



# Supporting Working Parents: Pregnancy and Return to Work National Review

Sex Discrimination Commissioner  
Australian Human Rights Commission  
Level 3, 175 Pitt Street  
Sydney NSW 2000  
Australia

Annarella Hardiman  
Helen Makregiorgos  
Health Promotion Managers  
Women's Health West  
317-319 Barkly Street  
Footscray 3011  
Telephone: (03) 9689 9588  
Fax: (03) 9689 3861  
Email: [hpmanager@whwest.org.au](mailto:hpmanager@whwest.org.au)

## Introduction

Since 1988, Women’s Health West (WHW) has actively improved the health, safety and wellbeing of women in the western region of Melbourne through a combination of direct service delivery, research, health promotion, community development, capacity building and group work. Since 1994, WHW has delivered family violence services for women and children ranging from crisis outreach, court support, housing establishment and crisis accommodation options, to counselling and group work programs. WHW has been an active and strong supporter of family violence reform at a regional and state wide level, integrating and coordinating family violence services in our region, and ensuring the integration of those services with a range of related sectors, including the housing sector.

WHW also have a health promotion, research and development arm, which offers a range of programs and projects, targeted to prevention and early intervention strategies to improve outcomes for women’s health, safety and wellbeing. We are leaders in the development of regional strategies, to further our work, seeing partnership within and outside the health sectors as crucial for bringing about effective and sustainable health outcomes for women and children.

These two main arms of the service place WHW in a unique position to offer a continuum of responses from prevention to early intervention to crisis response. WHW’s strategic plan sets out our approach to partnerships and our client-centred approach to service delivery and outcomes that support women to take control over their decisions and their lives.

## Response to the terms of reference

WHW welcomes the opportunity to provide evidence and recommendations for reform to the National Review into discrimination associated with pregnancy, parental leave and returning to work, and we commend the Australian Human Rights Commission for initiating the review. Discrimination undermines healthy workplace culture and limits the options available to Australian women and men. In Australia, persistent gender stereotypes associated with women and men’s roles in the family and at work, the higher prevalence of women being the primary carers of infants and children and the visibility and physical demands of pregnancy, result in clear gendered differences in the prevalence, nature and consequences of discrimination related to pregnancy and caring responsibilities. This submission will explore some of these differences and recommend strategies to ensure equitable outcomes for all.

## The prevalence, nature and consequences of discrimination related to pregnancy or caring responsibilities

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| <ol style="list-style-type: none"><li>1. Please provide any data on the prevalence, nature and consequences of discrimination experienced by women when they became pregnant at work and/or men and women who have returned to work after taking parental leave with the National Review</li><li>2. Please provide any case studies of women and men’s experiences of discrimination with the National Review</li><li>3. Has your organisation observed any trends in relation to discrimination experienced by women when they become pregnant at work and/or men and women who have returned to work after taking parental leave?</li></ol> |
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WHW is committed to improving the conditions in which women live, work and play in Melbourne’s western region. Our approach is informed by the recognition that good health is determined by social, economic and political structures and systems, which include economic security and freedom from violence, harassment and discrimination. Given the disproportionate impact on the health, wellbeing and choices of women, analysis and action on workplace discrimination related to pregnancy and caring responsibilities cannot be separated from the broader social context of gender inequity.

According to current data from the Australian Bureau of Statistics (ABS) (2011) 67,300 women (18.8 per cent) reported experiences of discrimination in the workplace while pregnant. Of the women who stated that the discrimination was directly associated with their pregnancy, the following types of discrimination were most commonly reported:

- 34 per cent 'missed out on an opportunity for promotion'
- 32 per cent 'missed out on training or development opportunities'
- 28 per cent 'received inappropriate or negative comments from their manager or supervisor'
- 23 per cent 'received a less favourable account of their work performance'
- 15 per cent 'had their job tasks, roles and/or responsibilities changed without consultation' (ABS, 2011)

It is also important to note that 12 per cent of women with children under two years old permanently left their job held during their pregnancy due to dismissal, feelings of pressure to resign, or unsuitable employment conditions (ABS, 2011). In total 29.2 per cent of women left their workplace permanently after giving birth (ABS, 2011).

