Australian Education Union

Submission to the

Australian Human Rights Commission Review on the Prevalence, Nature and Consequences of Discrimination in relation to Pregnancy at Work and Return to Work after Parental Leave.

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Introduction

The AEU represents approximately 190,000 members employed in government schools and public early childhood work locations, in public institutions of vocational and/or technical and further education (TAFE), in Adult Multicultural or Migrant Education Service centres and in Disability Services centres as teachers, school leaders and education assistants or support work classifications across Australia.

The majority of the AEU's members are women and the AEU has experience in resolving complaints of discrimination relating to pregnancy and returning to work following parental leave.

The AEU supports this inquiry and is pleased to make the following submission, which we hope will assist the Commission to respond to a disturbing trend of discrimination in Australian workplaces and to change the way pregnancy and parental leave is understood and managed in the workplace.

The AEU's submission will outline the need for strengthened laws to deal with discrimination as it is currently occurring but also further changes to promote and enforce workplace rights. Many employees and employers are not aware of their rights and responsibilities regarding the accommodation of pregnancy and returning to work following the birth of a child. The AEU's submission makes the case for effective education to change community attitudes and maximise workforce participation.

The AEU submission will include examples and case studies from our branches and associated bodies. The AEU supports the submission of its New South Wales branch (the New South Wales Teachers' Federation) which should be read in conjunction with this submission.

The AEU is aware that the Commission particularly wishes to hear from:

- women who have experienced discrimination while pregnant, and women and men who experienced discrimination while on parental leave, and/or upon their return to work following parental leave; and
- organisations that work with women who have experienced discrimination while pregnant, and women and men who experienced discrimination while on parental leave, and/or upon their return to work following parental leave.

A number of case studies are referred to in this submission. However, the Commission should also note that AEU members were encouraged to submit their stories to the Australian Council of Trade Unions (ACTU) to inform its submission. The AEU's submission supports and complements the ACTU's.

The AEU's recommendations promote:

- laws to deal with discrimination as it is currently occurring;
- further changes to enhance anti-discrimination laws;
- further changes to promote workplace rights;
- further changes to enforce workplace rights; and
- attitudinal change to maximise workforce participation.

The AEU's submission to the Productivity Commission inquiry into Early Childhood Education Learning will deal with matters relating to employees' access (or lack thereof) to quality, affordable and accessible childcare, which will therefore not be covered by this submission.

This inquiry stems from a request by the previous Government to investigate the prevalence, nature and consequences of discrimination in relation to pregnancy at work and return to work after parental leave. This is because there has been an increase in the number of complaints the Australian Human Rights Commission receives related to pregnancy which it reports is now the most common of all unlawful discrimination complaints.

The Australian Bureau of Statistics reports that approximately 67,300 women (19%) employees believed they had experienced some level of discrimination in the workplace while pregnant.

1. Modern families

The ideal of the 'unencumbered worker,' (Berns, 2002) (a man working fulltime with a wife and children to support) is no longer the norm in Australia.

In fact, a recent report (Oct 2013) by the National Centre for Social and Economic Modelling (NATSEM) at the University of Canberra, said that 58% of 'couple with children' households now involve both parents working, and the 'traditional family' is no longer the majority (42%).

This means that coupled families are already required to balance paid work and caring responsibilities.

NATSEM also reports that there are now more than half a million (or 1 in 4) households with a woman as their major breadwinner, (up from 22% or 385,000 families 10 years ago).

Further, families on lower incomes are more reliant on female bread-winners. 27% of dual-earner families with low household earnings and 25% of middle income dual-earner families have a female breadwinner. Only 17% of high income families have a female breadwinner (NATSEM, 2013).

There are good social reasons why individuals choose to work. However, increasingly it is a financial necessity for parents to work. The notion that a woman's salary is supplementary to that of the family income, or that they rely any less on regular paid work is outdated.

It is also important to note that the Workplace Gender Equality Agency, (2013, p1) in their work to encourage men to take up flexible work arrangements, report that "many men do not conform to the ideal 'full-time' worker model and instead have a range of priorities and aspirations, e.g. to be active and engaged fathers."

