

Pregnant and Productive: It's a right not a privilege to work while pregnant

Report of the National Pregnancy and Work Inquiry

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Terms of reference

I, Daryl Williams, Attorney-General of Australia, IN PURSUANCE OF section 48(1)(g) of the *Sex Discrimination Act 1984*, HEREBY REQUEST the Human Rights and Equal Opportunity Commission to inquire into and report matters relating to pregnancy and work.

The Commission is to:

- a) examine the policies and practices of employers in relation to the recruitment of women who are pregnant or have the potential to become pregnant;
- b) examine the rights and responsibilities of employers and their employees in relation to employees who are pregnant;
- c) examine the rights and responsibilities of employers and their employees in relation to potentially pregnant employees;
- d) examine the rights and responsibilities of employees who are pregnant in relation to that pregnancy;
- e) examine rights and responsibilities arising under sections 15,16,17 and 20 of the *Sex Discrimination Act 1984*;
- f) examine the adequacy of, and any need for changes to, relevant Federal anti-discrimination laws, or to policies and practices relating to pregnant or potentially pregnant workers;
- g) produce and publish guidelines to:
 - provide employers, principals of commission agents and contract workers, partnerships and employment agencies with practical guidance to those provisions of the *Sex Discrimination Act 1984* which apply to discrimination on the grounds of pregnancy or potential pregnancy;
 - assist those parties to implement policies and to eliminate and prevent discrimination on the grounds of pregnancy and potential pregnancy;
 - provide employees and potential employees with practical guidance on those provisions of the *Sex Discrimination Act 1984* which apply to discrimination on the grounds of pregnancy or potential pregnancy; and
 - assist all parties to understand and fulfil their obligations under *the Sex Discrimination Act 1984* in relation to pregnancy and potential pregnancy.

These guidelines may include:

- an overview of minimum standards;
- workplace examples that provide individual solutions to the circumstances of particular pregnant employees above and beyond minimum standards;
- sound management practices that meet the needs of individuals and their employers.

The term “employees” is to be interpreted broadly and should include, for example, part time, temporary, casual and shift workers.

IN PERFORMING its functions in relation to the reference, the Commission is to

- a) consult with individuals and organisations, particularly with employers and employer organisations, individual women, unions, relevant non-government organisations, relevant government authorities, medical practitioners’ associations and other inserted parties;
- b) have regard to relevant law, practice, research and experience; and
- c) have regard to Australia’s international human rights obligations.

THE COMMISSION IS REQUIRED to report no later than 31 May 1999.*

Dated 26 August 1998
DARYL WILLIAMS

* extended to 24 June 1999.

Foreword

It is a human right, not a privilege for a woman to work while she is pregnant. The challenge that lies before us on the eve of the 21st Century is to ensure appropriate, safe and fair management of workplace pregnancy. The national Pregnancy and Work Inquiry has provided an opportunity to assess our progress thus far and ensure that prevailing issues of concern are placed on the agenda for timely and thorough attention.

The federal *Sex Discrimination Act 1984* (Cth) reflects Australia's international obligations under the United Nations *Convention on the Elimination of all Forms of Discrimination Against Women* and the International Labour Organisation's *Discrimination (Employment and Occupation) Convention 1958* (ILO No 111), both of which denote the importance of a workplace free from discrimination.

The proscriptions in the *Sex Discrimination Act 1984* (Cth) covering discrimination on the ground of pregnancy and potential pregnancy have been in the Act, in one form or another, for 15 years. Yet, many people who contributed to the Pregnancy and Work Inquiry maintained that there remains a level of confusion and much work to be done.

As with most inquiries, a range of experiences and views emerged. Unfortunately, but not unexpectedly, there was evidence that erroneous tactics and exploitative practices are, to this day, being utilised to remove pregnant women from the workforce or deny pregnant and potentially pregnant women equal employment opportunity.

It also became evident that there is a significant level of ignorance amongst some employees and employers and that many people rely on second hand or semi-accurate information when making decisions about how to manage workplace pregnancy issues. The inquiry did, however, provide a number of heartening examples of employers (both large and small) and employees, who were aware of their rights and responsibilities. Together they managed pregnancy, and related workplace issues, well, avoiding risk and ensuring the women were able to fulfil their potential while pregnant.