This data is consistent with Australian and international studies on what is often termed the 'motherhood penalty', which is discrimination against pregnant women and women with young children in recruitment, promotion and salary allocation (Fuegen et al, 2004; Correll et al, 2007; Masser et al, 2007; Bernard et al, 2008). In their research Fuegen and colleagues (2004) sought to demonstrate the impact of gender stereotypes and parental status on employment decisions, by asking participants to evaluate job applicants who were either male or female and either single or married with two children. In their results on the likelihood of promotion, scores for male applicants remains the same regardless of parental status, but female applicants with children were significantly less likely to be recommended for promotion than those without children (Fuegen et al, 2004).

Using a comparable research format, Correll and colleagues (2007) found that women with children were only recommended for hire in 46.8 per cent of cases, compared to 73.4 per cent for men with children. The recommended starting salary for women was also \$13,000 lower (Correll et al, 2007). A similar Australian study indicated a bias in the recommendations for hiring and salary of pregnant women, compared to non-pregnant women. For example, results showed that the average salary recommendation for a three month secondment position as an editor was \$200 less for a pregnant applicant than the current wage and \$40 higher for non pregnant women (Masser et al, 2007).

These studies indicate the importance of recruitment as an ongoing site of investigation. Given the rates of pregnancy related discrimination in the workplace, it is clear that discrimination related to pregnancy and childcare responsibilities will also influence recruitment practices. However, due to limited transparency and accountability in hiring and salary negotiation processes it is far less likely that bias in this area will be perceived or redressed. It is therefore critical that we improve our processes for gathering data in this area.

These studies also indicate how deeply entrenched cultural norms relating to women's role in the workplace and the impact of their caring responsibilities continue to impact on their recruitment prospects, pay and employment opportunities. Although education is being provided to public and community sectors regarding human rights and workplace legislative requirements, such training rarely takes a whole of organisation approach and hence does not create lasting change to long standing discriminatory practices and cultures. There needs to be much more work done by the relevant bodies in Victoria to work with organisations to address this form of discrimination by changing culture and embedding practices that promote and uphold employee's human rights.

This ongoing gender bias in employment practice, particularly in recruitment and promotion, contributes to the underrepresentation of women in leadership and management positions across all sectors. Data gathered in the 2012 Australian Census of Women in Leadership shows consistently low levels of female representation in the executive management teams and boards of ASX 500/200 listed companies (see figure one and two).

**Figure one: Summary data ASX 500**

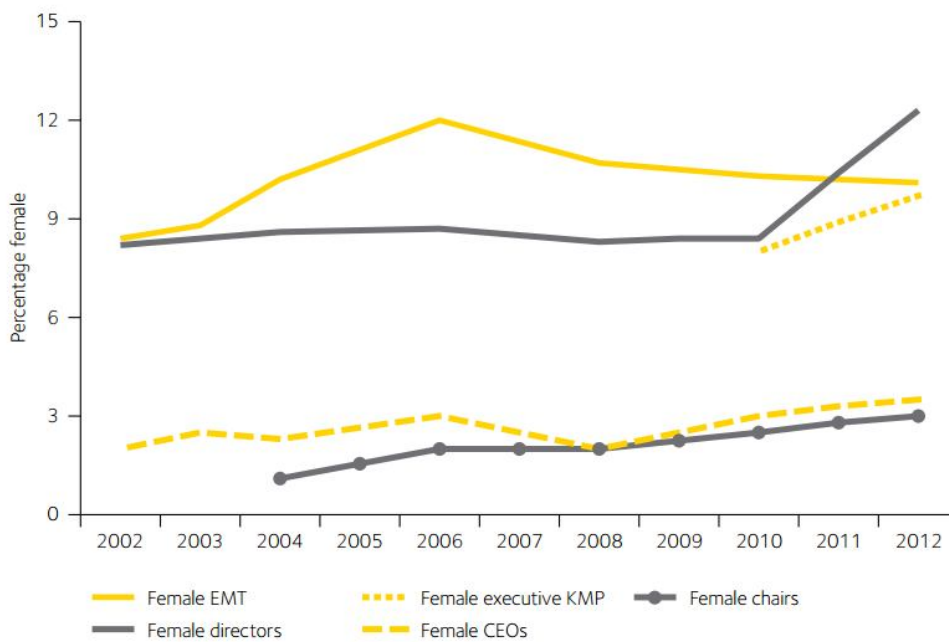
| Gender data        | Number of females | Total number | % Females |
|--------------------|-------------------|--------------|-----------|
| Chairs             | 13                | 500          | 2.6%      |
| CEOs               | 12                | 502          | 2.4%      |
| Directors          | 292               | 3175         | 9.2%      |
| Line executive KMP | 141               | 2289         | 6.2%      |
| Support KMP        | 119               | 530          | 22.5%     |
| Executive KMP      | 260               | 2819         | 9.2%      |

