

31 January 2014

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National Review Reference Group  
Australian Human Rights Commission  
GPO Box 5218  
Sydney NSW 2011

**By online upload at: <http://www.humanrights.gov.au/supporting-working-parents-pregnancy-and-return-work-national-review-community-organisations>**

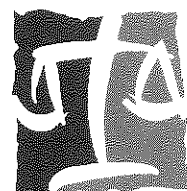
Dear Ms Broderick

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

The Women's Legal Centre (ACT & Region) (WLC) thanks the Australian Human Rights Commission (AHRC) for the opportunity to make a submission in response to the AHRC's national review entitled '*Supporting Working Parents: Pregnancy and Return to Work National Review*' (**National Review**).

#### **1. Executive summary**

- 1.1 The WLC notes that today, more than a decade since the then Australian Human Rights and Equal Opportunity Commission (HREOC) conducted a national inquiry into pregnancy and work, the WLC continues to hear complaints from its clients of discrimination based on pregnancy, parental leave and return to work.
- 1.2 From its experience, the WLC notes the following broad trends in relation to the discrimination experienced by women who become pregnant or have returned to work after taking parental leave:
  - (a) allocation to new roles during pregnancy or after returning to work after parental leave, which was detrimental from the perspective of the employee;
  - (b) lack of flexibility by employers in assigning suitable roles for women during pregnancy or when they return to work;
  - (c) lack of flexibility by employers in finding "safe jobs" for pregnant women in high risk workplaces; and
  - (d) pregnant women having their employment terminated or being made redundant.



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- 1.3 A common feature of many of the matters that the WLC deals with in this area is a lack of education, understanding and access to information (for both employers and employees) about the rights of women in the workplace who are pregnant and the rights of women returning from work after parental leave.
- 1.4 The WLC has observed that there are many employers who are not fully aware of their obligations in relation to employees who are pregnant or who take parental leave. Similarly, in the WLC's experience, many employees are not fully aware of their entitlements in relation to pregnancy or taking parental leave, or are unwilling to ask about these entitlements or to seek access to these entitlements.
- 1.5 The WLC has observed general gaps in the current legislative and policy framework, as discussed in **section 8** of this submission, in the following broad categories:
- (a) flexible working arrangements;
  - (b) education/awareness;
  - (c) community/cultural change; and
  - (d) 'reasonable adjustments' requirements.
- 1.6 On the basis of these general gaps as observed by the WLC, there are a number of recommendations that the WLC would like to see arise from the National Review, which are set out in **section 10** of this submission.

## 2. Introduction

- 2.1 In 1999, the then HREOC published its findings and recommendations as a result of a national inquiry into pregnancy and work, entitled *'Pregnant and Productive: It's a Right not a Privilege to Work while Pregnant'* (***Pregnant and Productive Report***).<sup>1</sup>
- 2.2 In the *Pregnant and Productive Report*, HREOC noted that as at 1999, it was 15 years since the introduction of the *Sex Discrimination Act 1984* (Cth) (**SD Act**), which covers discrimination on the grounds of pregnancy and potential pregnancy.<sup>2</sup> Yet, HREOC further noted that workplace discrimination and harassment on the ground of pregnancy and potential pregnancy continued, in 1999, to be a real issue for many women in Australian society, stating:

*"Regardless of status industry, discipline or level of education or for that matter age, race or religion, for many women pregnancy results in*

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<sup>1</sup> Human Rights and Equal Opportunity Commission, *'Pregnant and Productive: It's a right not a privilege to work while pregnant'* (1999), available online at: <https://www.humanrights.gov.au/publications/pregnant-and-productive-its-right-not-privilege-work-while-pregnant-1999> [accessed 21 January 2014].

<sup>2</sup> See: section 7, *Sex Discrimination Act 1984* (Cth).

