

## Chapter 1 - Introduction

### Background

- 1.1 On 26 August 1998, the Commonwealth Attorney-General, the Hon Daryl Williams AM QC MP, referred to the Human Rights and Equal Opportunity Commission (HREOC) a national inquiry into discrimination on the ground of pregnancy and potential pregnancy and the management of pregnancy in the workplace. The terms of reference for the inquiry are reproduced at page i.
- 1.2 HREOC is an independent statutory authority established under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). It has a variety of functions and powers to promote and protect the human rights of all people in Australia.
- 1.3 The national Pregnancy and Work Inquiry was granted to HREOC under the auspices of the *Sex Discrimination Act 1984* (Cth) (the SD Act). The SD Act provides a framework for the investigation and conciliation of complaints of unlawful acts of discrimination on the grounds of sex, marital status, pregnancy, potential pregnancy, sexual harassment and dismissal on the ground of family responsibilities. The SD Act gives HREOC and, in particular, the Sex Discrimination Commissioner who is a member of HREOC, powers to deal with these complaints. A number of other powers necessary to deal with systemic issues of discrimination are also granted to the Sex Discrimination Commissioner under the SD Act.
- 1.4 The terms of reference underpinning the inquiry asked HREOC to investigate and report on matters relating to workplace pregnancy and potential pregnancy. HREOC was also asked to examine the rights and responsibilities of employers and employees in relation to pregnancy and potential pregnancy in the workplace, including recruitment policies and practices. The terms of reference required HREOC to produce a report on the findings of the inquiry, as well as a set of practical guidelines, to be referred to throughout as “the Guidelines”. The Guidelines will serve as an important tool to increase understanding of these issues and help prevent discrimination on the ground of pregnancy and potential pregnancy.
- 1.5 This Pregnancy and Work Inquiry is the first national inquiry of its kind.

### Why was an inquiry needed?

- 1.6 The SD Act makes it unlawful to discriminate on the ground of pregnancy or potential pregnancy in the area of employment. In recent years, over 80% of all complaints lodged under the SD Act relate to employment<sup>1</sup>.

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<sup>1</sup> Based on complaints received under the *Sex Discrimination Act 1984* (Cth) in 1997-1998, 80.8% of complaints were employment related: Human Rights and Equal Opportunity Commission *Annual Report 1997-98* HREOC Sydney 1998, 48. Of complaints received during the 1997 calendar year,

- 1.7 In the 1997 calendar year, 14.7% of all complaints accepted under the SD Act that proceeded to conciliation included an allegation of discrimination on the ground of pregnancy.<sup>2</sup> At 3 May 1999, after the commencement and publicity of this inquiry, this figure had risen to 17.4%.<sup>3</sup> In Queensland the number of pregnancy discrimination complaints made under the *Anti-Discrimination Act 1991* (Qld), have doubled from 4% of all complaints to 8% over the last year.<sup>4</sup> These statistics are substantial when the number of pregnant women in the workforce at any given time is considered.
- 1.8 Complaints and anecdotes demonstrate that pregnancy and potential pregnancy discrimination occurs in public and private sectors of employment and across most industry sectors.
- 1.9 Consultations undertaken by the Sex Discrimination Commissioner highlighted that the extent of pregnancy and potential pregnancy discrimination in the workplace was greater than the federal and state/territory anti-discrimination complaint statistics indicated. Grievances are often handled internally in enterprises, by trade unions, by private mediators and legal firms. Data are not generally collected on these “informal” methods of complaint resolution.
- 1.10 Consultations have also highlighted a significant level of misinformation with respect to laws, such as anti-discrimination, industrial, or occupational health and safety, that affect the management of pregnancy and potential pregnancy at work.
- 1.11 Fifteen years after the introduction of the SD Act, continuing significant levels of pregnancy and potential pregnancy discrimination not only reflect a lack of awareness of the legal framework, but also indicate the persistence of systemic barriers to the employment of pregnant and potentially pregnant women. It is a human right, not a privilege, to be able to work and have children without disadvantage.<sup>5</sup> The need for attitudinal and cultural changes towards pregnant and potentially pregnant women in the workplace remains a priority.