| Company data directors:                     | Female directors | Total directors | % Females | Number of companies | % Total companies |
|---------------------------------------------|------------------|-----------------|-----------|---------------------|-------------------|
| Companies with two or more female directors | 136              | 527             | 25.8%     | 63                  | 12.6%             |
| Companies with at least one female director | 292              | 1592            | 18.3%     | 219                 | 43.8%             |
| Companies with one female director          | 156              | 1065            | 14.6%     | 156                 | 31.2%             |
| Companies without a female director         | 0                | 1583            | 0.0%      | 281                 | 56.2%             |
| Companies with 25% or more female directors | 105              | 351             | 29.9%     | 51                  | 10.2%             |
| All Companies                               | 292              | 3175            | 9.2%      | 500                 | 100.0%            |

Source: *2012 Australian Census of Women in Leadership*

**Figure two: ASX 200 female representation in leadership (2002-2012)**



Source: *2012 Australian Census of Women in Leadership*

In the Australian public sector, women occupy more than half of all Commonwealth public service roles, but only 39 per cent of senior executive positions are held by women (ABS, 2012). While there are multiple factors that contribute to these trends, discrimination in recruitment and promotion processes and the absence of workplace policies that support flexible work arrangements have a significant impact. There are clear benefits in promoting flexible work and redressing discrimination at the executive level. Intervention at this level helps to ensure diversity in senior management, and progresses a whole of organisation approach to family friendly policy and practice.

- **Recommendation: Conduct qualitative and quantitative Australian research to determine the prevalence and nature of discrimination in recruitment and promotion processes and inform best practice workplace practices**
- **Recommendation: Fund relevant organisations to design and deliver whole-of-setting workplace programs that redress gender inequity and cultural norms that perpetuate discriminatory practices**

Workplace discrimination associated with pregnancy or returning to work is often complex and difficult for individuals to immediately identify as discriminatory conduct. This can limit the options for redress available to individuals. In the case study below, Susan<sup>1</sup> experienced discrimination after returning from maternity leave. She was not informed of her right to request flexibility in her work and no effort was made to adapt her permanent position. She was also not informed that a transition to casual work would result in a loss of accrued leave entitlements, and she was given inaccurate information regarding the process of transitioning to a casual role.

Susan worked for her employer for 17 years in a number of roles across the agency. After the birth of her first child she took maternity leave for 8 months before returning to her full-time position. After returning, Susan decided that she needed greater flexibility in her work, and met with her manager to discuss the possibility of transferring from her current full-time position to a casual role in the agency. Susan's manager responded positively, stating that she was happy to support her in a transition to a casual role, and suggested work in the coming month that would be a good fit for her. Two weeks later, after resigning from her full-time role, Susan received a letter stating that as she had resigned from the agency there would be a three month break before she could reapply for a casual role, and her accrued sick leave and other entitlements would not be transferable. These conditions were not raised during Susan's discussion with her manager, and her employer was not able to provide a written policy or procedure that supported these actions. Susan contacted her employer to explain that she did not intend to leave the agency, but to transfer into a different role. At this point she was told that she could only return to the agency immediately as a private contractor if she applied for an ABN. She then took her case to the agency's board of directors. While Susan was eventually offered a casual position, this did not include transfer of her accrued leave entitlements. As a result of her experience, and the stress that is caused, Susan left the agency.

*Source: WHW interview, 2013*

- **Recommendation: Strengthen the Fair Work Ombudsman ability to conduct education, capacity building initiatives and action to enforce workplace laws relating to pregnancy and parenting discrimination, including strategies for negotiating flexible workplace practice**

In very similar circumstances Anita also experienced little support from her employer during her pregnancy and discrimination upon her return to the workplace.