With men and women sharing roles as carers and breadwinners, the "work life collision" between paid work and unpaid care/child rearing, referred to by Barbara Pocock (2003) is inevitable. This raises the issue of whether balancing work hours and time spent caring is a private problem or a matter for public policy. The AEU believes that there are good reasons for governments and employers to adapt to the needs of working parents by providing workplace entitlements which help parents to balance their paid work and unpaid care.

Workplace cultures that continue to view maternity and caring as 'private' matters and preserve gender stereotypes, effectively deny women their right to work and have a family. They also entrench discrimination. This relegates women to low paid, insecure jobs which lack opportunities for advancement.

Wasting women's skills and potential in this way is bad for productivity. As discussed below, Australia will desperately need to maximise women's workforce participation given the aging population and future economic challenges.

2. Economic imperative

The prevailing attitude of employers for most of last century was that it was not their responsibility to employ women (as there is a risk they could become pregnant) nor to support a parent who wished to return to work after a period of parental leave.

Though attitudes may slowly be changing, cases being brought to the Australian Human Rights Commission indicate a persistent undercurrent of hostility to pregnant and parenting employees which is leading to unlawful behaviour.

Over the next decades, Australia's population profile will undergo considerable change with a significant increase in the proportion of older Australians.

Currently, (NATSEM, Oct, 2013) Australia's fertility rate is below the population replacement level. Australian women's fertility has increased from 1.8 births per 1,000 women in 2001 to 1.9 births in 2011, but this is still below the replacement level of 2.1.

With an 'aging population'(at June 30 2012 there was 3.2 million Australians aged 65 and over which constitutes 14% of the population) all aspects of personal and community life, costs of health care, tax revenue, workforce participation levels and productivity, will be affected (Australian Institute for Health and Welfare).

For individuals and communities, this will increase the numbers of employees who need to provide care for others, whether young children or older parents/family members (or both). This will have an impact on employee superannuation incomes, putting more pressure on the pension system later down the track.

For employers, the economic challenges the country's changing demographics pose relate strongly to the pool of employees available, the detrimental effects of losing qualified staff, the high cost of retraining and the loss of productivity that comes from poor employee satisfaction.

Ernst and Young (2013, p19) suggest that: "if we could stop motherhood from derailing female careers and reduce women's reliance on the age pension by just 10%, it would save $2 billion per annum today and $8 billion per annum in 2050."

The report also rightly says: "this is not about men vs. women, parents vs. the child-free, or fulltime vs. part-time workers. It's about allowing everyone who can to contribute to the economic wellbeing of the nation — because living in a stronger, more resilient economy will benefit all Australians."

Smart employers understand that keeping women attached to the labour market through flexible work arrangements and parental leave, whether through the national scheme or a private scheme, are important strategies to ensure that all people can contribute to productivity and a stronger economy.

Further, companies that get flexibility right will massively improve productivity across their female workforce. New research (Ernst and Young, May 2013, cited in Ernst and Young 2013, p12) shows "women in flexible roles (part-time, contract or casual) are the most productive members of your workforce. This is in sharp contrast to common assumptions about women in flexible roles, who are often accused of 'not pulling their weight'."

In an average year, these women effectively deliver an extra week and a half of productive work, simply by using their time more wisely. In other words, for every 71 women employed in flexible roles, an organisation gains a productivity bonus of one additional full-time employee.

Greater access to flexible work will enable men to increase their engagement in care-giving and household work, which in turn will help to facilitate gender equality at work. When couples share caring and domestic tasks more equitably, women who have traditionally undertaken the majority of these responsibilities are better positioned to access quality employment opportunities (WGEA, men flex work, p1).

The AEU believes it is time governments, employers and unions accept that it is in Australia's interests to change attitudes regarding the workforce participation of parents and carers. Part of this change needs to be done via public awareness campaigns through the media and in the community.

3. Enforcing the law

While there are laws within Australia already addressing discrimination, discrimination remains a major social problem. However, regardless of the changing nature of the workforce and families, and regardless of social and economic reasons to promote a change in workplace attitudes, behaviours have not changed.