*inequitable workplace treatment as well as long and short term financial impact and career disadvantage."*<sup>3</sup>

- 2.3 The WLC notes that today, more than a decade after the release of the *Pregnant and Productive Report*, workplace discrimination on the grounds of pregnancy and potential pregnancy still occurs.
- 2.4 The WLC understands that the AHRC continues to receive complaints relating to "discrimination based on pregnancy as well as related grounds such as family responsibilities and breastfeeding".<sup>4</sup>
- 2.5 Similarly, the WLC continues to hear complaints from its clients of discrimination based on pregnancy, parental leave and return to work, with a number of specific examples discussed in **section 6** of this submission.
- 2.6 In this context, the WLC welcomes the opportunity to make this submission to the AHRC in response to its current National Review.
3. **About the Women's Legal Centre (ACT & Region)**
- 3.1 The Women's Legal Centre (ACT & Region) (WLC) is a Community Legal Centre accredited by the National Association of Community Legal Centres.
- 3.2 WLC has provided legal and advocacy services to women in the ACT and surrounding region since 1996, primarily in the areas of family law, domestic violence, employment and discrimination law and victims of crime compensation.
- 3.3 The WLC aims to improve women's access to justice by:
- (a) providing legal information and advice;
  - (b) referring women to sympathetic lawyers and other support services;
  - (c) running community legal education sessions;
  - (d) producing information for women about their rights, the legal system and the law; and
  - (e) doing research, law reform and lobbying activities that help to remove barriers to women's access to justice.
- 3.4 The WLC client group includes disadvantaged women, women from culturally and linguistically diverse communities, Aboriginal and Torres Strait Islander women, women with disabilities, and women living in poverty.

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<sup>3</sup> See footnote 1, at page vii.

<sup>4</sup> Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review*: Issues Paper (October 2013).

#### 4. **Notes on the nature of this submission**

4.1 This submission has been drafted based on the experience of the WLC in providing assistance to women when pregnant or returning to work after parental leave by the following means:

- (a) **telephone advice:** for women who call the WLC's free, confidential telephone advice service; and
- (b) **face-to-face advice:** for women who meet a WLC lawyer.

4.2 The WLC acknowledges that discrimination in relation to pregnancy and return to work after parental leave can be experienced by people of all genders. However, the WLC's comments and case studies as set out in this submission are focussed on the experiences of women, as the WLC's mandate is limited to improving access to justice for women.

4.3 For ease of reference, this submission adopts the AHRC's guiding questions for Community Organisations responding to the National Review.<sup>5</sup>

#### 5. **Data on the prevalence, nature and consequences of discrimination**

##### **AHRC - Community Organisations - Guiding Question 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.'*

##### ***Prevalence***

5.1 As at June 2012, there were 15.2 million people of working age (15 to 64 years) residing in Australia<sup>6</sup> and during 2011-12, females (aged 20-74 years) had a labour force participation rate of 65%.<sup>7</sup>

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<sup>5</sup> Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review - Community Organisations*, available online at: <http://www.humanrights.gov.au/supporting-working-parents-pregnancy-and-return-work-national-review-community-organisations> [accessed 21 January 2014].

<sup>6</sup> Australian Bureau of Statistics, 3235.0 - Population by Age and Sex, Regions of Australia, 2012 (August 2012).

<sup>7</sup> In 2011-12, males aged 20-74 years had a higher labour force participation rate (79%) than females in the same age group (65%): Australian Bureau of Statistics, 4125.0 - Gender Indicators, Australia (January 2013).

- 5.2 The WLC notes that in 2011-12:
- (a) 21% of complaints under the SD Act received by the AHRC related to pregnancy discrimination and family responsibilities;<sup>8</sup> and
  - (b) 21% of complaints investigated by the Fair Work Commission related to an allegation of pregnancy discrimination.<sup>9</sup>
- 5.3 During 2013, the WLC provided telephone advice and/or face-to-face advice to 1,113 clients.
- 5.4 Of these, 46 involved complaints of discrimination, of which 11 related to pregnancy, parental leave or return to work. These figures may not accurately reflect the extent of pregnancy related discrimination, as the figures do not capture the contact where a woman makes an enquiry to the WLC regarding her entitlements to parental leave or return to work, either for her own information or in response to action that has been taken by her employer. These enquiries may be categorised as “employment conditions/entitlements” rather than discrimination.
- 5.5 The WLC notes that that it is possible that the number of requests for assistance that it receives (via its telephone assistance service and legal advice service) that involve discrimination relating to pregnancy, parental leave or return to work are limited partly due to a commonly held expectation by employees that pregnant women and women taking parental leave will experience discrimination (i.e. a perception that discrimination of this type is just something that occurs).
- 5.6 Due to a range of reasons, including the power balance inherent in the employment relationship, and workplace culture where employees assume that they will be treated poorly in relation to matters relating to pregnancy, the WLC has observed that many women simply will not make requests to their employer regarding their pregnancy or parental leave. This approach extends to not raising complaints (with their employer or otherwise) about discrimination on the grounds of pregnancy or parental leave. Instead, some women will simply stay silent in relation to the discrimination or leave their employment.
- 5.7 For this submission, the WLC has focussed on the experiences of six clients that the WLC assisted during 2012-2013 financial year. De-identified case studies for each of these clients are set out in **section 6** of this submission.