Anita worked in middle management positions at a major public hospital. During the end of her pregnancy she worked 50 to 60 hour with little support from senior management or recognition about the potential impact on her health and wellbeing. When she returned from maternity leave, Anita was refused return to her position because she was unable to return full time. Upon her request, options for a job share were refused, as were flexible work arrangements such as working from home with no explanation. This was inconsistent with the options that were available for women in executive management positions within the organisation returning from parental leave. Other women in management and middle management positions reported to Anita that the same flexibility open to women in executive management was also not afforded to them, resulting in them having to relinquish their management roles. The organisations' human resource department provided Anita with incorrect advice that could have

<sup>1</sup> Pseudonyms are used in all case studies

meant that she resigned, rather than pursue her rights to be employed part time until her child was school aged, in a role that paid the equivalent rate to her previous permanent role. Advice from Anita's union and the national and state human rights commission differed and both commissions had different processes though neither was clear about which was the most suitable. Anita then sought legal advice and then lodged a complaint with HR. Pursuing a human rights complaint meant that mediation is the first step, which is voluntary, and meant that Anita still needed to continue working in the organisation while they are aware of the complaint. This places employees in vulnerable positions. The experience did impact Anita personally. It was also one of a number of contributing factors that led to her leaving the organisation.

Source: WHW interview, 2013

- **Recommendation: Clearer and consistent information provision from unions and state and federal human rights commissions.**
- **Recommendation: Clearer roles and pathways among organisations providing legal support and advocacy to pregnant women and parents who have experienced workplace discrimination.**

It is important to recognise that Australian families, their circumstances, and the associated patterns of care are extremely diverse. According to data from the Work, Love, Play study (2010) same sex parents divided household labour significantly more equally than heterosexual parents. The study also found that for many same-sex couples, major decisions around who gives up paid work and how many hours parents choose to work are negotiated on the basis of couple's preferences and circumstance rather than an assumption that one parent will be the primary child carer. Non-birth mother in a lesbian relationship might be forced to 'out herself' in the workplace before accessing parental leave entitlements and therefore homophobia and parenting discrimination could arise. Families who rely on kinship care arrangements that are not supported through workplace parental leave schemes also experience discrimination and therefore we recommend more research into diverse care arrangements.

- **Recommendation: Further research is required to determine the impacts, prevalence and nature of discrimination relating to pregnancy and parenting for diverse families**

### Legislative and policy framework

4. Identify any limitations or gaps in the legislative and policy framework in relation to pregnancy discrimination and return to work. What are the key challenges in the relevant legislative and policy framework?

The *Sex Discrimination Act 1984* has set important standards for gender equality in Australia and provides a baseline against which unequal opportunity between women and men can be measured. The Act also allows individual women to articulate complaints and seek redress from discrimination. However, there are also significant limitations in the implementation of the Act, and WHW would like to take this opportunity to outline some of these challenges and outline ways that this legislation can be strengthened.

The *Sex Discrimination Act 1984* supports an individual complaints based model through a process of voluntary mediation between the applicant and respondent. In this process, there is an inherent power imbalance between these two parties, which can affect the outcome of mediation, and the likelihood of an individual bringing their complaint to the commission in the first place (Thornton, 2010: 135). A survey conducted in the United Kingdom found that only 13 per cent of women who experienced pregnancy related discrimination pursued formal action (Russel and Banks, 2011a: 17). This figure is likely to be comparable to Australia given similarities in anti-discrimination and industrial relations frameworks. As highlighted in the Australian Human Rights Commission's *Pregnancy and Return to Work National Review Issues Paper*, 160 complaints were made to the Commission for pregnancy discrimination,

and approximately 5,537 (21 per cent of total claims) to the Fair Work Commission in 2011-2012 (Australian Human Rights Commission, 2013; Fair Work Commission, 2012). This compares to 67,300 instances of perceived pregnancy related discrimination between 2008 and 2011, as outlined in the data above (ABS, 2011).

For those who do engage formal anti-discrimination mechanisms, it is important to acknowledge the challenges that they are likely to experience. This includes the responsibility to prove beyond reasonable doubt that their dismissal or treatment in the workplace was based on their pregnancy or their status as a parent. This is particularly challenging in cases that proceed beyond mediation to the Federal Court of Australia or the Federal Magistrates Court, and similarly for those who lodge claims for unfair dismissal on grounds of discrimination with the Fair Work Commission (Fair Work Act sec 772(1f)).