At the most basic level, under Australian workplace laws, women have a legal right to take maternity leave as well as the right to return to the job they left. Employers are not allowed to make a woman feel uncomfortable about being pregnant, and must modify any shifts or tasks that could become difficult to complete.

The Federal Sex Discrimination Act 1984 (incorporating amendments in 2011) makes it unlawful to treat someone unfairly (in employment) because they are pregnant, potentially pregnant, breastfeeding or have family responsibilities. This includes both direct and indirect discrimination.

In the workplace this covers being refused employment, dismissed, denied promotion, transfer or other employment-related benefits, given less favourable terms or conditions of employment or denied equal access to training opportunities.

The Fair Work Act 2009 (including the National Employment Standards), the Paid Parental Leave Act 2010 (including Dad and Partner Pay and Other Measures) and the Work Health and Safety Act 2011 (including Work Health and Safety Regulations 2011), all provide very clear instruction to employers and employees about the rights and responsibilities surrounding

potential pregnancy, pregnancy, alternate duties/transfer to safe work, parenting, planning for return to work and caring responsibilities outside the workplace.

Good employers and employment practices do exist. These are evident in many small business organisations as much as they are in large private or public sector workplaces. Good practices and good intentions are evident through coalitions such as the Male Champions of Change established by the Sex Discrimination Commissioner. Their influence is being seen in places like the ASX Corporate Governance Council around gender diversity which demonstrates that Australia's workplace laws are not impossible to uphold or overly restrictive.

Put simply, the laws need to be promoted and enforced.

4. AEU conditions

The submission by the New South Wales Teachers' Federation details the entitlements that teachers in NSW have regarding pregnancy and return to work, including:

- pre-natal leave (including for IVF treatments),
- maternity/adoption leave,
- parental leave,
- right to request part time work upon return to work, and
- breastfeeding and lactation provisions.

AEU members across the country have similar entitlements (but as the NSWTF notes, they may vary according to employment status and for non-teaching members.)

Rather than explore the respective entitlements and the differences across the country for AEU members, this submission will instead cite examples of where those entitlements are being misinterpreted, poorly applied or denied to members across the country.

5. Employers' attitudes

There is a growing acceptance that Australia is still evolving in its acceptance of flexible working arrangements.

As reflected in an Ernst and Young (2013, p13) report on men's perspectives on gender diversity, the culture being seen by senior male leaders across public and private sectors is one where "employees who take advantage of flexible work options are routinely given lower levels of responsibility, left out of communications, excluded from invitations and passed over for promotions."

Further, it is still the case that requests for flexible work are still gendered, with 24.2% of women requesting flexibility compared to 17.3% of men (WGEA, 2013). WGEA also found that a significant number of men (24.8%) did not request flexibility despite not being content with their current work arrangements, and having a preference to work fewer hours.

This reluctance could sometimes be because men are more conscious of likely refusals, because 17.4% of men are much more likely than women (9.8%) to have their request for flexibility declined (WGEA, 2013).

In his contribution to the Ernst and Young report (2013, p13), the Secretary to the Treasury, Dr Martin Parkinson says that the Treasury, just like many organisations "use flexibility to attract high calibre candidates and promote [ourselves] as 'employers of choice', but the truth is that many people's experiences of flexible work practices don't match the rhetoric."

In many cases good initiatives fail in part because the system is still set up to discriminate against people who take advantage of flexibility. (Ernst and Young, 2013, p9.)

AEU members' experiences support this claim. For example an assessment of enquiries from NSWTF's members finds that discrimination was more than twice as likely to be experienced by primary teachers as by secondary teachers. More than two thirds of cases related to either difficulties teachers experience accessing part-time work or a temporary teacher failing to secure an engagement for the following year after her pregnancy became known. The remaining calls related to accessing lactation breaks, an unfair allocation of duties or pressure to resign or accept demotion.

The following are further examples of specific case studies and common experiences.