As we celebrate the 15th anniversary of the *Sex Discrimination Act 1984* (Cth), we cannot ignore the fact that workplace discrimination and harassment on the ground of pregnancy and potential pregnancy remains a real issue for many women in our society. Regardless of status, industry, discipline or level of education, or for that matter age, race or religion, for many women pregnancy results in inequitable workplace treatment as well as long and short term financial impact and career disadvantage.

Beyond the experiences of individual women, the inquiry found that discrimination that prevents women from entering or moving within the workforce continues to operate as a barrier to redress historical workforce gender imbalances.

As a society that 15 years ago legally acknowledged that women had a right to work and be pregnant, we now have to ask ourselves whether or not we are comfortable with these findings.

This inquiry, having confirmed that to be granted a human right does not necessarily ensure its realisation, provides us with an opportunity, via the report recommendations, to support Australian women and their families. Women, who are encouraged by society to have children, should be in a position to view the privilege of being able to have a child as just that, a privilege, rather than something they are penalised for.

Our work in this area can only benefit future generations of Australians.

Susan Halliday
Sex Discrimination Commissioner
Human Rights and Equal Opportunity Commission
24 June 1999
Sydney

Executive summary

It is paramount that all parties to the employment relationship are well informed about their rights and responsibilities with regards to workplace discrimination. This message was repeatedly voiced during the national Pregnancy and Work Inquiry. Conducted by the Human Rights and Equal Opportunity Commission (HREOC) under the auspices of the federal *Sex Discrimination Act 1984* (Cth), the Pregnancy and Work Inquiry is the first national inquiry of its kind.

On 26 August 1998, the federal Attorney-General asked HREOC to conduct an inquiry into pregnancy and potential pregnancy discrimination in the workplace. An Issues Paper was produced on 1 December 1998 and distributed widely around the country. Consultations were conducted on that paper between December 1998 and April 1999. The Issues Paper attracted over 100 submissions. A wide range of consultations were undertaken by members of the Sex Discrimination Unit and the Sex Discrimination Commissioner personally. Focus groups were also hosted by interested organisations around the country in metropolitan, regional and remote areas.

Across the board there was a positive response to the inquiry with the vast majority of contributors questioning how, as a society that acknowledges both women's right to work and the economic contribution they make, we can better manage the reality of pregnant workers. A variety of perspectives were aired and a significant amount of evidence concerning direct and indirect discrimination on the basis of pregnancy and potential pregnancy was detailed. Issues of harassment and victimisation due to pregnancy and potential pregnancy were documented by contributors. Employers and employer organisations also took the opportunity to explain some of the difficulties that they believed they faced with the practical day to day management of pregnant workers.

There were a number of confidential submissions to the inquiry with some contributors feeling uncomfortable about publicly discussing their experiences; these were received from both employers and employees. There was also evidence that many instances of

pregnancy discrimination go unreported, a decision some women make when they feel that to seek redress by questioning employers' authority is risky, and while pregnant, simply too hard.

Of great concern...is the acceptance by a considerable number of women of the discrimination that they experience. It appears that they accept that pregnancy is a personal choice and you can't have your cake and eat it too. This clearly indicates that there is a need for public education about what women's rights are when they are pregnant. It is a sad reflection of women's status in Australian society that so many women are prepared to accept this discrimination as part of life.¹

The inquiry revealed that stereotyping the capacities and inclinations of female job applicants who were pregnant or who had the potential to become pregnant in the future affected their ability to obtain work or gain promotion. It was also a reason for denial of training.

There was evidence of workplace practices that had failed to integrate the needs and rights of women workers, with submissions highlighting a wealth of specific examples of women who have been recently disadvantaged when attempting to combine their right to work with their choice to remain pregnant.

Discriminatory dismissals are a common basis of sex discrimination complaints made under the *Sex Discrimination Act 1984* (Cth), and as noted in the inquiry, the most common reason that women formalise complaints of discrimination on the ground of pregnancy under the Act.

Submissions received from employer organisations and unions detailed work that was undertaken to educate their respective members. Other submissions indicated that employees in workplaces that have access to well articulated, comprehensive frameworks that cover sex discrimination, pregnancy, and maternity leave, felt a sense of security, reduced anxiety and that they were better placed to plan for their future. Such frameworks were sighted for large and small organisations.

