



Australian
Human Rights
Commission

Supporting Working Parents:

PREGNANCY AND RETURN
TO WORK NATIONAL REVIEW
– COMMUNITY GUIDE 2014



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Contact details: For further information about the Australian Human Rights Commission, please visit www.humanrights.gov.au or email communications@humanrights.gov.au. You can also write to: Communications Team, Australian Human Rights Commission, GPO Box 5218, Sydney NSW 2001

Overview

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 (from this point on is referred to as ‘pregnancy/return to work discrimination’). 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.¹

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 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.

Both the quantitative and qualitative data 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 has a tangible impact on women’s workforce participation’

In addition to the negative impacts of discrimination on individual women and men, the National Review found that discrimination has a tangible impact on women’s workforce participation. The National Prevalence Survey revealed 32% of all mothers who were discriminated against during pregnancy, parental leave or on return to work went to look for another job or resigned. Such discrimination, particularly where it results in job loss or the withdrawal from the workforce, can have significant long-term effects.

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.² 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.

‘It is up to all of us...to play a role in addressing such discrimination and preventing its continuation’

‘Discrimination places an economic impost on employers, industries and individual organisations and on the Australian economy’

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.

Methodology

The findings and recommendations of the National Review are based on an independent assessment of the prevalence, nature and consequences of pregnancy/return to work discrimination. This assessment included a detailed examination and analysis of both qualitative and quantitative research, as required by the National Review Terms of Reference.

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 included:

- 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

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,³ it is not representative of all working fathers who have had a child.

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 experience of individuals and organisations working on and with these issues.

Group consultations

Through over 50 face-to-face group consultations the National Review consulted with over 430 individuals including:

- 85 individuals affected by discrimination
- 180 representatives from more than 150 community organisations, including community legal centres, working women's centres, unions, health organisations and academics⁴
- 170 employers and business and industry peak bodies, including those from a range of business sizes, sectors and industries.

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

Submissions

The National Review received a total of 447 online submissions including:

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

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

A National Roundtable was convened 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.

Research

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

- 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.

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



Results of the National Prevalence Survey

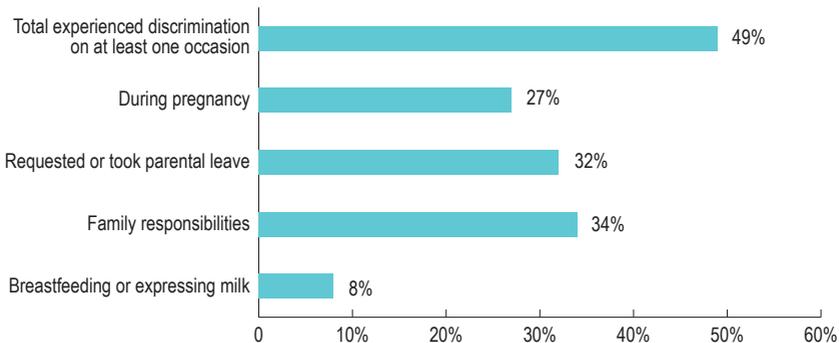
The National Prevalence Survey provides baseline data on the extent, nature and consequences of pregnancy/return to work discrimination.

Key findings of the Mothers Survey

Prevalence of discrimination

Discrimination in the workplace against mothers is pervasive. One in two (49%) mothers reported experiencing discrimination at some point during pregnancy, parental leave or on return to work.

Figure 1: Prevalence of discrimination in the workplace during pregnancy, parental leave and return to work⁵



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).

Types of discrimination

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

One in five (18%) mothers indicated that they were made redundant/restructured/dismissed or that their contract was not renewed because of their pregnancy, their request for or taking of parental leave or because of their family responsibilities, breastfeeding/expressing on return to work.

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 reported a negative impact as a result of that discrimination. Two thirds (72%) reported that the discrimination impacted on their mental health. Two in five (42%) reported that the discrimination had a financial impact on them.

Discrimination also has a negative impact on women's engagement in the workforce and their attachment to their workplace. Nearly a third of mothers (32%) who experienced discrimination at some point went to look for another job⁶ or resigned.⁷ Mothers who experienced discrimination during pregnancy were also less likely to return to their job or return to the workforce.

Response to discrimination

91% per cent of mothers who experience discrimination do not make a formal complaint (either within their organisation or to a government agency). There were a range of reasons for this, the most common being that they perceived that the discrimination was not serious enough, it was too hard, stressful or embarrassing to take action, or they felt that they would not be believed or nothing would change.