Pre- employment

Unfortunately, many schools offer temporary or short-term contracts on a term by term basis. This poses significant difficulties for those wishing to plan pregnancy including the timing of disclosures of pregnancy. It is also common for casual teachers to fail to secure an engagement for the following year due to pregnancy.

The insecurity of employment women experience when they become pregnant is coupled with unnecessary guilt, such as one NSW member who said, "the school made me feel terrible because I had gone and had a baby, and because I was not permanent, that I was a risk of having another child."

Another member, who'd previously miscarried, understandably waited until her 20th week to announce her pregnancy, indicating risk was the main reason for the timing of disclosure. She subsequently did not have her term 1 temporary engagement extended, as had been verbally agreed with the Principal because her 'high risk' pregnancy meant she was 'not safe at school' (despite no medical indication previous miscarriage had anything to do with the workplace).

Chloe from a metropolitan primary school in Victoria, wanted to transfer to a safe job while pregnant but was initially refused because her principal was not prepared to look at any options and flatly refused the request. Her medical practitioner advised in writing that the she needed to temporarily transfer out of the maximum security young male offenders unit in the latter stages of her pregnancy. There had been repeated incidents of violence towards staff in this area. Chloe could have transferred to the young female offenders' area. The principal instead advised Chloe to take sick leave. In this case, the union is still attempting to negotiate with the principal.

Pre-natal leave

In the Victorian Enterprise Bargaining Agreement there is a provision entitling pregnant women to access 5 days of pre-natal leave to attend medical and related appointments. The 5 days is taken from the personal/sick leave entitlement. Despite this, a principal refused to

allow Lauren, from a country primary school, to attend medical appointments when she was pregnant. The principal told Lauren to organise her specialist and hospital appointments for a time when she was not teaching. She found this impossible because specialists and hospitals do not allow flexibility in attendance time. The treatment by the principal was very upsetting for the member.

Federal Paid Parental Leave denied

The AEU has constantly urged the Government to amend the eligibility criteria for Federal Paid Parental Leave, because temporary/casual/contract teachers are ineligible. These teachers (especially in secondary schools and TAFE) who have an extended period of time over the summer vacation period due to the very nature of the work, suffer a 'break in service' of over 8 weeks and hence fail to meet the requirement of working the 10 of the previous 13 months. These employees are, for all intents and purposes, employed in an ongoing nature, but are denied the same rights as other parents.

Right to request

Requesting part-time work following a period of parental leave is a useful and sensible way for parents to re-engage with work while adjusting to their caring responsibilities.

In one NSW case, a member was discriminated against as a result of the principal's lack of imagination and inability to consider reasonable solutions to a request for some flexibility. So that the member could complete the childcare drop off, and due to traffic, the request was to begin later and to make up the time by teaching an extra period, doing bus duty, or extra playground duty. Rather than accepting any of these reasonable alternatives, the employer's advice was to take unpaid leave. Pressure was put on the member to relinquish the permanent position and become a casual.

In increasingly devolved school systems, principals are putting the burden of requesting flexible work arrangements on the individual employee.

Georgia, a secondary teacher, at a large high school on the Gold Coast requested of her principal, in writing, a return to work part time but after long delays the response was that unless she located her own job sharing partner, the request could not be accommodated.

The assumption that student success is dependent on having teachers working full-time means that the onus has been on the teacher (usually a woman)to seek flexible work arrangements, to find a person with whom to share the teaching load then to develop a model for job sharing and prove to the principal that it will work. Those seeking flexible working arrangements, even with the right to request in place, have to convince others to give them permission to vary from the 'norm'.

This is an example of clear options being ignored because they don't suit an 'ideal worker' scenario even though they could clearly be accommodated. The fact that the 'choice' being given is to lose a secure job is unacceptable yet all too common, and yet another way discrimination is fostered.

Other times, the consequences of decisions are simply not considered in terms of the inconvenience they might pose to employees with children.

The South Australian Department of Education and Childhood Development's maternity and adoption leave policy includes a "right" to part time on return to work until your child turns two but with no specified fraction of time (minimum or maximum) and no restrictions around expectations in terms of number of days at school. All reductions in time must be individually negotiated prior to return to work.

