager' to manage the process. Smaller organisations may choose to designate management of the process to an existing staff member, instead of creating a new position.

We now have a centralised role of flexibility manager. We are small, just 400 people, so it can be one person (that person is me). Every formal request for flexibility comes to me and I'm involved in brokering those arrangements for every person. There's equity of treatment and of process and everyone knows that. So that no matter who they work for, they get a fair go about what's negotiated for them. Part of that is coaching partners and managers on my part how to handle flexible work better and coaching the individual about their responsibilities. And it's about mutual responsibility to make sure that everyone participates in making this work. For those returning, we discuss how have things changed, how are things going to change? And we do some catch ups, once they have returned to work, 3 months in.<sup>80</sup>

[We have a] form for flexible work application. It outlines steps to discuss [and] asks managers, have you considered...<sup>81</sup>

**Support managers in managing flexible workers.** Managing employees on flexible work arrangements may present a number of concerns. It may therefore be useful for employers to provide coaching and support for managers on how to supervise flexible employees, including how to ensure that employee output expectations are tailored to match their reduced/changed hours of work.

Specific support may be required for managing flexibility in the context of rosters/shift work, since this kind of work poses specific challenges to flexible work arrangements.

Our Chief Technology Officer had an experienced staff [member] retire who needed to be replaced. There were two women returning from parental leave at the same time. With the Human Resources partner, we wrote a [jobshare] proposal for [the] two women...one was in Melbourne, one in Sydney. He agreed to it. And now he speaks [publically] as to how wonderful it has been. This gets others thinking about how good it is to manage that way.<sup>82</sup>

### Leading Practice: Flexibility coaching program<sup>83</sup>

One organisation's Human Resources department piloted a flexibility coaching program with a small number of participants. The coach found that working with both the employee and their manager on an as needed basis worked well. As the flexibility coaching pilot continued, the organisation broadened the reach to include all senior managers who are managing flexible team members. The format for the coaching was changed to be more of an assistive service to supplement broader manager education on managing the workplace of the future.

### (e) Accommodate specific needs: Securing the physical environment

Ensure that the workplace accommodates specific employee needs, for example, by providing appropriate breastfeeding/expressing facilities (at a minimum these facilities should be private, hygienic, have seating and access to power points). Access to refrigeration for expressed breast milk should also be provided.

[We have] multi-access suites but [they are] predominantly [used as] breastfeeding rooms.<sup>84</sup>

We let them bring their baby in to staff meetings. We're quite flexible like that.<sup>85</sup>

#### Leading Practice: Breastfeeding policy<sup>86</sup>

On 28 April 2010, the NSW Industrial Relations Commission approved the application by the NSW Director of Public Employment to vary the Crown Employees (Public Service Conditions of Employment) Award 2009 (the Award).

The variation includes the following provisions:

- A full-time staff member or part-time staff member working more than four hours a day is entitled to up to two paid breaks of up to 30 minutes each day for the purpose of breastfeeding or expressing milk.
- A part-time staff member, who is working less than or equal to 4 hours on any one day is entitled to one paid lactation break of up to 30 minutes on that day.
- Flexible arrangements achieved by mutual agreement between staff members and their supervisors.
- The Breastfeeding Policy seeks a flexible and consultative approach to the provision of breaks and facilities for breastfeeding mothers where both employees and supervisors have responsibilities. The Policy acknowledges that breastfeeding promotes the health and wellbeing of mothers and babies.

For more information, please contact NSW Industrial Relations at [psir@industrialrelations.nsw.gov.au](mailto:psir@industrialrelations.nsw.gov.au).

#### Small Business Leading Practice: Breastfeeding workshop<sup>87</sup>

Tegan<sup>88</sup> returned to her workplace, an automobile workshop, several months after giving birth. She advised her employers that she would need to breastfeed whilst at work.

The workshop, being fairly small and highly male-dominated, was unable to provide a room solely for breastfeeding. This posed a challenge because previous employees returning to work had stated that they didn't want 'a 17 year old staring' whilst they breastfed.

The organisation decided that it was important to create a better work place culture for Tegan and other mothers where they could breastfeed comfortably. The employer consulted Tegan and the other mothers within the workplace about what questions and behaviour would be appropriate around them regarding their breastfeeding.

Using the information gathered, Tegan's employers arranged for the younger apprentices to mix with the older employees and facilitated a discussion without Tegan present. 'It was very much, let's all sit in the tearoom and have a chat about it...Let's talk about breastfeeding, what it is, how it works...why we do it, why we don't do it.'

The information session was met with genuine interest and acceptance from employees.

After this information session took place, both Tegan and her employer reported a positive result, where a change in the workplace culture meant that Tegan was able to breastfeed comfortably without affecting her workplace relationships.

### Leading Practice: Parking on campus for pregnant women<sup>89</sup>

Melbourne University Parkville Campus Policy:

A parking permit to allow easier access to the workplace, may be granted to staff who are more than six months pregnant. A staff member who is pregnant and wishes to apply for a parking permit should consult the Parking Office...with a doctor's letter indicating the expected date of birth of the child. A fee applies to parking permits.

### Leading Practice: Managing the parental leave process before, during and after

'Off boarding' (ie those going on leave) recommendations:

- Managers to take a more active role in a parental leaver's transition to leave – including talking employees through the Parental Leave Pack. To assist Managers talk through the pack and more broadly, increase Manager's understanding of current legislation, obligations and [the Organisation's] policies/processes, a Parental Leave Guide for Managers to be developed. Additionally, managers encouraged to assign the parental leaver a 'buddy' whose role is to keep in touch with the parental leaver whilst they are on leave and provide updates as/when appropriate.
- Ensuring adherence to the Parental Leave and Return to work Guarantee, policies, including all decisions on parental leave backfills requiring Human Resources' involvement and subsequent approval.
- Increase accuracy of parental leave data – ensure that all employees taking parental leave are captured accurately in the Human Resources management system including their effective return date to allow us to proactively manage the careers of our parental leavers and therefore create a smooth return to work transition.

'On leave' (ie those on parental leave) – In addition to the current offerings of the parental leave seminars and parenting programs:

- Implement a '**Stay in Touch**' Program designed to:
  - » Alleviate the feeling of being 'disconnected' with the workplace.
  - » Maintain levels of engagement to the workplace.
- Set clear expectations with Managers around their responsibilities in maintaining contact and therefore 'checking-in' with their employee regularly.
- Implement '**Keeping in touch**' days – The *Paid Parental Leave Act 2010* (Cth) makes provision for keeping in touch days, when an employee performs work for the employer on a day or part of a day while on a period of approved leave. Our plan is for managers to use this as a tool to engage employees and bring them up to speed quickly before their return to the workforce.

'Onboarding' (ie those returning from parental leave) – in addition to retaining and promoting our current offerings (eg, career coaching, parenting partner program etc):

- '**I'm back!**' Seminar: A session designed to provide additional support services to employees who have recently returned to work from parental leave and are combining work and family.
- Parental Leave Survey: Within three months of their return to work, all parental leavers to complete a Parental Leave and Return to Work Survey to obtain feedback on their overall leave experience, levels of satisfaction with our processes/programs etc and recommendations for improvement. This survey will allow [the Organisation] to validate the effectiveness of our measures.
- Supporting flexible work requests: Where parental leave employees request a flexible working arrangement, this should be considered as a 'default' yes – requiring a shift in mindset of our managers.



**Table 2: Implementing policies and managing the process comprehensively and efficiently<sup>90</sup>**

	1	2	3	4	5
Phase	Starting off right	Preparing for leave	Staying connected	Reintegration	Career acceleration
Standard expectation	Pregnant employees should be able to continue working 'business as usual', while having specific needs accommodated	Leave and return should be clearly planned, appropriately setting expectations for both employees and managers	Parents should feel connected to the organisation during leave and the encouragement to return should be clear	Parents should be able to pick up where they left off, while being able to balance work and family commitments	Career planning and development opportunities made available – placing returning parents on same successful career trajectory as all other employees
Mechanism to support	Manager and employee checklists to facilitate a positive and productive conversation about working during pregnancy; work health and safety checklist	Manager and employee checklists; discuss 'staying in touch' expectations; plan expected return dates; ensure a quick turn around on paper work and consistent follow up	Formal catch-up dates that are not cancelled; access to laptop and mobile; inclusion in development reviews; business update newsletters	Highlight flexible return options and establish a formal process for requesting and granting flexible work requests; support managers to manage flexible workers; return to work workshops and seminars; early childhood education and care services; accommodate specific needs around breastfeeding/expressing milk	Career planning; sustainable flexible program; removal of any unconscious or systemic bias
Mindsets that need challenging	'She's got babybrain'	'Oh, you're pregnant! You must be stepping back from your career for a while'	'She won't want to be bothered with what's happening in the business during leave'	'Have you had a good holiday?'	'She won't want that opportunity, and I don't want to load more work on her when she already has a family to balance'

## 6.3 Conclusion

This chapter has outlined some of the leading practices and strategies being developed – and, importantly, adopted – by organisations around Australia. It has also featured guidelines and best practice policies developed by national and international agencies which aim to guide employers in shaping supportive workplaces. Significantly, it has highlighted strategies for small, medium and large sized organisations. The fact that many of these practices are already in place is proof that it *is* possible to step outside the conventional model of work and to develop a new concept of the 'ideal worker' which better reflects contemporary ways of working.

The initiatives highlighted in this chapter signal what many businesses already understand – that successful and productive workplaces are ones in which employers and employees are partners; in which every member is valued for their unique contributions; in which employers can develop a skilled workforce which they know will make a positive contribution to the organisation for the longer term.

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# Appendix A

## Overview of the National Review consultation process

This appendix provides a detailed outline of the National Review consultation process. The consultation process formed a critical part of the National Review's qualitative research and involved face-to-face group consultations and roundtables, individual interviews, and an online submissions process available to all stakeholders.

The National Review sought to consult as widely as possible throughout this process with a diverse range of individuals and organisations. However the consultation process was not intended to be representative by groups of individuals or organisations (such as age, gender, industry or business size).

Please note, all graphs and charts refer to numbers rather than percentages, unless otherwise stated.

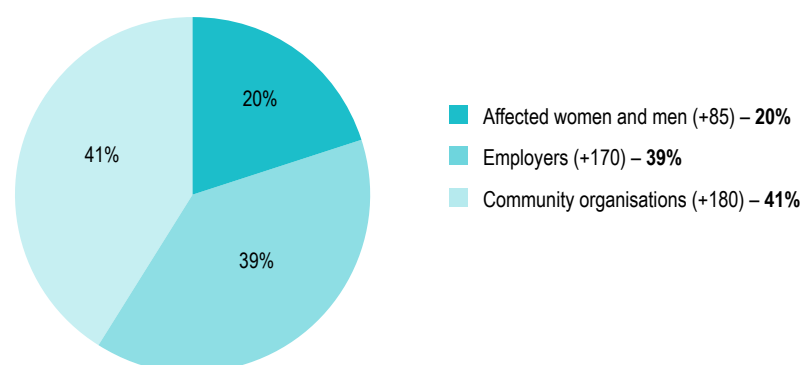
### 1.1 Consultations

The National Review conducted more than 50 face-to-face group consultations with all relevant stakeholders in the capital cities of every state and territory across Australia as well as some regional centres. These stakeholders included:

- Individuals
- Employers
- Community organisations (including community legal centres, working women's centres, unions and health organisations). State and territory anti-discrimination and equal opportunity authorities and academics are also included in this group.

Consultations were held over five months from October 2013 to February 2014.

**Figure A.1: Consultations – Percentage of individuals from each stakeholder group<sup>1</sup>**



In addition to the face-to-face consultations, the National Review conducted 14 one-on-one interviews over the phone or in person with affected women and men, one roundtable with relevant federal government agencies in Canberra, and two roundtables in Sydney with academics from around Australia who work in the field.

**Table A.1: Consultations – Number of consultations with key stakeholder groups in each location**

Locations	No. of consultations with affected women and men	No. of consultations with employers and business and industry peaks	No. of consultations with community organisations
Sydney	3	9	6
Newcastle	1	1	1
Albury	1	1	
Adelaide	2	2	2
Hobart		2	1
Launceston	1	1	1

Locations	No. of consultations with affected women and men	No. of consultations with employers and business and industry peaks	No. of consultations with community organisations
Perth	2	1	3
Gold Coast			1
Brisbane	1	2	2
Darwin	3	1	2
Canberra	2	1	1
Melbourne	3	4	2

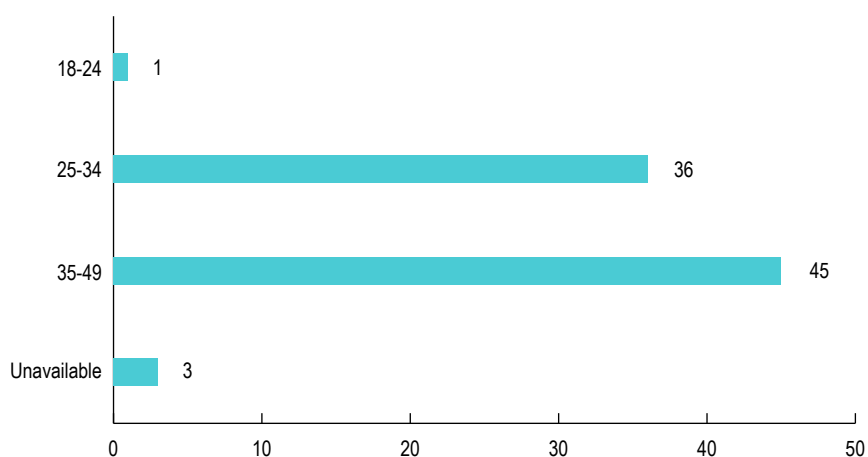
Participants in consultations with affected women and men, and with employers, business and industry peaks were asked to complete a Demographic Data Form. The data from the completed forms has been collated, de-identified and is outlined below. Note that in some consultations there were some participants who did not complete the demographic data form.

#### (a) Affected women and men

The National Review consulted with 85 affected women and men across Australia including individuals with disability, individuals who identified as Aboriginal and/or Torres Strait Islander, and individuals from culturally and linguistically diverse backgrounds. While the consultations for affected individuals were open to both women and men, the large majority of participants were women, with four men taking part in these consultations.

The individuals consulted represented a wide age range. As outlined in Figure A.2 below, the largest age group were individuals aged 35 to 49 years.

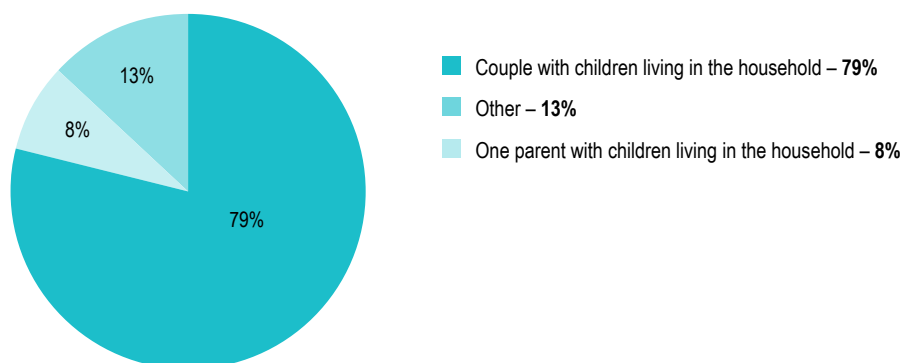
**Figure A.2: Consultations – Age ranges of affected individuals**





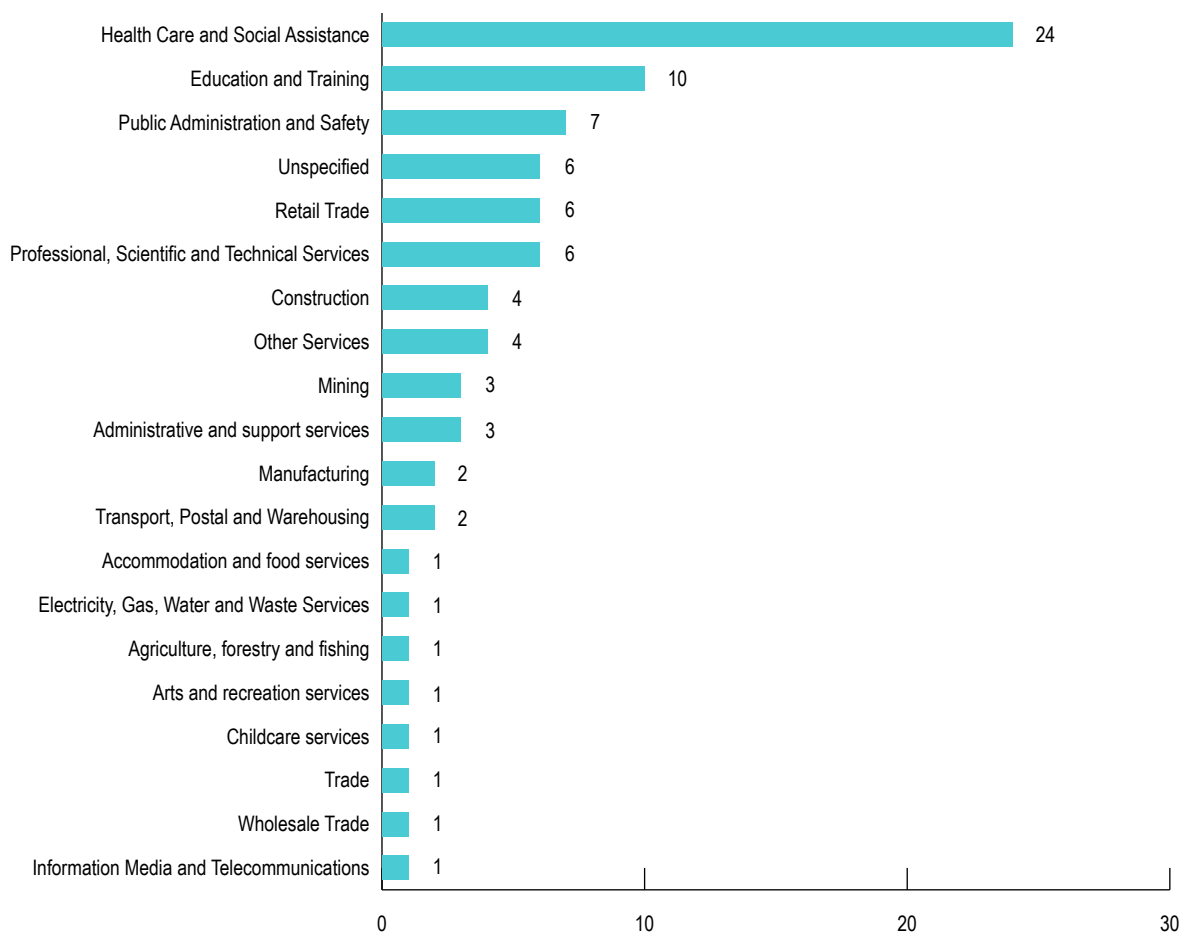
Individuals consulted came from a variety of different household types,<sup>2</sup> with the majority of individuals specifying that their household consisted of a couple with children living in the household.

**Figure A.3: Consultations – Household types of affected individuals (by percentage)<sup>3</sup>**



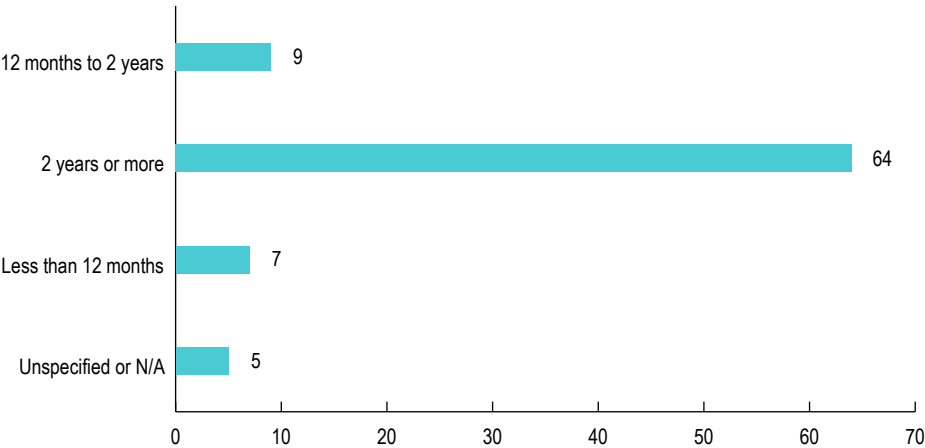
Consulted individuals were employed in a variety of industries,<sup>4</sup> most commonly in the area of health care and social assistance as illustrated in Figure A.4 below.

**Figure A.4: Consultations – Industries in which affected individuals worked**



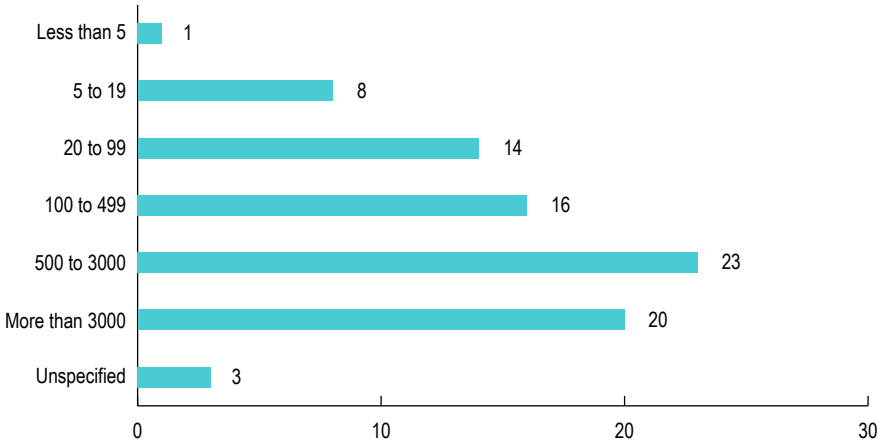
Most of the individuals consulted had been employed in their former or current organisation for two years or more.<sup>5</sup>

Figure A.5: Consultations – Length of current or previous employment of affected individuals



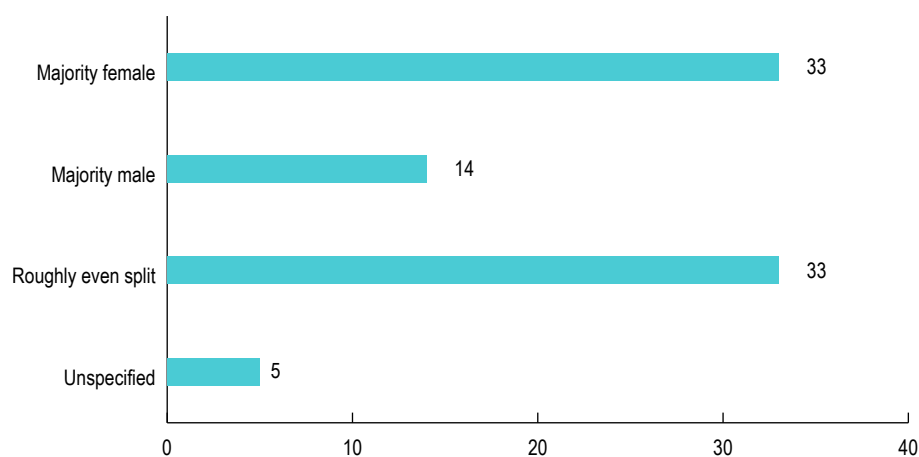
Individuals worked in a range of different sized businesses with the majority working in organisations with 500 to 3000 employees, followed closely by organisations with more than 3000 employees.

Figure A.6: Consultations – Size of organisation where affected individuals worked



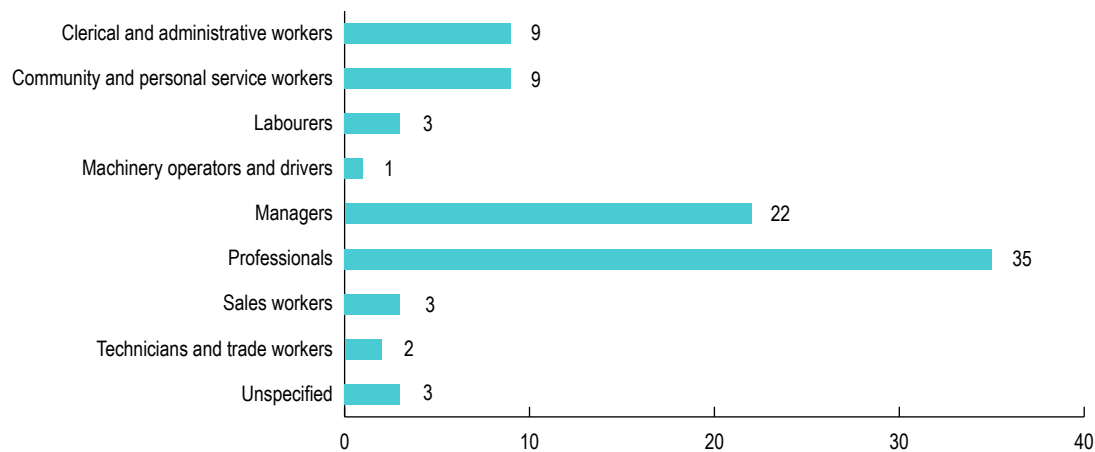
There were equivalent numbers of individuals working in organisations that were predominantly female and gender balanced.

**Figure A.7: Consultations – Ratio of male to female employees in organisations where affected individuals worked**



Individuals consulted held a variety of occupations<sup>6</sup> within their organisations,<sup>7</sup> with the majority employed as a Professional.

**Figure A.8: Consultations – Occupations of affected individuals**

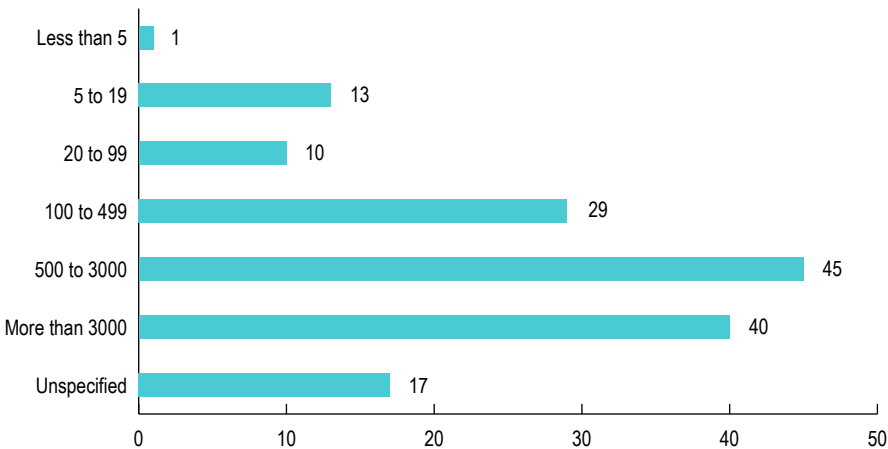


**(b) Employers**

The National Review consulted with more than 170 employers and representatives from employer associations, business and industry associations, including industry training providers. Employers and employer representatives held a variety of positions, including Human Resources roles, diversity roles, managers, directors, and organisational development consultants.

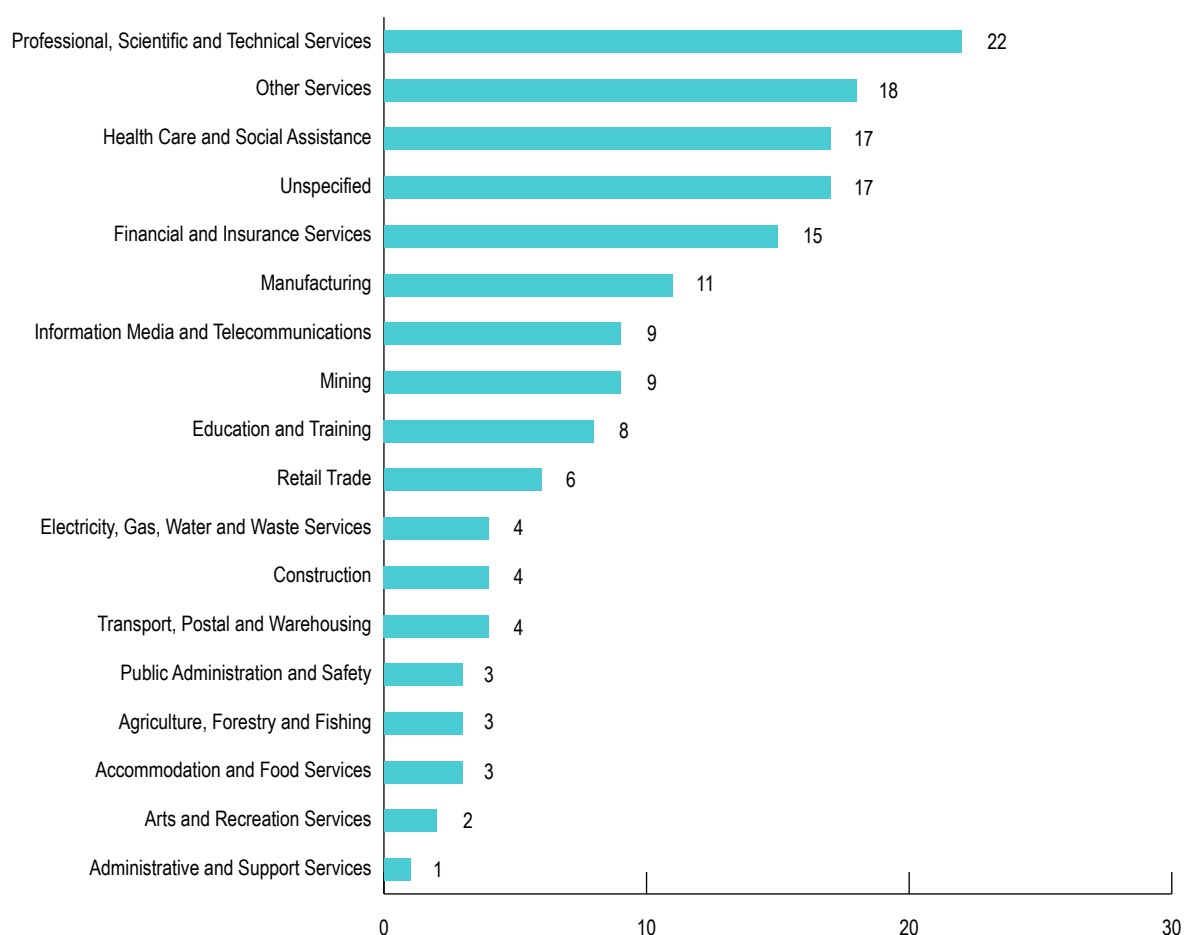
The National Review consulted with a range of small (1-19 employees), medium (20-99 employees) and large (over 100 employees) organisations.<sup>8</sup>

**Figure A.9: Consultations – Size of organisations represented by employers**



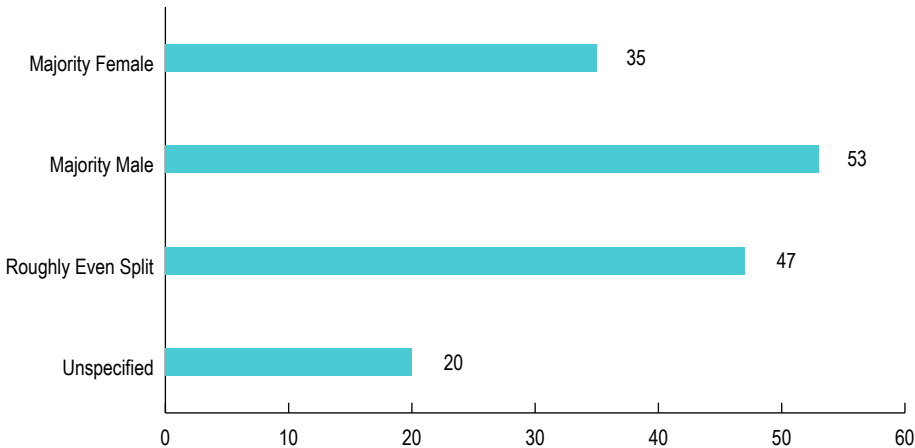
The employers consulted represented a variety of industries as illustrated in Figure A.10 below, with professional, scientific and technical services being the most common industry type.<sup>9</sup>

**Figure A.10: Consultations – Industries represented by employers**



There was a fairly even divide among employers who stated that their organisation was either majority male or gender balanced.

Figure A.11: Consultations – Ratio of male to female employees in organisations represented by employers



(c) Community organisations

The National Review met with more than 180<sup>10</sup> individuals representing over 150 community organisations across Australia. Community organisations consulted include community legal centres, working women’s centres, unions and health organisations. State and territory anti-discrimination and equal opportunity authorities and academics were also included in this group.

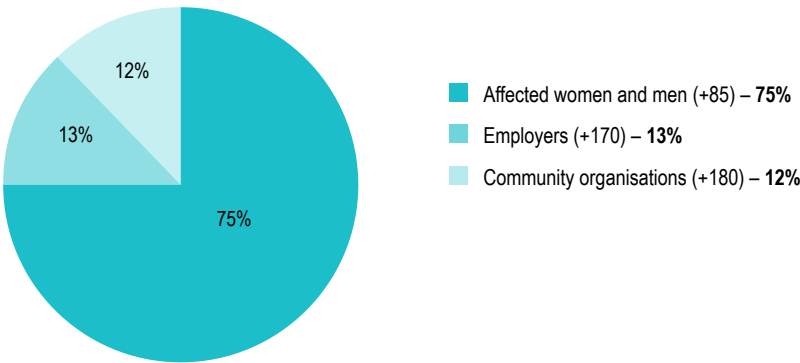
1.2 Online submissions

The National Review received a total of 447 submissions from the different stakeholders. These stakeholders included:

- Individuals
- Employers
- Community organisations (including including community legal centres, working women’s centres, unions, and health organisations).