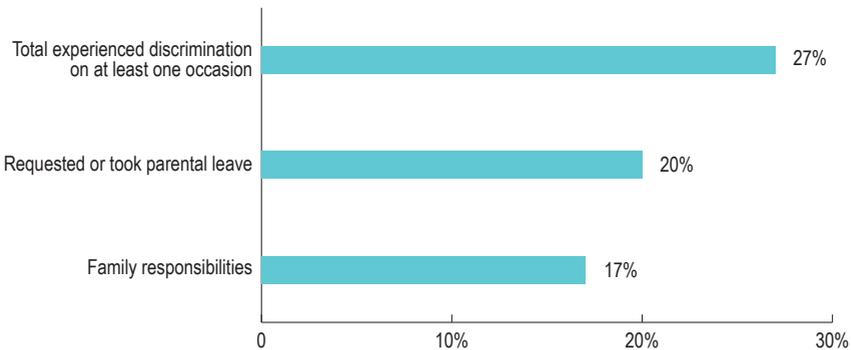
Key findings of the Fathers and Partners Survey

Unlike the Mothers Survey, the results of the Fathers and Partners Survey does not establish national prevalence rates of discrimination for fathers and partners. 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.

Prevalence of discrimination

Despite taking very short periods of parental leave, fathers and partners⁸ face discrimination. Over a quarter (27%) of survey respondents reported experiencing discrimination when requesting or taking parental leave or when they returned to work.

Figure 2: Prevalence of discrimination in the workplace when requesting or during parental leave and return to work⁹



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

Types of discrimination, the impacts and the responses to discrimination

Fathers and partners experienced 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.

Discrimination has a significant negative impact on fathers and partners' mental health, family, finances and career and job opportunities. Three quarters (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. Over a third (37%) said that this had a negative financial impact on them.

A substantial proportion (33%) of fathers and partners who reported experiencing discrimination went to look for another job or resigned.

95% of fathers and partners who experience discrimination do not make a formal complaint (either within their organisation or to a government agency).



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

The types of discrimination experienced by women at work during pregnancy/return to work and by men during parental leave/return to work include:

- » negative attitudes towards pregnant women and mothers and fathers

I was told I was both a bad mother and a bad employee for working while having a young family.¹⁰

One of the other men in the office had started calling me 'placenta brain' when I was pregnant.¹¹

- » health and safety issues for pregnant women

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.¹²

- » recruitment bias against working parents

[The person in charge of recruiting] 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.¹³

- » unexpected changes to salary, conditions and duties upon announcing pregnancy, while on parental leave and on return to work

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.¹⁴

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.¹⁵

- » being refused leave for the purpose of caring responsibilities

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.¹⁶

- » lack of communication with employees on parental leave

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.¹⁷

- » missing out on career advancement opportunities

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'.¹⁸

- » being denied flexible arrangements on return to work following parental leave

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.¹⁹

- » inadequate support in workplaces for breastfeeding mothers

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...They did not offer me any room in the building to express or feed, although there were places available.²⁰

- » job loss

I have been made redundant twice – both times it was at different organisations 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.²¹

Discrimination can have a wide range of negative short and long term consequences for affected individuals, their families, and workplaces. These include mental and physical health impacts, including on the successful continuation of breastfeeding, financial impacts, impacts on career progression, impacts on family, and systemic impacts on workplaces and the Australian workforce.

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.²²

It was too difficult to continue breastfeeding after I went back to work so I stopped.²³

My workplace rejected my application to work [under] flexible work arrangements [and] rejected my application to continue in a part time manner...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.²⁴

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.²⁵

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, well below my skills and qualifications reporting to graduates even though I had been working in the company for more than 7 years before going on maternity leave. My career has not progressed since I got pregnant.²⁶

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.

Working parents also faced other obstacles and structural constraints which either led to discrimination or negatively impacted on their experiences within workplaces while pregnant, on parental leave and on return to work. Such structural barriers and other causal and contributing factors include limited availability, affordability and accessibility of quality early childhood education and care services, underlying stereotypes and assumptions about childbearing, parenting and the roles of women and men in the home and in the workplace, lack of awareness and understanding of rights and entitlements, and gaps between workplace policies and practice.