#### *Nature*

- 5.8 From the WLC's experience, the nature of the discrimination as described by WLC clients is wide ranging, including the following:
- (a) allocation to new roles, for which our clients did not have the relevant skill set, after return to work from parental leave;

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<sup>8</sup> Australian Human Rights Commission, *Annual Report 2011-2012* (2012).

<sup>9</sup> Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review*: Issues Paper (October 2013), at page 3.

- (b) allocation to new roles at a different location, when our clients did not wish to change their work location, after return to work from parental leave;
- (c) allocation to work on different and less convenient days, which involved less pay and greater childcare costs;
- (d) delays before being moved to appropriate duties, when our clients worked in higher risk workplaces and had requested a move to more appropriate duties;
- (e) discriminating statements by employers, including being told by a supervisor:
  - (i) "there are no safe jobs for pregnant women [in this workplace]";
  - (ii) "pregnant women aren't fit to work here";
  - (iii) that she was not able to perform "full duties"; and
  - (iv) that breast milk could not be stored anywhere in the premises, because it is a "biological hazard".
- (f) being harassed by a supervisor and later, developing stress and anxiety and being unable to continue work;
- (g) being made redundant; and
- (h) termination of employment while taking leave (during which leave our client gave birth).

5.9 Through its work in providing legal information and advice to clients over the years, the WLC has observed the following more general issues arising for women in relation to pregnancy and parental leave:

- (a) lack of access to flexible working arrangements;
- (b) lack of accessible and affordable childcare hindering return to work;
- (c) perception in some workplaces that having a baby is seen as a lack of commitment to the job;
- (d) a lack of knowledge (amongst both employers and employees) in relation to the rights of women who are pregnant or have taken or will be taking parental leave;
- (e) unnecessary restrictions on the type of work that an employee is allowed to performed when the employee has caring responsibilities;
- (f) limited access to 'acting up' positions or promotion;

- (g) not being informed of promotion opportunities or new positions whilst on parental leave; and
- (h) a culture in some workplaces that parental leave has to be 'earned'.

### ***Consequences***

- 5.10 Due to limited resources, the nature of assistance provided by the WLC to its clients (via telephone advice and face-to-face advice) is mostly in the form of information, advice and referrals. The WLC focuses on assisting women to represent themselves in employment and discrimination matters, and has discretion to represent highly vulnerable or marginalised clients in limited circumstances.
- 5.11 While the WLC has encountered a number of cases of discrimination in relating to pregnancy and parental leave, the WLC is not always involved with complaints through to their ultimate conclusion and as a result, the WLC does not always know the final outcome of our client's claims.

## **6. Case studies**

### **AHRC - Community Organisations - Guiding Question 2**

*'Please provide any case studies of women and men's experiences of discrimination.'*

- 6.1 To illustrate just some of the issues faced by women for whom the WLC has provided legal advice, below we have set out six case studies, drawn from our client files for the 2012-2013 financial year.

#### ***WLC Case Study 1***

Our client took parental leave from her job, during which period her workplace was restructured.

Upon return to work, our client was allocated a new role, which was different to the role she held prior to commencing parental leave.

The new role was in an area in which our client did not have the relevant skill set.

**Our client felt like she was "being set up for failure".**

### *WLC Case Study 2*

Our client's employer was a business that managed a number of operations. During parental leave, our client approached her employer and requested training and information to assist her when she resumed work, such as learning how to use the new computer system that had been installed in the workplace whilst she was on parental leave.