Public submissions are available on the Commission’s website.<sup>11</sup>

Figure A.12: Submissions – Percentage of submissions from each stakeholder group<sup>12</sup>





### (a) Affected women and men

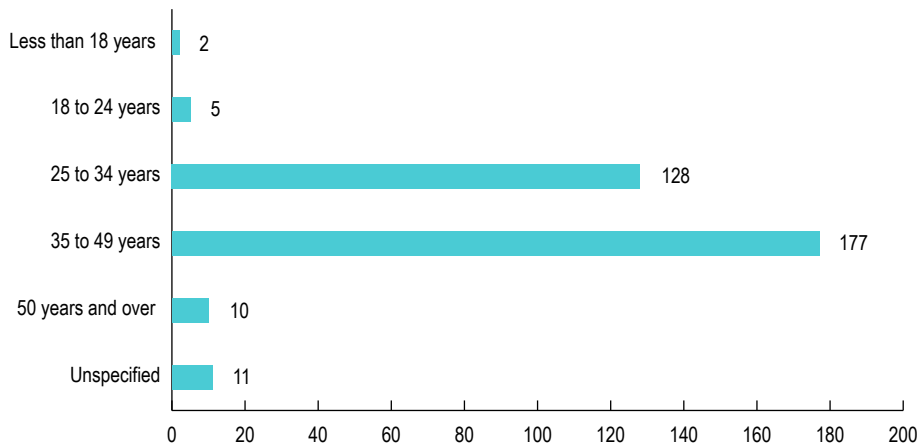
The National Review invited written submissions from women who experienced pregnancy/return to work discrimination and men who experienced parental leave/return to work discrimination. The online submissions process was open from 21 October 2013 to 31 January 2014.

The National Review received a total of 333 submissions from affected women and men including from individuals who specified that they have a disability (6), are Aboriginal and/or Torres Strait Islander (11), and are from a culturally and linguistically diverse background (50). The vast majority of individual submissions were made by women (311).<sup>13</sup>

Two hundred and thirty individuals indicated that they wanted their submissions to remain confidential, and 103 individuals consented to their submissions being made public on the Commission's website. All public submissions were de-identified and in some cases, the Commission edited or did not publish (where an edited copy could not reasonably be published) public submissions in order to protect the identity of third parties, or where otherwise appropriate.

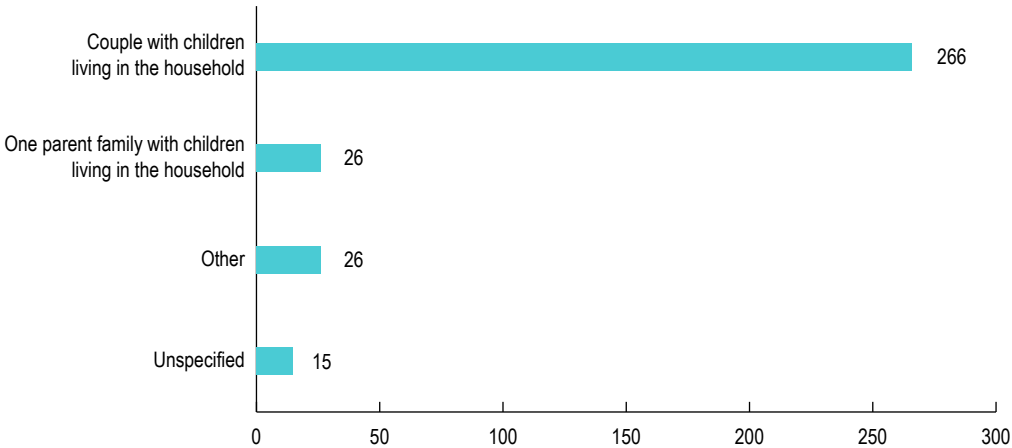
The majority of individuals that made a submission were aged between 35 and 49 years.

**Figure A.13: Submissions – Age ranges of affected individuals**



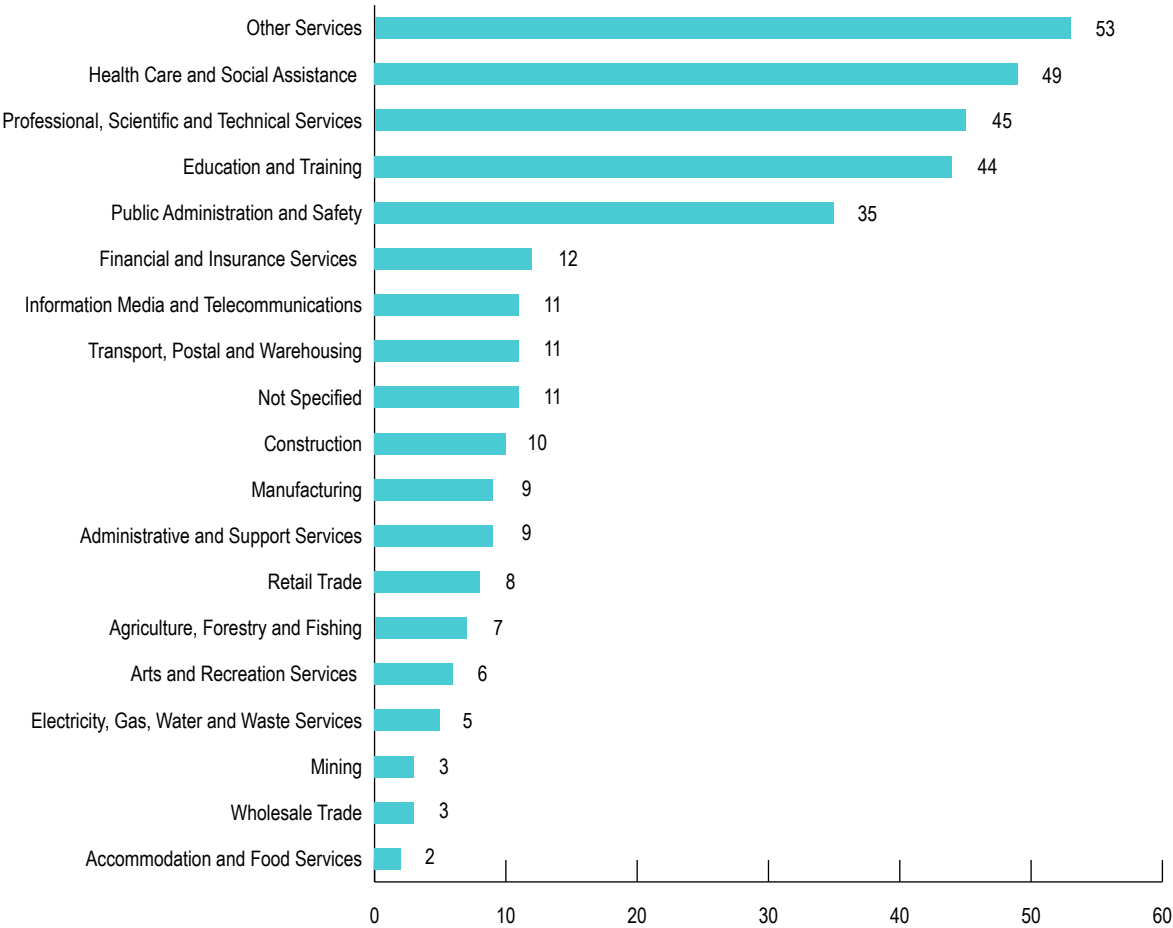
The majority of submissions came from individuals who stated that their household type was a couple with children living in the household.

Figure A.14: Submissions – Household types of affected individuals



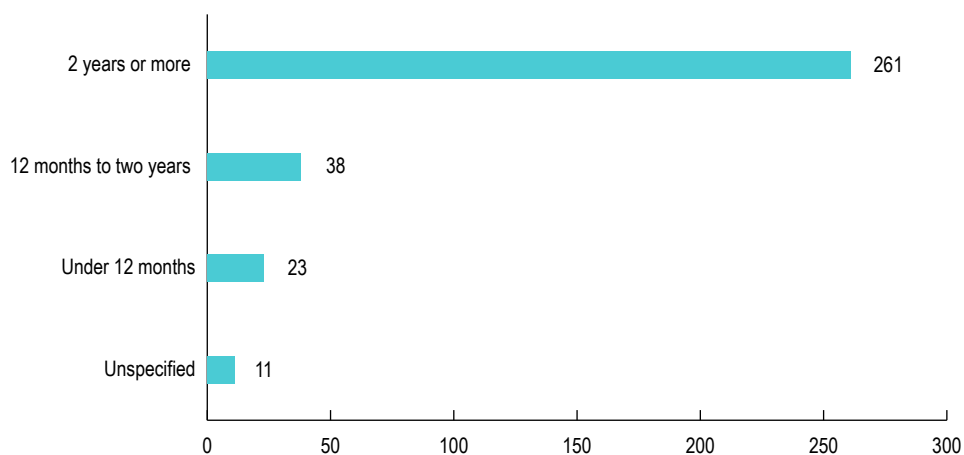
As illustrated in Figure A.15, the individuals who made a submission were employed in a variety of industries.<sup>14</sup>

Figure A.15: Submissions – Industries where affected individuals worked



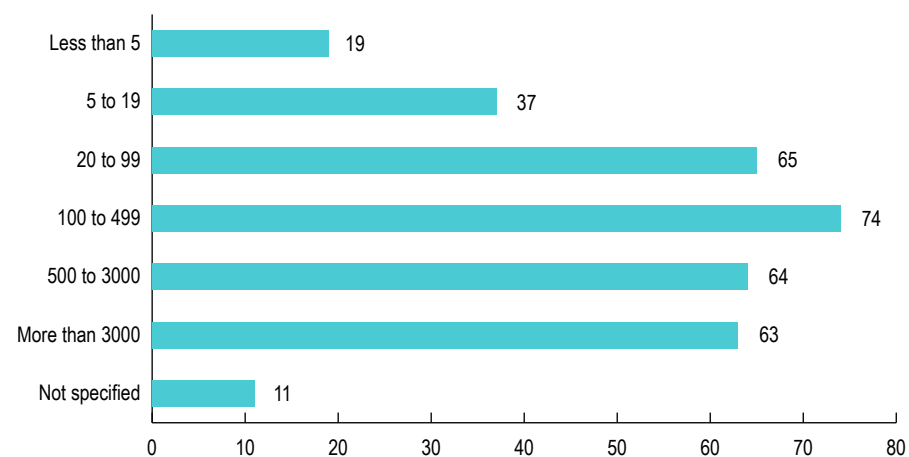
A significant majority of individuals that made a submission had been in their current or previous employment for two or more years.

**Figure A.16: Submissions – Length of current or previous employment of affected individuals**



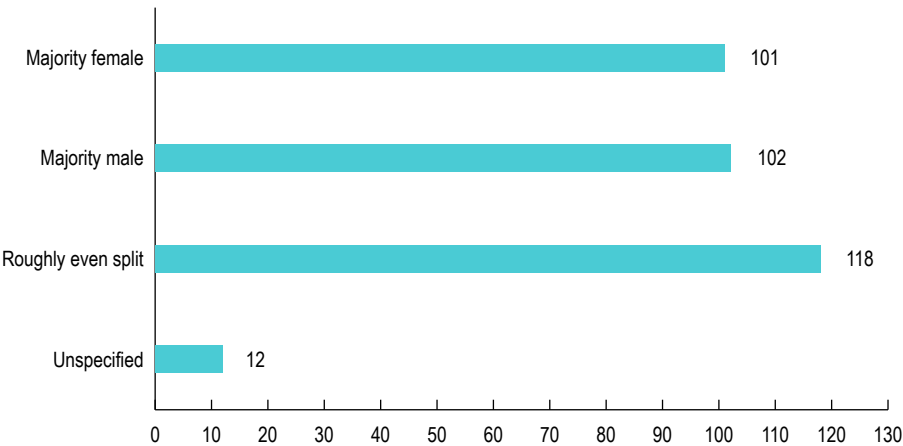
Just over half of the individuals that made a submission were working in an organisation with over 100 employees.

**Figure A.17: Submissions – Size of organisation where affected individuals worked**



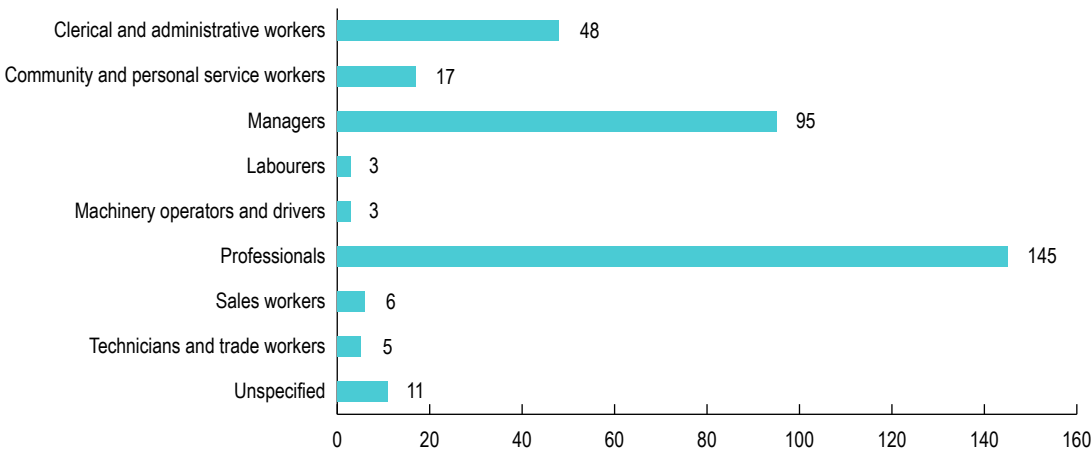
There was a fairly even divide among individuals who were employed in organisations that were either majority female, majority male, or gender balanced.

Figure A.18: Submissions – Ratio of male to female employees in organisations where affected individuals worked



Individuals who made submissions held a broad range of occupations.

Figure A.19: Submissions – Occupations of affected individuals



**(b) Employers, employer associations, business and industry associations**

The National Review invited submissions from employers, employer associations and business and industry associations. Organisations were given the option to either complete an online questionnaire or make a written submission. Industry associations were encouraged to complete the written submission form.

The online questionnaire and submissions process for employers, employer associations, and business and industry associations were open from 15 November 2013 to 31 January 2014.<sup>15</sup>

(i) *Questionnaire*

The National Review received 39 confidential and nine public completed questionnaires (total of 48) from employers.

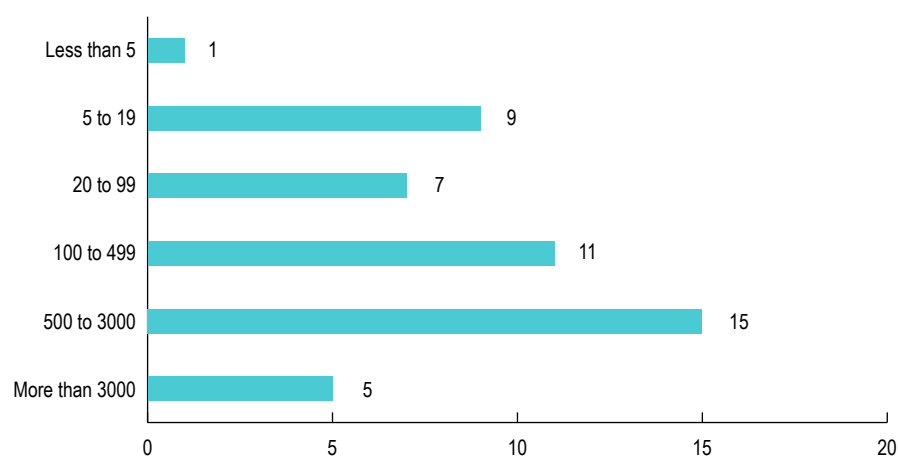
The Commission edited or did not publish (where an edited copy could not reasonably be published) public questionnaires in order to protect the identity of third parties, or where otherwise appropriate.

**Table A.2: List of public completed questionnaires**

Public completed questionnaires	Reference number
ABC Ltd	1
Loaded Technologies	2
Subsea 7 Australia Contracting Pty Ltd	9
Syngenta Australia Pty Ltd	15
Siemens Ltd	22
ThoughtWorks Australia Pty Ltd	34
Programmed Maintenance Services Ltd	41
The University of Western Australia	44

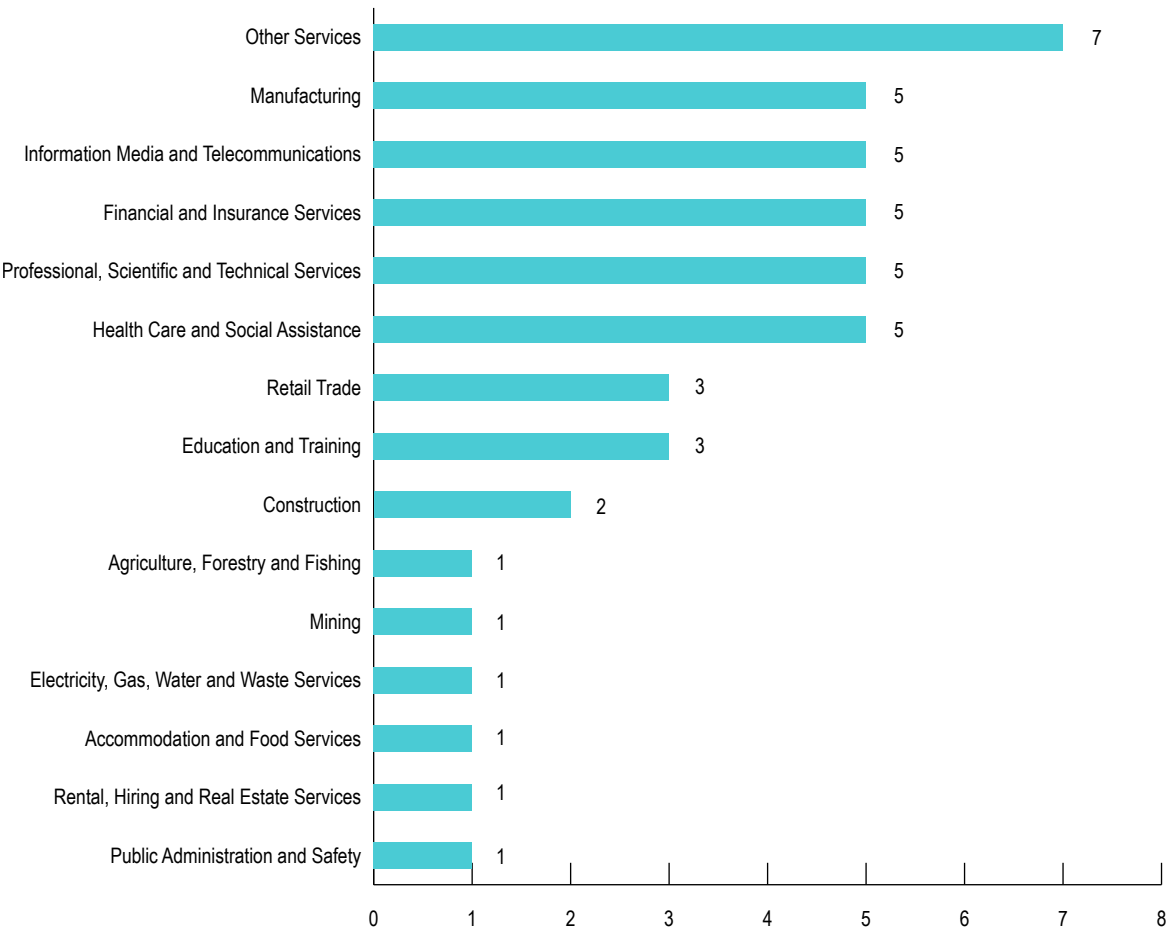
Over half of all employers who submitted a questionnaire worked in a large organisation (ie an organisation that employed over 100 staff).

**Figure A.20: Submissions (employer questionnaire) – Size of organisations represented by employers**



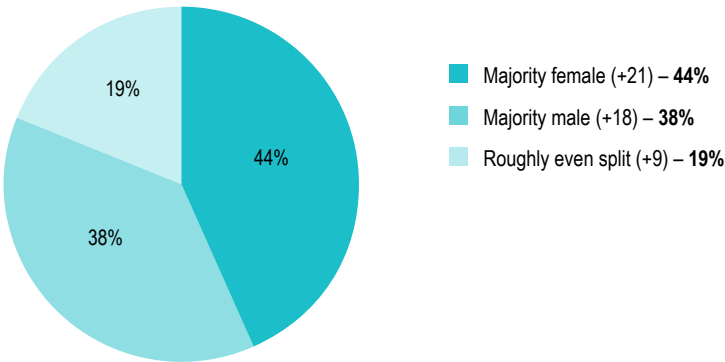
Questionnaires were received from organisations from a broad range of industries.<sup>16</sup>

Figure A.21: Submissions (employer questionnaire) – Industries represented by employers



There were near equivalent numbers of respondents from organisations which had predominantly female or majority male employees.

Figure A.22: Submissions (employer questionnaire) – Ratio of male to female employees in organisations represented by employers (by percentage)<sup>17</sup>





(ii) *Submissions from employer associations, business and industry associations*

The National Review received nine public and two confidential (total of 11) submissions from a range of business and industry associations and employer associations.<sup>18</sup> The Commission edited or did not publish (where an edited copy could not reasonably be published) public submissions in order to protect the identity of third parties, or where otherwise appropriate.

The number of member organisations represented by these bodies varied greatly, some representing a small number of businesses (up to 19), and others representing in excess of 3000 businesses. For example, the Australian Industry Group (Ai Group), along with its affiliates, represents the interests of more than 60,000 businesses of varying size across a range of sectors. The businesses represented by Ai Group employ more than 1 million people.

**Table A.3: Submissions – List of public submissions received from employer associations, business and industry associations**

Public submissions received	Reference number
Master Electricians Australia	1
HR Business Direction	4
The Australian Industry Group	5
Australian Human Resources Institute	6
Business SA	7
South Australian Wine Industry Association	8
University of Technology Sydney	9
Diversity Council Australia	10
Curtin University	11

(iii) *Community organisations*

The National Review invited submissions from organisations that work with women who have experienced pregnancy/return to work discrimination and men who have experienced parental leave/return to work discrimination. The submissions process was open from 21 October 2013 to 31 January 2014.

The National Review received 47 public and eight confidential (total of 55) submissions. In some cases, the Commission edited or did not publish (where an edited copy could not reasonably be published) public submissions in order to protect the identity of third parties, or where otherwise appropriate.

The range of organisations represented include working women's centres, unions, community legal centres, legal aid and other justice agencies, private consulting firms, state and territory anti-discrimination and equal opportunity authorities, academics, women's health services, employee associations and other not-for-profit organisations.

Many of the submissions received represented the views and experiences of many hundreds of their members.

**Table A.4: Submissions – List of public submissions received from community organisations**

Public submissions received	Reference number
Queensland Teachers' Union	2
Parlour: women, equity, architecture	3
NSW Teachers Federation	5
National Working Women's Centres	7
Security4Women.org.au	9
Public Service Association	10
Queensland Nurses' Union	11
Young Parents Program Inc	12
Office of the Commission for Equal Opportunity (SA)	13
Victoria Legal Aid	14
Professionals Australia	16
Kingsford Legal Centre	18
Australasian Council of Women and Policing Inc	19
Breastfeeding Forum, Department of Agriculture	20
Anglicare Australia	21
Women's Legal Centre (ACT & Region)	22
National Tertiary Education Union	23
Footscray Community Legal Centre	24
Women Lawyers Association of NSW	25
Redfern Legal Centre	26
Transitioning Well	27
Australian Salaried Medical Officers' Federation NSW	28
Women Lawyers Association of South Australia	29
Independent Education Union of Australia	30

Public submissions received	Reference number
Australian Young Pregnant and Parenting Network (AYPPN)	31
Unions NSW	32
Australian Education Union	33
JobWatch Inc	34
Finance Sector Union of Australia	35
WA Equal Opportunity Commission	36
YWCA Australia	37
Friends of Sole Parents Incorporated	39
Australian Council of Trade Unions	40
Office of the Anti-Discrimination Commissioner, Tasmania	41
Police Federation of Australia	42
NSW Bar Association	43
Victorian Women Lawyers	44
Employment Law Centre of WA	46
Queensland Law Society	47
Law Council of Australia	48
Women's Health West	49
Sussex Street Community Law Service Inc	50
Law Society of South Australia	51
Women's Law Centre of WA Inc	52
Women's Legal Services of NSW	53
Shop, Distributive and Allied Employees' Association	54
Legal Aid NSW	55

- 
- 1 Please note that the numbers within the chart refer to percentages of the overall number of individuals rather than the number of individuals themselves.
  - 2 Of those who specified 'Other' household, some went on to specify a variety of household types including 'couple, pregnant', and, 'couple with no children living in the household'.
  - 3 Please note that the numbers within the chart refer to percentages of the overall number of individuals rather than the number of individuals themselves.
  - 4 The industry categories are based on the Australian and New Zealand Standard Industrial Classification (ANZSIC). Where individuals indicated that their organisation crossed several industries, each one was counted.
  - 5 Where an individual was employed in two organisations, each was counted.
  - 6 The occupation categories are based on the Australian and New Zealand Standard Classification of Occupations.
  - 7 Where individuals indicated that they held positions covering two occupations, both were counted.
  - 8 Australian Bureau of statistics, 1321.0 – *Small Business in Australia, 2001* (2002). At <http://www.abs.gov.au/ausstats/abs@.nsf/mf/1321.0> (viewed 14 July 2014).
  - 9 Where employers indicated that their organisation crossed several industries each one was counted. The high number of employers that identified 'other services' may be inaccurate as some employers may have understood this to be an 'other' option rather than a specific industry under the Australian and New Zealand Standard Industrial Classification.
  - 10 The National Review consulted with 187 representatives of community organisations, however data was only collected for 154.
  - 11 At: <https://www.humanrights.gov.au/submissions-supporting-working-parents-pregnancy-and-return-work-national-review>.
  - 12 Please note that the numbers within the chart refer to percentages of the overall number of individuals rather than the number of individuals themselves.
  - 13 10 submissions were received from individuals affected who identified as male. A further 12 submissions were received from individuals who identified as 'X' (indeterminate, intersex, unspecified).
  - 14 The high number of individuals that identified 'other services' may be inaccurate as some individuals may have understood this to be an 'other' option rather than a specific industry under the Australian and New Zealand Standard Industrial Classification.
  - 15 The slightly shorter time period for employer submissions in comparison to individual and community organisation submissions was due to delays in obtaining approval from the Statistical Clearing House.
  - 16 The high number of employers that identified 'other services' may be inaccurate as some employers may have understood this to be an 'other' option rather than a specific industry under the Australian and New Zealand Standard Industrial Classification.
  - 17 Please note that the numbers within the chart refer to percentages of the overall number of individuals rather than the number of individuals themselves.
  - 18 This includes two employers who completed the written submission form for employer associations and business and industry associations.

# Appendix B: National Prevalence Survey

## Appendix B.1: Mothers Survey questionnaire

### INTRODUCTION

Good [Morning/ Afternoon/ Evening]. My name is (SAY NAME) from Roy Morgan Research on behalf of the Australian Human Rights Commission. May I please speak to <NAME>?

We are conducting an important social study about people's experiences related to pregnancy, parental leave and returning to work after parental leave. This is on behalf of the Australian Human Rights Commission.

IF NECESSARY: The survey will take approximately 15 minutes and will be used for research purposes only. Your answers will remain strictly confidential. You will not be identified in any way in the results. Your answers will be combined with the information from hundreds of other participants across Australia.

IF QUERIED ABOUT HOW NAME OR NUMBER WAS SOURCED: Your contact details have been provided to us by the Department of Social Services for the sole purpose of contacting mothers who have taken parental leave to ask about their experiences. If you have any concerns with this you can contact Sarah Hinde from the Department on Ph: 02 6146 2944.

IF NECESSARY: We really would like to include your opinion and experience in this survey to ensure a representative and diverse sample of Australians.

Is now a good time?

IF NECESSARY, MAKE APPOINTMENT.

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

INTRO. Do you agree to participate?

- |    |         |
|----|---------|
| 1  | YES     |
| 2  | NO      |
| 99 | REFUSED |

IF REFUSES (CODE 2 OR 99 ON INTRO)

ENDIF

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

SCR1. Do you have a child who was born in <MONTH><YEAR>?

- |   |     |
|---|-----|
| 1 | YES |
| 2 | NO  |

IF NO

Thank you for your time and assistance, but we need to speak to people with a child of a certain age.

ENDIF

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

SCR2. Can you please tell me the name of this child for the purpose of conducting this interview?

- |    |                                   |
|----|-----------------------------------|
| 1  | YES (ENTER NAME ON THE NEXT PAGE) |
| 99 | REFUSED                           |

IF CODE 1 IN SCR2

[Character]

SCR2A. ENTER CHILD'S NAME HERE

ENDIF

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

SCR3. Are you the biological or adoptive parent of the child?

- |    |            |
|----|------------|
| 1  | ADOPTIVE   |
| 2  | BIOLOGICAL |
| 99 | REFUSED    |

IF CODE 99 IN SCR3

Thank you for your time and assistance, but we need an answer to this question before we can proceed with this interview.

ENDIF

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

SCR4. When you adopted// While you were pregnant with <NAME> //your child born in// <MONTH><YEAR>, were you self-employed/ running your own business or an employee getting paid a wage or salary?

- |    |  |
|----|--|
| 1  | SELF-EMPLOYED/RUNNING OWN BUSINESS     |
| 2  | EMPLOYEE GETTING PAID A WAGE OR SALARY |
| 3  | BOTH                                   |
| 4  | NEITHER                                |
| 99 | REFUSED                                |

IF SELF EMPLOYED OR NEITHER OR CODE 99 IN SCR4

*Thank you for your time and assistance, but we need to speak to people who were an employee getting paid a wage or salary.*

**ENDIF**

**IF CODE 3 IN SCR4**

*For this survey, we are only interested in the job in which you were an employee getting paid a wage or salary.*

**ENDIF**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

SCR5. What is your gender?

- |    |  |
|----|--|
| 1  | FEMALE                                   |
| 2  | MALE                                     |
| 3  | X (INDETERMINATE, INTERSEX, UNSPECIFIED) |
| 99 | REFUSED                                  |

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

SCR6. Can you please tell me your age?

- |    |               |
|----|---------------|
| 1  | 18-24         |
| 2  | 25-29         |
| 3  | 30-34         |
| 4  | 35-39         |
| 5  | 40-44         |
| 6  | 45-49         |
| 96 | NONE OF THESE |
| 99 | REFUSED       |

**IF CODE 99 IN SCR6**

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

SCR6A. Would you be aged...?

- |    |                             |
|----|-----------------------------|
| 1  | 18-24                       |
| 2  | 25-29                       |
| 3  | 30-34                       |
| 4  | 35-39                       |
| 5  | 40-44                       |
| 6  | 45-49                       |
| 96 | (DO NOT READ) NONE OF THESE |
| 99 | (DO NOT READ) REFUSED       |

**ENDIF**

[Quantity]

SCR7. Can you please tell me your postcode?

IF REFUSES, CLICK ON THE CROSS

**EXPERIENCES DURING PREGNANCY/ADOPTION OF CHILD**

*Now we would like to talk about the job you had// when you adopted your child// during your pregnancy.*

INTERVIEWER'S NOTE: IF RESPONDENT SAYS THEY HAD MORE THAN ONE JOB DURING THEIR PREGNANCY/ADOPTION, SAY:  
*"Please think about the job closest to the// birth// adoption// of <NAME> //your child born in// <MONTH><YEAR>"*



IF RESPONDENT SAYS THEY HAD MORE THAN ONE JOB AT A TIME DURING THEIR PREGNANCY/ADOPTION, SAY:  
"Please think of the job that you worked for the most hours per week."

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q1. Can you please tell me the occupation of that job?

- |    |        |                                |
|----|--------|--------------------------------|
| 1  |        | MANAGER                        |
| 2  |        | PROFESSIONAL                   |
| 3  |        | TECHNICIAN/TRADE WORKER        |
| 4  |        | COMMUNITY AND PERSONAL SERVICE |
| 5  |        | CLERICAL/ADMIN                 |
| 6  |        | SALES                          |
| 7  |        | MACHINERY OPERATORS/DRIVERS    |
| 8  |        | LABOURERS                      |
| 99 | Single | REFUSED                        |

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q1A. Which of the following best describes the location of your workplace// when you were pregnant// when you adopted// with//  
<NAME> //your child born in// <MONTH><YEAR>?

- |    |        |                          |
|----|--------|--------------------------|
| 1  |        | Major city               |
| 2  |        | Large regional town      |
| 3  |        | Small regional town      |
| 4  |        | Rural area               |
| 97 |        | OTHER                    |
| 98 | Single | (DO NOT READ) DON'T KNOW |
| 99 | Single | (DO NOT READ) REFUSED    |

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q2. Was that job in the public, private or not-for-profit sector?

- |    |        |                |
|----|--------|----------------|
| 1  |        | PUBLIC         |
| 2  |        | PRIVATE        |
| 3  |        | NOT-FOR-PROFIT |
| 98 | Single | DON'T KNOW     |
| 99 | Single | REFUSED        |

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q3. Can you please tell me the industry of that job?