However, despite "Mary" being granted her request to work 0.6 FTE given that she had a young baby and two older children, her manager had arranged the school timetable requiring Mary to be at school every day of the week including one day where she was rostered on right in the middle of the day. This effectively meant that her youngest would be in child care every day of the week and her child care costs would be even higher because on the day that she had to be at work from 11am until 2 pm she would need to pay for a full days child care.

Living in a small country town where there is limited child care and having recently separated from her husband, Mary had very definite needs around her return to work. If Mary wanted to have at least one full day off she would need to drop her time further and relinquish at least one subject. Financially this was not an option for Mary.

The situation was resolved but only after the threat of action in the South Australian Equal Opportunity Commission.

Rather than reluctance, there is a misconception particularly amongst QLD principals that a quota exists or a cap on part time work is necessary. The QLD education department part-time teaching policy does not support quotas for part time work. This has not stopped some regional and school leaders discouraging the practice and informing teachers that their request cannot be accommodated as the "quota" or level for the school has been reached. There has also been a practice in some schools that there is only one part time or job sharing arrangement "permitted" across one year level in primary schools.

In some cases, decisions have been made on incorrect advice.

For example, Evelyn, a principal at a Brisbane metropolitan primary school, contacted the union seeking information and advice about the department's job share policy because she was concerned that she had inadvertently provided unfair and incorrect information to an employee. Having never been provided with any advice or guidance with her decision making, she was unaware of the department's policy and decision flow making chart which would have clarified how schools can accommodate job sharing.

Breast- feeding and lactation

Many requests for lactation breaks and entitlements are misunderstood by school leaders, who are unaware of relevant government policy or entitlements in collective agreements.

Different options are proposed in schools, none of which truly achieves elimination of discrimination due to a woman's breastfeeding:

- Having a teacher express during lunch and recess breaks denies her right to her own lunch break.
- Reducing the playground duty allocation to one teacher translates to additional workload for other teachers.
- Having a teacher express during her release time only increases the amount of preparation work that she must do outside of hours.

- Providing a teacher with additional release time is clearly the ideal approach from the perspective of the lactating mother, but because there are no available resources, this inevitably creates additional workload for others in the school.

Of the issues about which the union is contacted relating to pregnancy and return to work discrimination, accessing lactation breaks is not one of the most common. However, anecdotal evidence suggests that this is more because people are reluctant to request lactation breaks, due largely to the knowledge that the only available arrangements will significantly impact on people's workload.

Demotions, loss of permanency etc

Employers remain reluctant to accept that part-time work or job-sharing is appropriate or even possible for those in positions of seniority.

Frida, who is a Principal of a small primary school in metropolitan Brisbane, requested of her regional supervisor to return to work part time following maternity leave. She was asked to, and provided an outline of what this may look like for a school leader, however the regional leader still did not feel it appropriate for a principal to work part time. He suggested instead that part time work could be accommodated in the positions of Head of Curriculum (HOC) or Deputy Principal (DP) which are demotions for a principal.

In Clare's case, (a secondary teacher in a large school in far north Queensland), following maternity leave, she was effectively demoted by not being timetabled onto her specialist teaching area for the 2013 school year, and a temporary employee was provided with this class. The principal also made her delay her return to work claiming it was disruptive to students because of assessments/exams.

Sam has been a Language Coordinator in South Australia for 3 years with 2 years of tenure still to run. She assumed that her "right" to part time would be honoured as her child would only be 10 months old when she returned, but was informed that if she wished to work part time she would need to relinquish her coordinator role until such time as she could return full time.

The school leadership maintained that a Coordinator needed to be at school every day of the week in case they were needed. Sam had agreed to be available by email and or phone everyday of the week even if she was not physically at school. The school did not accept this compromise. After more threatened legal action Sam was allowed to work part time but only at a compromised reduction from 0.6 FTE to 0.8 FTE.