**She was then advised by her employer that she would not be returning to work in the same centre after her parental leave.**

Our client was advised by her employer that the person who was acting in her former position was a "better fit" for that centre. Although she was to hold the same level of position, she did not want to change the location of her work or her work environment, particularly as it involved longer travelling time.

### *WLC Case Study 3*

Our client worked on evening/weekends in a high risk workplace where, after discovering that she was pregnant, she requested light duties for the duration of her pregnancy, to avoid any exposure to dangerous situations while pregnant.

Her employer did not move her to light duties until one month after the request. Our client's employer then informed her that the new 'safe job' did not require weekend/evening work. Accordingly, she did not receive the penalty rates she received for evening/weekend work. She also had to then find childcare for the weekdays that she now worked.

**Not only was our client's annual salary significantly reduced due to her change in work days, she now had greater child care costs.**



#### *WLC Case Study 4*

Our client had been employed as a manager of a company.

Shortly before she was to commence her maternity leave, the company went into voluntary administration and her employment was terminated on a redundancy basis, along with approximately 50 other staff of the company. Our client expressed concern about the selection criteria for the staff who were chosen for redundancy, as she was the only manager who was made redundant.

The company was then sold with reduced staff numbers.

**At the time of her redundancy, our client was seven months pregnant.**

#### *WLC Case Study 5*

Our client commenced employment in a new job, but did not inform her employer that she was pregnant at the time of employment.

Our client later informed her employer that she was pregnant and that she intended to take a number of weeks of unpaid leave from work after the birth of the child. She had not yet worked the period that entitled her to parental leave.

Our client applied for annual leave, which was approved by her employer.

**During her leave period, she was then informed that her employment had been terminated and she was not to return to work.**

She was not paid any further money by her employer. Later, our client was informed by one of the managers that he had been instructed to terminate her employment as she was planning on taking leave to have a baby.

#### *WLC Case Study 6*

Our client worked in a high risk workplace where, after being involved in a particular incident at the workplace, she advised her supervisor that she was pregnant.

Our client was informed by her supervisor that her place of employment was not safe for pregnant women.

**She was also told that "pregnant women aren't fit to work here".**

Our client requested a different role that would be considered safe, but was told that she was unable to perform "full duties". She then experienced harassment from her supervisor.

She developed stress and anxiety and was unable to continue her work.

## 7. Trends in relation to discrimination experienced by women

### AHRC - Community Organisations - Guiding Question 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 has returned to work after taking parental leave?'*

#### *WLC case studies*

7.1 From the WLC's experience, the WLC notes the following broad trends in relation to discrimination experienced by women who become pregnant or have returned to work after taking parental leave:

- (a) allocation to new roles during pregnancy, which was a detrimental change in role from the perspective of the employee;
- (b) allocation to new roles after returning to work from parental leave, which was a detrimental change in role from the perspective of the employee;
- (c) lack of flexibility by employers in assigning suitable roles for women during pregnancy or when they return to work after parental leave;
- (d) lack of flexibility by employers in finding "safe jobs" for pregnant women in higher risk workplaces; and
- (e) pregnant women having their employment terminated or being made redundant.

#### *General trends*

7.2 Through its work in providing legal information and advice to clients over the years, the WLC has observed a number of general trends in relation to discrimination experienced by women who become pregnant or have returned to work after taking parental leave.

7.3 A common feature of many of the matters that the WLC deals with in this area is a lack of education, understanding and access to information (for both employers and employees) about the rights of women in the workplace who are pregnant and the rights of women returning to work after parental leave.

- 7.4 Most of the WLC's involvement in matters of this type has been to provide information to our clients about their rights and entitlements.
- 7.5 The WLC experience is that, when an employee presents their employer with details of the employee's rights and entitlements regarding pregnancy and parental leave, those entitlements will often be met. However, this pattern relies on the individual woman having access to information about her entitlements, and having the confidence to approach her employer to discuss them. The WLC remains concerned that many women are not in a position to advocate for themselves in such circumstances and as such, do not access their entitlements. Again, the WLC has found that women are concerned that they will be identified as 'troublemakers' if they ask about their pregnancy and parental leave-related entitlements, or seek to access these entitlements.
- 7.6 In the WLC's experience, these concerns commonly arise for marginalised women when they seek to access many different types of employment entitlements. However, workplace culture seems to make accessing pregnancy and parental leave-related entitlements particularly difficult.
- 7.7 In the WLC's experience, there are:
- (a) many employers who are not fully aware of their obligations in relation to employees who are pregnant or who take parental leave; and
  - (b) similarly, many employees are not fully aware of their rights in relation to pregnancy or taking parental leave.