To counter the challenge of individuals proving their claims, many countries in Europe have strengthened their anti-discrimination legislation by increasing the responsibility of employers to prove that decisions to dismiss pregnant employees or parents on leave are not discriminatory. In Finland and Norway, dismissal during pregnancy will be assumed to be discriminatory unless other grounds can be demonstrated by the employer (Heron, 2004). In Italy, the Netherlands, Germany and Austria, dismissal of a pregnant woman, or an employee on or returning from parental leave (usually until the child is one year old) must be authorised by an external agency. In these cases grounds for dismissal is generally limited to gross misconduct or collective redundancy (Heron, 2004). This model provides significant opportunities to prevent discriminatory dismissals by increasing accountability of employers through the scrutiny of an independent agency. This protection is particularly important for sole parents, women who are experiencing family violence and women on low incomes, who experience significant financial insecurity and harm as a result of unfair dismissal. Research also demonstrates that women are at an increased risk of developing mental health issues post the birth of a baby. Supportive employment has been identified as a protective factor for women as it provides economic resources and opportunities for social connectedness and participation (Cooklin et al, 2010). Research shows that the first two years of a child's life are critical to their development, and that stress, unemployment and poor mental health of parents can have a negative impact on health and development (World Health Organisation, 2005 and United Nations Children's Fund, 2010). Thus supporting parents and the employment choices during this period is also important for ensuring positive outcomes in early child development.

- **Recommendation: Strengthen the *Sex Discrimination Act 1984* to create clear reporting requirements for employers who dismiss employees who are pregnant or returning from parental leave**
- **Recommendation: Establish an independent agency or mechanism through the Fair Work Ombudsman that assess the legality of decisions made by organisations who want to dismiss a pregnant women or employee returning to work from parental leave (with a child under two)**
- **Recommendation: Greater provision through services such as Legal Aid so that individuals have equitable access to legal recourse**

There is also potential to strengthen anti-discrimination legislation to increase accountability in hiring practices. In Norway and Finland, sex discrimination legislative provisions state that upon request employers must provide unsuccessful job applicants with a written statement outlining the grounds for the employer's choice, including the education, experience and qualifications of the person who was successful (Heron, 2004: 7).

In addition to strengthening the legislation around anti-discrimination, it is important to ensure that our legislative and policy frameworks stimulate positive trends in family friendly and gender equitable workplace structures and culture. Commitment to preventing workplace discrimination relating to pregnancy and caring responsibilities can be supported by ensuring that organisational structures that support parents to balance their work and caring responsibilities are:

- embedded in workplace policy and procedures

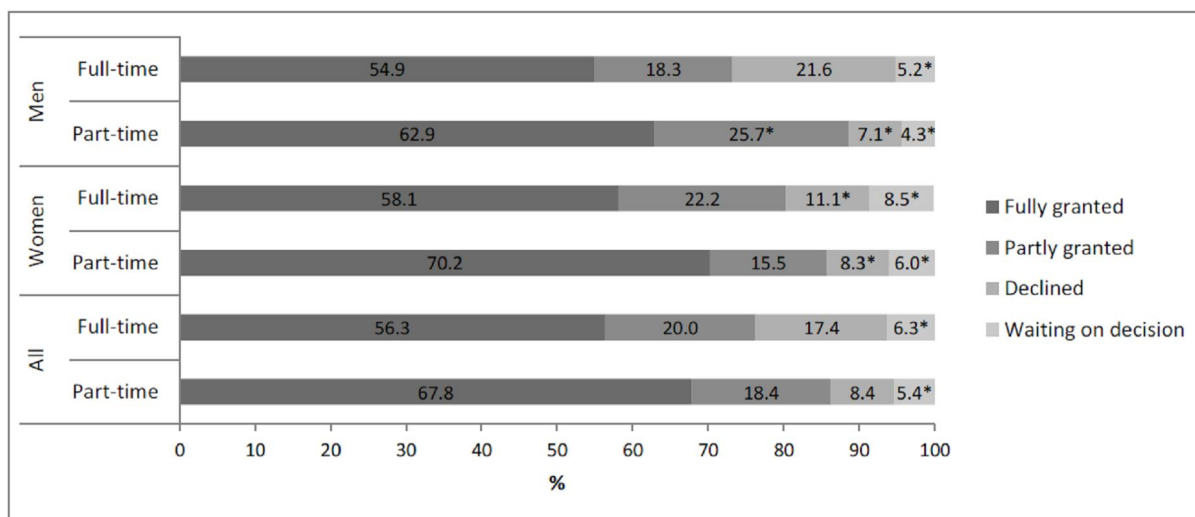
- viewed as entitlements, as opposed to special treatment
- known and accessible to women and men
- available at all levels of employment and management.