- |    |        |   |
|----|--------|---|
| 1  |        | AGRICULTURE, FORESTRY AND FISHING   |
| 2  |        | MINING  |
| 3  |        | MANUFACTURING   |
| 4  |        | ELECTRICITY, GAS, WATER AND WATER SERVICES  |
| 5  |        | CONSTRUCTION  |
| 6  |        | WHOLESALE TRADE   |
| 7  |        | RETAIL TRADE  |
| 8  |        | ACCOMMODATION AND FOOD SERVICES   |
| 9  |        | TRANSPORT, POSTAL AND WAREHOUSING   |
| 10 |        | INFORMATION MEDIA AND TELECOMMUNICATION   |
| 11 |        | FINANCIAL AND INSURANCE SERVICES  |
| 12 |        | RENTAL, HIRING AND REAL ESTATE SERVICES   |
| 13 |        | PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES (INCLUDING LEGAL, ACCOUNTING, ARCHITECTURAL, ENGINEERING AND OTHER PROFESSIONS) |
| 14 |        | ADMINISTRATIVE AND SUPPORT SERVICES   |
| 15 |        | PUBLIC ADMINISTRATION AND SAFETY  |
| 16 |        | EDUCATION AND TRAINING  |
| 17 |        | HEALTH CARE AND SOCIAL ASSISTANCE   |
| 18 |        | ARTS AND RECREATIONAL SERVICES  |
| 19 |        | OTHER SERVICES  |
| 98 | Single | CAN'T SAY   |
| 99 | Single | REFUSED   |

**[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]**

Q4. How many people worked in that organisation as a whole (including on different sites/locations in Australia if that applies)? Would you estimate that to be...

- |    |        |                          |
|----|--------|--------------------------|
| 1  |        | Less than 5              |
| 2  |        | 5-19                     |
| 3  |        | 20-99                    |
| 4  |        | 100-499                  |
| 5  |        | 500-3000                 |
| 6  |        | More than 3000           |
| 98 | Single | (DO NOT READ) DON'T KNOW |
| 99 | Single | (DO NOT READ) REFUSED    |

**[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]**

Q5. How long did you work for your employer prior to the// birth// adoption// of <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |  |
|----|--------|--|
| 1  |        | LESS THAN 1 MONTH                        |
| 2  |        | 1-12 MONTHS                              |
| 3  |        | MORE THAN 1 YEAR BUT LESS THAN 2 YEARS   |
| 4  |        | MORE THAN 2 YEARS BUT LESS THAN 6 YEARS  |
| 5  |        | MORE THAN 6 YEARS BUT LESS THAN 10 YEARS |
| 6  |        | MORE THAN 10 YEARS                       |
| 98 | Single | DON'T KNOW                               |
| 99 | Single | REFUSED                                  |

**[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]**

Q6. Were you working on a fixed-term contract, casual or an on-going/permanent basis?

- |    |        |                     |
|----|--------|---------------------|
| 1  |        | CASUAL              |
| 2  |        | FIXED-TERM CONTRACT |
| 3  |        | ON-GOING/PERMANENT  |
| 98 | Single | DON'T KNOW          |
| 99 | Single | REFUSED             |

**[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]**

Q7. Were you working on a part-time or full-time basis? Part time is less than 35 hours a week.

- |    |        |           |
|----|--------|-----------|
| 1  |        | PART-TIME |
| 2  |        | FULL-TIME |
| 99 | Single | REFUSED   |

**IF CODE 2 IN SCR3****[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]**

Q8. At work, were you ever treated unfairly or disadvantaged because you were pregnant with <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |                          |
|----|--------|--------------------------|
| 1  |        | YES                      |
| 2  |        | NO                       |
| 98 | Single | (DO NOT READ) DON'T KNOW |
| 99 | Single | (DO NOT READ) REFUSED    |

**ENDIF****IF CODE 1 IN Q8****[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]**

Q9. What kind of unfair treatment or disadvantage did you face?

- |   |  |   |
|---|--|---|
| 1 |  | YOU RECEIVED INAPPROPRIATE OR NEGATIVE COMMENTS FROM YOUR EMPLOYER/MANAGER ABOUT YOUR PREGNANCY |
| 2 |  | YOU RECEIVED INAPPROPRIATE OR NEGATIVE COMMENTS FROM YOUR COLLEAGUES ABOUT YOUR PREGNANCY       |
| 3 |  | YOUR HOURS WERE CHANGED AGAINST YOUR WISHES   |
| 4 |  | YOUR ROSTER SCHEDULE WAS CHANGED AGAINST YOUR WISHES  |

5		YOUR DUTIES OR ROLE WERE CHANGED AGAINST YOUR WISHES
6		YOU WERE MADE CASUAL
7		YOU HAD A REDUCTION IN YOUR SALARY OR BONUS
8		YOU DIDN'T RECEIVE A PAY RISE OR BONUS, OR RECEIVED A LESSER PAY RISE OR BONUS THAN YOUR PEERS AT WORK
9		YOU WERE TREATED SO POORLY THAT YOU FELT YOU HAD TO LEAVE
10		YOU WERE THREATENED WITH REDUNDANCY OR DISMISSAL
11		YOU WERE MADE REDUNDANT/RESTRUCTURED
12		YOU WERE DISMISSED
13		YOUR CONTRACT WAS NOT RENEWED
14		YOU WERE UNFAIRLY CRITICISED OR DISCIPLINED ABOUT YOUR PERFORMANCE AT WORK
15		YOU FAILED TO GAIN A PROMOTION THAT YOU FELT YOU DESERVED OR YOU WERE OTHERWISE SIDELINED
16		YOU WERE DENIED ACCESS TO TRAINING THAT YOU WOULD OTHERWISE HAVE RECEIVED
17		YOU WERE UNABLE TO TAKE TOILET BREAKS AS YOU NEEDED
18		YOU WERE UNFIT FOR WORK DUE TO PREGNANCY-RELATED ILLNESS OR BECAUSE YOUR PREGNANCY ENDED AND YOUR EMPLOYER DENIED YOU SPECIAL UNPAID MATERNITY LEAVE
19		YOU WERE DENIED LEAVE TO ATTEND MEDICAL APPOINTMENTS FOR YOUR PREGNANCY
20		YOU WERE NOT PROVIDED WITH A SUITABLE UNIFORM
21		YOUR WORK/WORKLOAD WAS NOT ADEQUATELY ADJUSTED TO ACCOMMODATE YOUR PREGNANCY
22		YOUR HEALTH AND SAFETY WERE JEOPARDISED BY FAILURE TO ACCOMMODATE YOUR PREGNANCY
23		YOU WERE NOT PROVIDED WITH A SAFE JOB
24		YOU WERE TRANSFERRED TO A SAFE JOB BUT IT INVOLVED A DIFFERENT NUMBER OF HOURS OF WORK THAT YOU DID NOT AGREE TO
25		YOU WERE TRANSFERRED TO A SAFE JOB BUT IT DID NOT HAVE THE SAME TERMS AND CONDITIONS OF EMPLOYMENT
97	Openend	OTHER (SPECIFY)
99	Single	REFUSED

**ENDIF**

**IF CODE 2 IN SCR3**

**SELECTED CODES ON Q9 (1-7) WILL NOT APPEAR IN Q10**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q10. Do you think that during your pregnancy with <NAME> //your child born in// <MONTH><YEAR> you were treated in any of the following ways as a result of your pregnancy?

1		You received inappropriate or negative comments from your employer/manager about your pregnancy
2		You received inappropriate or negative comments from your colleagues about your pregnancy
3		Your hours were changed against your wishes
4		Your roster schedule was changed against your wishes
5		Your duties or role were changed against your wishes
6		You were made casual
7		You had a reduction in your salary or bonus
96	Single	(DO NOT READ) NONE OF THE ABOVE

**SELECTED CODES ON Q9 (8-16) WILL NOT APPEAR IN Q10A**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q10A. Just a reminder that we would like to know whether you experienced the following as a result of your pregnancy.

8		You didn't receive a pay rise or bonus, or received a lesser pay rise or bonus than your peers at work
9		You were treated so poorly that you felt you had to leave
10		You were threatened with redundancy or dismissal
11		You were made redundant/restructured
12		You were dismissed
13		Your contract was not renewed
14		You were unfairly criticised or disciplined about your performance at work
15		You failed to gain a promotion that you felt you deserved or you were otherwise sidelined
16		You were denied access to training that you would otherwise have received
96	Single	(DO NOT READ) NONE OF THE ABOVE

**SELECTED CODES ON Q9 (17-25) WILL NOT APPEAR IN Q10B**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q10B. Again, thinking about your experiences during your pregnancy. Did you experience any of the following as a result of your pregnancy?

- |    |         |  |
|----|---------|--|
| 17 |         | You were unable to take toilet breaks as you needed  |
| 18 |         | You were unfit for work due to pregnancy-related illness or because your pregnancy ended and your employer denied you special unpaid maternity leave |
| 19 |         | You were denied leave to attend medical appointments for your pregnancy  |
| 20 |         | You were not provided with a suitable uniform  |
| 21 |         | Your work/workload was not adequately adjusted to accommodate your pregnancy   |
| 22 |         | Your health and safety were jeopardised by failure to accommodate your pregnancy   |
| 23 |         | You were not provided with a safe job  |
| 24 |         | You were transferred to a safe job but it involved a different number hours of work that you did not agree to  |
| 25 |         | You were transferred to a safe job but did not have the same terms and conditions of employment  |
| 96 | Single  | (DO NOT READ) NONE OF THE ABOVE  |
| 97 | Openend | (DO NOT READ) OTHER (SPECIFY)  |
| 99 | Single  | (DO NOT READ) REFUSED  |

**ENDIF**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

XQ10. COMPUTE FROM Q10, Q10A AND Q10B

- |   |  |
|---|--|
| 1 | CODE 1-7 IN Q10 OR CODE 8-16 IN Q10A OR CODE 17-25 OR 97 IN Q10B |
| 2 | NO   |

**IF CODE 1 IN XQ10 OR CODE 1 IN Q8**

You said...READ OUT /

Q9: // 205. /  
 Q10: // 206. /  
 Q10A: // 207. /  
 Q10B: // 208.

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q11. Thinking about this, what impact, if any did this treatment have on you?

- |    |        |  |
|----|--------|--|
| 1  |        | Your physical health was affected                    |
| 2  |        | The health of your baby was affected                 |
| 3  |        | Affected your self-esteem and confidence             |
| 4  |        | Affected your mental health                          |
| 5  |        | Caused you stress                                    |
| 6  |        | Negatively impacted on your family                   |
| 7  |        | Negatively impacted you financially                  |
| 8  |        | Negatively impacted your career                      |
| 9  |        | Negatively impacted your capacity to seek other work |
| 96 | Single | (DO NOT READ) NONE                                   |
| 97 | Single | (DO NOT READ) DON'T KNOW                             |
| 98 | Single | (DO NOT READ) OTHER                                  |
| 99 | Single | (DO NOT READ) REFUSED                                |

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q12. What actions, if any, did you take?

- |   |   |
|---|---|
| 1 | Discussed it with family/friends                              |
| 2 | Discussed it with colleagues                                  |
| 3 | Discussed/raised it with supervisor/manager                   |
| 4 | Discussed/raised it with Human Resources/Personnel Department |
| 5 | Made a formal complaint within the organisation               |
| 6 | Went to a Union or Employee Advisory Service                  |
| 7 | Went to a solicitor or legal service                          |

---

8		Contacted the Australian Human Rights Commission or a State or Territory Discrimination Agency
9		Made a complaint to the Australian Human Rights Commission or a State or Territory Discrimination Agency
10		Contacted the Fair Work Ombudsman/Fair Work Commission
11		Lodged a complaint with Fair Work Ombudsman/Fair Work Commission
12		Went to look for another job
13		Resigned
14	Single	(DO NOT READ) DIDN'T TAKE ANY ACTION
97		(DO NOT READ) OTHER
99	Single	(DO NOT READ) REFUSED

**ENDIF**

**IF CODE 1 TO 13 OR 97 IN Q12**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q13. Were the issues resolved?

1		YES
2		NO
98	Single	PARTLY
99	Single	REFUSED

**ENDIF**

**IF CODE 14 IN Q12**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q14. Why didn't you take action?

1		NOT AWARE OF HOW TO TAKE ACTION OR WHO TO REPORT IT TO
2		YOU DIDN'T KNOW YOU COULD
3		FAMILY/FRIENDS/CO-WORKERS ADVISED YOU NOT TO
4		EASIER TO KEEP QUIET
5		THOUGHT YOU WOULD NOT BE BELIEVED
6		TOO STRESSFUL TO MAKE A COMPLAINT WHILE PREGNANT
7		COMPLAINT PROCESS WOULD BE EMBARRASSING
8		COMPLAINT PROCESS WOULD BE DIFFICULT
9		WOULD NOT CHANGE THINGS/NOTHING COULD BE DONE
10		DIDN'T WANT TO GET A REPUTATION FOR BEING A TROUBLEMAKER
11		DID NOT WANT TO RISK YOUR EMPLOYMENT BEING TERMINATED BEFORE MEETING THE CRITERIA FOR PAID PARENTAL LEAVE
12		CONCERNED IT MIGHT AFFECT YOUR RETURN TO WORK AFTER PARENTAL LEAVE
13		AFRAID IT WOULD AFFECT YOUR CAREER
14		THOUGHT YOU WOULD GET FIRED
97	Openend	OTHER (SPECIFY)
98	Single	DON'T KNOW
99	Single	REFUSED

**ENDIF**

**IF CODE 2 IN SCR3**

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q14A. Overall, how supportive or unsupportive would you say your employer was towards you when you were pregnant with your child?

1		Very supportive
2		Supportive
3		Neither supportive nor unsupportive
4		Unsupportive
5		Very unsupportive
98	Single	(DO NOT READ) CAN'T SAY
99	Single	(DO NOT READ) REFUSED

**ENDIF**

**PARENTAL LEAVE**

Now we would like to ask you questions about your request for or taking of parental leave or other leave to care for your child.

**IF BB IN SAMPLE**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q15. Did you take parental leave or other leave to care for <NAME> //your child born in// <MONTH><YEAR> around the time of the child's birth// adoption//?

- |    |        |         |
|----|--------|---------|
| 1  |        | YES     |
| 2  |        | NO      |
| 99 | Single | REFUSED |

**IF CODE 99 IN Q15**

*Thank you for your time and assistance, but we need an answer to this question before we can proceed with this interview.*

**ENDIF****IF PPL IN SAMPLE**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q15A. Apart from the Government Paid Parental Leave, did you take any other leave to care for <NAME> //your child born in// <MONTH><YEAR> around the time of the child's birth// adoption//?

- |    |        |         |
|----|--------|---------|
| 1  |        | YES     |
| 2  |        | NO      |
| 99 | Single | REFUSED |

**ENDIF****IF CODE 1 IN Q15 OR Q15A**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q16. What kind of leave did you take?

INTERVIEWER NOTE: PROBE AND ASK 'ANY OTHERS?'

- |    |         |                              |
|----|---------|------------------------------|
| 1  |         | UNPAID PARENTAL LEAVE        |
| 2  |         | EMPLOYER PAID PARENTAL LEAVE |
| 3  |         | ANNUAL LEAVE                 |
| 4  |         | PERSONAL LEAVE               |
| 97 | Openend | OTHER (SPECIFY)              |
| 98 | Single  | DON'T KNOW                   |
| 99 | Single  | REFUSED                      |

**ENDIF****IF CODE 1 IN Q15 OR SAMPLE IS PPL**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q17. In total, how long was the leave you took to care for <NAME> //your child born in// <MONTH><YEAR> or are you still on leave?

- |    |         |                 |
|----|---------|-----------------|
| 1  | Single  | STILL ON LEAVE  |
| 97 | Openend | OTHER (SPECIFY) |
| 98 | Single  | DON'T KNOW      |
| 99 | Single  | REFUSED         |

**IF CODE 1 IN Q17**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q17A. At the end of the leave you take to care for your child, in total how long would you have taken?

- |    |         |                 |
|----|---------|-----------------|
| 97 | Openend | OTHER (SPECIFY) |
| 98 | Single  | DON'T KNOW      |
| 99 | Single  | REFUSED         |

**ENDIF**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q18. Would you have liked to take// additional leave to care for// leave to care for <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |         |
|----|--------|---------|
| 1  |        | YES     |
| 2  |        | NO      |
| 99 | Single | REFUSED |

**IF CODE 1 IN Q18**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q19. Why didn't you take// additional leave to care for// leave to care for <NAME> //your child born in// <MONTH><YEAR>?

- |    |         |   |
|----|---------|---|
| 1  |         | DIDN'T KNOW YOU COULD   |
| 2  |         | DIDN'T THINK IT WOULD BE GRANTED  |
| 3  |         | THOUGHT IT WOULD NOT BE POSSIBLE TO ACCOMMODATE BECAUSE OF THE NATURE OF YOUR JOB |
| 4  |         | THOUGHT YOUR EMPLOYER WOULD FROWN UPON IT   |
| 5  |         | THOUGHT IT WOULD CAUSE RESENTMENT AMONG COLLEAGUES                                |
| 6  |         | THOUGHT IT WOULD AFFECT YOUR CHANCES FOR PROMOTION                                |
| 7  |         | THOUGHT IT WOULD AFFECT YOUR SECURITY OF EMPLOYMENT                               |
| 8  |         | NO ONE ELSE HAS DONE IT   |
| 9  |         | STIGMA  |
| 10 |         | COULDN'T AFFORD TO  |
| 97 | Openend | OTHER (SPECIFY)   |
| 98 | Single  | DON'T KNOW  |
| 99 | Single  | REFUSED   |

**ENDIF**

**IF PPL OR (NOT CODE 2 ON Q15 AND Q18)**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q20. At work, were you treated unfairly or disadvantaged because you took or requested to take leave to care for <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |            |
|----|--------|------------|
| 1  |        | YES        |
| 2  |        | NO         |
| 98 | Single | DON'T KNOW |
| 99 | Single | REFUSED    |

**ENDIF**

**IF CODE 1 IN Q20**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q21. What unfair treatment or disadvantage did you experience because you requested or took leave to care for your child?

- |    |  |   |
|----|--|---|
| 1  |  | YOU RECEIVED INAPPROPRIATE OR NEGATIVE COMMENTS FROM YOUR EMPLOYER/MANAGER BECAUSE YOU REQUESTED OR TOOK LEAVE TO CARE FOR YOUR CHILD |
| 2  |  | YOU RECEIVED INAPPROPRIATE OR NEGATIVE COMMENTS FROM YOUR COLLEAGUES BECAUSE YOU REQUESTED OR TOOK LEAVE TO CARE FOR YOUR CHILD       |
| 3  |  | YOUR EMPLOYER DID NOT ADEQUATELY BACKFILL YOUR POSITION DURING YOUR PARENTAL LEAVE AND THIS NEGATIVELY IMPACTED YOU                   |
| 4  |  | YOUR POSITION WAS REPLACED PERMANENTLY BY ANOTHER EMPLOYEE  |
| 5  |  | YOUR HOURS CHANGED AGAINST YOUR WISHES  |
| 6  |  | YOUR ROSTER SCHEDULE WAS CHANGED AGAINST YOUR WISHES  |
| 7  |  | YOUR DUTIES OR ROLE WERE CHANGED AGAINST YOUR WISHES  |
| 8  |  | YOU WERE MADE CASUAL  |
| 9  |  | YOU HAD A REDUCTION IN YOUR SALARY OR BONUS   |
| 10 |  | YOU DIDN'T RECEIVE A PAY RISE OR BONUS, OR RECEIVED A LESSER PAY RISE OR BONUS THAN YOUR PEERS AT WORK                                |
| 11 |  | YOU WERE TREATED SO POORLY THAT YOU FELT YOU HAD TO LEAVE   |
| 12 |  | YOU WERE THREATENED WITH REDUNDANCY OR DISMISSAL  |
| 13 |  | YOU WERE MADE REDUNDANT/RESTRUCTURED  |
| 14 |  | YOU WERE DISMISSED  |
| 15 |  | YOUR CONTRACT WAS NOT RENEWED   |



- 16 YOU MISSED OUT ON OPPORTUNITIES FOR TRAINING  
 17 YOU MISSED OUT ON OPPORTUNITIES FOR PROMOTION  
 18 YOU MISSED OUT ON A PERFORMANCE APPRAISAL  
 19 YOU MISSED OUT ON A SALARY INCREMENT OR BONUS  
 20 YOUR EMPLOYER ENCOURAGED YOU TO START OR FINISH YOUR PARENTAL LEAVE EARLIER OR LATER THAN YOU WOULD HAVE LIKED  
 21 YOU WERE DENIED LEAVE THAT YOU WERE ENTITLED TO  
 97 Openend OTHER (SPECIFY)  
 99 Single REFUSED

**ENDIF**

**IF PPL OR (NOT CODE 2 ON Q15 AND Q18)**

**SELECTED CODES ON Q21 (1-7) WILL NOT APPEAR IN Q22**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q22. Did you personally experience any of the following because you requested or took leave to care for your child?

- 1 You received inappropriate or negative comments from your employer/manager because you requested or took leave to care for your child  
 2 You received inappropriate or negative comments from your colleagues because you requested or took leave to care for your child  
 3 Your employer did not adequately backfill your position during your parental leave and this negatively impacted you  
 4 Your position was replaced permanently by another employee  
 5 Your hours changed against your wishes  
 6 Your roster schedule was changed against your wishes  
 7 Your duties or role were changed against your wishes  
 96 Single (DO NOT READ) NONE OF THE ABOVE

**SELECTED CODES ON Q21 (8-15) WILL NOT APPEAR IN Q22A**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q22A. Just a reminder that we would like to know whether you experienced the following because you requested or took leave to care for your child.

- 8 You were made casual  
 9 You had a reduction in your salary or bonus  
 10 You didn't receive a pay rise or bonus, or received a lesser pay rise or bonus than your peers at work  
 11 You were treated so poorly that you felt you had to leave  
 12 You were threatened with redundancy or dismissal  
 13 You were made redundant/restructured  
 14 You were dismissed  
 15 Your contract was not renewed  
 96 Single (DO NOT READ) NONE OF THE ABOVE

**SELECTED CODES ON Q21 (16-21) WILL NOT APPEAR IN Q22B**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q22B. Again thinking about when you requested or took leave to care for your child. Did you experience any of the following?

- 16 You missed out on opportunities for training  
 17 You missed out on opportunities for promotion  
 18 You missed out on a performance appraisal  
 19 You missed out on a salary increment or bonus  
 20 Your employer encouraged you to start or finish your parental leave earlier or later than you would have liked  
 21 You were denied leave that you were entitled to  
 96 Single (DO NOT READ) NONE OF THE ABOVE  
 97 Openend (DO NOT READ) OTHER (SPECIFY)  
 99 Single (DO NOT READ) REFUSED

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

XQ22. COMPUTE FROM Q22, Q22A AND Q22B

- 1 CODE 1-7 IN Q22 OR CODE 8-15 IN Q22A OR CODE 16-21 OR 97 IN Q22B  
 2 NO

ENDIF

**IF CODE 1 IN Q20 OR CODE 1 IN XQ22**

You said...READ OUT /

Q21: // 223. /

Q22: // 224. /

Q22A: // 225. /

Q22B: // 226.

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q23. Thinking about this, what impact, if any did this treatment have on you?

- |    |          |   |
|----|----------|---|
| 1  |          | Your physical health was affected                       |
| 2  |          | Affected your self-esteem and confidence                |
| 3  |          | Affected your mental health                             |
| 4  |          | Caused you stress                                       |
| 5  |          | Negatively impacted on your family                      |
| 6  |          | Negatively impacted you financially                     |
| 7  |          | Negatively impacted your career                         |
| 8  |          | Negatively impacted on your capacity to seek other work |
| 95 |          | (DO NOT READ) OTHER                                     |
| 96 | Single   | (DO NOT READ) NONE                                      |
| 97 | NoScreen |   |
|    | Openend  | (DO NOT READ) OTHER (REPLACE BY CODE 95)                |
| 98 | Single   | (DO NOT READ) DON'T KNOW                                |
| 99 | Single   | (DO NOT READ) REFUSED                                   |

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q24. What actions, if any, did you take?

- |    |          |  |
|----|----------|--|
| 1  |          | Discussed it with family/friends   |
| 2  |          | Discussed it with colleagues   |
| 3  |          | Discussed/raised it with supervisor/manager  |
| 4  |          | Discussed/raised it with Human Resources/Personnel Department  |
| 5  |          | Made a formal complaint within the organisation  |
| 6  |          | Went to a Union or Employee Advisory Service   |
| 7  |          | Went to a solicitor or legal service   |
| 8  |          | Contacted the Australian Human Rights Commission or a State or Territory Discrimination Agency           |
| 9  |          | Made a complaint to the Australian Human Rights Commission or a State or Territory Discrimination Agency |
| 10 |          | Contacted the Fair Work Ombudsman/Fair Work Commission   |
| 11 |          | Lodged a complaint with Fair Work Ombudsman/Fair Work Commission   |
| 12 |          | Went to look for another job   |
| 13 |          | Resigned   |
| 14 | Single   | (DO NOT READ) DIDN'T TAKE ANY ACTION   |
| 95 |          | (DO NOT READ) OTHER  |
| 97 | NoScreen |  |
|    | Openend  | (DO NOT READ) OTHER (SPECIFY) (REPLACE BY CODE 95)   |
| 99 | Single   | (DO NOT READ) REFUSED  |

**IF CODE 1 TO 13 OR 95 IN Q24**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q25. Were the issues resolved?

- |    |        |         |
|----|--------|---------|
| 1  |        | YES     |
| 2  |        | NO      |
| 98 | Single | PARTLY  |
| 99 | Single | REFUSED |

ENDIF

**IF CODE 14 IN Q24**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q26. Why didn't you take action?

- |    |         |   |
|----|---------|---|
| 1  |         | NOT AWARE OF HOW TO TAKE ACTION OR WHO TO REPORT IT TO  |
| 2  |         | YOU DIDN'T KNOW YOU COULD   |
| 3  |         | FAMILY/FRIENDS/CO-WORKERS ADVISED YOU NOT TO  |
| 4  |         | EASIER TO KEEP QUIET  |
| 5  |         | THOUGHT YOU WOULD NOT BE BELIEVED   |
| 6  |         | TOO STRESSFUL TO MAKE A COMPLAINT WHILE PREGNANT  |
| 7  |         | COMPLAINT PROCESS WOULD BE EMBARRASSING   |
| 8  |         | COMPLAINT PROCESS WOULD BE DIFFICULT  |
| 9  |         | WOULD NOT CHANGE THINGS/NOTHING COULD BE DONE   |
| 10 |         | DIDN'T WANT TO GET A REPUTATION FOR BEING A TROUBLEMAKER  |
| 11 |         | DID NOT WANT TO RISK YOUR EMPLOYMENT BEING TERMINATED BEFORE MEETING THE CRITERIA FOR PAID PARENTAL LEAVE |
| 12 |         | CONCERNED IT MIGHT AFFECT YOUR RETURN TO WORK AFTER PARENTAL LEAVE  |
| 13 |         | AFRAID IT WOULD AFFECT YOUR CAREER  |
| 14 |         | THOUGHT YOU WOULD GET FIRED   |
| 97 | Openend | OTHER (SPECIFY)   |
| 98 | Single  | DON'T KNOW  |
| 99 | Single  | REFUSED   |

ENDIF

IF CODE 1 IN Q15 OR SAMPLE IS PPL

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q27. While you were on leave to care for your child, did your employer keep you informed about major changes or opportunities in the workplace that could affect you?

- |    |        |  |
|----|--------|--|
| 1  |        | Yes  |
| 2  |        | No   |
| 3  |        | There were no major changes in the workplace to be kept informed about |
| 99 | Single | (DO NOT READ) REFUSED  |

ENDIF

EXPERIENCES AFTER BIRTH/ADOPTION OF CHILD (RETURN TO WORK/START WORK)

Now we would like to ask you some questions about your experiences after the// birth// adoption// of your child.

INTERVIEWER'S NOTE: IF RESPONDENT SAYS THEY HAD MORE THAN ONE JOB AFTER THEIR PREGNANCY/ADOPTION, SAY "Please think about the job closest to after the// birth// adoption// of <NAME> //your child born in// <MONTH><YEAR>."

IF RESPONDENT SAYS THEY HAD MORE THAN ONE JOB AT A TIME AFTER THEIR PREGNANCY/ADOPTION, SAY "Please think of the job that you worked for the most hours per week."

IF Q17=97 OR 98 OR 99 OR Q15=2, ASK

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q28. Were you self-employed/running your own business or an employee getting paid a wage or salary// after you adopted// after the birth of <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |  |
|----|--------|--|
| 1  |        | SELF-EMPLOYED/RUNNING OWN BUSINESS     |
| 2  |        | EMPLOYEE GETTING PAID A WAGE OR SALARY |
| 3  |        | BOTH                                   |
| 4  |        | NEITHER                                |
| 99 | Single | REFUSED                                |

IF CODE 99 IN Q28

Thank you for your time and assistance, but we need an answer to this question before we can proceed with this interview.

ENDIF

IF CODE 3 IN Q28

We will be asking you questions about the job in which you were an employee getting paid a wage or salary.

ENDIF

**IF CODE 2 OR 3 IN Q28**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q29. Did you return to the main employer you had// when you adopted// while you were pregnant with <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |           |
|----|--------|-----------|
| 1  |        | YES       |
| 2  |        | NO        |
| 98 | Single | CAN'T SAY |
| 99 | Single | REFUSED   |

**IF CODE 98 OR 99 IN Q29**

*Thank you for your time and assistance, but we need an answer to this question before we can proceed with this interview.*

**ENDIF**

**IF CODE 2 IN Q29**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q30. Why didn't you return to the same employer?

- |    |         |                      |
|----|---------|----------------------|
| 97 | Openend | OTHER (SPECIFY)      |
| 98 | Single  | CAN'T SAY/DON'T KNOW |
| 99 | Single  | REFUSED              |

**ENDIF**

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q28A. Which of the following best describes the location of your workplace after the// birth// adoption// of <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |                     |
|----|--------|---------------------|
| 1  |        | Major city          |
| 2  |        | Large regional town |
| 3  |        | Small regional town |
| 4  |        | Rural area          |
| 97 |        | OTHER               |
| 98 | Single | DON'T KNOW          |
| 99 | Single | REFUSED             |

**IF CODE 1 IN Q29**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q31. Were there any negative differences in the job you returned to?

- |    |         |  |
|----|---------|--|
| 1  |         | STATUS   |
| 2  |         | LEVELS OF RESPONSIBILITY   |
| 3  |         | COMPLEXITY OF THE WORK   |
| 4  |         | OPPORTUNITIES FOR PROMOTION/CAREER ADVANCEMENT   |
| 5  |         | LEVELS OF CONTROL OVER YOUR WORK   |
| 6  |         | OPPORTUNITIES FOR TRAINING   |
| 7  |         | DIDN'T RETURN TO SAME POSITION/ROLE OR AREA OF WORK  |
| 8  |         | DIDN'T RETURN ON THE SAME PRO-RATA PAY AND CONDITIONS AS BEFORE THE BIRTH/ADOPTION OF YOUR CHILD |
| 9  |         | DIDN'T RETURN ON THE SAME FLEXIBLE WORK ARRANGEMENTS   |
| 10 | Single  | NO NEGATIVE DIFFERENCES  |
| 97 | Openend | OTHER (SPECIFY)  |
| 98 | Single  | CAN'T SAY  |
| 99 | Single  | REFUSED  |

**ENDIF**

**IF CODE 2 IN Q29**

**[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]**

Q31A. Compared to the job you had before// you adopted// the birth of <NAME> //your child born in// <MONTH><YEAR>, were there any negative differences in the first job you took after// you adopted// the birth?

- |    |         |  |
|----|---------|--|
| 1  |         | STATUS   |
| 2  |         | LEVELS OF RESPONSIBILITY   |
| 3  |         | COMPLEXITY OF THE WORK   |
| 4  |         | OPPORTUNITIES FOR PROMOTION/CAREER ADVANCEMENT   |
| 5  |         | LEVELS OF CONTROL OVER YOUR WORK   |
| 6  |         | OPPORTUNITIES FOR TRAINING   |
| 7  |         | DIDN'T RETURN TO SAME POSITION/ROLE OR AREA OF WORK  |
| 8  |         | DIDN'T RETURN ON THE SAME PRO-RATA PAY AND CONDITIONS AS BEFORE THE BIRTH/ADOPTION OF YOUR CHILD |
| 9  |         | DIDN'T RETURN ON THE SAME FLEXIBLE WORK ARRANGEMENTS   |
| 10 | Single  | NO NEGATIVE DIFFERENCES  |
| 97 | Openend | OTHER (SPECIFY)  |
| 98 | Single  | CAN'T SAY  |
| 99 | Single  | REFUSED  |

Now thinking about the first job you had after the// birth// adoption// of <NAME> //your child born in// <MONTH><YEAR>

**[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]**

Q32. Can you please tell me the occupation of that job?

- |    |        |                                |
|----|--------|--------------------------------|
| 1  |        | MANAGER                        |
| 2  |        | PROFESSIONAL                   |
| 3  |        | TECHNICIAN/TRADE WORKER        |
| 4  |        | COMMUNITY AND PERSONAL SERVICE |
| 5  |        | CLERICAL/ADMIN                 |
| 6  |        | SALES                          |
| 7  |        | MACHINERY OPERATORS/DRIVERS    |
| 8  |        | LABOURERS                      |
| 98 | Single | DON'T KNOW                     |
| 99 | Single | REFUSED                        |

**[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]**

Q33. Is that job in the public, private or not-for-profit sector?

- |    |        |                |
|----|--------|----------------|
| 1  |        | PUBLIC         |
| 2  |        | PRIVATE        |
| 3  |        | NOT-FOR-PROFIT |
| 98 | Single | DON'T KNOW     |
| 99 | Single | REFUSED        |

**[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]**

Q34. Can you please tell me the industry of that job?