## 8. Limitations or gaps in the legislative and policy framework

### AHRC - Community Organisations - Guiding Question 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?'*

- 8.1 From the WLC's experience in providing legal information and advice to women, there are number of broad gaps in the current legislative and policy framework in Australia.
- 8.2 The WLC has not sought to identify specific legislation or policy that it considers requires amendment (with the exception of the discussion at **sections 8.10-8.16** of this submission). Instead, below we have set out some general comments on gaps in the current framework as experienced by the WLC's clients, in the following broad categories:
- (a) flexible working arrangements;
  - (b) education/awareness;

- (c) community/cultural change; and
- (d) 'Reasonable adjustments' requirement,

noting that many of the ideas raised these categories are in fact interconnected or closely related.

### *Flexible Working Arrangements*

- 8.3 The WLC notes that flexible work arrangements help employees to balance their work and personal lives, which is important for employees who are pregnant or returning to work after parental leave, particularly in relation to the demands of caring for a child.
- 8.4 The WLC further notes the comments of the Fair Work Ombudsman regarding the benefits of flexible work arrangements for business, which include reduced absenteeism, improved productivity and job satisfaction.<sup>10</sup>
- 8.5 From the experiences of WLC clients, we note that gaps in the current framework exist which does not, in the WLC's opinion, sufficiently reflect the need:
  - (a) to have flexible working arrangements as the norm, with onus on the employer to demonstrate why a job needs to be full time;
  - (b) for employers to be creative when working out flexible arrangements;
  - (c) for working arrangements to allow for breastfeeding (such as allocated car parking spaces, to allow mothers to attend childcare centre through day for breastfeeding etc.);
  - (d) to eliminate the concerns regarding job security if raising pregnancy or parental leave discrimination issues, which has resulted in some employees not requesting flexible work arrangements;
  - (e) to reduce unnecessary restrictions on the work that an employee can perform when the employee has caring responsibilities; and
  - (f) to give incentives to employers to change practices, such as:
    - (i) a reputational benefit (for example, through a 'family friendly' accreditation system); or
    - (ii) financial benefit (for example, tax relief or payments for employing people on flexible work arrangements).

### *Education/Awareness*

- 8.6 As noted earlier, a common feature of many of the matters that the WLC deals in this area is a lack of education, understanding and access to information (for both

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<sup>10</sup> Fair Work Ombudsman, "Best Practice Guide: Work & Family" (2013), available online at: <http://www.fairwork.gov.au/resources/best-practice-guides/Pages/work-and-family.aspx> [accessed 21 January 2014].

employers and employees) about pregnancy and women returning to work after parental leave.

- 8.7 From the experiences of the WLC clients, we note that gaps in the current framework exist which does not, in the WLC's opinion, sufficiently reflect the need:
- (a) for education (for both employer and employee) about the obligations of the employer, and rights of the employee, in relation to pregnancy, parental leave and return to work arrangements;
  - (b) for better preparation for when employees are preparing to go on parental leave and are returning to work after parental leave, such as:
    - (i) information regarding the role the employee will return to;
    - (ii) information during the period of parental leave regarding promotion opportunities, new position opportunities and general contact to 'keep in touch' (to the extent the employee wants it); and
    - (iii) information regarding changes that happened in the workplace during the period of parental leave;
  - (c) to make employers aware of the cost to business if flexible work practices are not adopted (for example, the cost of losing an employee and the cost of hiring and retraining a new employee); and
  - (d) to make employers aware of the potential productivity of employees in flexible work positions<sup>11</sup>.