The relationship between an employer and employee is one of mutual rights and responsibilities. A successful working relationship is one where these rights and responsibilities are respected and implemented by all parties. A number of submissions and consultations detailed how the new agreement-based workplace relations system can help facilitate this. There were also concerns expressed about industrial relations changes contributing to decreased protection afforded to women workers, particularly with respect to pregnancy.

HREOC recognises a considerable degree of common ground between the workplace relations and the anti-discrimination systems; both systems aim to assist the fair and equitable operation of employment relationships. HREOC is of the view that the existing relationship between the two regimes should be formally acknowledged and, where appropriate, strengthened.

¹ Women's Electoral Lobby Australia (Submission no 97).

Workplace pregnancy requires sound, thoughtful management. The inquiry indicated that pregnancy, and in some cases potential pregnancy, can pose particular challenges for ensuring compliance with both occupational health and safety and anti-discrimination legislation simultaneously. Employers and employees should consider the management of pregnancy and potential pregnancy in the context of the general obligation to ensure health, safety and welfare. Risks need to be assessed objectively, free from discriminatory assumptions and/or stereotypes. The inquiry evidenced that there are some managers who have difficulty with this. It also alerted HREOC to managers who were of the view that individual workers deserved to be managed as individuals and that entrenched cultural values had to be challenged in order to ensure a workplace free from pregnancy discrimination.

The inquiry confirmed that employers and employees are in need of clear practical guidelines that are educative in nature. Increased education to ensure compliance with the *Sex Discrimination Act 1984* (Cth) and how the Act interrelates with workplace relations and occupational health and safety requirements also emerged as a priority. The main recommendation concerns the immediate need for education, guidance and awareness raising programs around pregnancy and work. A number of other recommendations have been designed to address how this could be done.

Recommendations also cover the content of the proposed Guidelines, on managing pregnancy and potential pregnancy at work. The Guidelines will be finalised after further consultations with interested groups, and launched later this year. A plain English, user-friendly approach will be taken with the Guidelines which are designed to give practical advice on assessing a workplace to ensure practices, procedures and policies in relation to the management of pregnancy and potential pregnancy are appropriately focused, while taking account of the particular characteristics of that workforce as well as the needs of employees and employers.

Inquiry findings and hence recommendations also address two other main areas.

The first area is concerned with the large range of federal, state and territory legislation covering pregnancy-related concerns, in particular anti-discrimination, workplace relations and occupational health and safety legislation. The volume and diversity of this legislation makes identifying an appropriate legislative framework for each workplace and managing pregnancy and work within that legislative framework cumbersome and sometimes difficult. The first set of findings and recommendations addresses ways to ensure that legislative duplication and inconsistencies are minimised as far as possible. Other aspects of the report address the need for amendments to the *Sex Discrimination Act 1984* (Cth) to clarify existing protections that are confusing for business and the broader community. There are also recommendations that reflect the way the workplace, and how we do, and define, work has altered over the past 15 years. These recommendations seek to enhance *the Sex Discrimination Act 1984* (Cth).

The second area relates to the need for further research. The inquiry found that there has been extremely limited research undertaken on issues of pregnancy and potential pregnancy at work in Australia and internationally. The obvious need for further or

initial research on many areas touched upon during the inquiry is exemplified in the findings and the recommendations.

This report is divided into four parts:

1. Introduction (Chapters 1,2,3). These chapters provide an overview of the report and discuss the context in which HREOC considers issues of discrimination on the grounds of pregnancy and potential pregnancy.
2. The regulatory framework (Chapters 4,5,6,7,8,9). These chapters discuss in detail the provisions of the *Sex Discrimination Act 1984* (Cth), and the interaction of that Act with workplace relations legislation, occupational health and safety systems and state and territory anti-discrimination legislation. An outline of how the systems work and where they fail or are lacking, is provided. Suggestions for remedies are discussed.
3. Specific issues (Chapters 10, 11, 12, 13). These chapters concern the specific practices that were raised as concerns during the inquiry. In particular, issues of advertising and recruitment, workplace management of pregnancy and potential pregnancy, and grievance and complaints procedures are discussed. This set of chapters also covers specific issues for particular groups of workers.
4. The future (Chapter 14). The report concludes with a discussion of post-pregnancy issues. These issues, particularly in relation to stimulating debate around the provision of paid maternity leave in Australia and legislative coverage of breast feeding, were raised throughout the inquiry and emphasised as areas in need of immediate and sustained attention.