- |    |  |   |
|----|--|---|
| 1  |  | AGRICULTURE, FORESTRY AND FISHING   |
| 2  |  | MINING  |
| 3  |  | MANUFACTURING   |
| 4  |  | ELECTRICITY, GAS, WATER AND WASTE SERVICES  |
| 5  |  | CONSTRUCTION  |
| 6  |  | WHOLESALE TRADE   |
| 7  |  | RETAIL TRADE  |
| 8  |  | ACCOMMODATION AND FOOD SERVICES   |
| 9  |  | TRANSPORT, POSTAL AND WAREHOUSING   |
| 10 |  | INFORMATION MEDIA AND TELECOMMUNICATIONS  |
| 11 |  | FINANCIAL AND INSURANCE SERVICES  |
| 12 |  | RENTAL, HIRING AND REAL ESTATE SERVICES   |
| 13 |  | PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES (INCLUDING LEGAL, ACCOUNTING, ARCHITECTURAL, ENGINEERING AND OTHER PROFESSIONS) |
| 14 |  | ADMINISTRATIVE AND SUPPORT SERVICES   |
| 15 |  | PUBLIC ADMINISTRATION AND SAFETY  |
| 16 |  | EDUCATION AND TRAINING  |
| 17 |  | HEALTH CARE AND SOCIAL ASSISTANCE   |
| 18 |  | ARTS AND RECREATION SERVICES  |

97 Single OTHER SERVICES  
 98 Single DON'T KNOW  
 99 Single REFUSED

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q35. How many people work in that organisation as a whole (including on different sites/locations in Australia if that applies)?  
 Would you estimate that to be...

1 Less than 5  
 2 5-19  
 3 20-99  
 4 100-499  
 5 500-3000  
 6 More than 3000  
 98 Single DON'T KNOW

**ENDIF**

**IF CODE 2 OR 3 IN Q28**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q38. Are you still currently working with that employer?

1 YES  
 2 NO  
 98 Single CAN'T SAY  
 99 Single REFUSED

**IF CODE 2 IN Q38**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q39. Why aren't you working with that employer anymore?

97 Openend OTHER (SPECIFY)  
 98 Single CAN'T SAY/DON'T KNOW  
 99 Single REFUSED

**ENDIF**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q36. After the// In the first job you had after the// birth// adoption// of your child, were you working on a fixed-term contract, casual or an on-going/permanent basis with that employer?

1 CASUAL  
 2 FIXED-TERM CONTRACT  
 3 ON-GOING/PERMANENT  
 99 Single REFUSED

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q37. After the// In the first job you had after the// birth// adoption// of your child, were you working on a part-time or full-time basis?

1 PART-TIME  
 2 FULL-TIME  
 99 Single REFUSED

**ENDIF**

**IF CODE 2 OR 3 IN Q28**

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q40. After the// In the first job you had after the// birth// adoption// of your child, compared with your job before the// birth// adoption// of <NAME> //your child born in// <MONTH><YEAR>, are your career opportunities:

1 A lot better than before  
 2 A little better than before  
 3 About the same  
 4 A little worse than before  
 5 A lot worse than before

98 Single (DO NOT READ) CAN'T SAY  
 99 Single (DO NOT READ) REFUSED

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q41. After the// In the first job you had after the// birth// adoption// of your child, did you request for any adjustments to your working arrangements (such as a request for part-time or flexible working hours) to care for <NAME> //your child born in// <MONTH><YEAR>?

1 YES  
 2 NO  
 98 Single CAN'T SAY  
 99 Single REFUSED

**IF CODE 1 IN Q41**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q42. Why did you request adjustments to your working arrangements (such as a request for part-time or flexible working hours) to care for <NAME> //your child born in// <MONTH><YEAR>?

1 YOU WERE UNABLE TO GET SUFFICIENT CHILDCARE  
 2 YOUR PARTNER WAS UNABLE TO GET FLEXIBLE WORK ARRANGEMENTS  
 3 YOU PREFERRED TO WORK PART-TIME/FLEXIBLY  
 4 TO ACCOMMODATE CHILD CARE ARRANGEMENTS  
 97 Openend OTHER (SPECIFY)  
 98 Single CAN'T SAY  
 99 Single REFUSED

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q43. What adjustments to your working arrangements did you request?

1 WORKING FROM HOME IN NORMAL WORKING HOURS  
 2 CHANGED STARTING AND FINISHING TIMES  
 3 CHANGING SHIFT/ROSTER  
 4 PART-TIME WORK OR JOB SHARING  
 5 WORKING MORE HOURS OVER FEWER DAYS  
 6 WORKING ADDITIONAL HOURS TO MAKE UP FOR TIME TAKEN OFF  
 7 FLEXIBLE HOURS/FLEXITIME  
 8 TAKING ROSTERED DAYS OFF IN HALF DAYS OR MORE FLEXIBLY  
 9 TIME OFF INSTEAD OF OVERTIME PAYMENTS  
 10 COMPRESSED WORK WEEK  
 11 PURCHASED LEAVE  
 12 ANNUALISED HOURS  
 97 Openend OTHER (SPECIFY)  
 98 Single CAN'T SAY  
 99 Single REFUSED

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q44. Was this granted?

1 YES  
 2 NO  
 3 PARTLY  
 99 Single REFUSED

**IF CODE 2 OR 3 IN Q44**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q45. What reasons were you given for partly or not granting adjustments to your working arrangements (such as a request for part-time or flexible working hours)?

1 NOT DOABLE/NOT POSSIBLE  
 2 NOT CONSIDERED PRODUCTIVE  
 3 WORK SITE LOCATION  
 4 MANAGER DOESN'T LIKE FLEXIBLE/PART-TIME WORK  
 5 BUSINESS REASONS  
 97 Openend OTHER (SPECIFY)  
 98 Single DON'T KNOW  
 99 Single REFUSED



ENDIF

**IF CODE 2 IN Q41**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q46. Why didn't you request for adjustments to your working arrangement to care for <NAME> //your child born in// <MONTH><YEAR>?

INTERVIEWERS NOTE: PLEASE PROBE FURTHER AND SAY "IS THERE ANYTHING ELSE?"

- |    |         |   |
|----|---------|---|
| 1  |         | DIDN'T KNOW YOU COULD   |
| 2  |         | DIDN'T THINK IT WOULD BE GRANTED  |
| 3  |         | THOUGHT IT WOULD NOT BE POSSIBLE TO ACCOMMODATE BECAUSE OF THE NATURE OF YOUR JOB               |
| 4  |         | THOUGHT YOUR EMPLOYER WOULD FROWN UPON IT   |
| 5  |         | THOUGHT IT WOULD CAUSE RESENTMENT AMONG COLLEAGUES  |
| 6  |         | THOUGHT IT WOULD AFFECT YOUR CHANCES FOR PROMOTION  |
| 7  |         | THOUGHT IT WOULD AFFECT YOUR SECURITY OF EMPLOYMENT   |
| 8  |         | NO ONE ELSE HAS DONE IT   |
| 9  |         | STIGMA  |
| 10 |         | THOUGHT YOU WOULD END UP DOING THE SAME NUMBER OF HOURS   |
| 11 |         | ALREADY HAD ADJUSTMENTS TO WORK ARRANGEMENTS BEFORE THE BIRTH/ADOPTION THAT WERE STILL IN PLACE |
| 12 |         | DIDN'T NEED ADJUSTMENTS TO YOUR WORK ARRANGEMENTS   |
| 97 | Openend | OTHER (SPECIFY)   |
| 98 | Single  | CAN'T SAY   |
| 99 | Single  | REFUSED   |

ENDIF

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q47. After the// In the first job you had after the// birth// adoption// of your child, were you ever treated unfairly or disadvantaged because of your family responsibilities for <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |           |
|----|--------|-----------|
| 1  |        | YES       |
| 2  |        | NO        |
| 98 | Single | CAN'T SAY |
| 99 | Single | REFUSED   |

**IF CODE 1 IN Q47**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q48. What unfair treatment or disadvantage did you experience because of your family responsibilities for your child?

- |    |  |
|----|--|
| 1  | RECEIVED INAPPROPRIATE OR NEGATIVE COMMENTS ABOUT BREASTFEEDING OR EXPRESSING MILK                       |
| 2  | RECEIVED INAPPROPRIATE OR NEGATIVE COMMENTS ABOUT WORKING PART-TIME OR FLEXIBLE HOURS                    |
| 3  | RECEIVED INAPPROPRIATE OR NEGATIVE COMMENTS ABOUT NEEDING TIME OFF TO CARE FOR YOUR CHILD DUE TO ILLNESS |
| 4  | YOU WERE VIEWED AS A LESS COMMITTED EMPLOYEE   |
| 5  | YOU WERE UNFAIRLY CRITICISED OR DISCIPLINED ABOUT YOUR PERFORMANCE AT WORK                               |
| 6  | YOUR REQUESTS FOR FLEXIBLE HOURS OR WORK FROM HOME WERE DENIED   |
| 7  | YOUR REQUESTS FOR TIME OFF TO COPE WITH ILLNESS OR OTHER PROBLEMS WITH YOUR BABY WERE DENIED             |
| 8  | YOU WERE GIVEN UNSUITABLE WORK OR WORKLOADS  |
| 9  | YOU WERE GIVEN WORK AT TIMES THAT DID NOT SUIT YOUR FAMILY RESPONSIBILITIES                              |
| 10 | YOUR SHIFT HOURS WERE CHANGED AGAINST YOUR WISHES  |
| 11 | YOU WERE NOT PROVIDED WITH APPROPRIATE BREASTFEEDING OR EXPRESSING FACILITIES                            |
| 12 | YOUR DUTIES OR ROLE WERE CHANGED AGAINST YOUR WISHES   |
| 13 | YOU FAILED TO GAIN A PROMOTION YOU FELT YOU DESERVED   |
| 14 | YOU HAD A REDUCTION IN YOUR SALARY OR BONUS  |
| 15 | YOU DIDN'T RECEIVE A PAY RISE OR BONUS, OR RECEIVED A LESSER PAY RISE OR BONUS THAN YOUR PEERS AT WORK   |
| 16 | YOU WERE DENIED ACCESS TO TRAINING THAT YOU WOULD OTHERWISE HAVE   |
| 17 | YOU WERE THREATENED WITH REDUNDANCY OR DISMISSAL   |
| 18 | YOU WERE MADE REDUNDANT/RESTRUCTURED   |
| 19 | YOU WERE DISMISSED   |
| 20 | YOUR CONTRACT WAS NOT RENEWED  |
| 21 | YOU WERE TREATED SO POORLY THAT YOU FELT YOU HAD TO LEAVE  |

22 YOUR POSITION WAS PERMANENTLY REPLACED BY ANOTHER EMPLOYEE  
 97 Openend OTHER (SPECIFY)  
 98 Single DON'T KNOW  
 99 Single REFUSED

**ENDIF**

**IF CODE 2 OR 3 IN Q28 AND CODE 2 IN SCR3**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q49. After the// In the first job you had after the// birth of your child, were you ever treated unfairly or disadvantaged because you were breast-feeding or expressing milk?

1 YES  
 2 NO  
 3 NOT APPLICABLE  
 98 Single DON'T KNOW  
 99 Single REFUSED

**ENDIF**

**IF CODE 2 OR 3 IN Q28**

**SELECTED CODES ON Q48 (1-7) WILL NOT APPEAR IN Q50**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q50. After the// In the first job you had after the// birth// adoption// of your child, have you ever personally experienced any of the following because of your family responsibilities for <NAME> //your child born in// <MONTH><YEAR>?

1 Received inappropriate or negative comments about breastfeeding or expressing milk  
 2 Received inappropriate or negative comments about working part-time or flexible hours  
 3 Received inappropriate or negative comments about needing time off to care for your child due to illness  
 4 You were viewed as a less committed employee  
 5 You were unfairly criticised or disciplined about your performance at work  
 6 Your requests for flexible hours or work from home were denied  
 7 Your requests for time off to cope with illness or other problems with your baby were denied  
 96 Single (DO NOT READ) NONE OF THE ABOVE

**SELECTED CODES ON Q48 (8-16) WILL NOT APPEAR IN Q50A**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q50A. Just a reminder that we would like to know whether you experienced the following because of your family responsibilities for your child.

8 You were given unsuitable work or workloads  
 9 You were given work at times that did not suit your family responsibilities  
 10 Your shift hours were changed against your wishes  
 11 You were not provided with appropriate breastfeeding or expressing facilities  
 12 Your duties or role were changed against your wishes  
 13 You failed to gain a promotion you felt you deserved  
 14 You had a reduction in your salary or bonus  
 15 You didn't receive a pay rise or bonus, or received a lesser pay rise or bonus than your peers at work  
 16 You were denied access to training that you would otherwise have received  
 96 Single (DO NOT READ) NONE OF THE ABOVE

**SELECTED CODES ON Q48 (17-22) WILL NOT APPEAR IN Q50B**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q50B. Again thinking about after the// birth// adoption// of your child. Did you experience any of the following because of your family responsibilities?

17 You were threatened with redundancy or dismissal  
 18 You were made redundant/restructured  
 19 You were dismissed  
 20 Your contract was not renewed  
 21 You were treated so poorly that you felt you had to leave  
 22 Your position was permanently replaced by another employee  
 96 Single (DO NOT READ) NONE OF THE ABOVE  
 97 Openend (DO NOT READ) OTHER (SPECIFY)

98 Single (DO NOT READ) DON'T KNOW  
99 Single (DO NOT READ) REFUSED

**ENDIF**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

XQ50. COMPUTE FROM Q50, Q50A AND Q50B

1 CODE 1-7 IN Q50 OR CODE 8-16 IN Q50A OR CODE 17-22 OR 97 IN Q50B  
2 NO

**IF CODE 1 IN Q47 OR Q49 OR CODE 1 IN XQ50**

You said...READ OUT /

Q48: // 255. /  
Q50: // 257. /  
Q50A: // 258. /  
Q50B: // 259.

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q51. Thinking about this, what impact, if any did this treatment have on you?

1 Your physical health was affected  
2 Affected your self-esteem and confidence  
3 Affected your mental health  
4 Caused you stress  
5 Negatively impacted on your family  
6 Negatively impacted you financially  
7 Negatively impacted your career  
8 Negatively impacted on your capacity to seek other work  
96 Single (DO NOT READ) NONE  
97 (DO NOT READ) OTHER  
98 Single (DO NOT READ) DON'T KNOW  
99 Single (DO NOT READ) REFUSED

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q52. What actions, if any, did you take?

1 Discussed it with family/friends  
2 Discussed it with colleagues  
3 Discussed/raised it with supervisor/manager  
4 Discussed/raised it with Human Resources/Personnel Department  
5 Made a formal complaint within the organisation  
6 Went to a Union or Employee Advisory Service  
7 Went to a solicitor or legal service  
8 Contacted the Australian Human Rights Commission or a State or Territory Discrimination Agency  
9 Made a complaint to the Australian Human Rights Commission or a State or Territory Discrimination Agency  
10 Contacted the Fair Work Ombudsman/Fair Work Commission  
11 Lodged a complaint with Fair Work Ombudsman/Fair Work Commission  
12 Went to look for another job  
13 Resigned  
14 Single (DO NOT READ) DIDN'T TAKE ANY ACTION  
97 (DO NOT READ) OTHER  
99 Single (DO NOT READ) REFUSED

**IF CODE 1 TO 13 OR 97 IN Q52**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q53. Were the issues resolved?

1 YES  
2 NO  
3 PARTLY  
99 Single REFUSED

**ENDIF**

**IF CODE 14 IN Q52**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q54. Why didn't you take action?

- |    |         |   |
|----|---------|---|
| 1  |         | NOT AWARE OF HOW TO TAKE ACTION OR WHO TO REPORT IT TO  |
| 2  |         | YOU DIDN'T KNOW YOU COULD   |
| 3  |         | FAMILY/FRIENDS/CO-WORKERS ADVISED YOU NOT TO  |
| 4  |         | EASIER TO KEEP QUIET  |
| 5  |         | THOUGHT YOU WOULD NOT BE BELIEVED   |
| 6  |         | TOO STRESSFUL TO MAKE A COMPLAINT WHILE PREGNANT  |
| 7  |         | COMPLAINT PROCESS WOULD BE EMBARRASSING   |
| 8  |         | COMPLAINT PROCESS WOULD BE DIFFICULT  |
| 9  |         | WOULD NOT CHANGE THINGS/NOTHING COULD BE DONE   |
| 10 |         | DIDN'T WANT TO GET A REPUTATION FOR BEING A TROUBLEMAKER  |
| 11 |         | DID NOT WANT TO RISK YOUR EMPLOYMENT BEING TERMINATED BEFORE MEETING THE CRITERIA FOR PAID PARENTAL LEAVE |
| 12 |         | CONCERNED IT MIGHT AFFECT YOUR RETURN TO WORK AFTER PARENTAL LEAVE  |
| 13 |         | AFRAID IT WOULD AFFECT YOUR CAREER  |
| 14 |         | THOUGHT YOU WOULD GET FIRED   |
| 97 | Openend | OTHER (SPECIFY)   |
| 98 | Single  | DON'T KNOW  |
| 99 | Single  | REFUSED   |

**ENDIF****IF CODE 2 OR 3 IN Q28 AND CODE 97 OR 98 OR 99 IN Q17**

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q55. Overall, how supportive or unsupportive would you say your employer was towards you on return to work after leave to care for your child?

- |    |        |                                     |
|----|--------|-------------------------------------|
| 1  |        | Very supportive                     |
| 2  |        | Supportive                          |
| 3  |        | Neither supportive nor unsupportive |
| 4  |        | Unsupportive                        |
| 5  |        | Very unsupportive                   |
| 98 | Single | CAN'T SAY                           |
| 99 | Single | REFUSED                             |

**ENDIF****IF CODE 1 IN Q17 OR CODE 1 OR 4 IN Q28**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q56. Why haven't you returned to paid employment as an employee yet?

- |    |         |   |
|----|---------|---|
| 1  |         | CAN'T FIND CHILDCARE FOR DAYS NEEDED                        |
| 2  |         | CHILDCARE IS TOO EXPENSIVE                                  |
| 3  |         | YOU COULDN'T NEGOTIATE SUITABLE RETURN TO WORK ARRANGEMENTS |
| 4  |         | YOU PREFER TO BE AT HOME LOOKING AFTER YOUR CHILD           |
| 5  |         | YOUR PARTNER EARNS ENOUGH TO SUPPORT YOUR FAMILY            |
| 6  |         | YOU WANTED TO CONTINUE BREASTFEEDING                        |
| 7  |         | STILL ON PAID PARENTAL LEAVE                                |
| 8  |         | STILL ON UNPAID PARENTAL LEAVE                              |
| 9  |         | WANT TO BE SELF-EMPLOYED/RUN YOUR OWN BUSINESS              |
| 10 |         | CAN'T FIND PART-TIME WORK                                   |
| 97 | Openend | OTHER (SPECIFY)   |
| 98 | Single  | DON'T KNOW  |
| 99 | Single  | REFUSED   |

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q57. Do you plan to return to the same employer you had// when you were pregnant with// when you adopted <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |            |
|----|--------|------------|
| 1  |        | YES        |
| 2  |        | NO         |
| 98 | Single | DON'T KNOW |
| 99 | Single | REFUSED    |

**IF CODE 2 IN Q57**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q58. Why don't you plan to return to the same employer?

- |    |         |                 |
|----|---------|-----------------|
| 97 | Openend | OTHER (SPECIFY) |
| 98 | Single  | DON'T KNOW      |
| 99 | Single  | REFUSED         |

**ENDIF**

**DEMOGRAPHICS**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q59. Do you have a disability?

- |    |        |         |
|----|--------|---------|
| 1  |        | YES     |
| 2  |        | NO      |
| 99 | Single | REFUSED |

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q60. Have you been the sole income earner in your household...

- |    |        |  |
|----|--------|--|
| 1  |        | During your pregnancy  |
| 2  |        | Just before you adopted your child                                     |
| 3  |        | During parental leave or other leave to care for your child            |
| 4  |        | On return from parental leave or other leave to care for your child    |
| 5  | Single | (DO NOT READ) NO I HAVEN'T BEEN THE SOLE INCOME EARNER IN MY HOUSEHOLD |
| 99 | Single | (DO NOT READ) REFUSED  |

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q61. Which of the following best describes your household// when you were pregnant// when you adopted <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |   |
|----|--------|---|
| 1  |        | Couple with child/children living in the household            |
| 2  |        | One parent family with child/children living in the household |
| 3  |        | Single household with no children                             |
| 4  |        | Couple with no children                                       |
| 99 | Single | (DO NOT READ) REFUSED   |

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q62. Which of the following best describes your household after the// birth// adoption// of <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |   |
|----|--------|---|
| 1  |        | Couple with child/children living in the household            |
| 2  |        | One parent family with child/children living in the household |
| 3  |        | Single household with no children                             |
| 4  |        | Couple with no children                                       |
| 99 | Single | (DO NOT READ) REFUSED   |

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q63. Where would you go to get information on your rights and entitlements about pregnancy, parental leave or return to work discrimination?

INTERVIEWER NOTE: PROBE FURTHER AND ASK ‘ANYWHERE ELSE?’

- 1 FAMILY/FRIENDS
- 2 COLLEAGUES
- 3 SUPERVISOR/MANAGER
- 4 HUMAN RESOURCES/PERSONNEL DEPARTMENT
- 5 UNION OR EMPLOYEE ADVISORY SERVICE
- 6 SOLICITOR OR LEGAL SERVICE
- 7 THE AUSTRALIAN HUMAN RIGHTS COMMISSION OR A STATE OR TERRITORY DISCRIMINATION AGENCY
- 8 FAIR WORK OMBUDSMAN/FAIR WORK COMMISSION
- 9 INTERNET
- 10 GOVERNMENT DEPARTMENT/CENTRELINK
- 97 Openend OTHER (SPECIFY)
- 98 Single DON'T KNOW
- 99 Single REFUSED

IF CODE 1 IN Q8 OR CODE 1 IN XQ10 OR CODE 1 IN Q20 OR CODE 1 IN XQ22 OR CODE 1 IN Q47 OR CODE 1 IN Q49 OR CODE 1 IN XQ50

Please note that your survey responses about any discrimination you may have experienced during pregnancy, parental leave or return to work do not constitute a formal report of that discrimination. If you would like to make a formal report of discrimination during pregnancy, parental leave or return to work, you may do so by contacting the Australian Human Rights Commission, a state or territory anti-discrimination agency, Fair Work Commission or Fair Work Ombudsman.

ENDIF

Okay, the interview is now finished. Thank you for your time and for your support. You made a valuable contribution to the success of this important study.

This research is carried out in compliance with the Privacy Act and Telecommunications and Research Calls Industry Standard, and the information you provided will be used only for research purposes.

We are conducting this research on behalf of the Australian Human Rights Commission. If you would like any more information about this project or Roy Morgan Research, you can phone us on 1800 337 332.

END-OF-QUESTIONNAIRE

## Appendix B.2: Fathers and Partners Survey questionnaire

### INTRODUCTION

Good [Morning/ Afternoon/ Evening]. My name is (SAY NAME) from Roy Morgan Research on behalf of the Australian Human Rights Commission. May I please speak to <NAME>?

We are conducting an important social study about people's experiences related to parental leave and returning to work after parental leave. This is on behalf of the Australian Human Rights Commission.

IF NECESSARY: The survey will take approximately 15 minutes and will be used for research purposes only. Your answers will remain strictly confidential. You will not be identified in any way in the results. Your answers will be combined with the information from hundreds of other participants across Australia.

IF QUERIED ABOUT HOW NAME OR NUMBER WAS SOURCED: Your contact details have been provided to us by the Department of Social Services for the sole purpose of contacting fathers and partners who have taken parental leave to ask about their experiences. If you have any concerns with this you can contact Sarah Hinde from the Department on Ph: 02 6146 2944.

IF NECESSARY: We really would like to include your opinion and experience in this survey to ensure a representative and diverse sample of Australians.

Is now a good time?

IF NECESSARY, MAKE APPOINTMENT.

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

INTRO. Do you agree to participate?

- |    |         |
|----|---------|
| 1  | YES     |
| 2  | NO      |
| 99 | REFUSED |

IF REFUSES (CODE 2 OR 99 ON INTRO)

ENDIF

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

SCR1. Do you have a child who was born in <MONTH><YEAR>?

- |   |     |
|---|-----|
| 1 | YES |
| 2 | NO  |

IF NO

Thank you for your time and assistance, but we need to speak to people with a child of a certain age.

ENDIF

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

SCR2. Can you please tell me the name of this child for the purpose of conducting this interview?

- |    |                                   |
|----|-----------------------------------|
| 1  | YES (ENTER NAME ON THE NEXT PAGE) |
| 99 | REFUSED                           |

IF CODE 1 IN SCR2

[Character]

SCR2A. ENTER CHILD'S NAME HERE

ENDIF

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

SCR3. Are you the biological or adoptive parent of the child?

- |    |            |
|----|------------|
| 1  | ADOPTIVE   |
| 2  | BIOLOGICAL |
| 99 | REFUSED    |

IF CODE 99 IN SCR3

Thank you for your time and assistance, but we need an answer to this question before we can proceed with this interview.

ENDIF



[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

SCR4. Were you self-employed/running your own business or an employee getting paid a wage or salary just before <NAME> //your child born in// <MONTH><YEAR> was born?

- |    |  |
|----|--|
| 1  | SELF-EMPLOYED/RUNNING OWN BUSINESS     |
| 2  | EMPLOYEE GETTING PAID A WAGE OR SALARY |
| 3  | BOTH                                   |
| 4  | NEITHER                                |
| 99 | REFUSED                                |

**IF SELF EMPLOYED OR NEITHER OR CODE 99 IN SCR4**

*Thank you for your time and assistance, but we need to speak to people who were an employee getting paid a wage or salary.*

**ENDIF**

**IF CODE 3 IN SCR4**

*For this survey, we are only interested in the job in which you were an employee getting paid a wage or salary.*

**ENDIF**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

SCR5. What is your gender?

- |    |  |
|----|--|
| 1  | FEMALE                                   |
| 2  | MALE                                     |
| 3  | X (INDETERMINATE, INTERSEX, UNSPECIFIED) |
| 99 | REFUSED                                  |

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

SCR6. Can you please tell me your age?

- |    |               |
|----|---------------|
| 1  | 18-24         |
| 2  | 25-29         |
| 3  | 30-34         |
| 4  | 35-39         |
| 5  | 40-44         |
| 6  | 45-49         |
| 96 | NONE OF THESE |
| 99 | REFUSED       |

**IF CODE 99 IN SCR6**

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

SCR6A. Would you be aged...?

- |    |                             |
|----|-----------------------------|
| 1  | 18-24                       |
| 2  | 25-29                       |
| 3  | 30-34                       |
| 4  | 35-39                       |
| 5  | 40-44                       |
| 6  | 45-49                       |
| 96 | (DO NOT READ) NONE OF THESE |
| 99 | (DO NOT READ) REFUSED       |

**ENDIF**

[Quantity]

SCR7. Can you please tell me your postcode?

**IF REFUSES, CLICK ON THE CROSS**

**EXPERIENCES DURING PREGNANCY/ADOPTION OF CHILD**

Now we would like to talk about the job you had //when you adopted your child //just before your child was born.

INTERVIEWER'S NOTE: IF RESPONDENT SAYS THEY HAD MORE THAN ONE JOB JUST BEFORE THE CHILD WAS BORN, SAY:  
"Please think about the job closest to the <NAME> //your child born in// <MONTH><YEAR>"

IF RESPONDENT SAYS THEY HAD MORE THAN ONE JOB JUST BEFORE THE CHILD WAS BORN, SAY:  
"Please think of the job that you worked for the most hours per week."

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q1. Can you please tell me the occupation of that job?

- |    |        |                                |
|----|--------|--------------------------------|
| 1  |        | MANAGER                        |
| 2  |        | PROFESSIONAL                   |
| 3  |        | TECHNICIAN/TRADE WORKER        |
| 4  |        | COMMUNITY AND PERSONAL SERVICE |
| 5  |        | CLERICAL/ADMIN                 |
| 6  |        | SALES                          |
| 7  |        | MACHINERY OPERATORS/DRIVERS    |
| 8  |        | LABOURERS                      |
| 99 | Single | REFUSED                        |

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q1A. Which of the following best describes the location of your workplace before the// birth// adoption// of <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |                          |
|----|--------|--------------------------|
| 1  |        | Major city               |
| 2  |        | Large regional town      |
| 3  |        | Small regional town      |
| 4  |        | Rural area               |
| 97 |        | OTHER                    |
| 98 | Single | (DO NOT READ) DON'T KNOW |
| 99 | Single | (DO NOT READ) REFUSED    |

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q2. Was that job in the public, private or not-for-profit sector?

- |    |        |                |
|----|--------|----------------|
| 1  |        | PUBLIC         |
| 2  |        | PRIVATE        |
| 3  |        | NOT-FOR-PROFIT |
| 98 | Single | DON'T KNOW     |
| 99 | Single | REFUSED        |

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q3. Can you please tell me the industry of that job?

- |    |        |   |
|----|--------|---|
| 1  |        | AGRICULTURE, FORESTRY AND FISHING   |
| 2  |        | MINING  |
| 3  |        | MANUFACTURING   |
| 4  |        | ELECTRICITY, GAS, WATER AND WATER SERVICES  |
| 5  |        | CONSTRUCTION  |
| 6  |        | WHOLESALE TRADE   |
| 7  |        | RETAIL TRADE  |
| 8  |        | ACCOMMODATION AND FOOD SERVICES   |
| 9  |        | TRANSPORT, POSTAL AND WAREHOUSING   |
| 10 |        | INFORMATION MEDIA AND TELECOMMUNICATION   |
| 11 |        | FINANCIAL AND INSURANCE SERVICES  |
| 12 |        | RENTAL, HIRING AND REAL ESTATE SERVICES   |
| 13 |        | PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES (INCLUDING LEGAL, ACCOUNTING, ARCHITECTURAL, ENGINEERING AND OTHER PROFESSIONS) |
| 14 |        | ADMINISTRATIVE AND SUPPORT SERVICES   |
| 15 |        | PUBLIC ADMINISTRATION AND SAFETY  |
| 16 |        | EDUCATION AND TRAINING  |
| 17 |        | HEALTH CARE AND SOCIAL ASSISTANCE   |
| 18 |        | ARTS AND RECREATIONAL SERVICES  |
| 19 |        | OTHER SERVICES  |
| 98 | Single | CAN'T SAY   |
| 99 | Single | REFUSED   |

**[SINGLE RESPONSE – INTERVIEWER NOTE: Q4. READ OUT]**

Q4. How many people worked in that organisation as a whole (including on different sites/locations in Australia if that applies)?  
Would you estimate that to be...

- |    |        |                          |
|----|--------|--------------------------|
| 1  |        | Less than 5              |
| 2  |        | 5-19                     |
| 3  |        | 20-99                    |
| 4  |        | 100-499                  |
| 5  |        | 500-3000                 |
| 6  |        | More than 3000           |
| 98 | Single | (DO NOT READ) DON'T KNOW |
| 99 | Single | (DO NOT READ) REFUSED    |

**[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]**

Q5. How long did you work for your employer prior to the// birth// adoption// of <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |  |
|----|--------|--|
| 1  |        | LESS THAN 1 MONTH                        |
| 2  |        | 1-12 MONTHS                              |
| 3  |        | MORE THAN 1 YEAR BUT LESS THAN 2 YEARS   |
| 4  |        | MORE THAN 2 YEARS BUT LESS THAN 6 YEARS  |
| 5  |        | MORE THAN 6 YEARS BUT LESS THAN 10 YEARS |
| 6  |        | MORE THAN 10 YEARS                       |
| 98 | Single | DON'T KNOW                               |
| 99 | Single | REFUSED                                  |

**[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]**

Q6. Were you working on a fixed-term contract, casual or an on-going/permanent basis?

- |    |        |                     |
|----|--------|---------------------|
| 1  |        | CASUAL              |
| 2  |        | FIXED-TERM CONTRACT |
| 3  |        | ON-GOING/PERMANENT  |
| 98 | Single | DON'T KNOW          |
| 99 | Single | REFUSED             |

**[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]**

Q7. Were you working on a part-time or full-time basis? Part time is less than 35 hours a week.

- |    |        |           |
|----|--------|-----------|
| 1  |        | PART-TIME |
| 2  |        | FULL-TIME |
| 99 | Single | REFUSED   |

*Now we would like to ask you questions about your request for or taking of parental leave or other leave to care for your child.*

**[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]**

Q8. Apart from the Dad and Partner Pay Leave, did you take any other leave to care for <NAME> //your child born in// <MONTH><YEAR> around the time of the child's// birth// adoption//?

- |    |        |         |
|----|--------|---------|
| 1  |        | YES     |
| 2  |        | NO      |
| 99 | Single | REFUSED |

**IF CODE 99 IN Q8**

*Thank you for your time and assistance, but we need an answer to this question before we can proceed with this interview.*

**ENDIF****IF CODE 1 IN Q8****[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]**

Q9. What kind of leave did you take?

INTERVIEWER NOTE: PROBE AND ASK 'ANY OTHERS?'

- |   |  |                              |
|---|--|------------------------------|
| 1 |  | UNPAID PARENTAL LEAVE        |
| 2 |  | EMPLOYER PAID PARENTAL LEAVE |
| 3 |  | ANNUAL LEAVE                 |
| 4 |  | PERSONAL LEAVE               |

97 Openend OTHER (SPECIFY)  
 98 Single DON'T KNOW  
 99 Single REFUSED

**ENDIF**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q10. In total, how long was the leave you took to care for <NAME> //your child born in// <MONTH><YEAR> or are you still on leave?

1 Single STILL ON LEAVE  
 97 Openend OTHER (SPECIFY)  
 98 Single DON'T KNOW  
 99 Single REFUSED

**IF CODE 1 IN Q10**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q10A. At the end of the leave you take to care for your child, in total how long would you have taken?

97 Openend OTHER (SPECIFY)  
 98 Single DON'T KNOW  
 99 Single REFUSED

**ENDIF**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q11. Would you have liked to take additional leave to care for <NAME> //your child born in// <MONTH><YEAR>?

1 YES  
 2 NO  
 99 Single REFUSED

**IF CODE 1 IN Q11**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q12. Why didn't you take additional leave to care for <NAME> //your child born in// <MONTH><YEAR>?