### ***Community/Cultural Change***

8.8 The WLC considers that there are also number of gaps in the current framework relating to community and cultural change. The WLC notes that potential negative stereotypes about pregnant women may include: incompetence, lack of commitment, inflexibility, and the need for accommodation.<sup>12</sup>

8.9 From the experiences of the our clients, the WLC notes that gaps in the current framework include the need:

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<sup>11</sup> For example, see: Ernst & Young, 'Untapped Opportunity: The role of women in unlocking Australia's productivity potential' (July 2013), available online at: [http://www.ey.com/Publication/vwLUAssets/Untapped\\_opportunity\\_-\\_The\\_role\\_of\\_women\\_in\\_unlocking\\_Australias\\_productivity\\_potential/\\$FILE/EY-Untapped-opportunity-The-role-of-women-in-unlocking-Australias-productivity-potential.pdf](http://www.ey.com/Publication/vwLUAssets/Untapped_opportunity_-_The_role_of_women_in_unlocking_Australias_productivity_potential/$FILE/EY-Untapped-opportunity-The-role-of-women-in-unlocking-Australias-productivity-potential.pdf) [accessed 21 January 2014].

<sup>12</sup> Whitney Morgan et al, 'A field experiment: Reducing interpersonal discrimination toward pregnant job applicants', *Journal of Applied Psychology* 98(5) (2013) 799, available online at <http://psycnet.apa.org/journals/apl/98/5/799> [accessed 21 January 2014].

- (a) to change the perception that often having a baby is seen as a lack of commitment to the job, which can result in women who have a baby being devalued at work;
- (b) to change the culture that parental leave has to be 'earned';
- (c) for cultural attitudinal changes in many work organisations;
- (d) for accessible, affordable childcare, which will assist employees to return to work after a period a parental leave; and
- (e) to change the perception held by some employees that discrimination relating to pregnancy and parental leave is just 'something that happens', which results in some employees not raising discrimination issues or simply leaving their job.

***'Reasonable adjustments' requirement***

8.10 The WLC also considers that there may be potential gaps in existing legislation. In particular, the WLC notes that under the SD Act, there is no requirement for employers to make 'reasonable adjustments' for pregnant employees. In particular, the WLC notes that section 7(2) of the SD Act provides that:

***7 Discrimination on the ground of pregnancy or potential pregnancy***  
 ...  
*(2) For the purposes of this Act, a person (the discriminator) discriminates against a woman (the aggrieved woman) on the ground of the aggrieved woman's pregnancy or potential pregnancy if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging women who are pregnant or potentially pregnant.*  
 ...

8.11 By contrast, the *Disability Discrimination Act 1992* (Cth) (**DD Act**) includes the following sections:

***5 Direct disability discrimination***  
 ...  
*(2) For the purposes of this Act, a person (the discriminator) also discriminates against another person (the aggrieved person) on the ground of a disability of the aggrieved person if:*

- (a) the discriminator does not make, or proposes not to make, **reasonable adjustments** for the person; and*
- (b) the failure to make the **reasonable adjustments** has, or would have, the effect that the aggrieved person is, because of the disability, treated less favourably than a person without the disability would be treated in circumstances that are not materially different. [our bolding]*

...

## **6 Indirect disability discrimination**

...  
(2) For the purposes of this Act, a person (the discriminator) also discriminates against another person (the aggrieved person) on the ground of a disability of the aggrieved person if:

(a) the discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and

(b) because of the disability, the aggrieved person would comply, or would be able to comply, with the requirement or condition only if the discriminator **made reasonable adjustments** for the person, but the discriminator does not do so or proposes not to do so; and

(c) the failure to make **reasonable adjustments** has, or is likely to have, the effect of disadvantaging persons with the disability. [our bolding]

...

8.12 In section 4 of the DD Act, 'reasonable adjustment' is defined as meaning "an adjustment to be made by a person is a reasonable adjustment unless making the adjustment would impose an unjustifiable hardship on the person".

8.13 The WLC understands that the DD Act requires employers to make reasonable adjustments so that a person with disability does not suffer difficulty in their employment environment, unless making the adjustment would impose an unjustifiable hardship on the employer.

8.14 Common types of reasonable adjustments for employees with disabilities include:

- (a) adjustments to the workplace, equipment or facilities;
- (b) adjustments to work-related communications including the form or format in which information is available
- (c) adjustments to work methods; and
- (d) adjustments to work arrangements, including in relation to hours of work.<sup>13</sup>

8.15 The WLC notes that the SD Act could be amended to similarly include a 'reasonable adjustments' requirement, which would require employers to make reasonable adjustments to accommodate the needs of a pregnant employee, unless this would impose an unjustifiable hardship on the employer.