Evidence shows that access to flexible work is associated with reduced stress, lower levels of burnout, and higher levels of employee engagement, commitment and productivity (Russel and McGinnity, 2011). Flexible work conditions are also one of the main incentives that determine employment choices for women and men. According to the Workplace Gender Equality Agency (WGEA):

- 79 per cent of young fathers would prefer to choose their start and finish times but only 41 per cent can currently do so
- 79 per cent of young fathers prefer to work a compressed work-week but only 24 per cent have access to this flexibility
- 56 per cent of young fathers would prefer to work part of their regular hours at home while only 13 per cent actually do
- 18 per cent of men indicated that lack of flexibility was the main reason for seriously considering leaving their current job, increasing to 37 per cent for young fathers and 29 per cent for men under the age of 35 years (WGEA, 2013a: 3).

In Australia, flexible work conditions are usually negotiated by employees on an individual basis, which is regulated and supported through the ‘right to request’ provisions set out in the National Employment Standards in the *Fair Work Act 2009* (Fair Work Ombudsman, 2013). Creating a framework for discussions around work flexibility was an important first step. However, significant limitations remain in employer accountability and avenues for appeal, as the negotiations end if the employer denies the request on ‘reasonable business grounds’. There is also an extremely low level of awareness of the provisions among employees (Broomhill and Sharp, 2012: 9). Only a third of fathers and a quarter of mothers with children under five years old were aware that they had a legal right to request flexible work arrangements (Australian Work Life Index, 2012: 61). While requests for flexibility are being granted, a review of the patterns of flexible working conditions offered across different employment sectors, different levels of employment and differences in requests received and granted between women and men is needed. Figures three and four provide sex-disaggregated data relating to requests made to change work arrangements and proportion of requests that were granted.

**Figure three: Requests for flexible work by gender and work hours (2012)**



Source: Australian Work Life Index 2012



**Figure four: Requests for flexible work by gender, age and parenting (2009 and 2012)**

|                                     | 2009 | 2012 |
|-------------------------------------|------|------|
| All                                 | 22.4 | 20.6 |
| Men                                 | 16.3 | 17.3 |
| Women                               | 29.1 | 24.2 |
| Age                                 |      |      |
| 18 – 24 years                       | 29.8 | 31.3 |
| 25 – 44 years                       | 23.9 | 23.3 |
| 45 – 54 years                       | 18.4 | 13.7 |
| 55 - 64 years                       | 14.4 | 13.8 |
| 65+ years                           | 8.6* | **   |
| Parenting responsibilities          |      |      |
| With preschool children (< 5 years) | 30.0 | 29.6 |
| Men                                 | 17.1 | 19.8 |
| Women                               | 47.8 | 43.0 |
| With children under 16 years        | 25.1 | 24.8 |
| Men                                 | 16.2 | 19.2 |
| Women                               | 34.7 | 31.0 |
| No children under 16 years          | 20.6 | 17.8 |
| Men                                 | 16.4 | 16.0 |
| Women                               | 25.3 | 19.7 |

Note: \*Estimate unreliable due to insufficient sample size. \*\*Data not provided due to small sample size. Table excludes self-employed persons. 2009 N = 2307; 2012 N = 2500.

Source: Australian Work Life Index 2012

The data from the Australian Work Life Index indicates that there has been no change in the rates of requests since 2009. An ongoing concern reported by individuals is that asking for flexible workplace conditions is an indicator of their low work commitment, which suggests that greater responsibility for promoting flexible work practices needs to be placed on employers (Broomhill and Sharp, 2012). The gender indicators set out in the *Workplace Gender Equality Act 2012* is a promising framework for employer engagement. Non-public sector workplaces with over 100 employees are currently required to report against several gender indicators. These include the ‘availability and utility of employment terms, conditions and practices relating to flexible working arrangements and to working arrangements supporting employees with family or caring responsibilities’ (WGEA, 2013b). WHW recommend that reporting under this indicator be expanded to include staff surveys that will establish baseline data and measure indicators of progress relating to the number of employees who want, request and are successful in obtaining flexible workplace condition. Minimum standards against each indicator are set to be introduced in 2014. We therefore recommend that as part of this process, standards be set on the availability and promotion of flexible work. This would shift the emphasis from employees to request flexibility towards an obligation for employers to provide these conditions in an equitable and measurable way. Employers should also be provided with education and capacity building support to increase their understanding of the evidence of the benefits to their business of greater employee flexibility and the costs associated with employee resignation. Such work also needs to include strategies, tools and processes that are designed to embed cultural change within organisations and businesses.