1 DIDN'T KNOW YOU COULD  
 2 DIDN'T THINK IT WOULD BE GRANTED  
 3 THOUGHT IT WOULD NOT BE POSSIBLE TO ACCOMMODATE BECAUSE OF THE NATURE OF YOUR JOB  
 4 THOUGHT YOUR EMPLOYER WOULD FROWN UPON IT  
 5 THOUGHT IT WOULD CAUSE RESENTMENT AMONG COLLEAGUES  
 6 THOUGHT IT WOULD AFFECT YOUR CHANCES FOR PROMOTION  
 7 THOUGHT IT WOULD AFFECT YOUR SECURITY OF EMPLOYMENT  
 8 NO OTHER MAN IN MY WORKPLACE HAS DONE IT  
 9 THERE IS STIGMA AROUND MEN WORKING PART-TIME OR FLEXIBILITY  
 10 COULDN'T AFFORD TO  
 97 Openend OTHER (SPECIFY)  
 98 Single DON'T KNOW  
 99 Single REFUSED

**ENDIF**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q13. At work, were you treated unfairly or disadvantaged because you took or requested to take leave to care for <NAME> //your child born in// <MONTH><YEAR>?

1 YES  
 2 NO  
 98 Single DON'T KNOW  
 99 Single REFUSED

**IF CODE 1 IN Q13**

**[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]**

Q14. What unfair treatment or disadvantage did you experience because you requested or took leave to care for your child?

- |    |         |   |
|----|---------|---|
| 1  |         | YOU RECEIVED INAPPROPRIATE OR NEGATIVE COMMENTS FROM YOUR EMPLOYER/MANAGER BECAUSE YOU REQUESTED OR TOOK LEAVE TO CARE FOR YOUR CHILD |
| 2  |         | YOU RECEIVED INAPPROPRIATE OR NEGATIVE COMMENTS FROM YOUR COLLEAGUES BECAUSE YOU REQUESTED OR TOOK LEAVE TO CARE FOR YOUR CHILD       |
| 3  |         | YOUR EMPLOYER DID NOT ADEQUATELY BACKFILL YOUR POSITION DURING YOUR PARENTAL LEAVE AND THIS NEGATIVELY IMPACTED YOU                   |
| 4  |         | YOUR POSITION WAS REPLACED PERMANENTLY BY ANOTHER EMPLOYEE  |
| 5  |         | YOUR HOURS CHANGED AGAINST YOUR WISHES  |
| 6  |         | YOUR ROSTER SCHEDULE WAS CHANGED AGAINST YOUR WISHES  |
| 7  |         | YOUR DUTIES OR ROLE WERE CHANGED AGAINST YOUR WISHES  |
| 8  |         | YOU WERE MADE CASUAL  |
| 9  |         | YOU HAD A REDUCTION IN YOUR SALARY OR BONUS   |
| 10 |         | YOU DIDN'T RECEIVE A PAY RISE OR BONUS, OR RECEIVED A LESSER PAY RISE OR BONUS THAN YOUR PEERS AT WORK                                |
| 11 |         | YOU WERE TREATED SO POORLY THAT YOU FELT YOU HAD TO LEAVE   |
| 12 |         | YOU WERE THREATENED WITH REDUNDANCY OR DISMISSAL  |
| 13 |         | YOU WERE MADE REDUNDANT/RESTRUCTURED  |
| 14 |         | YOU WERE DISMISSED  |
| 15 |         | YOUR CONTRACT WAS NOT RENEWED   |
| 16 |         | YOU MISSED OUT ON OPPORTUNITIES FOR TRAINING  |
| 17 |         | YOU MISSED OUT ON OPPORTUNITIES FOR PROMOTION   |
| 18 |         | YOU MISSED OUT ON A PERFORMANCE APPRAISAL   |
| 19 |         | YOU MISSED OUT ON A SALARY INCREMENT OR BONUS   |
| 20 |         | YOUR EMPLOYER ENCOURAGED YOU TO START OR FINISH YOUR PARENTAL LEAVE EARLIER OR LATER THAN YOU WOULD HAVE LIKED                        |
| 21 |         | YOU WERE DENIED LEAVE THAT YOU WERE ENTITLED TO   |
| 97 | Openend | OTHER (SPECIFY)   |
| 99 | Single  | REFUSED   |

**ENDIF****SELECTED CODES ON Q14 (1-7) WILL NOT APPEAR IN Q15****[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]**

Q15. Did you personally experience any of the following because you requested or took leave to care for your child?

- |    |        |   |
|----|--------|---|
| 1  |        | You received inappropriate or negative comments from your employer/manager because you requested or took leave to care for your child |
| 2  |        | You received inappropriate or negative comments from your colleagues because you requested or took leave to care for your child       |
| 3  |        | Your employer did not adequately backfill your position during your parental leave and this negatively impacted you                   |
| 4  |        | Your position was replaced permanently by another employee  |
| 5  |        | Your hours changed against your wishes  |
| 6  |        | Your roster schedule was changed against your wishes  |
| 7  |        | Your duties or role were changed against your wishes  |
| 96 | Single | (DO NOT READ) NONE OF THE ABOVE   |

**SELECTED CODES ON Q14 (8-15) WILL NOT APPEAR IN Q15A****[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]**

Q15A. Just a reminder that we would like to know whether you experienced the following because you requested or took leave to care for your child.

- |    |        |  |
|----|--------|--|
| 8  |        | You were made casual   |
| 9  |        | You had a reduction in your salary or bonus  |
| 10 |        | You didn't receive a pay rise or bonus, or received a lesser pay rise or bonus than your peers at work |
| 11 |        | You were treated so poorly that you felt you had to leave  |
| 12 |        | You were threatened with redundancy or dismissal   |
| 13 |        | You were made redundant/restructured   |
| 14 |        | You were dismissed   |
| 15 |        | Your contract was not renewed  |
| 96 | Single | (DO NOT READ) NONE OF THE ABOVE  |

**SELECTED CODES ON Q14 (16-21) WILL NOT APPEAR IN Q15B**

**[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]**

Q15B. Again thinking about when you requested or took leave to care for your child. Did you experience any of the following?

- |    |         |  |
|----|---------|--|
| 16 |         | You missed out on opportunities for training   |
| 17 |         | You missed out on opportunities for promotion  |
| 18 |         | You missed out on a performance appraisal  |
| 19 |         | You missed out on a salary increment or bonus  |
| 20 |         | Your employer encouraged you to start or finish your parental leave earlier or later than you would have liked |
| 21 |         | You were denied leave that you were entitled to  |
| 96 | Single  | (DO NOT READ) NONE OF THE ABOVE  |
| 97 | Openend | (DO NOT READ) OTHER (SPECIFY)  |
| 99 | Single  | (DO NOT READ) REFUSED  |

**[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]**

XQ15. COMPUTE FROM Q15, Q15A AND Q15B

- |   |  |
|---|--|
| 1 | CODE 1-7 IN Q15 OR CODE 8-15 IN Q15A OR CODE 16-21 OR 97 IN Q15B |
| 2 | NO   |

**IF CODE 1 IN Q13 OR CODE IN XQ15**

You said...READ OUT /

Q14: // 217. /  
Q15: // 218. /  
Q15A: // 219. /  
Q15B: // 220.

**[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]**

Q16. Thinking about this, what impact, if any did this treatment have on you?

- |    |        |   |
|----|--------|---|
| 1  |        | Your physical health was affected                       |
| 2  |        | Affected your self-esteem and confidence                |
| 3  |        | Affected your mental health                             |
| 4  |        | Caused you stress                                       |
| 5  |        | Negatively impacted on your family                      |
| 6  |        | Negatively impacted you financially                     |
| 7  |        | Negatively impacted your career                         |
| 8  |        | Negatively impacted on your capacity to seek other work |
| 96 | Single | (DO NOT READ) NONE                                      |
| 97 |        | (DO NOT READ) OTHER                                     |
| 98 | Single | (DO NOT READ) DON'T KNOW                                |
| 99 | Single | (DO NOT READ) REFUSED                                   |

**[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]**

Q17. What actions, if any, did you take?

- |    |        |  |
|----|--------|--|
| 1  |        | Discussed it with family/friends   |
| 2  |        | Discussed it with colleagues   |
| 3  |        | Discussed/raised it with supervisor/manager  |
| 4  |        | Discussed/raised it with Human Resources/Personnel Department  |
| 5  |        | Made a formal complaint within the organisation  |
| 6  |        | Went to a Union or Employee Advisory Service   |
| 7  |        | Went to a solicitor or legal service   |
| 8  |        | Contacted the Australian Human Rights Commission or a State or Territory Discrimination Agency           |
| 9  |        | Made a complaint to the Australian Human Rights Commission or a State or Territory Discrimination Agency |
| 10 |        | Contacted the Fair Work Ombudsman/Fair Work Commission   |
| 11 |        | Lodged a complaint with Fair Work Ombudsman/Fair Work Commission   |
| 12 |        | Went to look for another job   |
| 13 |        | Resigned   |
| 14 | Single | (DO NOT READ) DIDN'T TAKE ANY ACTION   |
| 97 |        | (DO NOT READ) OTHER  |
| 99 | Single | (DO NOT READ) REFUSED  |

**IF CODE 1 TO 13 OR 97 IN Q17**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q18. Were the issues resolved?

- |    |                |
|----|----------------|
| 1  | YES            |
| 2  | NO             |
| 3  | PARTLY         |
| 99 | Single REFUSED |

**ENDIF****IF CODE 14 IN Q17**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q19. Why didn't you take action?

- |    |   |
|----|---|
| 1  | NOT AWARE OF HOW TO TAKE ACTION OR WHO TO REPORT IT TO  |
| 2  | YOU DIDN'T KNOW YOU COULD   |
| 3  | FAMILY/FRIENDS/CO-WORKERS ADVISED YOU NOT TO  |
| 4  | EASIER TO KEEP QUIET  |
| 5  | THOUGHT YOU WOULD NOT BE BELIEVED   |
| 6  | COMPLAINT PROCESS WOULD BE EMBARRASSING   |
| 7  | COMPLAINT PROCESS WOULD BE DIFFICULT  |
| 8  | WOULD NOT CHANGE THINGS/NOTHING COULD BE DONE   |
| 9  | DIDN'T WANT TO GET A REPUTATION FOR BEING A TROUBLEMAKER  |
| 10 | DID NOT WANT TO RISK YOUR EMPLOYMENT BEING TERMINATED BEFORE MEETING THE CRITERIA FOR PAID PARENTAL LEAVE |
| 11 | CONCERNED IT MIGHT AFFECT YOUR RETURN TO WORK AFTER PARENTAL LEAVE  |
| 12 | AFRAID IT WOULD AFFECT YOUR CAREER  |
| 13 | THOUGHT YOU WOULD GET FIRED   |
| 97 | Openend OTHER (SPECIFY)   |
| 98 | Single DON'T KNOW   |
| 99 | Single REFUSED  |

**ENDIF**

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q20. While you were on leave to care for your child, did your employer keep you informed about major changes or opportunities in the workplace that could affect you?

- |    |  |
|----|--|
| 1  | Yes  |
| 2  | No   |
| 3  | There were no major changes in the workplace to be kept informed about |
| 99 | Single (DO NOT READ) REFUSED   |

**EXPERIENCES AFTER BIRTH/ADOPTION OF CHILD (RETURN TO WORK/START WORK)***Now we would like to ask you some questions about your experiences after the// birth// adoption// of your child.**INTERVIEWER'S NOTE: IF RESPONDENT SAYS THEY HAD MORE THAN ONE JOB AFTER THE BIRTH/ADOPTION OF THEIR CHILD, SAY "Please think about the job closest to after the// birth// adoption// of <NAME> //your child born in// <MONTH><YEAR>"**IF RESPONDENT SAYS THEY HAD MORE THAN ONE JOB AT A TIME AFTER THE BIRTH/ADOPTION OF THEIR CHILD, SAY "Please think of the job that you worked for the most hours per week."***IF Q10=97 OR 98 OR 99, ASK**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q21. Were you self-employed/running your own business or an employee getting paid a wage or salary //after you adopted//after the birth of// &lt;NAME&gt; //your child born in// &lt;MONTH&gt;&lt;YEAR&gt;?

- |    |  |
|----|--|
| 1  | SELF-EMPLOYED/RUNNING OWN BUSINESS     |
| 2  | EMPLOYEE GETTING PAID A WAGE OR SALARY |
| 3  | BOTH                                   |
| 4  | NEITHER                                |
| 99 | Single REFUSED                         |



**IF CODE 99 IN Q21**

*Thank you for your time and assistance, but we need an answer to this question before we can proceed with this interview.*

**ENDIF**

**IF CODE 3 IN Q21**

*We will be asking you questions about the job in which you were an employee getting paid a wage or salary.*

**ENDIF**

**IF CODE 2 OR 3 IN Q21**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q22. Did you return to the main employer you had //when you adopted //just before the birth of <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |           |
|----|--------|-----------|
| 1  |        | YES       |
| 2  |        | NO        |
| 98 | Single | CAN'T SAY |
| 99 | Single | REFUSED   |

**IF CODE 98 OR 99 IN Q22**

*Thank you for your time and assistance, but we need an answer to this question before we can proceed with this interview.*

**ENDIF**

**IF CODE 2 IN Q22**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q23. Why didn't you return to the same employer?

- |    |         |                      |
|----|---------|----------------------|
| 97 | Openend | OTHER (SPECIFY)      |
| 98 | Single  | CAN'T SAY/DON'T KNOW |
| 99 | Single  | REFUSED              |

**ENDIF**

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q21A. Which of the following best describes the location of your workplace after the// birth// adoption// of <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |                          |
|----|--------|--------------------------|
| 1  |        | Major city               |
| 2  |        | Large regional town      |
| 3  |        | Small regional town      |
| 4  |        | Rural area               |
| 97 |        | (DO NOT READ) OTHER      |
| 98 | Single | (DO NOT READ) DON'T KNOW |
| 99 | Single | (DO NOT READ) REFUSED    |

**IF CODE 1 IN Q22**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q24. Were there any negative differences in the job you returned to?

- |    |         |  |
|----|---------|--|
| 1  |         | STATUS   |
| 2  |         | LEVELS OF RESPONSIBILITY   |
| 3  |         | COMPLEXITY OF THE WORK   |
| 4  |         | OPPORTUNITIES FOR PROMOTION/CAREER ADVANCEMENT   |
| 5  |         | LEVELS OF CONTROL OVER YOUR WORK   |
| 6  |         | OPPORTUNITIES FOR TRAINING   |
| 7  |         | DIDN'T RETURN TO SAME POSITION/ROLE OR AREA OF WORK  |
| 8  |         | DIDN'T RETURN ON THE SAME PRO-RATA PAY AND CONDITIONS AS BEFORE THE BIRTH/ADOPTION OF YOUR CHILD |
| 9  |         | DIDN'T RETURN ON THE SAME FLEXIBLE WORK ARRANGEMENTS   |
| 10 | Single  | NO NEGATIVE DIFFERENCES  |
| 97 | Openend | OTHER (SPECIFY)  |
| 98 | Single  | CAN'T SAY  |
| 99 | Single  | REFUSED  |

**ENDIF****IF CODE 2 IN Q22**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q24A. Compared to the job you had before //you adopted //the birth of <NAME> //your child born in// <MONTH><YEAR>, were there any negative differences in the first job you took after //you adopted //the birth?

- |    |         |  |
|----|---------|--|
| 1  |         | STATUS   |
| 2  |         | LEVELS OF RESPONSIBILITY   |
| 3  |         | COMPLEXITY OF THE WORK   |
| 4  |         | OPPORTUNITIES FOR PROMOTION/CAREER ADVANCEMENT   |
| 5  |         | LEVELS OF CONTROL OVER YOUR WORK   |
| 6  |         | OPPORTUNITIES FOR TRAINING   |
| 7  |         | DIDN'T RETURN TO SAME POSITION/ROLE OR AREA OF WORK  |
| 8  |         | DIDN'T RETURN ON THE SAME PRO-RATA PAY AND CONDITIONS AS BEFORE THE BIRTH/ADOPTION OF YOUR CHILD |
| 9  |         | DIDN'T RETURN ON THE SAME FLEXIBLE WORK ARRANGEMENTS   |
| 10 | Single  | NO NEGATIVE DIFFERENCES  |
| 97 | Openend | OTHER (SPECIFY)  |
| 98 | Single  | CAN'T SAY  |
| 99 | Single  | REFUSED  |

Now thinking about the first job you had after the// birth// adoption// of <NAME> //your child born in// <MONTH><YEAR>.

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q25. Can you please tell me the occupation of that job?

- |    |        |                                |
|----|--------|--------------------------------|
| 1  |        | MANAGER                        |
| 2  |        | PROFESSIONAL                   |
| 3  |        | TECHNICIAN/TRADE WORKER        |
| 4  |        | COMMUNITY AND PERSONAL SERVICE |
| 5  |        | CLERICAL/ADMIN                 |
| 6  |        | SALES                          |
| 7  |        | MACHINERY OPERATORS/DRIVERS    |
| 8  |        | LABOURERS                      |
| 98 | Single | DON'T KNOW                     |
| 99 | Single | REFUSED                        |

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q26. Is that job in the public, private or not-for-profit sector?

- |    |        |                |
|----|--------|----------------|
| 1  |        | PUBLIC         |
| 2  |        | PRIVATE        |
| 3  |        | NOT-FOR-PROFIT |
| 98 | Single | DON'T KNOW     |
| 99 | Single | REFUSED        |

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q27. Can you please tell me the industry of that job?

- |    |  |  |
|----|--|--|
| 1  |  | AGRICULTURE, FORESTRY AND FISHING          |
| 2  |  | MINING                                     |
| 3  |  | MANUFACTURING                              |
| 4  |  | ELECTRICITY, GAS, WATER AND WASTE SERVICES |
| 5  |  | CONSTRUCTION                               |
| 6  |  | WHOLESALE TRADE                            |
| 7  |  | RETAIL TRADE                               |
| 8  |  | ACCOMMODATION AND FOOD SERVICES            |
| 9  |  | TRANSPORT, POSTAL AND WAREHOUSING          |
| 10 |  | INFORMATION MEDIA AND TELECOMMUNICATIONS   |
| 11 |  | FINANCIAL AND INSURANCE SERVICES           |
| 12 |  | RENTAL, HIRING AND REAL ESTATE SERVICES    |

- 13 PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES (INCLUDING LEGAL, ACCOUNTING, ARCHITECTURAL, ENGINEERING AND OTHER PROFESSIONS)
- 14 ADMINISTRATIVE AND SUPPORT SERVICES
- 15 PUBLIC ADMINISTRATION AND SAFETY
- 16 EDUCATION AND TRAINING
- 17 HEALTH CARE AND SOCIAL ASSISTANCE
- 18 ARTS AND RECREATION SERVICES
- 97 Single OTHER SERVICES
- 98 Single DON'T KNOW
- 99 Single REFUSED

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q28. How many people work in that organisation as a whole (including on different sites/locations in Australia if that applies)?  
Would you estimate that to be...

- 1 Less than 5
- 2 5-19
- 3 20-99
- 4 100-499
- 5 500-3000
- 6 More than 3000
- 98 Single (DO NOT READ) DON'T KNOW

**ENDIF**

**IF CODE 2 OR 3 IN Q21**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q31. Are you still currently working with that employer?

- 1 YES
- 2 NO
- 98 Single CAN'T SAY
- 99 Single REFUSED

**IF CODE 2 IN Q31**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q32. Why aren't you working with that employer anymore?

- 97 Openend OTHER (SPECIFY)
- 98 Single CAN'T SAY/DON'T KNOW
- 99 Single REFUSED

**ENDIF**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q29. After the// In the first job you had after the// birth// adoption// of your child, were you working on a fixed-term contract, casual or an on-going/permanent basis with that employer?

- 1 CASUAL
- 2 FIXED-TERM CONTRACT
- 3 ON-GOING/PERMANENT
- 99 Single REFUSED

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q30. After the// In the first job you had after the// birth// adoption// of your child, were you working on a part-time or full-time basis?

- 1 PART-TIME
- 2 FULL-TIME
- 99 Single REFUSED

**ENDIF****IF CODE 2 OR 3 IN Q21**

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q33. After the// In the first job you had after the// birth// adoption// of your child, compared with your job before you went on leave to care for <NAME> //your child born in// <MONTH><YEAR>, are your career opportunities:

- |    |        |                             |
|----|--------|-----------------------------|
| 1  |        | A lot better than before    |
| 2  |        | A little better than before |
| 3  |        | About the same              |
| 4  |        | A little worse than before  |
| 5  |        | A lot worse than before     |
| 98 | Single | (DO NOT READ) CAN'T SAY     |
| 99 | Single | (DO NOT READ) REFUSED       |

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q34. After the// In the first job you had after the// birth// adoption// of your child, did you request for any adjustments to your working arrangements (such as a request for part-time or flexible working hours) to care for <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |           |
|----|--------|-----------|
| 1  |        | YES       |
| 2  |        | NO        |
| 98 | Single | CAN'T SAY |
| 99 | Single | REFUSED   |

**IF CODE 1 IN Q34**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q35. Why did you request adjustments to your working arrangements (such as a request for part-time or flexible working hours) to care for <NAME> //your child born in// <MONTH><YEAR>?

- |    |         |   |
|----|---------|---|
| 1  |         | YOU WERE UNABLE TO GET SUFFICIENT CHILDCARE               |
| 2  |         | YOUR PARTNER WAS UNABLE TO GET FLEXIBLE WORK ARRANGEMENTS |
| 3  |         | YOU PREFERRED TO WORK PART-TIME / FLEXIBLY                |
| 4  |         | TO ACCOMMODATE CHILD CARE ARRANGEMENTS                    |
| 97 | Openend | OTHER (SPECIFY)   |
| 98 | Single  | CAN'T SAY   |
| 99 | Single  | REFUSED   |

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q36. What adjustments to your working arrangements did you request?

- |    |         |  |
|----|---------|--|
| 1  |         | WORKING FROM HOME IN NORMAL WORKING HOURS              |
| 2  |         | CHANGED STARTING AND FINISHING TIMES                   |
| 3  |         | CHANGING SHIFT/ROSTER                                  |
| 4  |         | PART-TIME WORK OR JOB SHARING                          |
| 5  |         | WORKING MORE HOURS OVER FEWER DAYS                     |
| 6  |         | WORKING ADDITIONAL HOURS TO MAKE UP FOR TIME TAKEN OFF |
| 7  |         | FLEXIBLE HOURS/FLEXITIME                               |
| 8  |         | TAKING ROSTERED DAYS OFF IN HALF DAYS OR MORE FLEXIBLY |
| 9  |         | TIME OFF INSTEAD OF OVERTIME PAYMENTS                  |
| 10 |         | COMPRESSED WORK WEEK                                   |
| 11 |         | PURCHASED LEAVE  |
| 12 |         | ANNUALISED HOURS                                       |
| 97 | Openend | OTHER (SPECIFY)  |
| 98 | Single  | CAN'T SAY  |
| 99 | Single  | REFUSED  |

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q37. Was this granted?

- |    |        |         |
|----|--------|---------|
| 1  |        | YES     |
| 2  |        | NO      |
| 3  |        | PARTLY  |
| 99 | Single | REFUSED |

#### IF CODE 2 OR 3 IN Q37

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q38. What reasons were you given for partly or not granting adjustments to your working arrangements (such as a request for part-time or flexible working hours)?

- |    |         |  |
|----|---------|--|
| 1  |         | NOT DOABLE/NOT POSSIBLE                      |
| 2  |         | NOT CONSIDERED PRODUCTIVE                    |
| 3  |         | WORK SITE LOCATION                           |
| 4  |         | MANAGER DOESN'T LIKE FLEXIBLE/PART-TIME WORK |
| 5  |         | BUSINESS REASONS                             |
| 97 | Openend | OTHER (SPECIFY)                              |
| 98 | Single  | DON'T KNOW                                   |
| 99 | Single  | REFUSED                                      |

ENDIF

#### IF CODE 2 IN Q34

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q39. Why didn't you request for adjustments to your working arrangement to care for <NAME> //your child born in// <MONTH><YEAR>?

INTERVIEWERS NOTE: PLEASE PROBE FURTHER AND SAY "IS THERE ANYTHING ELSE?"

- |    |         |   |
|----|---------|---|
| 1  |         | DIDN'T KNOW YOU COULD   |
| 2  |         | DIDN'T THINK IT WOULD BE GRANTED  |
| 3  |         | THOUGHT IT WOULD NOT BE POSSIBLE TO ACCOMMODATE BECAUSE OF THE NATURE OF YOUR JOB               |
| 4  |         | THOUGHT YOUR EMPLOYER WOULD FROWN UPON IT   |
| 5  |         | THOUGHT IT WOULD CAUSE RESENTMENT AMONG COLLEAGUES  |
| 6  |         | THOUGHT IT WOULD AFFECT YOUR CHANCES FOR PROMOTION  |
| 7  |         | THOUGHT IT WOULD AFFECT YOUR SECURITY OF EMPLOYMENT   |
| 8  |         | NO OTHER MAN IN YOUR WORKPLACE HAS DONE IT  |
| 9  |         | THERE IS STIGMA AROUND MEN WORKING PART-TIME OR FLEXIBILITY                                     |
| 10 |         | THOUGHT YOU WOULD END UP DOING THE SAME NUMBER OF HOURS   |
| 11 |         | ALREADY HAD ADJUSTMENTS TO WORK ARRANGEMENTS BEFORE THE BIRTH/ADOPTION THAT WERE STILL IN PLACE |
| 12 |         | DIDN'T NEED ADJUSTMENTS TO YOUR WORK ARRANGEMENTS   |
| 97 | Openend | OTHER (SPECIFY)   |
| 98 | Single  | CAN'T SAY   |
| 99 | Single  | REFUSED   |

ENDIF

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q40. After the// In the first job you had after the// birth// adoption// of your child, were you ever treated unfairly or disadvantaged because of your family responsibilities for <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |           |
|----|--------|-----------|
| 1  |        | YES       |
| 2  |        | NO        |
| 98 | Single | CAN'T SAY |
| 99 | Single | REFUSED   |

#### IF CODE 1 IN Q40

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q41. What unfair treatment or disadvantage did you experience because of your family responsibilities for your child?

- |   |  |  |
|---|--|--|
| 1 |  | RECEIVED INAPPROPRIATE OR NEGATIVE COMMENTS ABOUT WORKING PART-TIME OR FLEXIBLE HOURS                    |
| 2 |  | RECEIVED INAPPROPRIATE OR NEGATIVE COMMENTS ABOUT NEEDING TIME OFF TO CARE FOR YOUR CHILD DUE TO ILLNESS |
| 3 |  | YOU WERE VIEWED AS A LESS COMMITTED EMPLOYEE   |
| 4 |  | YOU WERE UNFAIRLY CRITICISED OR DISCIPLINED ABOUT YOUR PERFORMANCE AT WORK                               |
| 5 |  | YOUR REQUESTS FOR FLEXIBLE HOURS OR WORK FROM HOME WERE DENIED   |
| 6 |  | YOUR REQUESTS FOR TIME OFF TO COPE WITH ILLNESS OR OTHER PROBLEMS WITH YOUR BABY WERE DENIED             |

- 7 YOU WERE GIVEN UNSUITABLE WORK OR WORKLOADS  
 8 YOU WERE GIVEN WORK AT TIMES THAT DID NOT SUIT YOUR FAMILY RESPONSIBILITIES  
 9 YOUR SHIFT HOURS WERE CHANGED AGAINST YOUR WISHES  
 10 YOUR DUTIES OR ROLE WERE CHANGED AGAINST YOUR WISHES  
 11 YOU FAILED TO GAIN A PROMOTION YOU FELT YOU DESERVED  
 12 YOU HAD A REDUCTION IN YOUR SALARY OR BONUS  
 13 YOU DIDN'T RECEIVE A PAY RISE OR BONUS, OR RECEIVED A LESSER PAY RISE OR BONUS THAN YOUR PEERS AT WORK  
 14 YOU WERE DENIED ACCESS TO TRAINING THAT YOU WOULD OTHERWISE HAVE  
 15 YOU WERE THREATENED WITH REDUNDANCY OR DISMISSAL  
 16 YOU WERE MADE REDUNDANT/RESTRUCTURED  
 17 YOU WERE DISMISSED  
 18 YOUR CONTRACT WAS NOT RENEWED  
 19 YOU WERE TREATED SO POORLY THAT YOU FELT YOU HAD TO LEAVE  
 20 YOUR POSITION WAS PERMANENTLY REPLACED BY ANOTHER EMPLOYEE  
 97 Openend OTHER (SPECIFY)  
 98 Single DON'T KNOW  
 99 Single REFUSED

**ENDIF**

**IF CODE 2 OR 3 IN Q21**

**SELECTED CODES ON Q41 (1-7) WILL NOT APPEAR IN Q42**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q42. After the// In the first job you had after the// birth// adoption// of your child, have you ever personally experienced any of the following because of your family responsibilities for <NAME> //your child born in// <MONTH><YEAR>?

- 1 Received inappropriate or negative comments about working part-time or flexible hours  
 2 Received inappropriate or negative comments about needing time off to care for your child due to illness  
 3 You were viewed as a less committed employee  
 4 You were unfairly criticised or disciplined about your performance at work  
 5 Your requests for flexible hours or work from home were denied  
 6 Your requests for time off to cope with illness or other problems with your baby were denied  
 7 You were given unsuitable work or workloads  
 96 Single (DO NOT READ) NONE OF THE ABOVE

**SELECTED CODES ON Q41 (8-16) WILL NOT APPEAR IN Q42A**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q42A. Just a reminder that we would like to know whether you experienced the following because of your family responsibilities for your child.

- 8 You were given work at times that did not suit your family responsibilities  
 9 Your shift hours were changed against your wishes  
 10 Your duties or role were changed against your wishes  
 11 You failed to gain a promotion you felt you deserved  
 12 You had a reduction in your salary or bonus  
 13 You didn't receive a pay rise or bonus, or received a lesser pay rise or bonus than your peers at work  
 14 You were denied access to training that you would otherwise have received  
 15 You were threatened with redundancy or dismissal  
 16 You were made redundant/restructured  
 96 Single (DO NOT READ) NONE OF THE ABOVE

**SELECTED CODES ON Q41 (17-20) WILL NOT APPEAR IN Q42B**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q42B. Again thinking about after the// birth// adoption// of your child. Did you experience any of the following because of your family responsibilities?

- 17 You were dismissed  
 18 Your contract was not renewed  
 19 You were treated so poorly that you felt you had to leave  
 20 Your position was permanently replaced by another employee  
 96 Single (DO NOT READ) NONE OF THE ABOVE  
 97 Openend (DO NOT READ) OTHER (SPECIFY)

98 Single (DO NOT READ) DON'T KNOW  
99 Single (DO NOT READ) REFUSED

**ENDIF**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

XQ42. COMPUTE FROM Q42, Q42A AND Q42B

1 CODE 1-7 IN Q42 OR CODE 8-16 IN Q42A OR CODE 17-20 OR 97 IN Q42B  
2 NO

**IF CODE 1 IN Q40 OR CODE 1 IN XQ42**

You said..READ OUT /

Q41: // 249. /  
Q42: // 250. /  
Q42A: // 251. /  
Q42B: // 252.

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q43. Thinking about this, what impact, if any did this treatment have on you?

1 Your physical health was affected  
2 Affected your self-esteem and confidence  
3 Affected your mental health  
4 Caused you stress  
5 Negatively impacted on your family  
6 Negatively impacted you financially  
7 Negatively impacted your career  
8 Negatively impacted on your capacity to seek other work  
96 Single (DO NOT READ) NONE  
97 (DO NOT READ) OTHER  
98 Single (DO NOT READ) DON'T KNOW  
99 Single (DO NOT READ) REFUSED

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q44. What actions, if any, did you take?

1 Discussed it with family/friends  
2 Discussed it with colleagues  
3 Discussed/raised it with supervisor/manager  
4 Discussed/raised it with Human Resources/Personnel Department  
5 Made a formal complaint within the organisation  
6 Went to a Union or Employee Advisory Service  
7 Went to a solicitor or legal service  
8 Contacted the Australian Human Rights Commission or a State or Territory Discrimination Agency  
9 Made a complaint to the Australian Human Rights Commission or a State or Territory Discrimination Agency  
10 Contacted the Fair Work Ombudsman/Fair Work Commission  
11 Lodged a complaint with Fair Work Ombudsman/Fair Work Commission  
12 Went to look for an job  
13 Resigned  
14 Single (DO NOT READ) DIDN'T TAKE ANY ACTION  
97 (DO NOT READ) OTHER  
99 Single (DO NOT READ) REFUSED

**IF CODE 1 TO 13 OR 97 IN Q44**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q45. Were the issues resolved?

1 YES  
2 NO  
3 PARTLY  
99 Single REFUSED

**ENDIF**



**IF CODE 14 IN Q44**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q46. Why didn't you take action?

- |    |         |   |
|----|---------|---|
| 1  |         | NOT AWARE OF HOW TO TAKE ACTION OR WHO TO REPORT IT TO  |
| 2  |         | YOU DIDN'T KNOW YOU COULD   |
| 3  |         | FAMILY/FRIENDS/CO-WORKERS ADVISED YOU NOT TO  |
| 4  |         | EASIER TO KEEP QUIET  |
| 5  |         | THOUGHT YOU WOULD NOT BE BELIEVED   |
| 6  |         | COMPLAINT PROCESS WOULD BE EMBARRASSING   |
| 7  |         | COMPLAINT PROCESS WOULD BE DIFFICULT  |
| 8  |         | WOULD NOT CHANGE THINGS/NOTHING COULD BE DONE   |
| 9  |         | DIDN'T WANT TO GET A REPUTATION FOR BEING A TROUBLEMAKER  |
| 10 |         | DID NOT WANT TO RISK YOUR EMPLOYMENT BEING TERMINATED BEFORE MEETING THE CRITERIA FOR PAID PARENTAL LEAVE |
| 11 |         | CONCERNED IT MIGHT AFFECT YOUR RETURN TO WORK AFTER PARENTAL LEAVE  |
| 12 |         | AFRAID IT WOULD AFFECT YOUR CAREER  |
| 13 |         | THOUGHT YOU WOULD GET FIRED   |
| 97 | Openend | OTHER (SPECIFY)   |
| 98 | Single  | DON'T KNOW  |
| 99 | Single  | REFUSED   |

**ENDIF****IF CODE 2 OR 3 IN Q21**

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q47. Overall, how supportive or unsupportive would you say your employer was towards you on return to work after leave to care for your child?