Employers' interpretations of the legal entitlements for parents may vary overtime. In the case of Victoria, following a change of government the education department's interpretations of return to work entitlements did appear to change. When the union sought to dispute principals' decisions in regard to returning from parental leave, department officials have denied employee access to entitlements, where it previously existed.

For example, Kirsty is from a rural Victorian primary school and was forced by her principal to return to work after her third child at the permanently reduced (to 0.2 FTE) time fraction. Kirsty is disadvantaged as her earning capacity will be permanently reduced. Her career prospects are also reduced as very few school leadership positions exist at a 0.2 time fraction. She is also disadvantaged because her superannuation and other entitlements will be affected.

The union intervened and her full time status was preserved. The union was then able to address this matter in the next Enterprise Bargaining Agreement and the entitlement to retain full time status is protected. However, the employer is now interpreting this provision incorrectly to mean that all members with a school age child must be full time.

Similarly, Leanne from a Victorian metropolitan primary school, was refused part time work on her return after parental leave. The principal advised her to undertake casual relief teaching work (this employment does not accrue any entitlements or count as service). Consequently, the member was unable to access paid maternity leave for her second child. She was denied part time work when she returned from the birth of her second child and again was employed as a casual. The union intervened and was able to gain her a part-time job share position at the school.

Same sex partners seeking to exercise their Federal Paid Parental Leave entitlements have experienced difficulties. In a Victorian example, a lack of clarity regarding the new law, coupled with low levels of employer awareness with same sex partner eligibility, were major barriers to both partners receiving paid leave following the birth of a child.

Nonetheless, as the Commission is aware, more blatant discrimination is also occurring, which indicates that the penalties for current breaches of the law need to be increased and that additional law reform is appropriate.

A survey of 500 employers reported by the ABC in July (Pallan, 2013), by Kronos, found that 38% believed men are better employees than women. It also found that 40% prefer workers who do not have children.

The AEU is aware of examples whereby principals'/managers' views are well known amongst staff, whether by overheard comments or intrusive and intimidatory behaviour. Our members report similar instances to one workplace in NSW where the Principal has made a range of comments and decisions which indicate that he is discriminatory toward pregnant women and those with family responsibilities. For example:

- A male teacher taking parental leave was questioned about why he should take time off to allow partner to return to work.
- A head teacher reported that the deputy principal had said that the principal did not want pregnant teachers in the school.
- A head teacher reported that the principal had asked her to find out exactly when a fellow member fell pregnant because if it was before signing the contract that this would be considered a breach of contract by the member.

The AEU manages to secure satisfactory outcomes for the majority of our members who seek union support and advice.
However, because members are afraid that their complaints could be formally taken to the Australian Human Rights Commission or to other avenues for dispute resolution, they prefer to transfer to other schools and the employer is never reprimanded for discriminatory behaviour.

As one member from NSW said, "I will need to use my principal as a reference for promotion or transfer in the future, so I feel that I can't speak out against her."

In other industries, we are aware of employees not being allowed extra toilet breaks, with dire consequences and numerous examples of professional women when handing in a request for maternity leave being told that they might as well be handing in a resignation letter.

This is unacceptable in 2014 and neither the community nor the law should turn a blind eye any longer.

6. Improving the law

Australia should be a country where women are employed and promoted regardless of their potential to become pregnant.

Australia should be a country where pregnant workers are not forced to perform unsafe jobs that can harm them or their baby.

Australia should be a country where working parents and carers (men and women):

- can ask for a change in start/finish times, part-time work or job sharing, or to work more hours over fewer days, or work from home;
- have these requests genuinely considered by their employer;
- have a right to an appeal if an employer unreasonably refuses a request for a change;
- are not punished for taking time off for family care, emergencies or personal requirements; and
- not be forced to accept reduced working conditions or those that reduce their job security.

The AEU is supportive of the detailed recommendations made to this review by the Australian Council of Trade Unions (ACTU) and wishes to also emphasise a number of recommendations below.