Working full-time would not be worth it when I factor in childcare costs.²⁷

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'.²⁸

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.²⁹

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.³⁰

Experiences of employers in managing pregnancy, parental leave and return to work after parental leave

Through the consultations and online written submissions 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, parental leave and 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
- managing flexible work arrangements effectively, especially on return to work after parental leave
- accommodating the specific needs of pregnant employees and employees returning from parental leave and ensuring a safe working environment (particularly an issue in highly physical industries or roles)
- identifying, challenging and removing deeply held harmful stereotypes, negative attitudes and behaviours among managers, line managers and other staff about pregnant employees, parents returning to work after parental leave and flexible work.



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? 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?³¹

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.³²

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.³³

[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.³⁴

Some managers can manage [pregnancy, parental leave and return to work] well, some don't.³⁵

However, many employers, small and large, are implementing leading practices to support and retain pregnant employees and working parents.

Critical to the success of these practices and strategies is establishing the foundations for success, including, making sure the right policies and practices are in place and they are effectively communicated throughout the organisation. It requires leaders within the organisation to be vocal and committed to supporting pregnant employees and working parents within the organisation. Table 1 outlines the steps necessary for laying a successful foundation and includes examples of leading strategies.

Success also 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. Table 2 below outlines the practical steps for effective implementation.

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.

What	How	Examples
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.
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.

Table 2: Implementing policies and managing the process comprehensively and efficiently³⁶

	1	2	3	4	5
Phase		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	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'



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; and
- 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.**

Useful resources for further information

- 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>
- Workplace Gender Equality Agency:
https://www.wgea.gov.au/sites/default/files/2013-05-10_branded_ppl.pdf
- ASX Corporate Governance Council:
<http://www.asx.com.au/regulation/corporate-governance-council.htm>
- Australian Industry Group Bizassist Infoline: 1300 78 38 44
- Australian Chamber of Commerce and Industry
(and state and territory Chambers of Commerce):
<http://www.acci.asn.au/>
- Australian Council of Trade Unions:
<http://www.actu.org.au/HelpDesk/default.aspx>
- Working Women's Centres:
<http://www.wwc.org.au/>

- 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.
- 3 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).
- 4 Also included under community organisations are state and territory anti-discrimination and equal opportunity authorities.
- 5 Survey questions: Q8, Q10/A/B, Q20, Q22/A/B, Q47, Q49, Q50/A/B. 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).
- 6 13% of mothers who were discriminated against at some point went to look for another job.
- 7 19% of mothers who were discriminated against at some point resigned.
- 8 The survey provides the 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 'Dad and Partner Pay' (DaPP) scheme for leave take to care for their child. As noted above, 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. 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.
- 9 Survey questions: Q13, Q14, Q15, Q40, Q41, Q42. Base: During parental leave: all respondents (n=1001); family responsibilities: returned to work as an employee (n=977).
- 10 Individual submission no. 114.
- 11 Individual submission no. 133.
- 12 Community organisation submission no. 14 (Victoria Legal Aid).
- 13 Individual submission no. 176.
- 14 Individual submission no. 38.
- 15 Individual submission no. 30.
- 16 Consultation 4A (Affected women and men).
- 17 Consultation 2B (Affected women).
- 18 Individual submission no. 316.
- 19 Individual submission no. 142.
- 20 Individual submission no. 264.
- 21 Individual submission no. 181.
- 22 Consultation 4A (Affected women and men).
- 23 Individual submission no. 265.
- 24 Individual submission no. 42.
- 25 Individual submission no. 299.
- 26 Individual submission no. 294.
- 27 Individual submission no. 254.
- 28 Individual submission no. 281.
- 29 Individual submission no. 79.
- 30 Individual submission no. 73.
- 31 Consultation 8E (Employers).
- 32 Employer questionnaire no. 20.
- 33 Employer questionnaire no. 30.
- 34 Employer submission no. 1 (Master Electricians Australia).
- 35 Consultation 5B (Employers).
- 36 This chart has been drawn and adapted from Male Champions of Change, *Accelerating the advancement of women in leadership: Listening, Learning, Leading* (2013), p 35. At <https://www.humanrights.gov.au/publications/accelerating-advancement-women-leadership-listening-learning-leading> (viewed 14 June 2014).

Further Information

Australian Human Rights Commission

Level 3, 175 Pitt Street
SYDNEY NSW 2000

GPO Box 5218
SYDNEY NSW 2001
Telephone: (02) 9284 9600

General enquiries and publications: 1300 369 711

TTY: 1800 620 241

Fax: (02) 9284 9611

Website: www.humanrights.gov.au

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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

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](#).