This report presents the inquiry's findings and extensive legislative analysis. It also details existing research that will be useful to specialists, legislators, policy makers and academics. As the first national inquiry into pregnancy and potential pregnancy discrimination at work, this report will act as an authoritative statement about relevant law and practice. The Guidelines, on the other hand, having undergone a final process of consultation will be for general use by employees, employers, non-government organisations and support organisations, employer organisations, medical advisers, unions and other employee representatives.

The statistics documented in this report clearly identify a trend over the past decade of more women working and fewer births. While Australian women are strategically planning their daily lives and longer term futures, some women report that they are actually choosing between work and family, or limiting the number of children they have through a variety of means, to one child. The submission from the federal Office of the Status of Women noted that

[e]nsuring that pregnancy does not result in employment discrimination is an important requirement in supporting women's and families' choice to have children.²

² Office of the Status of Women (Submission no 98).

There was considerable information provided to the inquiry that indicated that discrimination on the basis of pregnancy and the inability to obtain paid maternity leave were significant factors that contributed to the decisions now being made by Australian women.

Pregnancy Guidelines Recommendations

Chapter 4 – Definitions and grounds of discrimination under the *Sex Discrimination Act 1984*

Pregnancy Guidelines 1: That the Guidelines provide assistance with the definition of potential pregnancy and include examples of what could constitute discrimination on that ground.

Pregnancy Guidelines 2: That the Guidelines provide clarification about the definition of pregnancy for the purposes of the *Sex Discrimination Act 1984* (Cth).

Pregnancy Guidelines 3: That the Guidelines provide plain English definitions and case studies of direct discrimination on the grounds of pregnancy and potential pregnancy.

Pregnancy Guidelines 4: That the Guidelines provide an explanation, including case studies, of “less favourable treatment” for the purposes of direct discrimination against pregnant and potentially pregnant employees.

Pregnancy Guidelines 5: That the Guidelines provide clarification of the prohibition on indirect discrimination against pregnant and potentially pregnant employees under the *Sex Discrimination Act 1984* (Cth). In particular, Guidelines should provide plain English definitions and case studies.

Chapter 5 – Areas covered by the *Sex Discrimination Act 1984* and exemptions

Pregnancy Guidelines 6: That the Guidelines provide clarification of the coverage of pregnant and potentially pregnant unpaid workers under the *Sex Discrimination Act 1984* (Cth).

Pregnancy Guidelines 7: That the Guidelines provide clarification of the rights and obligations under the *Sex Discrimination Act 1984* (Cth) for parties involved in licence agreements and franchise agreements.

Pregnancy Guidelines 8: That the Guidelines include an explanation of the scope of exemptions and special measures under the *Sex Discrimination Act 1984* (Cth) in relation to pregnancy and potential pregnancy and provide advice and assistance on factors to consider in making a formal application for a temporary exemption.

Chapter 6 – Types of discriminatory conduct or acts

Pregnancy Guidelines 9: That the Guidelines provide assistance with what could constitute discrimination suffered by employees within sections 14 to 17 of the *Sex Discrimination Act 1984* (Cth) on the basis of pregnancy or potential pregnancy. In particular, Guidelines should cover what could constitute unlawful

- limiting or denying access to benefits;
- dismissal or termination; and
- any other detriment.

Chapter 7 – Relationship with state and territory laws

Pregnancy Guidelines 10: That the Guidelines provide practical assistance in managing some of the major discrepancies between state/territory and federal anti-discrimination legislation.

Chapter 8 – Relationship between anti-discrimination and workplace relations systems

Pregnancy Guidelines 11: That the Guidelines specifically canvass some of the benefits of establishing pregnancy and related family-friendly work practices.

Pregnancy Guidelines 12: That the Guidelines include examples of provisions in agreements that have worked well and could be adapted for use in other agreements to assist in preventing or eliminating discrimination on the ground of pregnancy or potential pregnancy in the workplace.

Pregnancy Guidelines 13: That the Guidelines provide information on the interrelationship between federal anti-discrimination and workplace relations jurisdictions as they relate to pregnancy and potential pregnancy.