8.16 Reasonable adjustments for a pregnant employee could include:

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<sup>13</sup> Australian Public Service Commission, 'Disability: Information for applicants and employees', available online at: <http://www.apsc.gov.au/disability/information-for-applicants-and-employees> [accessed 21 January 2014].

- (a) adjustments to the workplace, equipment or facilities;
- (b) adjustments to the type of work (for example, a safer job or more appropriate duties for the duration of pregnancy);
- (c) adjustments to any uniform required (for example, by providing a maternity uniform); and
- (d) adjustments to work arrangements, including in relation to hours of work.

9. **Case studies of leading practices and strategies**

**AHRC - Community Organisations - Guiding Question 5**

*'Please provide case studies of leading practices and strategies for addressing discrimination in the workplace in relation to pregnancy, parental leave or return to work that you can share with the National Review.'*

- 9.1 Through the WLC's work in providing legal information and advice to women, the WLC has not come across specific 'leading practices and strategies' for addressing discrimination in the workplace in relation to pregnancy, parental leave or return to work that it wishes to share in this submission.

10. **Recommendations**

**AHRC - Community Organisations - Guiding Question 6**

*'What sorts of outcomes or recommendations would you like to see from this National Review?'*

- 10.1 The WLC would like to see recommendations arise from the National Review to fill the broad gaps in the current legislative and policy framework, as identified in **section 8** of this submission.
- 10.2 Accordingly, the WLC would like to see the following recommendations arise from the National Review:

***Flexible Working Arrangements***

- (a) rectification of gaps in the current framework, to sufficiently reflect the need:
  - (i) to have flexible working arrangements as the norm, with onus on the employer to demonstrate why a job needs to be full time;



- (ii) for employers to be creative when working out flexible arrangements;
- (iii) for working arrangements to allow for breastfeeding (such as allocated car parking spaces, to allow mothers to attend childcare centre through day for breastfeeding etc.);
- (iv) to eliminate the concerns regarding job security if raising pregnancy or parental leave discrimination issues;
- (v) to reduce unnecessary restrictions on the work that an employee can perform when the employee has caring responsibilities; and
- (vi) to give incentives to employers to change practices, such as:
  - A. a reputational benefit (for example, through a 'family friendly' accreditation system); or
  - B. financial benefit (for example, tax relief or payments for employing people on flexible work arrangements);

***Education/Awareness***

- (b) rectification of gaps in the current framework, to sufficiently reflect the need:
  - (i) for education (for both employer and employee) about the obligations of the employer, and rights of the employee, in relation to pregnancy, parental leave and return to work arrangements;
  - (ii) for better preparation for when employees are preparing to go on parental leave and are returning to work after parental leave, such as:
    - A. information regarding the role the employee will return to;
    - B. information during the period of parental leave regarding promotion opportunities, new position opportunities and general contact to 'keep in touch' (to the extent the employee wants it); and
    - C. information regarding changes that happened in the workplace during the period of parental leave;
  - (iii) to make employers aware of the cost to business if flexible work practices are not adopted (for example, the cost of losing

- an employee and the cost of hiring and retraining a new employee); and
- (iv) to make employers aware of the potential productivity of employees in flexible work positions;

***Community/Cultural Change***

- (c) rectification of gaps in the current framework, to sufficiently reflect the need:
  - (i) to change the perception that often having a baby is seen as a lack of commitment to the job, which can result in women who have a baby being devalued at work;
  - (ii) to change the culture that parental leave has to be 'earned';
  - (iii) for cultural attitudinal changes in many work organisations;
  - (iv) for accessible, affordable childcare, which will assist employees to return to work after a period a parental leave; and
  - (v) to change the perception held by some employees that discrimination relating to pregnancy and parental leave is just 'something that happens', which results in some employees not raising discrimination issues or simply leaving their job; and

***'Reasonable adjustments' requirement***

- (d) consideration to be given to amending the SD Act to include a 'reasonable adjustments' requirement, which would require employers to make reasonable adjustments to accommodate the needs of a pregnant employee, unless this would impose an unjustifiable hardship on the employer.

Women's Legal Centre (ACT & Region)

31 January 2014