- |    |        |                                     |
|----|--------|-------------------------------------|
| 1  |        | Very supportive                     |
| 2  |        | Supportive                          |
| 3  |        | Neither supportive nor unsupportive |
| 4  |        | Unsupportive                        |
| 5  |        | Very unsupportive                   |
| 98 | Single | (DO NOT READ) CAN'T SAY             |
| 99 | Single | (DO NOT READ) REFUSED               |

**ENDIF****IF CODE 1 OR 4 IN Q21 OR CODE 1 IN Q10**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q48. Why haven't you returned to paid employment as an employee yet?

- |    |         |   |
|----|---------|---|
| 1  |         | CAN'T FIND CHILDCARE FOR DAYS NEEDED                        |
| 2  |         | CHILDCARE IS TOO EXPENSIVE                                  |
| 3  |         | YOU COULDN'T NEGOTIATE SUITABLE RETURN TO WORK ARRANGEMENTS |
| 4  |         | YOU PREFER TO BE AT HOME LOOKING AFTER YOUR CHILD           |
| 5  |         | YOUR PARTNER EARNS ENOUGH TO SUPPORT YOUR FAMILY            |
| 6  |         | STILL ON PAID PARENTAL LEAVE                                |
| 7  |         | STILL ON UNPAID PARENTAL LEAVE                              |
| 8  |         | WANT TO BE SELF-EMPLOYED/RUN YOUR OWN BUSINESS              |
| 9  |         | CAN'T FIND PART-TIME WORK                                   |
| 97 | Openend | OTHER (SPECIFY)   |
| 98 | Single  | DON'T KNOW  |
| 99 | Single  | REFUSED   |

**ENDIF****IF CODE 1 IN Q10 OR CODE 1 OR 4 IN Q21**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q49. Do you plan to return to the same employer you had //just before the birth of// when you adopted// <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |            |
|----|--------|------------|
| 1  |        | YES        |
| 2  |        | NO         |
| 98 | Single | DON'T KNOW |
| 99 | Single | REFUSED    |

**IF CODE 2 IN Q49**

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q50. Why don't you plan to return to the same employer?

- |    |         |                 |
|----|---------|-----------------|
| 97 | Openend | OTHER (SPECIFY) |
| 98 | Single  | DON'T KNOW      |
| 99 | Single  | REFUSED         |

**ENDIF**

**DEMOGRAPHICS**

[SINGLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q51. Do you have a disability?

- |    |        |         |
|----|--------|---------|
| 1  |        | YES     |
| 2  |        | NO      |
| 99 | Single | REFUSED |

[MULTIPLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q52. Have you been the sole income earner in your household...

- |    |        |  |
|----|--------|--|
| 1  |        | Before the birth of your child   |
| 2  |        | Just before you adopted your child                                     |
| 3  |        | During parental leave or other leave to care for your child            |
| 4  |        | On return from parental leave or other leave to care for your child    |
| 5  | Single | (DO NOT READ) NO I HAVEN'T BEEN THE SOLE INCOME EARNER IN MY HOUSEHOLD |
| 99 | Single | (DO NOT READ) REFUSED  |

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q53. Which of the following best describes your household// before the birth of// when you adopted// <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |   |
|----|--------|---|
| 1  |        | Couple with child/children living in the household            |
| 2  |        | One parent family with child/children living in the household |
| 3  |        | Single household with no children                             |
| 4  |        | Couple with no children                                       |
| 99 | Single | (DO NOT READ) REFUSED   |

[SINGLE RESPONSE – INTERVIEWER NOTE: READ OUT]

Q54. Which of the following best describes your household after the// birth// adoption// of <NAME> //your child born in// <MONTH><YEAR>?

- |    |        |   |
|----|--------|---|
| 1  |        | Couple with child/children living in the household            |
| 2  |        | One parent family with child/children living in the household |
| 3  |        | Single household with no children                             |
| 4  |        | Couple with no children                                       |
| 99 | Single | (DO NOT READ) REFUSED   |

[MULTIPLE RESPONSE – INTERVIEWER NOTE: DO NOT READ]

Q55. Where would you go to get information on your rights and entitlements about parental leave or return to work discrimination?

INTERVIEWER NOTE: PROBE FURTHER AND ASK ‘ANYWHERE ELSE?’

- 1 FAMILY/FRIENDS
- 2 COLLEAGUES
- 3 SUPERVISOR/MANAGER
- 4 HUMAN RESOURCES/PERSONNEL DEPARTMENT
- 5 UNION OR EMPLOYEE ADVISORY SERVICE
- 6 SOLICITOR OR LEGAL SERVICE
- 7 THE AUSTRALIAN HUMAN RIGHTS COMMISSION OR A STATE OR TERRITORY DISCRIMINATION AGENCY
- 8 FAIR WORK OMBUDSMAN/FAIR WORK COMMISSION
- 9 INTERNET
- 10 GOVERNMENT DEPARTMENT/CENTRELINK
- 97 Openend OTHER (SPECIFY)
- 98 Single DON'T KNOW
- 99 Single REFUSED

IF CODE 1 IN Q13 OR CODE 1 IN XQ15 OR CODE 1 IN Q40 OR CODE 1 IN XQ42

Please note that your survey responses about any discrimination you may have experienced during parental leave or return to work do not constitute a formal report of that discrimination. If you would like to make a formal report of discrimination during parental leave or return to work, you may do so by contacting the Australian Human Rights Commission, a state or territory anti-discrimination agency, Fair Work Commission or Fair Work Ombudsman.

ENDIF

Okay, the interview is now finished. Thank you for your time and for your support. You made a valuable contribution to the success of this important study.

This research is carried out in compliance with the Privacy Act and Telecommunications and Research Calls Industry Standard, and the information you provided will be used only for research purposes.

We are conducting this research on behalf of the Australian Human Rights Commission. If you would like any more information about this project or Roy Morgan Research, you can phone us on 1800 337 332.

END-OF-QUESTIONNAIRE

## Appendix B.3: Types of discrimination experienced

### Mothers Survey

The types of discrimination can be reported as a proportion of *all mothers, of those who took or would have liked to take leave, returned to work as an employee* or as a proportion of those *who were discriminated during one of the stages of their pregnancy*. The following tables show the percentages for each type of discrimination using these different bases.

The classifications of the themes that are presented in the next three tables vary between during pregnancy, while on leave and return to work. Please refer to pages 30-31 for the definitions for each classification by the relevant stage as they may differ across three stages.

**Table B.1: Types of discrimination during pregnancy by theme<sup>1</sup>**

Types of discrimination by theme	Mothers (n=2,001)	Experienced discrimination during pregnancy (n=482)
Pay, conditions and duties	13%	49%
Health and safety	13%	48%
Performance assessments and career advancement opportunities	13%	46%
Dismissed, made redundant or job loss	10%	36%
Negative attitudes from employer/ manager	8%	28%
Leave	5%	20%
Negative attitudes from colleagues	5%	19%
Threatened with redundancy or dismissal	2%	8%
Other	2%	5%
Total experienced discrimination during pregnancy	27%	100%

Table B.2: Types of discrimination when requested or on parental leave by theme<sup>2</sup>

Types of discrimination by theme	Took leave or would have liked to take leave (n=1,902)	Experienced discrimination when requested or on parental leave (n=615)
Pay, conditions and duties	22%	69%
Performance assessments and career advancement opportunities	15%	46%
Dismissed, made redundant or job loss	9%	29%
Leave	8%	25%
Negative attitudes from manager/ employer	4%	14%
Negative attitudes from colleagues	3%	9%
Threatened with redundancy or dismissal	2%	7%
Other	2%	6%
Total experienced discrimination when requesting or on parental leave	32%	100%

Table B.3: Types of discrimination on return to work by theme<sup>3</sup>

Types of discrimination by theme	Returned to work as an employee (n=1,576)	Experienced discrimination on return to work (n=578)
Negative attitudes	23%	63%
Flexible work	18%	50%
Pay, conditions and duties	14%	38%
Performance assessments and career advancement opportunities	9%	27%
Dismissed, made redundant or job loss	8%	23%
Breast-feeding/expressing milk	8%	22%
Threatened with redundancy or dismissal	3%	8%
Other	2%	6%
Total experienced discrimination on return to work	36%	100%

## Fathers and Partners Survey

The types of discrimination can be reported as a proportion of *all fathers* or as a proportion of those *who were discriminated against on at least one occasion*. The following table incorporates both approaches to the analysis of discrimination types.

**Table B.4: Types of discrimination experienced on at least one occasion by theme<sup>4</sup>**

Types of discrimination by theme	Total fathers (n=1,001)	Experienced discrimination at some point before or after birth/adoption (n=271)
Negative attitudes	13%	49%
Pay, conditions and duties	13%	46%
Flexible work	10%	35%
Performance assessments and career advancement opportunities	8%	29%
Leave	8%	29%
Threatened with redundancy or dismissal	3%	16%
Dismissed, made redundant or job loss	4%	10%
Total experienced discrimination on at least one occasion	27%	100%

## Appendix B.4: Categorisation of male and female dominated industries

Using ABS 2011 Census of Population and Housing data<sup>5</sup> and applying a ratio of 60:40, the industries were collated into male-dominated and female-dominated industries. Industries were classified as follows:

- Male dominated (less than 40% women)
- Female dominated (more than 40% women)
- Neither male nor female dominated (more than 40% and less than 60% women).

**Table B.5: Categorisation of male and female dominated industries**

Industry	Male/Female Classification
Agriculture, Forestry and Fishing	Male
Mining	Male
Manufacturing	Male
Electricity, Gas, Water and Water Services	Male
Construction	Male
Wholesale Trade	Male
Retail Trade	Neither
Accommodation and Food Services	Neither
Transport, Postal and Warehousing	Male
Information Media and Telecommunication	Neither
Financial and Insurance Services	Neither
Rental, Hiring and Real Estate Services	Neither
Professional, Scientific and Technical Services	Neither
Administrative and Support Services	Neither
Public Administration and Safety	Neither
Education and Training	Female
Health Care and Social Assistance	Female
Arts and Recreational Services	Neither
Other Services	Neither

1 Survey question: Q8, Q9, Q10/A/B.

2 Survey question: Q20, Q21, Q22/A/B.

3 Survey question: Q47, Q48, Q49, Q50/A/B.

4 Survey question: Q14, Q15, Q41, Q42.

5 Australian Bureau of Statistics, 2011 Census of Population and Housing. At <http://www.abs.gov.au/ausstats/abs@.nsf/mf/2901.0> (viewed 9 July 2014).



# Appendix C

## International Labour Organization Conventions and Recommendations

<p><i>Discrimination (Employment and Occupation) Convention, 1958</i> (No. 111) [ratified by Australia];</p> <p>Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)</p>	<p>Requires Member States to pursue a national policy to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect to the right of work.</p>
<p><i>Workers with Family Responsibilities Convention, 1981</i> (No. 156) [ratified by Australia]</p>	<p>Article 3. Make it an aim of national policy to enable persons with family responsibilities who are engaged, or wish to engage in employment, to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.</p> <p>Article 8. Family responsibilities shall not, as such, constitute a valid reason for termination of employment.</p>
<p>Workers with Family Responsibilities Recommendation, 1981 (No. 165)</p>	<p>Paragraph 19. Whenever practicable and appropriate, the special needs of workers, including those arising from family responsibilities, should be taken into account in shift-work arrangements and assignments to night work.</p> <p>Paragraph 22(1). Either parent should have the possibility, within a period immediately following maternity leave, of obtaining leave of absence (parental leave), without relinquishing employment and with rights resulting from employment being safeguarded.</p>
<p><i>Maternity Protection Convention, 2000</i> (No. 183);<sup>1</sup></p> <p>Maternity Protection Recommendation, 2000 (No. 191)</p>	<p>Article 3. Member States shall adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child.</p> <p>Article 8(1). It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 [ie leave for illness related to pregnancy or childbirth and maternity leave] or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.</p> <p>Article 8(2). A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.</p> <p>Article 9. Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including – notwithstanding Article 2(1) – access to employment.</p> <p>Article 10(1). A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.</p> <p>Article 10(2). These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.</p>
<p><i>Part-Time Work Convention, 1994</i> (No. 175) (1994) [ratified by Australia]</p>	<p>Requires Member States to afford part-time workers the same protection as comparable full-time workers in respect of discrimination in employment and occupation and occupational health and safety, including in the fields of maternity protection.</p>

<sup>1</sup> ILO Convention 183 revises Maternity Protection Convention (Revised), 1952 (No. 103).



# Appendix D

## Procedural framework for anti-discrimination claims in the federal jurisdiction

There are different procedures for making a complaint under the *Sex Discrimination Act 1984* (Cth) (SDA) and *Fair Work Act 2009* (Cth) (FWA). Court proceedings under either statute may be commenced in the Federal Circuit Court of Australia (FCCA) or the Federal Court of Australia (FCA).

Provisions of the SDA and the FWA prevent applications in relation to discriminatory conduct being made under those Acts if a complaint raising the same subject matter is already being litigated under a state or territory anti-discrimination law.<sup>1</sup>

### 1.1 *Sex Discrimination Act 1984* (Cth)

Under the SDA an employee must, in the first instance, lodge a written complaint with the Australian Human Rights Commission. The President of the Commission is required to inquire into and attempt to resolve complaints by conciliation. There is no strict time frame for a complaint to be made to the Commission, however the President has discretion not to inquire, or not to continue to inquire, into a complaint where the alleged act occurred more than 12 months prior to making the complaint. Remedies that can be achieved through the Commission's conciliation process are very broad and may include apologies, financial compensation, reemployment, variations of terms and conditions of employment and agreements for employers to introduce changes to policies and training programs to address potential discrimination in the workplace.<sup>2</sup>

If a complaint is not resolved through the conciliation process, or is terminated for some other reason, the employee may commence court proceedings but must do so within 60 days.<sup>3</sup> Complaint procedures under state and territory anti-discrimination legislation are broadly similar, except in Victoria, where there is no requirement to lodge the complaint at the *Victorian Equal Opportunity and Human Rights Commission* before proceeding to the Victorian Civil and Administrative Tribunal.<sup>4</sup>

### 1.2 *Fair Work Act 2009* (Cth)

Where an employee makes a claim under the FWA adverse action provisions,<sup>5</sup> called a 'general protections application,' different procedures and time limits apply, depending on whether a dismissal has occurred.

Where there has been a dismissal, the employee can make a general protections application to the Fair Work Commission (FWC) under the FWA adverse action provisions, or they can make an unfair dismissal application to the FWC under the unfair dismissal provisions of the FWA. Both kinds of application must be made within 21 days of the dismissal. Once a general protections application has been received, the FWC will conduct a conciliation conference. Where the matter cannot be settled, the FWC issues a certificate to that effect. The employee may then commence court proceedings within 14 days.

In situations which do not involve dismissal, the employee can still make a general protections application under the adverse action provisions of the FWA. An employee may seek voluntary conciliation from the FWC, and proceed to court if conciliation fails,<sup>6</sup> or commence court proceedings from the outset.

The Fair Work Ombudsman (FWO) is a statutory office established by the FWA. Its functions include enforcing the FWA and related matters including investigating workplace discrimination. It resolves the individual complaints it receives through a range of voluntary mechanisms, including mediation and enforceable undertakings. The FWO can bring court proceedings for:

- unlawful adverse action
- breaches of other general protections provisions
- contraventions of civil remedy provisions; and
- breaches of the NES.<sup>7</sup>

Employees whose complaints are pursued by the FWO do not incur any financial costs.

### 1.3 Costs under the SDA and the FWA

There is no cost for an employee to lodge a complaint with the Australian Human Rights Commission for investigation and conciliation. This is the same for similar bodies in the states or territories.

Similarly, there is no cost to lodge a complaint with the FWO. However there is a lodgement fee to file an application for certain matters with the FWC, including general protections and unlawful termination disputes.

Where a matter proceeds to court under the SDA, normal practice is for the Court to make an order in line with the principle that 'costs follow the event' – ie the unsuccessful party is to pay the legal costs of the other party.<sup>8</sup> In contrast, in most state and territory jurisdictions, a default 'each party bears their own costs' rule exists.<sup>9</sup> In relation to claims under the FWA, there is a similar provision that each party bears their own costs except in specified circumstances.<sup>10</sup>

### 1.4 Court remedies

Remedies for an employer's discriminatory conduct under the SDA and unlawful adverse action under the FWA are very broad, as the Court has the power to make orders which it sees as appropriate to the case before it.<sup>11</sup> Under the FWA the Court can in addition order pecuniary penalties for breaches of civil remedy provisions of the FWA, such as the NES.<sup>12</sup>

However, the remedies awarded are commonly limited to financial ones under both statutes. In cases of discriminatory conduct involving dismissal, courts have, on occasion, ordered that an employee be reinstated to their previous position (although this is rare). This contrasts with the enforceable undertakings into which the FWO has entered with employers who have admitted contraventions of the FWA.

**Table D.1: Procedural steps for taking action under federal anti-discrimination law<sup>13</sup>**

	<i>Sex Discrimination Act 1984 (Cth)</i>	<i>Fair Work Act 2009 (Cth)</i>	
Stages/steps	The Australian Human Rights Commission	Fair Work Ombudsman	Fair Work Commission
<b>Complaint</b>	Complaint to the Commission	Complaint to FWO	Complaint to FWC (within 21 days of dismissal)
<b>Investigate</b>	Investigation (option to proceed to conciliation early in the process)	FWO may investigate	
<b>Mediation/conciliation</b>	Conciliation (provision for both voluntary and compulsory conciliation)	FWO may mediate	Conference
<b>Court proceedings</b>	Complaint terminated by the Commission (only then may legal proceedings be brought) 60 days to start proceedings in FCCA/FCA <sup>14</sup>	FWO may bring proceedings in FCA, FCCA or agree enforceable undertaking with the employer <sup>15</sup>	If the matter is not settled in conference a certificate is issued 14 days to start proceedings in FCA, FCCA or if parties agree, FWC arbitration
<b>Court remedy/penalty</b>	Damages and other relief	Penalties and damages/ other orders	Penalties and damages/other relief
<b>Costs</b>	No costs for lodgement or investigation/conciliation service Costs if the matter reaches Court, follow the event i.e. the losing party usually pays its own and its opponent's costs	No costs (to individual)	Lodgement fee for some applications No cost for mediation service At court each party bears their own costs – for example legal expenses

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- 1 *Sex Discrimination Act 1984* (Cth) s 10(4). *Fair Work Act 2009* (Cth) s 725 and s 732. Employees must also make further choices about which proceedings to take under the FWA.
- 2 It is noted that complaints made to the Australian Human Rights Commission under the SDA have a very high rate of successful resolution through voluntary conciliation. For example in 2012-13, where conciliation was attempted, 60% of complaints were successfully resolved.
- 3 *Australian Human Rights Commission Act 1986* (Cth), s 46PO.
- 4 N Rees, S Rice and D Allen, *Australian Anti-Discrimination Law* (2nd ed 2014), p 756 and p 761.
- 5 S351; and under any other General Protections provision in the FWA.
- 6 This must be within six years, *Fair Work Act 2009* (Cth) s 544. Conciliation is compulsory in relation to dismissals.
- 7 The FWO takes these steps through the Fair Work Inspectors.
- 8 N Rees, S Rice and D Allen, *Australian Anti-Discrimination Law* (2nd ed 2014), p 848
- 9 A Stewart, *Stewart's Guide to Employment Law* (4th ed, 2013), p 283.
- 10 *Fair Work Act 2009* (Cth), s 570.
- 11 Academic commentators have described the remedies available under federal anti-discrimination legislation as 'remarkable' in their breadth, but underdeveloped, N Rees, S Rice and D Allen, *Australian Anti-Discrimination Law* (2nd ed 2014), p 810.
- 12 *Fair Work Act 2009* (Cth), s 546; civil remedy provisions are defined in s 539.
- 13 Susan Price, Director, PricewaterhouseCoopers, Sydney provided an earlier version of this chart.
- 14 Other causes of action can be added to the application, such as breach of contract.
- 15 The FWO's litigation activities are part of a broader compliance system which comprises a combination of positive motivators and deterrents aimed at bringing about compliance with Commonwealth workplace laws. Litigation may also be appropriate when there is a need for judicial clarification of Commonwealth workplace laws. Most matters handled by the FWO are however resolved through voluntary resolution mechanisms. Since its inception in July 2009, the FWO has filed approximately 50 matters in court each financial year.



# Appendix E

## Discrimination complaints data

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Enquiry and complaint data collected by the Australian Human Rights Commission, state and territory anti-discrimination and equal opportunity authorities, as well as the Fair Work Ombudsman (FWO), provides an important source of information on the extent of discrimination related to pregnancy, parental leave and return to work. Data on the enquiries and complaints received by work health and safety regulators on issues related to pregnancy and return to work after child birth also provides an important source of information. This section collates enquiries and complaints data provided to the National Review from each of these agencies:

- The Commission (2008-13)
- State and territory anti-discrimination and equal opportunity authorities (2011-13)
- Fair Work Ombudsman (2009-13)
- Work health and safety regulators.

### 1.1 Australian Human Rights Commission enquiry and complaint data

This section collates data on enquiries and complaints received by the Commission relating to pregnancy/return to work discrimination over the period of 2008-13. These include complaints on the ground of 'sex discrimination' where the subject is workplace related to pregnancy, parental leave and return to work.



[illegible]

Counted by ground. One enquiry may have more than one ground.

Ground	2008		2009		2010		2011		2012		2013						
No received**	As % of all sex discrimination complaints	As % of all No complaints received**	As % of all sex discrimination complaints	As % of all No complaints received**	As % of all sex discrimination complaints	As % of all No complaints received**	As % of all sex discrimination complaints	As % of all No complaints received**	As % of all sex discrimination complaints	As % of all No complaints received**	As % of all sex discrimination complaints	As % of all No complaints received**					
Pregnancy	77	17%	5%	64	13%	5%	69	17%	6%	77	6%	64	17%	5%	69	18%	6%
Parental leave/Family responsibilities/careers responsibility/parental status	84	18%	6%	73	15%	5%	56	14%	5%	84	18%	7%	73	19%	56	15%	5%
Breastfeeding	0	0%	0%	2	0.4%	0.1%	2	0.5%	0.2%	0	0%	2	-%	-%	2	-%	-%

Counted by ground. One enquiry may have more than one ground.



Of the complaints received by the Commission in this period:

- All complainants identified as female, with the exception of one complainant in 2012, whose complaint related to parental leave.
- Across the five year period, where the age of the complainant was identified, the majority were in the 25-34 year age group.<sup>1</sup>
- 1-2% of all complainants identified as Aboriginal.

As illustrated in Tables E.3, E.4 and E.5 below, complaints were received from all states and territories and from employees in organisations of varying size across a range of industries.

**Table E.3: Complaints received by State or Territory of origin of complainant<sup>2</sup>**

Ground*	State of origin	2008		2009		2010		2011		2012		2013	
		Number received		Number received		Number received		Number received		Number received		Number received	
All**	ACT	4	3%	2	1.5%	5	5%	0	–	5	6%	3	4%
	NSW	61	40%	59	44%	34	33%	44	42%	32	40%	34	41%
	NT	1	1%	0	–	1	1%	0	–	1	1%	0	–
	QLD	20	13%	11	8%	16	16%	14	13%	14	17.5%	11	13%
	SA	19	12%	22	16%	13	12%	15	14%	10	12.5%	7	8%
	VIC	43	28%	29	21%	20	20%	23	22%	14	17%	19	23%
	WA	5	3%	11	8%	11	11%	10	9%	4	5%	9	11%
	TAS	0	–	2	1.5%	2	2%	0	–	1	1%	0	–
Total matters		153	100%	136	100%	101	100%	106	100%	81	100%	83	100%

\* In the area of employment only.

\*\* Complaints related to discrimination in the workplace related to pregnancy, parental leave and return to work.

**Table E.4: Complaints received by respondent industry type<sup>3</sup>**

Ground*		2008		2009		2010		2011		2012		2013	
		Number received		Number received		Number received		Number received		Number received		Number received	
All**	Agriculture, Forestry and Fishing	–	–	–	–	–	–	–	–	–	–	–	–
	Mining	1	1%	4	3%	0	–	3	3%	1	1%	1	1%
	Manufacturing	7	4%	2	1.5%	6	6%	9	8%	3	3.5%	–	–
	Electricity, Gas, Water and Waste Services	1	1%	1	1%	1	1%	2	2%	0	–	2	2%
	Construction	2	1%	3	2%	3	3%	6	6%	1	1%	4	5%
	Wholesale Trade***	–	–	6	4%	15	15%	0	–	0	–	8	10%
	Retail trade***	25	16%	28	21%	1	1%	12	11%	11	14%	20	24%
	Accommodation and Food Services	7	4%	5	4%	8	8%	2	2%	4	5%	4	5%
	Transport, Postal and Warehousing	1	1%	7	5%	1	1%	1	1%	2	2.5%	3	4%

Ground*	2008		2009		2010		2011		2012		2013	
	Number received		Number received		Number received		Number received		Number received		Number received	
Information Media & Telecommunications	0	–	9	7%	0	–	0	–	2	2.5%	2	2%
Financial and Insurance Services	18	12%	14	10%	10	10%	12	11%	9	11%	6	7%
Rental, Hiring and Real Estate Services	0	–	1	1%	0	–	0	–	3	3.5%	–	–
Professional, Scientific and Technical Services	39	26%	19	14%	12	11.5%	24	23%	16	20%	4	5%
Administrative and Support Services	6	4%	6	4%	7	7%	8	8%	2	2.5%	3	4%
Public Administration and Safety	23	15%	6	4%	12	11.5%	10	9%	2	2.5%	7	8%
Education and Training	2	1%	5	4%	9	9%	9	8%	7	9%	7	8%
Health Care and Social Assistance	3	2%	18	13%	9	9%	3	3%	14	17%	4	5%
Arts and Recreation Services	1	1%	2	1.5%	5	5%	4	4%	4	5%	4	5%
Commonwealth Statutory Authority	5	3%	0	–	0	–	1	1%	0	–	–	–
Private household	0	–	0	–	0	–	0	–	0	–	–	–
Unknown	12	8%	0	–	2	2%	0	–	0	–	–	–
<b>Total</b>	<b>153</b>	<b>100%</b>	<b>136</b>	<b>100%</b>	<b>101</b>	<b>100%</b>	<b>106</b>	<b>100%</b>	<b>81</b>	<b>100%</b>	<b>83</b>	<b>100%</b>

\* In the area of employment only.

\*\* Complaints related to discrimination in the workplace related to pregnancy, parental leave and return to work.

\*\*\* In 2008-2011 wholesale trade and retail trade categories were combined. From 2012 onwards the categories was split into wholesale trade or retail trade. Where information was available, the above results have been split into wholesale trade or retail trade.

**Table E.5: Complaints received by respondent organisation size**

Ground*		2008		2009		2010		2011		2012		2013	
		Number received		Number received		Number received		Number received		Number received		Number received	
All**	Less than 5	4	2%	1	1%	1	1%	–	–	1	1%	–	–
	5-19	41	27%	23	17%	22	21%	21	20%	15	18%	8	10%
	20-99	47	31%	41	30%	40	40%	23	22%	33	41%	31	37%
	100-499	21	14%	35	26%	13	13%	25	23%	12	15%	18	22%
	500+	40	26%	36	26%	24	24%	37	35%	20	25%	26	31%
	Unknown	–	–	–	–	1	1%	–	–	–	–	–	–
Total matters		153	100%	136	100%	101	100%	106	100%	81	100%	83	100%

\* In the area of employment only.

\*\* Complaints related to discrimination in the workplace related to pregnancy, parental leave and return to work.

## 1.2 State and territory anti-discrimination and equal opportunity authorities complaints data

All state and territory anti-discrimination and equal opportunity authorities also receive enquiries and complaints related to pregnancy, parental leave and family responsibilities/carers responsibilities/family status discrimination under their legislation. This section collates complaints received by state and territory authorities.

Differences in the laws and the data collection methods across jurisdictions placed some limits on what data could be collated and the kind for analysis that can be drawn from it. These differences include the:

- different grounds under state and territory legislation, making direct comparisons difficult
- different methods of collecting and recording data (including by financial and calendar year).<sup>4</sup>

To assist with data comparison for the National Review, state anti-discrimination and equal opportunity authorities categorised complaint data with reference to grounds under the SDA. Table E.6 sets out the grounds under each state or territory law which have been categorised with reference to the grounds under the SDA.

**Table E.6: Categorisation of grounds with reference to grounds under the federal *Sex Discrimination Act 1984* (Cth)**

Relevant state legislation	Grounds that would fall under the <i>Sex Discrimination Act 1984</i> (Cth)
Equal Opportunity Act 2010 (Victoria)	<ul style="list-style-type: none"> <li>• carer status</li> <li>• parental status</li> <li>• gender identify</li> <li>• lawful sexual activity</li> <li>• sexual orientation</li> <li>• marital status</li> <li>• pregnancy</li> <li>• breastfeeding</li> <li>• sex and sexual harassment</li> </ul>
Equal Opportunity Act 1984 (South Australia)	<ul style="list-style-type: none"> <li>• caring responsibilities</li> <li>• chosen gender</li> <li>• marital or domestic partnership status</li> <li>• pregnancy</li> <li>• sex</li> <li>• sexuality</li> <li>• sexual harassment</li> </ul>
Equal Opportunity Act 1984 (Western Australia)	<ul style="list-style-type: none"> <li>• family responsibility</li> <li>• family status</li> <li>• gender history</li> <li>• victimisation</li> <li>• marital status</li> <li>• pregnancy</li> <li>• breastfeeding</li> <li>• sex</li> <li>• sexual harassment</li> <li>• sexual orientation</li> </ul>
Anti-Discrimination Act 1991 (Queensland)	<ul style="list-style-type: none"> <li>• sex</li> <li>• sexuality</li> <li>• gender identity</li> <li>• pregnancy</li> <li>• parental status</li> <li>• breast feeding</li> <li>• parental status</li> </ul>

Relevant state legislation	Grounds that would fall under the <i>Sex Discrimination Act 1984</i> (Cth)
Anti-Discrimination Act 1977 (New South Wales)	<ul style="list-style-type: none"> <li>• sex</li> <li>• pregnancy</li> <li>• breast-feeding</li> <li>• carer responsibility</li> </ul>
Anti-Discrimination Act 1998 (Tas)	<ul style="list-style-type: none"> <li>• gender</li> <li>• pregnancy</li> <li>• breast feeding</li> <li>• family responsibility</li> <li>• parental status</li> <li>• marital status</li> <li>• relationship status</li> <li>• gender identity</li> <li>• intersex</li> <li>• sexual orientation</li> <li>• sexual harassment</li> </ul>
Anti-Discrimination Act 1977 (Australian Capital Territory)	<ul style="list-style-type: none"> <li>• sex</li> <li>• pregnancy</li> <li>• breastfeeding</li> <li>• relationship status</li> <li>• status as a parent or carer</li> <li>• gender identity</li> <li>• sexuality</li> <li>• victimisation</li> <li>• sexual harassment</li> </ul>
Anti-Discrimination Act 2014 (Northern Territory)	<ul style="list-style-type: none"> <li>• sex</li> <li>• sexuality</li> <li>• pregnancy</li> <li>• parenthood</li> <li>• marital status</li> <li>• breastfeeding</li> </ul>

As illustrated by the data in Table E.7, pregnancy discrimination complaints (as a percentage of all sex discrimination complaints and as a percentage of all complaints) have remained relatively consistent. Please note that data from the Northern Territory Anti-Discrimination Commission is not included in Table E.7, as the data was only available by financial year. Rather it is outlined below, after Table E.7.

**Table E.7: Complaints received relating to employment\***

Ground	2011			2012			2013		
	Number received**	As % of all sex discrimination complaints <sup>5</sup>	As % of all complaints received	Number received**	As % of all sex discrimination complaints <sup>6</sup>	As % of all complaints received	Number received**	As % of all sex discrimination complaints <sup>7</sup>	As % of all complaints received
<b>ACT Human Rights Commission</b>									
Pregnancy	1	6%	1%	2	10%	3%	2	6%	3%
Parental leave/Family responsibilities/carers responsibility/parental status	2	11%	3%	1	5%	2%	5	21%	6%
Breastfeeding	0	n/a	0	0	n/a	n/a	0	n/a	n/a
<b>NSW Anti-Discrimination Board</b>									
Pregnancy	33	21%	4%	20	20%	4%	19	18%	3%

Ground	2011			2012			2013		
	Number received**	As % of all sex discrimination complaints <sup>5</sup>	As % of all complaints received	Number received**	As % of all sex discrimination complaints <sup>6</sup>	As % of all complaints received	Number received**	As % of all sex discrimination complaints <sup>7</sup>	As % of all complaints received
Parental leave/Family responsibilities/carers responsibility/parental status	56	35%	7%	29	28%	5%	38	37%	7%
Breastfeeding <sup>8</sup>	N/A			N/A			N/A		
<b>Queensland Anti-Discrimination Commission</b>									
Pregnancy	28	11%	4%	30	14%	4%	42	17%	6%
Parental leave/Family responsibilities/carers responsibility/parental status	77	31%	10%	67	31%	9%	68	27%	9%
Breastfeeding	2	1%	0%	1	0%	0%	1	0%	0%
<b>Victorian Equal Opportunity and Human Rights Commission</b>									
Pregnancy	52	10%	3%	43	11%	4%	40	10%	3%
Parental leave/Family responsibilities/carers responsibility/parental status	145	29%	10%	148	38%	13%	151	39%	4%
Breastfeeding	3	1%	0%	2	1%	0%	1	0%	0%
<b>Equal Opportunity Commission of South Australia</b>									
Pregnancy	14	14%	7%	6	10%	3%	3	8%	6%
Parental leave/Family responsibilities/carers responsibility/parental status	14	14%	7%	12	19%	7%	4	11%	5%
Breastfeeding <sup>9</sup>	N/A			N/A			N/A		

Ground	2011			2012			2013		
	Number received**	As % of all sex discrimination complaints	As % of all complaints received	Number received**	As % of all sex discrimination complaints	As % of all complaints received	Number received**	As % of all sex discrimination complaints	As % of all complaints received
<b>Equal Opportunity Commission of Western Australia</b>									
Pregnancy	22	10%	5%	21	10%	5%	12	9%	3%
Parental leave/Family responsibilities/carers responsibility/parental status	36	17%	8%	33	16%	7%	17	13%	5%
Breastfeeding	0	0%	0%	0	0%	0%	0	0%	0%
<b>Office of the Anti-Discrimination Commissioner, Tasmania<sup>10</sup></b>									
Pregnancy	6	15%	5%	4	11%	4%	5	14%	5%
Parental leave/Family responsibilities/carers responsibility/parental status	14	36%	12%	14	39%	13%	11	30%	10%
Breastfeeding	0	0%	0%	0	0%	0%	0	0%	0%

\* Figures are for calendar years.