Chapter 9 – Occupational health and safety

Pregnancy Guidelines 14: That the Guidelines clarify the relationship of obligations under anti-discrimination and OH&S legislation.

Chapter 10 – Marginalised workers

Pregnancy Guidelines 15: That the Guidelines provide clarification about the definition of casual employment and the rights and responsibilities of casual employees and employers of casuals.

Pregnancy Guidelines 16: That the Guidelines provide assistance and clarification regarding the rights and responsibilities of employees on short term contracts.

Pregnancy Guidelines 17: That the Guidelines address particular discrimination issues that can arise for pregnant or potentially pregnant Indigenous employees and assist

employees and employers awareness of the need for sensitivity and individual discussion regarding cultural practices.

Pregnancy Guidelines 18: That the Guidelines address the discrimination issues facing pregnant and potentially pregnant employees and employers in rural and remote areas.

Pregnancy Guidelines 19: That the Guidelines address the particular steps that need to be taken by employers to ensure that women entering the workforce for the first time are well informed of their rights and responsibilities under the *Sex Discrimination Act 1984* (Cth), particularly in relation to pregnancy and potential pregnancy.

Pregnancy Guidelines 20: That the Guidelines address specific issues regarding discrimination on the ground of pregnancy and potential pregnancy for apprentices and trainees.

Pregnancy Guidelines 21: That the Guidelines provide assistance to workplace participants in appropriate workplace management of the pregnancies of women in non-traditional families.

Pregnancy Guidelines 22: That the Guidelines provide assistance to all workplace participants about the particular issues faced by some women of culturally and linguistically diverse backgrounds. The Guidelines should address particular steps that need to be taken to ensure that women from such backgrounds are well informed of their rights and obligations under the *Sex Discrimination Act 1984* (Cth), particularly in relation to pregnancy and potential pregnancy.

Pregnancy Guidelines 23: That the Guidelines provide assistance to workplace participants in appropriately managing the pregnancies of women with disabilities.

Chapter 11 – Advertising and recruitment

Pregnancy Guidelines 24: That the Guidelines make clear the legal responsibilities of employers and employment and recruitment agencies in recruitment processes and demonstrate the way in which federal and state/territory legislation can operate together.

Pregnancy Guidelines 25: That the Guidelines provide examples of non-discriminatory questions for use at interview to elicit information legitimately required of applicants who are pregnant or potentially pregnant.

Pregnancy Guidelines 26: That the Guidelines note that, while it is appropriate to ask a pregnant job applicant to undergo a medical examination, any such medical examination should be undertaken with a view to addressing occupational health and safety concerns and should not in itself lead to, or exacerbate, discrimination on the ground of pregnancy.

Chapter 12 – Accommodating pregnancy in the workplace

Pregnancy Guidelines 27: That the Guidelines provide information regarding the rights and responsibilities of pregnant employees seeking to access maternity leave and the rights and responsibilities of employers in relation to arranging for maternity leave.

Pregnancy Guidelines 28: That the Guidelines provide practical assistance to employers in accommodating workplace pregnancy.

Pregnancy Guidelines 29: That Guidelines provide practical assistance on the use of sick leave during pregnancy.

Pregnancy Guidelines 30: That the Guidelines provide practical assistance to employees and employers in relation to miscarriage, pregnancy termination, still birth or the death of a newborn child.

Pregnancy Guidelines 31: That the Guidelines provide practical assistance to employers, employees and medical advisers on the proper role of medical advice in managing pregnancy at work.

Pregnancy Guidelines 32: That the Guidelines provide practical assistance particularly aimed at small business employers and employees in managing pregnancy at work and adequately accommodating the pregnancy.

Pregnancy Guidelines 33: That the Guidelines provide assistance to employees and employers in preventing unlawful harassment of pregnant and potentially pregnant employees.

Chapter 13 – Grievance and complaints procedures

Pregnancy Guidelines 34: That the Guidelines provide advice and assistance on the management of internal grievances with specific reference to small business.

Pregnancy Guidelines 35: That the Guidelines provide assistance on the establishment, and promotion, of appropriate internal employer mechanisms for handling grievances concerning discrimination on the grounds of pregnancy and potential pregnancy.