- **Recommendation: Establish minimum standards for the availability and accountability of flexible work provisions in Australian private and public sector workplaces with more than 100 employees**
- **Recommendation: Provide education resources to small businesses to promote the benefits and support the implementation of flexible workplace policy and practice**

Supportive parental leave arrangements are an important mechanism for preventing discrimination and can support efforts to achieve gender equitable Australian workplaces. Introduced in 2011, Australia's first universal paid parental leave scheme and the legislative requirements on the provision of unpaid leave set out in the *Fair Work Act 2009* (sect 67-77) provides a strong foundation for supporting parents with caring responsibilities. With the aim of advancing gender equity and reducing workplace discrimination for women, including those from diverse backgrounds, WHW recommends action targeted in the following areas. This includes strategies designed to:

- Increase men's role as primary care givers through mechanisms such as increasing entitlements under parental leave schemes
- Redress the gender gap in pay and superannuation
- Reconcile inconsistencies in eligibility requirements for accessing parental leave between the government paid parental leave scheme and the *Fair Work Act 2008*.

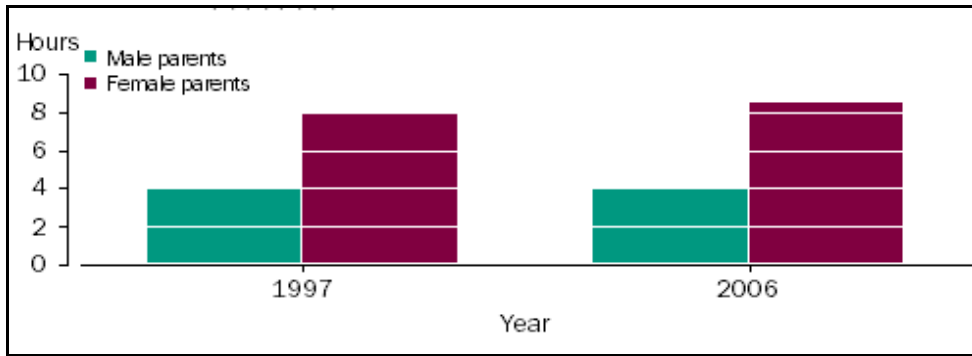
Many of the differences between women and men's experiences of discrimination in recruitment processes and in the workplace are associated with social and gendered norms that support a single male breadwinner model of employment, and assumes that women only seek parental leave or flexible work arrangements. Paul's case study is an example of how pervasive discriminatory gender norms are in Australian workplaces.

Paul was employed as a lawyer for a national legal firm. Of the firm's 50 legal partners across Australia, only one was a woman. When Paul noted this to one of the legal partners and sought clarification as to why so few women were employed within the firm's senior management structure, the partner explained that it was because 'women go off and have children and therefore can't progress their careers.' The inference being, as Paul noted, that the disproportionate representation of women in the firm's leadership structure was somehow 'normal' practice, as opposed to discrimination.

*Source: WHW interview, 2013*

While evidence indicates that more men would be willing to take leave to care for children, current data shows that 76 per cent of fathers took between no leave and 2 weeks leave when their baby was born and only 17 per cent had 4 weeks leave or longer. In addition to leave participation rates, data also indicates a persistent division of caring labour between women and men. For example, 'only 1-2 per cent of families have fathers sharing equal responsibility for the physical care of children and only 5-10 per cent of families have a father who is highly involved in the day-to-day care of children' (Australian Institute of Family Studies, 2013). According to data from the ABS there has been little change in these patterns over time, as indicated in figure five, despite the increasing number of women in the workforce.