\*\* Counted by ground. One complaint may have more than one ground.

In the period 2011-13, the Northern Territory Anti-Discrimination Commission received between six and 11 complaints in the area of employment per year on the grounds of pregnancy, between three and 17 complaints per year on the grounds of parental leave/family responsibilities/carers responsibility and parental status and between zero and one complaints per year on the grounds of breastfeeding.

### 1.3 Fair Work Ombudsman enquiry and complaints data

The FWO is an independent statutory office created under the FWA. It can receive enquiries and complaints from individuals that believe they have been discriminated against in the workplace because of pregnancy, parental leave or family or carer's responsibilities.

The following is an overview of the enquiries and complaints received by the FWO since 2009.<sup>11</sup>

**Table E.8: Enquiries received to the Fair Work Infoline (by main discussion topic of the call)**

Key word or enquiry type	2009-2010	2010-2011	2011-2012	2012-2013
Pregnancy/Pregnant/Leave/Parental Leave	7667	8574	8801	7723
Return to work/Flexible work	995	1197	1105	2062

Table E.9: Complaints lodged with the Fair Work Ombudsman<sup>12</sup>

	2009-2010	2010-2011	2011-2012	2012-2013
<b>Total FWO Discrimination Complaints</b>	804	1171	1040	235 <sup>13</sup>
<b>Allegations<sup>14</sup> regarding pregnancy discrimination, family/carers discrimination and parental leave</b>				
Total allegations	119	234	224	116
Total allegations which proceeded to full investigation	44	96	74	43
Proceeded to full investigation %	37%	41%	33%	37%

The most common discrimination complaints investigated in 2012–13 involved pregnancy (28%), surpassing complaints involving physical or mental disability (21%).<sup>15</sup>

Of these complaints received by the FWO across the five year period, where the age of the complainant was identified, the majority were in the 31–40 year age group, followed by 26–30 year age group.

As illustrated in table E.10 and E.11, complaints were received from all states and territories and from workers in a range of industry types.

Table E.10: Complaints lodged with the Fair Work Ombudsman – age of complainant

	2009-2010	2010-2011	2011-2012	2012-2013
<b>Age</b>				
N/A	3	5	6	3
<21	2	4	1	2
21-25	7	14	8	7
26-30	8	14	18	8
31-40	18	45	27	14
41-50	5	10	12	4
51-60	0	2	2	3
61-70	1	2	0	2
<b>Location</b>				
ACT	1	1	2	2
NSW	11	21	18	13
QLD	6	24	19	11
SA	3	11	5	4
TAS	1	1	3	1
VIC	16	28	20	11
WA	6	10	7	1



**Table E.11: Complaints lodged with the Fair Work Ombudsman – industry type of respondent**

	2009-2010	2010-2011	2011-2012	2012-2013
Industry				
Accommodation and Food Services	2	7	8	2
Administration and Support Services	5	12	4	0
Arts and Recreation Services	1	0	1	0
Construction	1	6	3	5
Education and Training	1	2	1	2
Electricity, Gas, Water and Waste Services	1	1	0	1
Financial and Insurance Services	2	2	1	1
Health Care and Social Assistance	2	13	15	2
Information Media and Telecommunication	3	0	1	0
Manufacturing	6	3	5	7
Mining	0	0	1	1
Other Services	2	17	5	3
Professional, Scientific and Technical Services	2	10	5	3
Public Administration and Safety	2	2	0	5
Rental, Hiring and Real Estate Services	2	11	3	2
Retail Trade	8	3	10	3
Transport Postal and Warehousing	0	0	2	4
Wholesale Trade	4	7	9	2

## 1.4 Enquiries and complaints to work, health and safety regulators<sup>16</sup>

As outlined above, laws to protect workers' health and safety exist in all Australian jurisdictions. Each state and territory has a regulator that provides information and advice to employers on complying with work health and safety laws, as well as to employees on workers compensation claims. Other Commonwealth and national regulators exist for this jurisdiction, such as Comcare.

On request of the National Review, Safe Work Australia requested that its members (all regulators in the state, territory and Commonwealth jurisdictions), provide any available data relating to enquiries and complaints relating to pregnancy/return to work (including breastfeeding), as well as examples of guidance materials and information provided.

Limited data is collected on the number and nature of enquiries received by each regulator. Comcare recorded a small number of enquiries and complaints about pregnant or potentially pregnant workers:

- three related to potential exposure to fumes or chemicals
- two related to potential bullying or harassment/discrimination of a pregnant worker
- one related to a worker who was on parental leave, but it did not appear to be related to her pregnancy.<sup>17</sup>

WorkCover NSW noted that, since January 2012, it has received 12 requests for service (complaints) related to work health and safety issues in NSW workplaces related to pregnancy and return to work after childbirth. The issues raised ranged from unsuitable work environments and/or tasks, to unsuitable duties and bullying/harassment. Some of the complainants were referred to other relevant agencies. WorkCover NSW also receives enquiries through its customer service centre on related issues, such as:

- how employers can meet their obligations under work health and safety laws in regards to pregnant workers
- from pregnant workers seeking advice about employer responsibility to provide suitable duties.

From 1 January 2012 to 31 March 2014, WorkCover NSW recorded 312 enquiries relating to these issues.

- 1 The age of the complainant was not known in a significant number of complaints.
- 2 Note that the totals do not correlate with the totals in Table 1.2 in Chapter 1 because while the totals were counted by grounds of complaints in Table 1.2, this table counts by complainant (complaint).
- 3 Note that the totals do not correlate with the totals in Table 1.2 in Chapter 1 because while the totals were counted by grounds of complaints in Table 1.2, this table counts by complainant (complaint).
- 4 Note that individuals employed in state government agencies are not permitted to make complaints to the Australian Human Rights Commission under the *Sex Discrimination Act 1984* (Cth).
- 5 Each state and territory collated the number of complaints received on grounds under their Act that would fall under the grounds covered by the *Sex Discrimination Act 1984* (Cth).
- 6 Each state and territory collated the number of complaints received on grounds under their Act that would fall under the grounds covered by the *Sex Discrimination Act 1984* (Cth).
- 7 Each state and territory collated the number of complaints received on grounds under their Act that would fall under the grounds covered by the *Sex Discrimination Act 1984* (Cth).
- 8 Breastfeeding complaints recorded within pregnancy complaints
- 9 Breastfeeding complaints recorded within pregnancy complaints
- 10 Complaints on the grounds of sexual orientation, intersex and gender identity can be received under the Anti-Discrimination Act 1998 (Tas) however data on these grounds is not included in this table. Furthermore, in addition to discrimination on the basis of specified attributed, the section 17(1) of the Anti-Discrimination Act 1998 (Tas) specifies that conduct that is offensive, humiliating, intimidating, insulting or ridiculing on the basis of specified attributes is unlawful. These attributes include gender, marital status, family responsibilities, parental status and breastfeeding. There are times where the conduct alleged in a complaint may not be characterised as possible discrimination, but it is properly characterised as within the scope of section 17(1). This Tasmanian data has not been included as there is no comparative data available from other jurisdictions in Australia.
- 11 Fewer discrimination complaints were counted as received in 2012-2013 because from 1 July 2012 only those complaints assessed as within the scope of the Fair Work Act were recorded as discrimination complaints. Previously all complaints alleging discrimination were registered as discrimination complaints and forwarded for assessment.
- 12 'Allegations' are not the same as complaints, as some complaints may contain more than one allegation.
- 13 In response to a request from the Commission, these figures were provided to the Commission by the Fair Work Ombudsman in a letter dated 18 March 2014.
- 14 Figures have been adjusted to ensure complaints resolved over multiple reporting periods are not duplicated.
- 15 Fair Work Ombudsman, *Annual Report 2013-2013*, p 32. At [www.fairwork.gov.au/annualreport](http://www.fairwork.gov.au/annualreport) (viewed 20 November 2013).
- 16 In response to a request from the Commission, the following information was provided to the Commission by Safe Work Australia in a letter dated 15 April 2014.
- 17 The time period for which these enquires and complaints were received was not provided.

# Appendix F

## Analysis of federal case law

Despite the extent of pregnancy/return to work discrimination, relatively few cases have been brought in the federal jurisdiction.<sup>1</sup>

This appendix provides an analysis of the federal case law relevant to the National Review with the aim of highlighting the key workplace discrimination issues the cases raise. These cases provide an important source of understanding of the nature and consequences of discrimination.

This section examines 26 decided pregnancy and parental related discrimination cases brought by individual employees under the *Sex Discrimination Act 1984* (Cth) (SDA) since 2000 and eight cases brought under the adverse action provisions of the *Fair Work Act 2009* (Cth) (FWA).<sup>2</sup> Ten enforcement activities by the Fair Work Ombudsman (FWO) under the FWA in relation to pregnancy/return to work discrimination and the National Employment Standards (NES) are also discussed.<sup>3</sup> A list of the cases is provided at the end of this appendix.

Under the SDA, courts have found discrimination in several cases. In 13 of the 19 cases before the Federal Magistrates Court of Australia (FMCA)/Federal Circuit Court of Australia (FCCA) and in one of the five FCA cases (which were not appeals from an FMCA/FCCA case)<sup>4</sup> the FCA found that the applicant had been discriminated against, though not necessarily on all of the grounds alleged.

The courts have found discrimination in fewer cases under the FWA (three<sup>5</sup> out of eight cases (involving nine applicants), although this is over a shorter time period than the SDA cases examined. The five court proceedings brought by the FWO against employers on behalf of employees relating to pregnancy and family and/or carers' responsibilities discrimination have all resulted in a finding of discrimination.<sup>6</sup> Five other discrimination investigations by the FWO resulted in enforceable undertakings into which the employers agreed to enter, with four including admissions of pregnancy discrimination.<sup>7</sup>

None of the cases or enforcement activities discussed in this chapter relate to breastfeeding discrimination, as no such claims were decided in the jurisdictions for time periods covered. The cases, however, do provide examples of discrimination due to pregnancy and proposing to take parental leave, as a result of taking parental leave and on the basis of family responsibilities. The cases address pregnancy and parental related discrimination including discriminatory dismissal; the failure to return the employee to her job after parental leave and/or demotion; failure to promote a pregnant employee<sup>8</sup> and unjustified refusals of part-time and flexible work.

This section provides an analysis of these cases to explore key workplace discrimination issues. Other issues raised by the cases, including legal issues, are addressed in Chapter 5. This section examines key themes<sup>9</sup> emerging from the cases examined with a focus on findings relating to anti-discrimination laws and the complementary role of the NES in promoting workplace protections for pregnant women and new parents on parental leave and on return to work. The analysis covers:

- the link between stereotypes and discriminatory treatment
- how unjustified allegations of misconduct or poor performance may mask discriminatory treatment
- cases reflecting the provision of family friendly working arrangements for parents, especially mothers
- issues surrounding return to work.

### 1.1 The link between stereotypes and discriminatory treatment

Stereotyping occurs when a view about the characteristics or behaviour of a group of people is applied to an individual. Where a stereotypical view motivates unfavourable treatment towards an employee, unlawful discrimination may occur. Common stereotypes of pregnant women and new parents include that they are less committed to their employment, less able to do particular sorts of jobs, should not be at work and are less likely to return to or maintain work after having children.<sup>10</sup>

In *Cincotta v Sunnyhaven Ltd*,<sup>11</sup> an SDA case, the Court considered circumstances where Ms Cincotta was not promoted permanently to the supervisory position in which she was acting whilst pregnant. The Court found pregnancy discrimination as part of the employer's reason was 'the possibility, imputed generally to women who are pregnant, that she would not return to work'.<sup>12</sup>

A recent FWA case, where the Court found pregnancy discrimination had occurred, is *Sagona v R & C Piccoli Investments Pty Ltd*.<sup>13</sup> The facts concerned a long serving photographer/salesperson. After she announced her pregnancy, her employers expressed concern that whatever her expressed intention now, she might not return to work after she had her baby (leaving her employers 'in the lurch'<sup>14</sup>) and in any event would not be as 'dedicated' to her work.<sup>15</sup> They wanted her to stop work earlier than she wished to, partly because of concern that having a pregnant woman on photography shoots 'was not a professional look'.<sup>16</sup>

In *Evans v National Crime Authority*,<sup>17</sup> an SDA case, the Court considered the circumstances of Ms Evans, a sole parent with a two-year-old son. Her fixed term contract was not extended, due partly to a poor performance review influenced by Ms Evans' use of carer's leave for her family responsibilities. The Court held that family responsibilities discrimination had occurred<sup>18</sup> and suggested that the manager conflated commitment with not taking such leave. The Court found that he was concerned about her use of her leave entitlement and his comment to her about wanting '100% commitment' to her job understandably suggested to her 'that he considered non-attendance for reason of carer's leave to be damaging' to her job prospects.<sup>19</sup>

Similar attitudes were expressed by employers in two cases brought by the FWO, where the Court found pregnancy discrimination to have occurred.

In *Fair Work Ombudsman v Wongtas Pty Ltd (No 2)*, an employer in the respondent printer firm told an employee, who was demoted and experienced 'mistreatment' after she revealed her pregnancy, that 'many employees resign when they fall pregnant and then stay at home in bed.'<sup>20</sup> The Court held that pregnancy discrimination had occurred.

In *Fair Work Ombudsman v Felix Corporation*, the employee of one of a chain of Victorian retail stores had her hours cut after she informed her employer she was pregnant and refused her employer's request that she take some unpaid leave. One of the firm's owner operators also told the employee 'it was a tradition that women in China do not work when they are pregnant and that she did not want her working at the store.'<sup>21</sup> The Court held that pregnancy discrimination had occurred.

## 1.2 Conduct and performance

In some cases, employers have argued in response to alleged discrimination that there was an issue of poor performance or misconduct. To counter this defence, the employee would need to provide evidence showing that the employer's defence disguised a discriminatory reason. For example, an employer may not have treated an employee's alleged misconduct or poor performance as significant until they became aware of the pregnancy, or they may have reacted to it more severely than they would have done to similar behaviour by an employee who was not pregnant.

In *Cincotta v Sunnyhaven Ltd*,<sup>22</sup> the SDA case referred to above, the employee applicant had lied to her employer by stating she had a work-related qualification when she did not. Though the employer tried to rely on this improper conduct subsequently, he did not treat it as significant when the employee first admitted the lie nor did he remove her from her temporary supervisor position.<sup>23</sup> The Court held that the employer's subsequent refusal to promote her permanently to the supervisor position was direct pregnancy discrimination.<sup>24</sup>

In *Dare v Hurley*,<sup>25</sup> an SDA case, Ms Dare was a newly engaged office manager and still on probation when she told her employer of her pregnancy. She was dismissed for misconduct.<sup>26</sup> However, in light of the employer's Human Resources policy, the importance the employer placed on these and evidence of the employer's concern about pregnancy and need for leave, the Court found that a comparable employee would not have been treated so harshly. Her relatively minor misconduct served as a 'convenient pretext[...]' for her dismissal, with the employer 'seriously concerned'<sup>27</sup> about her parental leave request. The Court found pregnancy discrimination based on her need for parental leave.<sup>28</sup>

In *Ilian v ABC*,<sup>29</sup> an SDA case, an ABC employee of 20 years did not receive her clerical position back on her return from parental leave and was required to do lesser duties. The Court held that the reason for this detrimental treatment was her pregnancy and taking parental leave.<sup>30</sup> It viewed concerns about her performance expressed by her employer as 'an endeavour to demonstrate lack of performance by [Ms Ilian] and was not consistent with a desire or intention that [Ms Ilian] should return to her original duties'.<sup>31</sup>

An FWA pregnancy and family responsibilities case, *Ucchino v Acorp*,<sup>32</sup> involved a series of misconduct allegations by the employer, who ran a childcare centre, against Ms Ucchino, a pregnant employee who was a childcare centre manager. The employer had not raised most of these misconduct allegations with Ms Ucchino prior to her disclosing her pregnancy to them and taking some unpaid family leave. The Court found the poor performance allegations unconvincing overall. The Court accepted that there was evidence of the employer's hostility to Ms Ucchino's pregnancy. For example, the employer had said, 'you know you're going to make it hard for me, being pregnant in your position, for the business.'<sup>33</sup> The Court held that the employer dismissed the applicant because of her pregnancy and family responsibilities.<sup>34</sup>

In *Wilkie v National Storage Operations Pty Ltd*,<sup>35</sup> an FWA case, the Court considered the circumstances of an employee, Ms Wilkie,<sup>36</sup> who left work and closed the centre she managed to attend to unavoidable caring commitments, despite her employer's express instruction not to do so. The Court found that the warning issued by the employer to Ms Wilkie because of her conduct was adverse action contrary to the FWA and found that unlawful discrimination on the basis of family and/or carer's responsibilities had taken place.<sup>37</sup>

### 1.3 Family friendly working arrangements

Several cases reflect the need of parents, especially mothers, to access family friendly working arrangements.<sup>38</sup> These include part-time work, the need for some flexibility in working hours and family friendly shift arrangements. The cases illustrate the variety of situations in which such requirements arise. They also reflect an ongoing need for flexible workplaces to accommodate pregnant women and parents of young children and a better understanding of the difficulties women and men face in combining work and care if family friendly working arrangements are unavailable. Under the SDA, claims for unlawful discrimination have been made by employees relating to refusals of the particular family friendly working arrangements which they have sought. Similar issues have emerged in some FWA cases.

Under the SDA, employees have brought claims of unlawful discrimination for the refusal of family friendly working arrangements under direct and indirect discrimination provisions. In direct SDA discrimination claims, some employees have claimed that they have been treated less favourably because of family responsibilities or sex<sup>39</sup> when their employer has refused the work arrangements that they need for their caring responsibilities.

In several indirect sex discrimination claims, courts have accepted that an employer who refused part-time work<sup>40</sup> or required full-time hours<sup>41</sup> imposed a condition on the employee which is potentially of discriminatory effect.<sup>42</sup> To evaluate if the condition is indirectly sex discriminatory, it must disadvantage women and be unreasonable in the circumstances. It is well established that women are still predominately the primary carers for children in contemporary Australia. On this basis, it has been held in a number of cases that a full-time work requirement disadvantages women.<sup>43</sup> The Court has then assessed whether the requirement was reasonable in the circumstances.<sup>44</sup>

#### Part-time work

In *Escobar v Rainbow Printing Pty Ltd (No 2)*,<sup>45</sup> an SDA case, Ms Escobar, a payroll accounts clerk, had been working at a small printer business for a couple of years prior to taking parental leave for her second child. She was refused part-time work when she sought to return. The employer's denial of part-time work was said by the Court to be 'likely to disadvantage women because of their disproportionate responsibility for the care of children.'<sup>46</sup> The Court rejected the employer's argument that, as a small business, it could not offer part-time positions and found the effective imposition of a full-time work requirement was unreasonable. The employer had employed someone else to fill her role without discussing her future work role with the employee despite agreeing to do so.<sup>47</sup> The Court found indirect sex discrimination.<sup>48</sup>

In *Mayer v Australian Nuclear Science & Technology Organisation*,<sup>49</sup> also an SDA case, a professional employee, working full-time on a fixed term contract for an Australian Public Service agency, requested to return part-time after her parental leave. The employer turned down this request on the basis that the particular position she filled had to be done on a full-time basis. The Court found that this was unreasonable. On the evidence, the employer could have, 'with a little imagination,' offered Ms Mayer other suitable work on a part-time basis but its attempts to find this for her were 'inadequate.' The Court found indirect sex discrimination.<sup>50</sup>

In the FWA case of *Sagona v R & C Piccoli Investments Pty Ltd*<sup>51</sup> referred to above, the Court found that the employer's refusal of an employee's request (made prior to maternity leave) to work part-time after her leave, constituted adverse action because of the employee's pregnancy and was therefore pregnancy discrimination. It held that '[t]here is insufficient evidence to show that it was not possible for the [employee] to perform her role as a photographer salesperson on a part-time basis.'<sup>52</sup>

### Shift requirements

In the SDA case of *Cincotta v Sunnyhaven Ltd*<sup>53</sup> referred to above, Ms Cincotta had been a permanent full-time worker and an acting supervisor prior to taking parental leave. After parental leave she asked to return initially on reduced hours so as to meet her childcare responsibilities, which her employer refused. He offered her the hours she needed if she resigned and became a casual which she agreed to do. The Court found that a reason for Ms Cincotta accepting casual work was her family responsibilities and that discrimination had occurred.<sup>54</sup>

In *Fair Work Ombudsman v A Dalley Holdings Pty Ltd*,<sup>55</sup> the FWO brought discrimination proceedings under the FWA on behalf of a permanent part-time care assistant at an aged care facility. The employee had taken parental leave from her job, which consisted largely of regular weekly afternoon shifts. On her attempt to return, she was eventually offered two 'sleepover' shifts a fortnight, which she could not accept because of her family responsibilities. The Court held that discrimination on the basis of pregnancy and family or carer's responsibilities had occurred.<sup>56</sup>

### Flexible start hours

In *Maxworthy v Shaw*,<sup>57</sup> a case of sex and disability discrimination, Ms Maxworthy, a sole parent, was required to work increasingly longer hours as a sandwich van driver. Unlike other employees, she was refused the limited amount of flexibility on her starting time during the school term, which she needed as a sole parent.<sup>58</sup> The Court held that this was direct sex discrimination under the SDA due to her caring responsibilities for her children, a characteristic generally imputed to women.<sup>59</sup>

### Caring emergencies

In the FWA case of *Wilkie v National Storage Operations Pty Ltd*<sup>60</sup> referred to above, Ms Wilkie, a manager of a storage facility in a large national company, received a written warning from her employer for leaving work and shutting the depot she managed. She did this to meet the unexpected family emergency of collecting her son from primary school when the usual arrangements fell through.<sup>61</sup> The Court held that issuing the warning amounted to family responsibilities discrimination, as a reason for the employer doing this was her family responsibilities. A related finding of family responsibilities discrimination was found, as Ms Wilkie was transferred to another work location by her employer, partly because of taking this emergency leave. The Court commented:

[I]t is clearly an inherent requirement of a position that an employee attend for work, [but] it could hardly be an inherent requirement of a position that the person not access the annual leave, personal leave and carer's leave to which they are entitled by statute and contract.<sup>62</sup>

### Location

In *Fair Work Ombudsman v Tiger Telco Pty Ltd (in liq)*,<sup>63</sup> the FWA case referred to above, the FWO took enforcement proceedings on behalf of a store manager of a mobile phone company. On her attempt to return to work after parental leave, her employer proposed she transfer to different workplaces (at the same grade) which were much further from her home. She refused on the basis of family responsibilities but did not receive her original position back. The Court found she had been discriminated against on the basis of her pregnancy and/or her family or carer's responsibilities.<sup>64</sup>

## 1.4 Conditions relating to return to work and consultation

Employees have certain rights to consultation during parental leave and a right to return to their job or a suitable alternative after parental leave.<sup>65</sup> In one case where contraventions of both these rights occurred, the Court commented that this represented:

a failure to provide basic and important conditions and entitlements under the Fair Work Act to an employee seeking to return to work from parental leave.<sup>66</sup>

The cases show that, at times, employees are not consulted when appropriate and that some face difficulties returning to their pre-parental leave position or obtaining an appropriate alternative position as a result.

Two recent FWA cases concerned the relevant employees' rights under the NES to information and consultation on any employer decisions affecting their job while they were on parental leave.<sup>67</sup> The cases confirm that consultation must occur before a final decision is made by the employer which affects the job that the employee held before going on parental leave. Similarly, if the employee can show that they were treated less favourably than a colleague/colleagues in terms of being consulted because of pregnancy or parental leave or family responsibilities, this may be a ground for a claim of discrimination under the SDA.<sup>68</sup>

In the FWA case of *Aitken & Vandeven v Virgin Australia Airlines*,<sup>69</sup> Ms Aitken was made redundant while on parental leave from Virgin Airlines, in the context of a significant operational restructure of the business.<sup>70</sup> The Court held that her employer had contravened her consultation and information rights under the NES, as she was not given the chance to discuss the effect of the restructure decision on her pre-parental leave position prior to being made redundant.<sup>71</sup>

Mobile phone company Tiger Telco, prevented a manager of one of their mobile phone shops from returning to her previous job after parental leave. As referred to above, the FWO took court proceedings under the FWA in *Fair Work Ombudsman v Tiger Telco Pty Ltd (in liq)*,<sup>72</sup> on the basis that the employer permanently filled her position with her parental leave cover without any prior consultation with her.<sup>73</sup> The Court found breaches of the employee's NES right to consultation about changes to her pre-parental leave position and her right to return to it after her leave was over.

Both SDA and FWA cases have explored the issue of an employee's right to return to their pre-parental leave position or a suitable alternative, as well as the employer's role in finding such an alternative.<sup>74</sup> An employee's right to return is not complied with if she or he is returned (without consent) to a lower level job. If the previous position no longer exists, the employer should take active steps to find a suitable available alternative.

In the SDA case of *Thomson v Orica Australia Pty Ltd*,<sup>75</sup> Ms Thomson, on returning from parental leave, was not offered her previous position or one of a similar status. The Court found that she was treated less favourably than a comparable employee taking 12 months leave for other reasons.

The Court held that this amounted to less favourable treatment on the basis of her parental leave (at least in part). Even though Ms Thomson's official status, salary and benefits were maintained, her position on her return involved 'duties and responsibilities of significantly reduced importance and status, of a character amounting to a demotion (though not in official status or salary)'.<sup>76</sup> The Court held that direct pregnancy discrimination had occurred on the basis that taking parental leave is a characteristic appertaining generally to pregnant women.<sup>77</sup>

In *Iliff v Sterling Commerce (Australia) Pty Ltd*,<sup>78</sup> an SDA case, Ms Iliff, the marketing manager for a software and solutions company, was not allowed to return after parental leave to her previous position. The Court held that this was not direct sex discrimination under the SDA,<sup>79</sup> as her employer preferred her replacement and a comparable employee would have been treated the same. However, the employer's failure to return her to her pre-parental leave job which still existed, regardless of their reason for doing so, contravened her express right under the FWA to return to her pre-parental leave position.<sup>80</sup> The substantial penalty imposed on the employer for this contravention was awarded to Ms Iliff.

In the FWA case of *Turnbull v Symantec*,<sup>81</sup> Ms Turnbull was a senior manager at an international software company who was made redundant whilst on parental leave. The Court did not find family or carer's responsibilities discrimination,<sup>82</sup> nor a contravention of her right to suitable available alternative employment. However, in making its decision, the Court held that an employer must proactively notify the employee of possible suitable alternatives 'as [these options are] peculiarly within the knowledge of the employer'.<sup>83</sup>

In a FWA case referred to above, *A Dalley Holdings Pty Ltd*,<sup>84</sup> an aged care employer reallocated the regular afternoon shifts of a part-time personal care assistant while she was on parental leave. The employer failed to consult her in breach of the information and discussion rights. They also offered her only sleepover shifts on her attempt to return. In proceedings brought by the FWO, the Court found that the employer had contravened the NES consultation provision<sup>85</sup> and had failed to return her to her pre-parental leave position.<sup>86</sup>



## 1.5 Redundancy situations

Stewart<sup>87</sup> summarises redundancy as occurring where a job is no longer needed in a workplace due to a restructure, due to the cutting of positions resulting from an organisation's financial difficulties, or due to technological innovation. A distinction can be made between situations in which a job disappears and a redundancy is likely to have occurred, for example, as a result of its duties being taken on by others and/or partly done by someone occupying a newly created job, and a situation in which a job remains 'with essentially the same duties or responsibilities... [but] filled by someone else.'<sup>88</sup>

Cases under both the SDA and the FWA suggest that, where sound evidence exists that there is a genuine redundancy<sup>89</sup> situation, courts will not tend to make a finding of pregnancy or parental related discrimination. This is because there is evidence of the business need for the redundancy. However, the case law also illustrates the vulnerability of employees about to go on or returning from parental leave in the redundancy process. For example, their performance review, on which a decision may be based, may be more dated than those of their competitors.