Pregnancy Guidelines 36: That the Guidelines focus on the need for employers to clearly indicate their commitment to the prevention and elimination of discrimination on the ground of pregnancy and potential pregnancy.

Pregnancy Guidelines 37: That the Guidelines identify those groups of employees who may have special needs when it comes to accessing effective mechanisms for handling grievances concerning discrimination on the grounds of pregnancy and potential pregnancy internally.

Pregnancy Guidelines 38: That the Guidelines make clear the role of HREOC is to act as a neutral third party in the resolution of complaints but is available to provide information on complaint processes to both complainants and respondents.

Pregnancy Guidelines 39: That the Guidelines explain the existence of the discretion under the *Sex Discrimination Act 1984* (Cth) to accept complaints outside of the 12 month time limit and provide advice about when the Sex Discrimination Commissioner is likely to exercise that discretion.

Pregnancy Guidelines 40: That the Guidelines provide suitably de-identified information and case studies from pregnancy discrimination matters conciliated under the SDA.

Pregnancy Guidelines 41: That the Guidelines provide some assistance in assessing the appropriateness of the jurisdiction of the Australian Industrial Relations Commission and HREOC for dealing with complaints of discrimination on the ground of pregnancy or potential pregnancy.

Recommendations

Chapter 1 – Introduction

Recommendation 1: That the Attorney-General amend the *Sex Discrimination Act 1984* (Cth) to empower HREOC to publish enforceable standards in relation to pregnancy and potential pregnancy.

Recommendation 2: That HREOC and the Affirmative Action Agency, with the assistance of state/territory anti-discrimination bodies, distribute and promote the Guidelines, by organising and conducting a series of workshops throughout Australia.

Recommendation 3: That the Attorney-General's Department fund and coordinate the production, in consultation with HREOC, of an educative video on pregnancy and work based upon the Guidelines.

Chapter 3 – Statistics and the extent of discrimination

Recommendation 4: That the Department of Employment, Workplace Relations and Small Business ensure that the AWIRS survey is conducted on a regular five year basis and include questions covering pregnancy and potential pregnancy. Useful questions could include

- the number of women who work during pregnancy,
- the distribution of pregnant employees by industry,
- the incidence of discrimination on the ground of pregnancy or potential pregnancy,
- the management of pregnancy at work and
- the attitudes of employees and employers regarding pregnancy at work.

Recommendation 5: That the Australian Bureau of Statistics develop, in consultation with HREOC, a set of questions on workplace pregnancy and maternity experiences for distribution in appropriate, regular, national surveys of workplaces (such as the Labour Force survey) and households. In particular, the Australian Bureau of Statistics

should consider the creation of a new specialist survey on these issues as well as the inclusion of relevant questions in future censuses.

Recommendation 6: That the Australian Institute of Family Studies conduct a quantitative and qualitative study into pregnancy and maternity in Australian workplaces.

Chapter 5 – Areas covered by the *Sex Discrimination Act 1984* and exemptions

Recommendation 7: That the Attorney-General examine the issues of coverage for federal statutory appointees, judicial office holders and Members of Parliament, to provide clarification of coverage and, if necessary, extend the provisions of the *Sex Discrimination Act 1984* (Cth) to cover these positions formally.

Recommendation 8: That the Attorney-General amend the *Sex Discrimination Act 1984* (Cth) to ensure coverage of unpaid workers.

Recommendation 9: That those federal Government Departments and agencies conducting formal unpaid work schemes ensure that participants in those schemes are provided with protection from discrimination on the ground of pregnancy and potential pregnancy.

Recommendation 10: That the Attorney-General amend section 13 of the *Sex Discrimination Act 1984* (Cth) to remove the exemption of employment by an instrumentality of a State.

Recommendation 11: That the Attorney-General amend the *Sex Discrimination Act 1984* (Cth) to remove the exemption contained in section 38 for educational institutions established for religious purposes in relation to pregnancy and potential pregnancy.

Chapter 8 – Relationship between anti-discrimination and workplace relations systems

Recommendation 12: That the Minister for Employment, Workplace Relations and Small Business specifically consider the position of pregnant and potentially pregnant employees in any future workplace relations reform to ensure that such employees are not exposed to the possibility of direct or indirect discrimination.