1. Recommendation

   That the Australian Human Rights Commission be appropriately funded to assist employer bodies such as the Australian Council of Commerce and Industry (ACCI), the Business Council of Australia (BCA) and the Australian Industry Group educate their members both on compliance with anti-discrimination law in the workplace but also about better understanding how to implement mutually beneficial family friendly supportive work conditions.

2. Recommendation

   That penalties be strengthened for breaches of anti-discrimination law whereby courts are provided with the capacity to award punitive damages which will deter future unlawful behaviour, and corrective and preventative orders which will bring about the systemic change required to avoid future discrimination. This might include providing the Australian Human Rights Commission with the capacity to issue performance improvement notices, enforceable undertakings or similar preventative remedies. It might also involve the Commission being charged with the responsibility of monitoring and reporting breaches so as to prevent repeat discrimination.

3. Recommendation

The AEU agrees (with the ACTU) that a number of the provisions proposed by the attempted consolidation of Australian anti-discrimination law should be revisited, principally so that:

- All State and federal anti-discrimination laws contain a positive duty on public and private sector employers, educational institutions and other service providers to eliminate discrimination, harassment and promote equality.
- Funding is provided to improve advocacy and support for individual complainants, through:
  - Providing standing/leave for community organisations seeking to represent individuals,
  - Litigation funds to assist low income or disadvantaged individuals, and
  - Providing the Australian Human Rights Commission the status of amicus curiae.
- Legislation institutes a shared onus of proof model, and a no cost jurisdiction model.
- Legislation restricts the defence of "inherent requirement of the job" and includes the obligation to explore the availability and feasibility of less discriminatory options, i.e. making 'reasonable adjustments' extended to all protected attributes.
- The term 'family responsibilities' is changed to 'family and caring responsibilities' throughout legislation to be consistent with the terminology used throughout the *Workplace Gender Equality Act 2012* (Cth) and s 351(1) of the *Fair Work Act 2009* (Cth).
- The definition of 'caring responsibilities' is a person who cares for, or expecting to care for, a dependent who reasonably relies on the person for care or support.

4. Recommendation

That the Fair Work Act ensures protections against adverse action for employees found to have been discriminated against or having exercised their workplace right (or proposes to exercise that workplace right) in relation to pregnancy and parenting responsibilities.

5. Recommendation

That the Fair Work Act be amended to oblige employers to notify employees of their right to request flexible work arrangements as an alternative to signing an Individual Flexibility Agreement. That employers also be obligated to provide a written response, with reasons, in a timely manner to any employee request for flexible work that cannot be supported.

6. Recommendation

That the Nation Employment Standards be improved to:

- Include the use of paid personal leave for pre-natal and ante-natal medical appointments,
- Stipulate paid breast-feeding breaks and access to appropriate breast-feeding facilities,

- Include dedicated paid carers leave so that employees with caring responsibilities are not disadvantaged by being required to use their 10 days personal leave to cover their caring roles as well as their own illnesses, and
- Include a right to return part-time following parental leave.

7. Recommendation

With any Government review or policy amendment to the Federal Paid Parental Leave scheme, the entitlement is recognised (and legislated as such), as an employment entitlement not a welfare payment.

8. Recommendation

That the eligibility criteria for the Federal Paid Parental Leave scheme be amended to include casual/contract employees engaged in genuinely seasonal work or work that is of an ongoing nature, who would satisfy the average hours work test but for breaks in service of longer than 8 weeks.

9. Recommendation

That employers be required to continue the role of paymaster for employees accessing the Federal Paid Parental Leave as it is an important aspect of the employment relationship. By continuing the connection to the workplace at this time the incidence of employer restructures or forced redundancies whilst employees are on parental leave might be reduced.

10. Recommendation

That, to ensure a higher standard of enforcing employees' current rights, the National Employment Standards be amended to include an appeal for employees, when an employer unreasonably refuses a request for flexible work (whether upon returning from parental leave or for other caring responsibilities). That all employees be made aware of their capacity to appeal a decision at the time at which it is declined.

11. Recommendation

That the NES right to request provision include an obligation for employers to consider the employee's circumstances, as well as their own business case, in deciding whether the request is reasonable and can be accommodated.