Following a change of strategic direction by Virgin Airways, the two employee applicants in the FWA case of *Aitken & Vandeven v Virgin Australia Airlines*,<sup>90</sup> alleged discrimination under the FWA (one was on parental leave and the other had childcare responsibilities). The evidence was that their skill sets were no longer required and there was no suitable available alternative work for them. The Court decided that sex, pregnancy and family responsibilities were not 'material features' in the redundancy decision.<sup>91</sup>

In the FWA case of *Turnbull v Symantec*,<sup>92</sup> Ms Turnbull's job duties had been redistributed for the duration of her parental leave. A need for cost-cutting arose before her return to work and the employer decided that her position was no longer needed. The decision was held by the Court not to relate to her having taken parental leave given the employer's credible evidence of the business reasons for the redundancy. Thus the Court did not find family responsibilities discrimination.<sup>93</sup>

Another FWA decision, *Schultz v Scanlan & Theodore Pty Ltd*,<sup>94</sup> also concerned the genuine redistribution of the duties of an employee, a pregnant manager in a medium-sized clothing firm, to other employees. The Court found this to be justifiable as solely due to the financial difficulties of the firm and held that it was not pregnancy discrimination.<sup>95</sup>

In *Sheaves v AAPT Ltd*,<sup>96</sup> an indirect pregnancy discrimination case under the SDA,<sup>97</sup> the employer required Ms Sheaves and two other sales managers to be assessed with a view to making one redundant. This requirement disadvantaged Ms Sheaves who had just returned from 12 months parental leave, in part due to her dated performance assessment period.<sup>98</sup> It stated that the employee:

could not be removed from the selection process simply because she had only recently returned from maternity leave. This would place a person in [the employee's] situation in a preferred position over other employees.<sup>99</sup>

However, the Court found no indirect sex discrimination, deciding overall that the redundancy process was reasonable.<sup>100</sup>

The FWA case of *Wolfe v ANZ Banking Group Ltd*<sup>101</sup> was a claim of discriminatory redundancy selection on the basis of family responsibilities. Mr Wolfe, a senior bank employee, alleged that his absence on four months leave to care for his child had contributed to his selection for redundancy.<sup>102</sup> The Court rejected his claim finding that he was 'unfortunately the victim of a restructuring exercise.'<sup>103</sup> Nevertheless, the Court criticised the restructuring exercise for:

lack of transparency, the substantially subjective nature of the selection and the failure to give appropriate weight in the performance assessment process to the Applicant's legitimate absence from work due to family responsibilities.<sup>104</sup>

**Table F.1: Federal case law**

Case name	Citation
<b>Sex Discrimination Act</b>	
<b>FCA</b>	
<i>Commonwealth of Australia v Evans</i>	[2004] FCA 654 (on appeal)
<i>Sterling Commerce (Australia) Pty Ltd v Illiff</i>	[2008] FCA 702 (on appeal)
<i>McDonald v Parnell Laboratories (Aust)</i>	[2007] FCA 1903
<i>Poppy v Service to Youth Council Incorporated</i>	[2014] FCA 656.
<i>Stanley v Service to Youth Council Incorporated</i>	[2014] FCA 643
<i>Thompson v Big Bert Pty Ltd t/as Charles Hotel</i>	[2007] FCA 1978
<i>Thomson v Orica Australia Pty Ltd</i>	[2002] FCA 939
<b>FMCA/FCCA</b>	
<i>Burns v Media Options Group Pty Ltd &amp; Ors</i>	[2013] FCCA 79
<i>Cincotta v Sunnyhaven Limited</i>	[2012] FMCA 110
<i>Dare v Hurley</i>	[2005] FMCA 844
<i>Escobar v Rainbow Printing Pty Ltd (No 2)</i>	[2002] FMCA 122
<i>Evans v National Crime Authority</i>	[2003] FMCA 375
<i>Fenton v Hair &amp; Beauty Gallery Pty Ltd &amp; Anor</i>	[2006] FMCA 3
<i>Gardner v National Netball League</i>	[2001] FMCA 50 and 84
<i>Ho v Regulator Australia Pty Ltd &amp; Anor</i>	[2004] FMCA 62
<i>Howe v Qantas Airways Ltd</i>	(2004) 188 FLR 1
<i>Ilian v ABC</i>	(2006) 236 ALR 168
<i>Illiff v Sterling Commerce (Australia) Pty Ltd</i>	[2007] FMCA 1960
<i>Kelly v TPG Internet Pty Ltd</i>	(2003) 176 FLR 214
<i>Maxworthy v Shaw</i>	[2010] FMCA 1014
<i>Mayer v Australian Nuclear Science &amp; Technology Organisation</i>	[2003] FMCA 209
<i>Piper v Metanoia Kojo Pty Ltd</i>	[2005] FMCA 1051
<i>Rispoli v Merck Sharpe &amp; Dohme &amp; Ors</i>	[2003] FMCA 160
<i>Ryan v Albutt; Ryan v Albutt (No.2) (re costs)</i>	[2004] FMCA 568; [2005] FMCA 95
<i>Sheaves v AAPT Limited</i>	[2006] FMCA 1380
<i>Song v Ainsworth Game Technology Pty Ltd</i>	[2002] FMCA 31

Case name	Citation
<b>Fair Work Act</b>	
<b>Decided cases brought by individual</b>	
<b>FMCA/FCCA</b>	
<i>Aitken v Virgin Australia Airlines and Vandeven v Virgin Australia Airlines; Aitken v Virgin Australia Airlines and Vandeven v Virgin Australia Airlines (No.2)</i> (re penalty and costs)	[2013] FCCA 98; [2013] FCCA 2031
<i>Lai v Symantec (Australia) Pty Ltd</i>	[2013] FCCA 625
<i>Sagona v R &amp; C Piccoli Investments Pty Ltd &amp; Ors</i>	[2014] FCCA 875
<i>Schultz v Scanlan &amp; Theodore Pty Ltd</i>	[2013] FCCA 1096
<i>Turnbull v Symantec (Australia) Pty Ltd</i>	[2013] FCCA 1771
<i>Ucchino v Acorp Pty Limited</i>	[2012] FMCA 9
<i>Wilkie v National Storage Operations Pty Ltd</i>	[2013] FCCA 1056
<i>Wolfe v Australia and New Zealand (ANZ) Banking Group Limited</i>	[2013] FMCA 65
<b>FWO Decided cases</b>	
<b>FCA</b>	
<i>Fair Work Ombudsman v Felix Corporation</i>	Written judgment awaited, <sup>105</sup>
<i>Fair Work Ombudsman v A Dalley Holdings Pty Ltd</i>	[2013] FCA 509
<i>Fair Work Ombudsman v W.K.O. Pty Ltd</i>	[2012] FCA 1129
<i>Fair Work Ombudsman v Tiger Telco Pty Ltd (in liq)</i>	[2012] FCA 479
<i>Fair Work Ombudsman v Wongtas Pty Ltd (No 2)</i>	[2012] FCA 30

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Case name	Citation
<b>FWO Enforceable Undertakings</b>	
Guardian Early Learning Centres (28 August 2013)	<a href="http://www.fairwork.gov.au/ArticleDocuments/2220/Enforceable-Undertaking-Guardian.pdf.aspx?Embed=Y">http://www.fairwork.gov.au/ArticleDocuments/2220/Enforceable-Undertaking-Guardian.pdf.aspx?Embed=Y</a> (viewed 8 June 2014)
Shawna Pty Ltd (2 December 2012)	<a href="http://www.fairwork.gov.au/ArticleDocuments/2220/Redacted-Shawna-EU-English.pdf.aspx?Embed=Y">http://www.fairwork.gov.au/ArticleDocuments/2220/Redacted-Shawna-EU-English.pdf.aspx?Embed=Y</a> (viewed 8 June 2014)
Holtham Family Pty Ltd as Trustee for the Holtham Family Unit Trust T/A The Soup Box (12 July 2012)	<a href="http://www.fairwork.gov.au/ArticleDocuments/2220/The-Soup-Box-Enforceable-Undertaking.pdf.aspx?Embed=Y">http://www.fairwork.gov.au/ArticleDocuments/2220/The-Soup-Box-Enforceable-Undertaking.pdf.aspx?Embed=Y</a> (viewed 8 June 2014)
Sebastion Pty T/A Hair Liaison (26 June 2012)	<a href="http://www.fairwork.gov.au/ArticleDocuments/2220/Sebastion-Pty-Ltd-Undertaking.pdf.aspx?Embed=Y">http://www.fairwork.gov.au/ArticleDocuments/2220/Sebastion-Pty-Ltd-Undertaking.pdf.aspx?Embed=Y</a> (viewed 8 June 2014)
Coles Supermarkets Australia Pty Ltd (15 February 2011)	<a href="http://www.fairwork.gov.au/ArticleDocuments/2220/Enforceable-Undertaking-Coles-Supermarket-Australia-Pty-Ltd.pdf.aspx?Embed=Y">http://www.fairwork.gov.au/ArticleDocuments/2220/Enforceable-Undertaking-Coles-Supermarket-Australia-Pty-Ltd.pdf.aspx?Embed=Y</a> (viewed 8 June 2014)

- 1 A Chapman, *Australian Anti-Discrimination Law*, Work, Care and Family (2012 pp 6-10). At <http://www.law.unimelb.edu.au/files/dmfile/WPNo51FINAL.pdf> (viewed 4 June 2014) provides an analysis of anti-discrimination statutes and case law in the federal, state and territory jurisdictions relating to work and care.
- 2 These cases were identified through searches of Australasian Legal Information Institute (Austlii), legal databases and other legal reference material. At <http://www.austlii.edu.au/> (viewed 21 June 2014).
- 3 Other claims in these cases for example, breach of contract or workplace rights are not examined.
- 4 Of the FCA cases, two were appeals from judgements of the Federal Magistrates Court of Australia (FMCA) (as the FCCA was previously known), one of which left the applicant's position largely unchanged from the FMCA decision (*Sterling Commerce (Australia) Pty Ltd v Iliff* [2008] FCA 702 (appeal *Iliff v Sterling Commerce (Australia) Pty Ltd*, [2007] FMCA 1960)). In the other the applicant's damages were reduced (*Commonwealth v Evans* [2004] FCA 654 (on appeal from *Evans v National Crime Authority*, [2003] FMCA 375)). The other FCA decisions were at first instance (that is, not appeals from other court judgements). Of these, the Court found discrimination in one (*Thomson v Orica Australia Pty Ltd* [2002] FCA 939) and did not find discrimination in the other four (*McDonald v Parnell Laboratories (Aust)* [2007] FCA 1903; *Thompson v Big Bert Pty Ltd t/as Charles Hotel* [2007] FCA 1978; *Stanley v Service to Youth Council Incorporated* [2014] FCA 643; *Poppy v Service to Youth Council Incorporated* [2014] FCA 656).
- 5 In another case, *Aitken & Vandeven v Virgin Australia Airlines* [2013] FCCA 981, the Court awarded a penalty for breach of an NES right (and certain other claims) but did not award a penalty for unlawful adverse action.
- 6 In these cases, the employers all admitted the breaches they had committed.
- 7 Guardian Early Learning Centres Enforceable Undertaking, only records admissions relating to contraventions of the workplace or NES rights of an employee seeking to return to work after parental leave. At <http://www.fairwork.gov.au/ArticleDocuments/2220/Enforceable-Undertaking-Guardian.pdf.aspx?Embed=Y> (viewed 16 May 2014).
- 8 See for example *Kelly v TPG Internet Pty Ltd*, (2003) 176 FLR 214 [56].
- 9 The concept of key themes is drawn from James, G *The legal regulation of pregnancy and parenting in the labour market* (2008).
- 10 See B Gaze, Quality Part-time Work: Can Law Provide a Framework? (2005) 15:3 *Labour and Industry* 89, p 95-96 for a discussion of the role of stereotypes in cases relating to flexible work claims.
- 11 [2012] FMCA 110.
- 12 *Cincotta v Sunnyhaven Ltd* [2012] FMCA 110 [230, 243, 263-264 and 270-272].
- 13 [2014] FCCA 875.
- 14 *Sagona v R & C Piccoli Investments Pty Ltd* [2014] FCCA 875 [29].
- 15 *Sagona v R & C Piccoli Investments Pty Ltd* [2014] FCCA 875 [19, 29].
- 16 *Sagona v R & C Piccoli Investments Pty Ltd* [2014] FCCA 875 [304]. Serious verbal abuse of the employee by the employers was found to have injured her in her employment [109-111 and 330]. The court also commented on the importance society places on protecting 'the capacity for women to continue in employment during their pregnancy and to be able to continue with their career after having a child' [376].
- 17 [2003] FMCA 375.
- 18 The court found the applicant was constructively dismissed, leaving her position because of the pressure placed upon her relating to her use of carer's leave, *Evans v National Crime Authority* [2003] FMCA 375 [106-107]. This finding but not one of direct sex discrimination was upheld on appeal, *Commonwealth v Evans* [2004] FCA 654. In relation to direct sex discrimination, the Federal Court found that there was no evidence showing that a hypothetical male comparator would have been treated less favourably than the applicant had they taken similar amounts of leave and dismissed this aspect of the claim. The court commented 'it is not illegitimate for an employer, all things being equal and provided indirect discrimination is avoided, to favour for re-employment an employee who takes limited leave over an employee who regularly takes a lot of leave, albeit that it is leave to which he or she is entitled' [71].
- 19 *Evans v National Crime Authority* [2003] FMCA 375 [88-89].
- 20 *Fair Work Ombudsman v Wongtas Pty Ltd* (No 2) [2012] FCA 30[13]. See also FWO's summary in its media release. At <http://www.fwo.gov.au/media-centre/media-releases/2012/02/pages/20120202-wongtas-penalty> (viewed 23 June 2014).
- 21 *FWO v Felix Corporation* (awaiting written judgement) from the FWO summary in its media release. At <http://www.fwo.gov.au/Media-centre/Media-Releases/2013/11/Pages/20131108-felix-penalty> (viewed 23 June 2014).
- 22 [2012] FMCA 110.
- 23 *Cincotta v Sunnyhaven Ltd* [2012] FMCA 110 [259].
- 24 *Cincotta v Sunnyhaven Ltd* [2012] FMCA 110 [197, 211 and 270-272].
- 25 [2005] FMCA 844.
- 26 The Court found that the Ms Dare password protected two stationery order forms contrary to company policy and had not complied with the required procedure to inform her employer of sick leave on one occasion. It did not find proven another allegation that she had maliciously deleted company documentation, *Dare v Hurley* [2005] FMCA 844 [99, 102, 108 and 116].
- 27 *Dare v Hurley* [2005] FMCA 844 [116 and 104].
- 28 *Dare v Hurley* [2005] FMCA 844 [116].
- 29 (2006) 236 ALR 168.
- 30 *Iljan v ABC* (2006) 236 ALR 168 [187]. The employee had taken over two years leave as she had had two children. The court stated it did 'not see any reason why a woman should be prejudiced by virtue of the fact that she has been absent due to the birth of two children' [189].
- 31 *Iljan v ABC* (2006) 236 ALR 168 [170].
- 32 [2012] FMCA 9.
- 33 *Ucchino v Acorp* [2012] FMCA 9 [33].
- 34 *Ucchino v Acorp* [2012] FMCA 9 [4, 67].
- 35 [2013] FCCA 1056.
- 36 *Wilkie v National Storage Operations Pty Ltd* [2013] FCCA 1056.
- 37 *Wilkie v National Storage Operations Pty Ltd* [2013] FCCA 1056 [58-62 and 103].
- 38 Academic analysis of these cases has been provided in several articles, including B Smith and J Riley, 'Family-friendly Work Practices and the Law' (2004) 26 *Sydney Law Review* 395; J von Doussa and C Lenehan, 'Barbecued or Burned? Flexibility in work arrangements and the Sex Discrimination Act' (2004) 27 *UNSWLJ* 892; B Gaze, Quality Part-time Work: Can Law Provide a Framework? (2005) 15:3 *Labour and Industry* 89.

39 For example in *Maxworthy v Shaw* [2010] FMCA 1014. In that case, childcare commitments were regarded as a characteristic generally imputed to women [145 and 153].

40 *Escobar v Rainbow Printing Pty Ltd (No 2)* [2002] FMCA 122 (Escobar).

41 *Mayer v Australian Nuclear Science & Technology Organisation*, [2003] FMCA 209 (Mayer).

42 This approach was not followed in the case of Kelly (a case decided after Escobar and Mayer) where a full-time requirement was not considered as a condition but a contractual requirement. In the later case of *Howe v Qantas Airways Ltd* (2004) 188 FLR 1 (Howe), the arguments for the point of view in the earlier decisions were comprehensively restated (obiter). In the FWA case of *Aitken & Vandeven v Virgin Australia Airlines*, the Court found Ms Vandeven's employer terminated the flexible working arrangements which she had used to drop her son at school. The court did not view this as adverse action as the changes reverted Ms Vandeven to her contractual set hours.

43 Escobar, Mayer and Howe, all citing the earlier landmark decision in *Hickie v Hunt & Hunt* (1998) EOC 92-910. There, Commissioner Evatt had found requiring full-time work was likely to disadvantage women. She also stated that she 'infer[red] from general knowledge that women are four times more likely than men to require periods of part-time work at some point during their careers, and in particular a period of part-time work after maternity leave, in order to meet family responsibilities', see Australian Human Rights Commission, *Federal Discrimination Law Online*, 2011, ch 4, pp 31, 34-35. At [https://www.humanrights.gov.au/sites/default/files/content/legal/FDL/2011/4\\_SDA.pdf](https://www.humanrights.gov.au/sites/default/files/content/legal/FDL/2011/4_SDA.pdf) (viewed 1 June 2014).

44 The Commission has summarised propositions on assessing reasonableness under the SDA in *Federal Discrimination Law Online*, 2011. Overall, the Commission suggests that looking at all the circumstances of the particular case is important including the employer's financial or economic circumstances, employer and employee preferences. Employer consideration of alternative arrangements which might work may also be significant in assessing if refusal of a particular request is reasonable. For example, in the claim for indirect carer's responsibilities discrimination under the NSW State legislation (*Anti-Discrimination Act 1977* (NSW)), the Anti-Discrimination Tribunal noted with approval the efforts the employer had made to try to accommodate the applicant's carer's responsibilities (*Gardiner v New South Wales WorkCover Authority* [2003] NSWADT 184 [69]). Upheld on appeal, *Gardiner v New South Wales WorkCover Authority* [2004] NSWADTAP 1. The test is not whether the decision could have been arrived at in a better way. However, even if it is 'logical' it may be unreasonable. Australian Human Rights Commission, *Federal Discrimination Law Online*, 2011, ch 4, pp 36-37. At [https://www.humanrights.gov.au/sites/default/files/content/legal/FDL/2011/4\\_SDA.pdf](https://www.humanrights.gov.au/sites/default/files/content/legal/FDL/2011/4_SDA.pdf) (viewed 1 June 2014).

45 [2002] FMCA 122.

46 *Escobar v Rainbow Printing Pty Ltd (No 2)*, [2002] FMCA 122 [31-32 and 37].

47 *Escobar v Rainbow Printing Pty Ltd (No 2)*, [2002] FMCA 122 [32].

48 This was as an alternative to a finding of direct family responsibilities discrimination, *Escobar v Rainbow Printing Pty Ltd (No 2)* [2002] FMCA 122 [36-37].

49 *Mayer v Australian Nuclear Science & Technology Organisation*, [2003] FMCA 209.

50 *Mayer v Australian Nuclear Science & Technology Organisation*, [2003] FMCA 209 [69,75-76].

51 [2014] FCCA 875.

52 *Sagona v R & C Piccoli Investments Pty Ltd* [2014] FCCA 875 [321, 330].

53 [2012] FMCA 110.

54 *Cincotta v Sunnyhaven Ltd* [2012] FMCA 110 [285, 287-295].

55 [2013] FCA 509.

56 *Fair Work Ombudsman v A Dalley Holdings Pty Ltd* [2013] FCA 509.

57 [2010] FMCA 1014.

58 *Maxworthy v Shaw* [2010] FMCA 1014. Her claim under the *Disability Discrimination Act* (Cth) 1992 (the main claim) and her claim of direct sex discrimination under the SDA both succeeded. The employer did not attend to contest the claim, so the outcome is to some degree less persuasive than a fully contested matter.

59 *Maxworthy v Shaw* [2010] FMCA 1014 [145, 150 and 153]. There was also a finding of direct family responsibilities discrimination due to dismissal on a similar basis of refusing accommodations – these were both found but not expressed to be in the alternative as authorities suggests they should have been. However damages were awarded on the basis of sex/childcare a characteristic generally imputed.

60 [2013] FCCA 1056.

61 *Wilkie v National Storage Operations Pty Ltd* [2013] FCCA 1056 [58-62].

62 *Wilkie v National Storage Operations Pty Ltd* [2013] FCCA 1056 [78, 79 and 103].

63 [2012] FCA 479.

64 *Fair Work Ombudsman v Tiger Telco Pty Ltd (in liq)* [2012] FCA 479

65 *Fair Work Act 2009* (Cth) s 83 and s 84. It is possible for an employee to lose their claim under the SDA provisions but succeed on the same facts with one under the NES, see *Iliff Sterling Commerce (Australia) Pty Ltd* [2007] FMCA 1960.

66 *Fair Work Ombudsman v Tiger Telco Pty Ltd (in liq)* [2012] FCA 479 [26].

67 *Fair Work Act 2009* (Cth) s 83(1).

68 For example, E McCarthy, E Jenkin and A Stewart, *Parental Leave: A User-Friendly Guide* (2012), p 214, suggest this may be the case.

69 [2013] FCCA 981.

70 The FWA pregnancy and family responsibilities discrimination claim failed. It was brought as a breach of workplace rights rather than directly under s.351 *Aitken & Vandeven v Virgin Australia Airlines*, [2013] FCCA 981 [55, 83-86] along with a number of other alleged workplace rights' contraventions relating to pregnancy and parental leave.

71 *Aitken & Vandeven v Virgin Australia Airlines*, [2013] FCCA 981 [264]. The court described the right as one to 'notice of the subject upon which that party's views are being sought before any final decision is made or course of action embarked upon' [262]. The court did envisage however that such a consultation would probably only have taken a week [281 and 284]. A penalty was imposed of \$4950 and compensation of \$500 for hurt and humiliation, see *Aitken & Vandeven v Virgin Australia Airlines (No.2)* [2013] FCCA 2031, [28]; a weeks loss of wages to compensate for the lack of consultation had been awarded in the original judgement. E McCarthy, E Jenkin and A Stewart, *Parental Leave: A User-Friendly Guide* (2012), p 213-214 suggest there must be 'a genuine opportunity to influence the employer's decision.'

72 [2012] FCA 479.

73 *Fair Work Ombudsman v Tiger Telco Pty Ltd (in liq)* [2012] FCA 479. At: <http://www.fairwork.gov.au/media-centre/media-releases/2012/05/pages/20120510-ramadan-penalty.aspx>.

- 74 *Fair Work Act 2009* (Cth) s 84.
- 75 *Thomson v Orica Australia Pty Ltd* [2002] FCA 939.
- 76 *Thomson v Orica Australia Pty Ltd* [2002] FCA 939, [53, 136]. Note that in the FWA case of *Wilkie v National Storage Operations Pty Ltd* [2013] FCCA 1056, the employee's reduction in status and level of responsibility when she was demoted from a manager to an assistant manager was held to be adverse action which the Court found to be due to her family responsibilities [89].
- 77 *Thomson v Orica Australia Pty Ltd* [2002] FCA 939 [164-165]. Allsop J [168-170] also found taking maternity leave is a characteristic generally appertaining to and imputed to women but followed Lockhart J in *Human Rights and Equal Opportunity Commission v Mt Isa Mines Ltd* (1993) 46 FCR 301 as to a finding of pregnancy discrimination operating to exclude a finding of sex discrimination.
- 78 [2007] FMCA 1960, upheld on appeal in *Sterling Commerce (Australia) Pty Ltd v Iliff* [2008] FCA 702.
- 79 *Iliff Sterling Commerce (Australia) Pty Ltd* [2007] FMCA 1960 [133] (though the Court held she had suffered direct sex discrimination on another basis).
- 80 This was the then a workplace right under Schedule 1A of the *Workplace Relations Act 1996* (Cth), and is now contained in the NES.
- 81 [2013] FCCA 1771.
- 82 *Turnbull v Symantec* [2013] FCCA 1771 [45, 47].
- 83 *Turnbull v Symantec* [2013] FCCA 1771 [56]. The court also held that a position is 'available' if the employer has the power to make it so [60] and that the employer must decide if available positions, those with 'comparable status and pay to the pre-parental leave position' are available and if there is more than one, make available the one which is nearest to that position [63].
- 84 *Fair Work Ombudsman v A Dalley Holdings Pty Ltd* [2013] FCA 509.
- 85 See a similar finding in *Fair Work Ombudsman v Tiger Telco Pty Ltd (in liq)* [2012] FCA 479.
- 86 *Fair Work Ombudsman v A Dalley Holdings Pty Ltd* [2013] FCA 509.
- 87 A Stewart, *Stewart's Guide to Employment Law* (4th ed, 2013) [16,25].
- 88 A Stewart, *Stewart's Guide to Employment Law* (4th ed, 2013) [16,25]; note also employer redeployment obligations.
- 89 The FWA defines genuine redundancy as: A person's dismissal was a case of genuine redundancy if: (a) the person's employer no longer required the person's job to be performed by anyone because of changes in the operational requirements of the employer's enterprise; and (b) the employer has complied with any obligation in a modern award or enterprise agreement that applied to the employment to consult about the redundancy. *Fair Work Act 2009* (Cth), s 389.
- 90 [2013] FCCA 981.
- 91 *Aitken & Vandeven v Virgin Australia Airlines*, [2013] FCCA 981 [86]. The case was principally about breaches of workplace rights relating to pregnancy and family responsibilities.
- 92 [2013] FCCA 1771
- 93 *Turnbull v Symantec* [2013] FCCA 1771 [2, 45, 478].
- 94 [2013] FCCA 1096.
- 95 *Schultz v Scanlan & Theodore Pty Ltd* [2013] FCCA 1096 [159].
- 96 *Sheaves v AAPT Ltd* [2006] FMCA 1380.
- 97 The court also found no direct pregnancy discrimination in relation to that claim.
- 98 *Sheaves v AAPT Ltd* [2006] FMCA 1380 [89].
- 99 *Sheaves v AAPT Ltd* [2006] FMCA 1380 [102].
- 100 *Sheaves v AAPT Ltd* [2006] FMCA 1380 [108].
- 101 [2013] FMCA 65.
- 102 *Wolfe v ANZ Banking Group Ltd* [2013] FMCA 65 [33, 35].
- 103 *Wolfe v ANZ Banking Group Ltd* [2013] FMCA 65 [122].
- 104 *Wolfe v ANZ Banking Group Ltd* [2013] FMCA 65 [122].
- 105 See Fair Work Ombudsman Media Release, 'Record penalties imposed in pregnancy discrimination matter', (8 November 2013). At <http://www.fwo.gov.au/Media-centre/Media-Releases/2013/11/Pages/20131108-felix-penalty> (viewed 14 July 2014).



# Appendix G

## Further analysis on the implementation of the 2008 Senate Inquiry Recommendations on the *Sex Discrimination Act 1984* (Cth)

### 1.1 Carer discrimination

The SDA covers carer responsibilities implicitly by reference to family responsibilities. However, it does not provide for express coverage of carers who are not immediate family members.

The *Disability Discrimination Act 1992* (Cth) provides protection against discrimination in relation to a person who has an associate with a disability.<sup>1</sup> The FWA<sup>2</sup> expressly prohibits adverse action in relation to family and carer responsibilities. Selected state and territory discrimination laws also prohibit discrimination on the grounds of family and carer responsibilities.<sup>3</sup>

The National Review supports amending the SDA to extend the ground of family responsibilities to include caring responsibilities.

### 1.2 Comparator

In direct discrimination cases under the SDA the treatment must be *less* favourable than that which was or would be afforded to a 'comparator' – namely, an employee without the protected attribute in the same or similar circumstances. For example, in relation to family responsibilities discrimination, an employer discriminates against an employee on the ground of family responsibilities if the employer treats that employee less favourably than they treat, or would treat, a person without family responsibilities, in the same or similar circumstances.

Often actual comparators are unavailable and a Court must therefore imagine what a 'hypothetical' comparator would look like, and how they would have been treated. In pregnancy and family responsibilities cases, a comparator must include characteristics such as proposed leave taking and/or a right to return to work, or an expectation of returning,<sup>4</sup> but omit the fact of pregnancy or taking of parental leave as these are the alleged reason for the discrimination.<sup>5</sup>

In the SDA case of *Thomson v Orica Australia Pty Ltd*,<sup>6</sup> Ms Thomson, on returning from parental leave, was not offered her previous position or one of a similar status. The Court decided the appropriate comparator was with someone of similar status and experience as Ms Thomson taking the same amount of leave (but for other reasons not related to maternity) and with a similar right to return.<sup>7</sup> The Court found that she was treated less favourably than this comparator would have been as the comparator would have been treated in accordance with any relevant return to work policy which Ms Thomson had not been.<sup>8</sup>

In the SDA case of *Iliff Sterling Commerce (Australia) Pty Ltd*,<sup>9</sup> Ms Iliff was not allowed to return after her parental leave though her job continued to exist. To consider if she had been treated less favourably, the Court described her hypothetical comparator as someone who took similar unpaid leave with the right to return at the end of it.<sup>10</sup> The Court concluded that this comparator would have been treated no better than Ms Iliff as the decision was not based on maternity leave but on a preference to employ the maternity leave replacement in that job. The Court held that discrimination was therefore not established.<sup>11</sup> The Federal Court upheld this decision on appeal. It said 'the company's poor conduct was driven by (and continues to be driven by) its own commercial interests'.<sup>12</sup>

In the SDA case of *Burns v Media Options Group Pty Ltd*<sup>13</sup> the Court accepted as a comparator the employee himself. That is, a comparison was made between the employee's treatment prior to taking on the care of his seriously ill partner to the (very much worse) treatment he received after that.<sup>14</sup> This approach may assist some SDA applicants if a suitable comparator is not available.

Using a comparator may result in unrealistic and strained evaluations. As the Commonwealth Attorney-General's Department has noted:

Cases regularly turn on a particular judge's view as to what the material circumstances were, and how the discriminator might have treated a hypothetical person without the protected attribute in those circumstances. Results are unpredictable and have created significant uncertainty.<sup>15</sup>

The FWA provisions on adverse action because of pregnancy, sex and family or carer's responsibilities do not require a comparator.<sup>16</sup> Removing the comparator element from the SDA would ensure a uniform approach across the federal jurisdiction.<sup>17</sup>

The National Review supports the recommendation of the 2008 *Senate Inquiry on the Effectiveness of the Sex Discrimination Act 1984* (Cth) in *eliminating discrimination and promoting gender equality* (2008 Senate Inquiry), to remove the requirement for a comparator and replace this with a test of unfavourable treatment similar to that in paragraph 8(1)(a) of the *Discrimination Act 1991* (ACT).<sup>18</sup>

### 1.3 Role of the Australian Human Rights Commission

The National Review received several submissions from community organisations suggesting that the current complaints-based model under federal anti-discrimination law creates impediments to justice for individuals experiencing pregnancy/return to work discrimination, as well as creating impediments to achieving systemic change.

Some stakeholder submissions suggested the Commission be allowed to initiate complaints and to commence legal action in the FMCA or the FCA for a breach of the SDA. The submissions suggested such investigations and actions are akin to those taken by the Australian Competition and Consumer Commission and work health and safety inspectors for public health matters. Similarly the *Equal Opportunity Act 2010* (Vic) empowers its Commission to investigate issues of discrimination without an individual complaint, to seek enforceable undertakings and apply to the Victorian Civil and Administrative Tribunal to enforce undertakings. The adverse action provisions of the FWA<sup>19</sup> can also be enforced through investigations and enforcement actions undertaken by the FWO.

Several stakeholders' submissions suggested a range of other amendments to the Commission's and the Sex Discrimination Commissioner's powers relating to: publishing enforceable standards, seeking penalties for breaches of the SDA (mirroring those available under the FWA), compelling respondents to attend conciliation conferences and registering agreements so that they become enforceable orders. In addition, stakeholders' submissions suggested that provisions be made for:

- the complainant to be able to commence proceedings in court for an injunction, without having to first make a complaint to the Commission.
- organisations to be able to bring complaints on behalf of complainants to the Commission, and the FCA and the FCCA.
- The 2008 Senate Inquiry recommended:
  - giving the Sex Discrimination Commissioner the power to investigate alleged breaches of the SDA, without requiring an individual complaint
  - giving the Commission the power to commence legal action in the FMCA or the FCA for a breach of the SDA
  - expanding the powers of the Commission to include the promulgation of legally binding standards under the SDA, equivalent to the powers exercised by the Minister under section 31 of the DDA.<sup>20</sup>

The National Review supports consideration of implementing outstanding recommendations from the 2008 Senate Inquiry including those related to the role of the Commission.

- 1 *Disability Discrimination Act 1992* (Cth), s 7.
- 2 *Fair Work Act 2009* (Cth), s 351.
- 3 Carer responsibilities are recognised as a ground of discrimination in New South Wales, Victoria, the Australian Capital Territory and South Australia: *Equal Opportunity Act 2010* (Vic); *Anti-Discrimination Act 1977* (NSW); *Equal Opportunity Act 1984* (SA); *Discrimination Act 1991* (ACT).
- 4 *Thomson v Orica Australia Pty Ltd* [2002] FCA 939. This approach has also been required by the High Court in the DDA case of *Purvis v New South Wales (Department of Education & Training)* (2003) 217 CLR 92.
- 5 Commentators have pointed out that using a manifestation of pregnancy and maternity in constructing the comparator imports into the comparison a factor which may be a reason for the unfavourable treatment, see for example B Smith and J Riley, 'Family-friendly Work Practices and Of the Law' (2004) 26 *Sydney Law Review* 395, p 407.
- 6 *Thomson v Orica Australia Pty Ltd* [2002] FCA 939.
- 7 *Thomson v Orica Australia Pty Ltd* [2002] FCA 939 [121].
- 8 *Thomson v Orica Australia Pty Ltd* [2002] FCA 939 [138]. Followed in *Dare v Hurley* [2005] FMCA 844 and *Rispoli v Merck Sharpe & Dohme (Australia) Pty Ltd* [2003] FMCA 160. In *Song v Ainsworth Game Technology Pty Ltd* [2002] FMCA 31 there was evidence of practices affording flexibility to similar workers to the applicant from which she did not benefit. In *Iljan v ABC* (2006) 236 ALR 168 the Court found that it was the employer's 'usual practice' to return employees to their previous duties after extended leave [182-185].
- 9 *Iliff Sterling Commerce (Australia) Pty Ltd* [2007] FMCA 1960.
- 10 *Iliff Sterling Commerce (Australia) Pty Ltd* [2007] FMCA 1960 [122].
- 11 *Iliff Sterling Commerce (Australia) Pty Ltd* [2007] FMCA 1960 [133]. The Court said 'the company's poor conduct [towards Ms Iliff] was driven by (and continues to be driven by) its own commercial interests,' in preferring the employee's replacement, noting there was no evidence the employer had a 'negative attitude' to maternity leave.
- 12 *Sterling Commerce (Australia) Pty Ltd v Iliff* [2008] FCA 702 [45-46].
- 13 *Burns v Media Options Group Pty Ltd* [2013] FMCA 79.
- 14 The Federal Court followed the *Disability Discrimination Act 1992* (Cth) decision in *Varas v Fairfield City Council* [2009] FCA 689 [81]. It decided 'an individual can be their own comparator...provided that the subjective features which surround [their] their treatment are put to one side'. Cited in *Burns v Media Options Group Pty Ltd & Ors* [2013] FMCA 79 [1728].
- 15 Attorney-General's Department, *Consolidation of Commonwealth Anti-Discrimination Laws: Discussion Paper* (2011), p 10. At <http://www.ag.gov.au/Consultations/Documents/ConsolidationofCommonwealthanti-discriminationlaws/Consolidation%20of%20Commonwealth%20Anti-Discrimination%20Laws.pdf> (viewed 4 June 2014).
- 16 Note that adverse action where the employer discriminates between the employee and other employees can contain a comparator element, *Fair Work Act 2009* (Cth), s 342.
- 17 It would also align the SDA with some state jurisdictions including Victoria and the ACT, as well as many overseas jurisdictions, such as Canada (see B Smith 'Fair and Equal in the World of Work: Two Significant Federal Developments in Australian Discrimination Law' (2010) *Australian Journal of Labour Law* 199; all European Union jurisdictions in relation to pregnancy and early maternity, see A Masselot, E Caracciolo Di Torrella and S Burri, *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood: The application of EU and national law in practice in 33 countries, Report for the European Commission Directorate-General for Justice* (2012). At [http://ec.europa.eu/justice/gender-equality/files/your\\_rights/discrimination\\_pregnancy\\_maternity\\_parenthood\\_final\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/your_rights/discrimination_pregnancy_maternity_parenthood_final_en.pdf) (viewed 1 June 2014). The Commission previously recommended the removal of the comparator element in its submission to the 2008 Senate Inquiry. Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Affairs Committee on the Inquiry into the effectiveness of the Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality* (2008). At <http://www.humanrights.gov.au/inquiry-effectiveness-sex-discrimination-act-1984-cth-eliminating-discrimination-and-promoting> (viewed 28 June 2014).
- 18 Senate Standing Committee on Legal and Constitutional Affairs, *Report on the Effectiveness of the Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality* (2008), p xiii. At [http://www.aph.gov.au/binaries/senate/committee/legcon\\_ctte/sex\\_discrim/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/legcon_ctte/sex_discrim/report/report.pdf) (viewed 28 June 2014).
- 19 *Fair Work Act 2009* (Cth) s 351.
- 20 Senate Standing Committee on Legal and Constitutional Affairs, *Report on the Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* (2008), recommendations 37-39. At [http://www.aph.gov.au/binaries/senate/committee/legcon\\_ctte/sex\\_discrim/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/legcon_ctte/sex_discrim/report/report.pdf) (viewed 28 June 2014).



## Further Information

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## Make a complaint

The *Sex Discrimination Act 1984* (Cth) (the SDA) makes it against the law to treat a person unfairly because of their sex, family responsibilities or because they are pregnant. The SDA can also provide some protections to people wanting to return to work after parental leave. If you would like more information about what might be covered by the SDA or you would like to make a complaint to the Australian Human Rights Commission, you can contact our National Information Service on:

**Phone:** 1300 656 419 or 02 9284 9888  
**Email:** [infoservice@humanrights.gov.au](mailto:infoservice@humanrights.gov.au)  
**Fax:** 02 9284 9611  
**TTY:** 1800 620 241 (toll free)  
**NRS:** 133 677

If you need an interpreter you can call **131 450** and ask to be connected to the Australian Human Rights Commission.

To make a complaint online [click here](#).

More information is also available at the [Complaints Section webpage](#).