Recommendation 13: That the Department of Employment, Workplace Relations and Small Business and the Office of the Employment Advocate ensure that information is available to all workplace participants in relation to their rights and responsibilities in relation to pregnancy and potential pregnancy under the *Workplace Relations Act 1996* (Cth), awards, and in relation to making certified agreements or AWAs.

Recommendation 14: That information provided by the Employment Advocate pursuant to section 170VO *Workplace Relations Act 1996* (Cth) include information

about anti-discrimination laws and the role of the agreement making process in achieving a workplace free from discrimination and harassment. The information should include particular reference to discrimination on the ground of pregnancy and potential pregnancy.

Recommendation 15: That the Minister for Employment, Workplace Relations and Small Business fund each Working Women's Centre to provide specific advice and education about pregnancy and work, specifically targeting employees in small business.

Recommendation 16: That the Office of the Employment Advocate be required to collect and regularly publish information about the provisions in AWAs concerning pregnancy and maternity issues.

Recommendation 17: That the Office of the Employment Advocate undertake a research initiative in close consultation with the Sex Discrimination Commissioner to assess the progress of AWAs in contributing to the prevention and elimination of discrimination in the workplace in relation to pregnancy and potential pregnancy.

Recommendation 18: That the Department of Employment, Workplace Relations and Small Business establish a regular consultative network comprising that Department, the Affirmative Action Agency, the Office of the Employment Advocate, the Attorney-General's Department, the Sex Discrimination Commissioner's policy unit and the Office of the Status of Women to exchange data and review trends in relation to systemic sectoral and industry specific discrimination in AWAs, certified agreements and awards in relation to pregnancy and potential pregnancy and maternity leave issues, with a view to policy development and monitoring of workplace relations reform.

Recommendation 19: That the *Sex Discrimination Act 1984* (Cth) be amended to allow the Sex Discrimination Commissioner to refer discriminatory awards or agreements to the Australian Industrial Relations Commission of her own initiative without the requirement to receive a written complaint.

Recommendation 20: That the Sex Discrimination Commissioner and the Australian Industrial Relations Commission establish formal links and protocols for information sharing and exchange of expertise, with specific reference to sex and pregnancy discrimination issues.

Chapter 9 – Occupational health and safety

Recommendation 21: That the Department of Health and Aged Care, in consultation with the National Occupational Health and Safety Commission and HREOC, develop an education campaign that reflects the expectations and needs about the type of information and advice employees and employers want and need to ensure better care of pregnant or potentially pregnant employees.

Recommendation 22: That the National Occupational Health and Safety Commission make available on the national OH&S database all available practical advice on risk

control issues surrounding pregnancy at work. Such material could include the New South Wales *Draft Code of Practice and Guidelines on Pregnancy and Work* when adopted in that state and relevant excerpts of the Guidelines.

Recommendation 23: That the National Occupational Health and Safety Commission, Comcare and state/territory Occupational Health and Safety Commissions work with HREOC and other relevant agencies and organisations to review the New South Wales *Draft Code of Practice and Guidelines on Pregnancy and Work*, once that Code is finalised, with a view to implementing such a Code nationally.

Recommendation 24: That business and industry take the opportunity provided by this inquiry to consider closely the need for any further lead exemptions under anti-discrimination legislation and to take appropriate action in this regard.

Chapter 10 – Marginalised workers

Recommendation 25: That the *Workplace Relations Act 1996* (Cth) be amended to extend unpaid maternity leave to casual employees employed for over 12 months.

Recommendation 26: That state governments extend unpaid maternity leave rights to casual employees employed for over 12 months under their respective legislation.

Recommendation 27: That the Department of Employment, Workplace Relations and Small Business establish a working party including the Aboriginal and Torres Strait Islander Commission, HREOC and the Working Women's Centres, to be responsible for the creation of culturally specific education material on pregnancy and potential pregnancy discrimination in the workplace for Indigenous women, and formulate an effective distribution program for the material produced.

Recommendation 28: That the Departments of Agriculture, Fisheries and Forestry - Australia and of Transport and Regional Services, in consultation with the Office of the Status of Women and the Aboriginal and Torres Strait Islander Commission, jointly provide education and services in rural and remote areas to assist pregnant and potentially pregnant employees and their employers. In particular, the provision of improved communication facilities and medical information should be a priority.