Just as the NES now offers examples of lawful business grounds for refusal, the Victorian Equal Opportunity Act 2010, (section 17, cause 2), asks also for the nature of the caring responsibilities and for the consequences for the employee of not making an accommodation, to be seriously considered. It which reads:

(2) In determining whether an employer unreasonably refuses to accommodate the responsibilities that a person has as a parent or carer, all relevant facts and circumstances must be considered, including -

a) **the person's circumstances, including the nature of his or her responsibilities as a parent or carer;** and
b) the nature of the role that is being offered; and

c) the nature of the arrangements required to accommodate those responsibilities; and
d) the financial circumstances of the employer; and
e) the size and nature of the workplace and the employer's business; and
f) the effect on the workplace and the employer's business of accommodating those responsibilities, including—
    (i) the financial impact of doing so;
    (ii) the number of persons who would benefit from or be disadvantaged by doing so;
    (iii) the impact on efficiency and productivity and, if applicable, on customer service of doing so; and
g) the consequences for the employer of making such accommodation; and
h) **the consequences for the person of not making such accommodation.**

12. Recommendation

That a Pregnancy Code of Conduct be developed with guidelines for employers and employees as to the Occupational Health & Safety risks for pregnancy in the workplace. That this code of conduct includes a clear definition of a "same or similar job" for when an employee requests a transfer for safety reasons during pregnancy/breastfeeding.

7. Cultural change needed

The AEU believes that the pace of law reform in Australia regarding anti-discrimination and workplace rights and responsibilities has been faster than cultural change. It is our hope that this inquiry will provide further evidence and impetus for the community discussion required about ongoing discrimination, why it is unacceptable. Changing discrimination in the workplace requires good faith from all relevant parties.

As Brian Hartzer Westpac's Chief Executive, Australian Financial Services, says (Ernst and Young, 2013, p8) "in my experience, very few men in senior business roles are consciously biased against the advancement of women. On the contrary, many, if not most men want to do what they can to support women...However, despite their best intentions, he says men often inadvertently contribute to work practices that make women feel excluded or develop candidate pools in ways that overlook important sources of high potential women....So the solution is not about how women need to change – instead, organisations need to work harder to remove unconscious bias."

For this to occur, entitlements to support parents and flexibility in general needs to be viewed as common and accessible to all employees as other entitlements, not as special treatment for a minority.

Workplaces need to foster an organisational culture that is supportive of flexible work for men. Effective strategies might be needed to pro-actively encourage men to engage in flexible work and to provide opportunities for men to share their experiences of flexible work. Flexible work and careers need to be promoted as legitimate and available to all employees, rather than simply the domain of mothers with young children, and those working at lower levels and in lower paid roles.

Business is realising that "initiatives don't work unless organisations also address: resistance to change, ingrained organisational and cultural beliefs, unconscious bias, societal norms — and sometimes sheer ignorance (Ernst and Young, 2013, p7)."

But so too is legislation still an important driver of change. For example, in Norway "cultural acceptance is actually written into legislation. Fathers have the right to leave the office by 5.30pm to spend time with their families and adjust office hours around pick-up/drop-off."

There is plenty of research that has already established the urgent need for action in this area. It is instead time for agencies of change such as governments, the Australian Human Rights Commission, unions, HR professionals, employer bodies and community organisations to accept and use this evidence so we are all part of the shift away from workplace cultures that sets up losers but instead positions Australia to maximise its economic and social potential for a stable and just future.

13. Recommendation

That a public community campaign, led by the Australian Human Rights Commission, be developed to create heightened awareness of the challenges faced by families in accessing parental leave and securing part-time and/or flexible work.

That this campaign also address the myths surrounding part-time employees (including their productivity) and demonstrate how the creation of a family friendly supportive workplace is beneficial to businesses directly and the Australian economy more broadly.

14. Recommendation

Educators should have the same right to exercise their workplace rights to paid leave or to seek part time work, just as other employees.

State, Territory and Federal Governments must ensure the public education system is funded so that appropriately qualified educators are available to replace employees on leave.

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