**Figure five: Total hours per day spent by parents to care for children (1997 and 2006)**



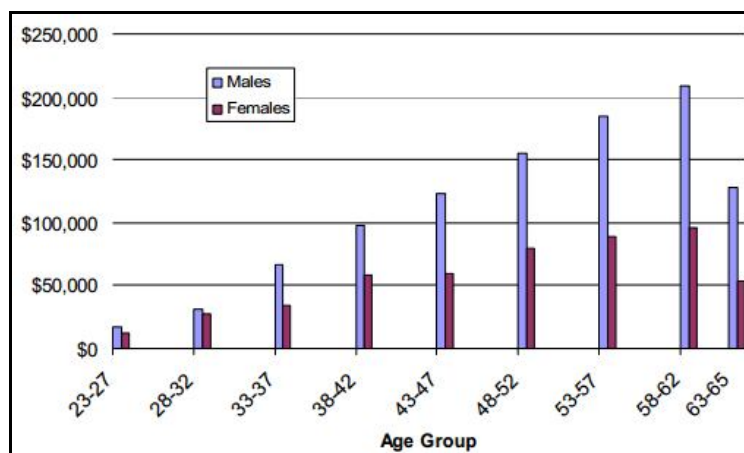
Source: ABS (2013) Gender indications, caring for children

Despite these trends in the division of caring responsibilities, Australia’s current parental leave scheme is gender neutral in so far as the scheme is accessible to women and men and can be shared between partners. However, international research suggests the including non-transferable leave periods for fathers has been far more effective in overcoming gender norms that can create barriers than limit men’s participation in parental leave. For example, in Norway after the introduction of 10 weeks non-transferable father’s leave, rates of men’s participation increased from 4 per cent to 89 per cent. In Iceland, leave arrangements allow for 3 months non-transferable leave to each partner and three months shared. The participation rate of fathers in Iceland is 91 per cent, with men’s use of leave accounting for one third of the total number of leave days taken (Broomhill and Sharp, 2012: 2).

- **Recommendation: Reforms to the current parental leave legislation must include gender analysis with a focus on increasing men’s participation in primary caring responsibilities**

As a result of gendered patterns of care, Australian women spend less time than men in the paid workforce and are more vulnerable to economic insecurity. Under the current legislative arrangements, women’s economic insecurity is amplified by the break in superannuation payments in paid and unpaid parental leave. Research shows that women’s average superannuation is approximately \$145,000 compared to \$250,000 for men, as evident in figure six, and that women’s time spent caring for children contributes to this disparity (Australia Institute, 2013: 9).

**Figure six: Average superannuation balances for non-retirees (2010)**



Source: Australian Institute of Superannuation Trustees & Australian Centre for Financial Studies (2012) Superannuation over the past decade: Individual experiences

However, under Australia's *Superannuation Guarantee Act 1992*, employers are not required to contribute to employees' superannuation payments for paid or unpaid parental leave, as they are for most other forms of paid leave. It is also not a requirement that employees accessing the government paid parental scheme receive superannuation for this period. Given the disproportionate impact on women, WHW recommends reviewing these legislative arrangements to improve equitable outcomes for women.

- **Recommendation: Amend the Superannuation Guarantee Act 1992 to include employer paid parental leave**
- **Recommendation: Encourage employers to extend superannuation payments to employees on unpaid parental leave**

To ensure equitable access of parental leave entitlements across different types of employment, WHW urges the commission to review the inconsistencies between the government's paid parental leave scheme and the provisions for unpaid leave set out in the *Fair Work Act 2009*. The work requirements for the governments' 18 weeks of paid parental leave are 10 month of work in the past 12 months with one or multiple employers. This provides important coverage for casual workers. However, eligibility for government paid parental leave does not necessarily mean that an employee will be able to take time out of work without risks to the stability of their employment. Under the *Fair Work Act 2009*, a person is only eligible for paid parental leave if they have been consistently employed by the same employer for 12 months, including for casual workers who have a reasonable expectation that their employment will continue (Australian Government, 2009). This 12 month requirement leaves women who are employed on casual contracts and those transitioning between employers particularly vulnerable to discrimination and unfair dismissal. WHW recommends that the *Fair Work Act 2009* is amended to include six months of unpaid parental leave for employees who have engaged in continuous service with their employer for at least six months. This would allow employees who have a shorter employment history with their current employer to still access the government scheme without compromising their job security.

- **Recommendation: Amend the Fair Work Act 2009 to include 6 months of unpaid parental leave for employees that have engaged in continuous service with their employer for at least 6 months**

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