Recommendation 29: That the Department for Education, Training and Youth Affairs, in consultation with the Sex Discrimination Commissioner, develop a pamphlet on the *Sex Discrimination Act 1984* (Cth) for all Year 9 to Year 12 students covering their rights and responsibilities at school, while in vocational education programs and in casual or part time work.

Recommendation 30: That the Department of Education, Training and Youth Affairs produce material in consultation with the Sex Discrimination Commissioner providing advice and assistance for managing pregnancy at school.

Recommendation 31: That the Chief Executive Officer of the Australian National Training Authority work with the Sex Discrimination Commissioner to develop a

strategy to inform policy about the circumstances of pregnant and potentially pregnant apprentices and trainees.

Recommendation 32: That Group Training Australia, in consultation with the Sex Discrimination Commissioner, develop an information sheet to advise all apprentices, trainees and host employers of the law regarding pregnancy and potential pregnancy discrimination.

Recommendation 33: That the Department of Immigration and Multicultural Affairs translate the Guidelines into six major community languages.

Recommendation 34: That Recommendation 22 and 23 include consideration of male partners' reproductive health.

Chapter 11 – Advertising and recruitment

Recommendation 35: That Attorney-General amend the *Sex Discrimination Act 1984* (Cth) to make clear that a complaint about a discriminatory advertisement may be made under section 14(1)(a) of the Act notwithstanding that the complainant is not a person directly affected by the advertisement.

Recommendation 36: That the Attorney-General clarify section 27 of the *Sex Discrimination Act 1984* (Cth) by the insertion of a specific provision that prohibits the asking of questions (whether orally or in writing) which might reasonably be understood as intended to elicit information about whether or when a woman intends to become pregnant and/or her intentions in relation to meeting her current or pending family responsibilities.

Recommendation 37: That the Attorney-General amend *Sex Discrimination Act 1984* (Cth) to clarify that it is unlawful to discriminate in medical examinations of pregnant women during recruitment processes.

Chapter 12 – Accommodating pregnancy in the workplace

Recommendation 38: That the federal Department of Health and Aged Care and the Australian Medical Association, in consultation with the Sex Discrimination Commissioner, develop a strategy to assist medical practitioners provide advice that contributes to the appropriate management of pregnancy at work.

Recommendation 39: That the Attorney-General amend the *Sex Discrimination Act 1984* (Cth) to include protection for employees who intend to, or are in the process of, adopting a child, from discrimination on this basis.

Chapter 13 – Grievance and complaints procedures

Recommendation 40: That the Advisory Board of the Affirmative Action Agency consult the Sex Discrimination Commissioner when developing minimum standards and educative materials to ensure that they reflect the legislative requirements of the

Sex Discrimination Act 1984 (Cth) and legal precedents with particular regard to pregnancy and potential pregnancy.

Recommendation 41: That, in accordance with recommendation 18 of the *Unfinished Business* report, the Director of the Affirmative Action Agency, in consultation with the Advisory Board, and the Sex Discrimination Commissioner develop protocols for the referral of certain systemic, sectoral or occupational sex-based discrimination issues, which may properly be the subject of an inquiry or report, to the Sex Discrimination Commissioner for consideration.

Recommendation 42: That the Attorney-General amend the provisions in relation to award of compensatory damages in the *Sex Discrimination Act 1984* (Cth) to also enable the award of punitive damages.

Chapter 14 – Where to from here?

Recommendation 43: That the Attorney-General amend the *Sex Discrimination Act 1984* (Cth) to specifically cover breastfeeding as a ground of unlawful discrimination.

Recommendation 44: That the federal Government remove its current reservation to article 11(2)(b) of the *Convention on the Elimination of all Forms of Discrimination Against Women* on paid maternity leave.

Recommendation 45: That Australian Governments, in particular through the federal Office of the Status of Women and its state/territory counterparts, and state/territory anti-discrimination bodies, encourage broad national debate regarding the amended draft text of ILO Convention 103 with a view to ratifying and implementing the resultant Convention.

Recommendation 46: That the Minister for Employment, Workplace Relations and Small Business provide funding to the Sex Discrimination Commissioner to undertake economic modelling and analysis of possible paid maternity leave options. The project, to be conducted in consultation with the Department of Employment, Workplace Relations and Small Business, would also involve extensive and close consultations with all relevant interested parties.