## Methodology

- 1.12 As the first national inquiry of its kind into workplace pregnancy and potential pregnancy discrimination, it was essential to draw together relevant research

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86% related to employment: R Clifford *A Review of Outcomes of Complaints Under the Sex Discrimination Act 1984* (Cth) unpublished HREOC paper Sydney 1998, 8.

<sup>2</sup> R Clifford *A Review of Outcomes of Complaints Under the Sex Discrimination Act 1984* (Cth) unpublished HREOC paper Sydney 1998, 13. See ch 3 for a breakdown of HREOC statistics.

<sup>3</sup> Based on all pregnancy complaints accepted under the *Sex Discrimination Act 1984* (Cth) open as at 3 May 1999. The total proportion of all pregnancy and pregnancy related (including maternity leave) complaints is 27.7%.

<sup>4</sup> Queensland Anti-Discrimination Commissioner (Personal communication with Sex Discrimination Commissioner, 20 May 1999). State/territory anti-discrimination bodies receive pregnancy complaints independently of the *Sex Discrimination Act 1984* (Cth). It is also important to note that this percentage relates to all complaints covered by the state Act, including for example, racial discrimination and disability discrimination as well as sex discrimination complaints.

<sup>5</sup> See paras 2.1 – 2.6.

and discussion concerning the issues. Published and unpublished research was accessed and opinion and anecdotes sought. To understand the breadth and depth of the issues, gathering a broad range of views and experiences was important. HREOC consulted widely with a large number of individuals, employees, employers, employer organisations, trade unions and other groups concerned with issues of pregnancy and work.

- 1.13 The Sex Discrimination Commissioner and her policy staff conducted personal interviews, targeted consultations and focus groups, in metropolitan and regional areas of Australia, with women who had experienced pregnancy at work, young people entering the workforce, employer groups with experience in advising on pregnancy management issues, private mediation consultants, employers, trade unions, community and women's organisations, professional groups including medical practitioners, academics, advocacy groups, and federal and state/territory government authorities, including anti-discrimination and equal opportunity commissions. A full list of consultations is provided at page 260.
- 1.14 In addition, over 100 written submissions were received from a broad range of individuals and organisations. Submissions ranged from personal experiences to detailed analyses of the issues. A full list of written submissions is provided at page 257.
- 1.15 Several organisations undertook their own research as part of their submissions. This included various surveys of organisation members or employees.<sup>6</sup> For example, one trade union conducted a 'chatline' on its Internet site.<sup>7</sup> The Western Australian Equal Opportunity Commissioner conducted five focus groups throughout Western Australia, in order to represent the diversity of views of Western Australians.<sup>8</sup> Several employers and employer groups assisted in organising focus groups of employees and members, as did trade unions and community based organisations.<sup>9</sup>
- 1.16 Publicity and press that followed the announcement of the inquiry attracted many telephone inquiries, several of which resulted in submissions about personal experiences and difficulties. Some telephone inquiries resulted in the lodgement of formal complaints of pregnancy discrimination under the SD Act.
- 1.17 Research was undertaken into issues that arose during the course of the inquiry. A review was conducted of relevant literature, current law, relevant international human rights obligations and global practices, and statistics were collected. Workplace pregnancy and potential pregnancy discrimination is an

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<sup>6</sup> Australian Education Union, South Australian Branch (Submission no 42); Australian Mines and Metals Association (Submission no 43); Australian Nursing Federation (Submission no 45); Australian Taxation Office (Submission no 49); Community and Public Sector Union (Submission no 53); Job Watch Inc (Submission no 60); Australian Services Union (Submission no 85); Women's Electoral Lobby Australia (Submission no 97); Group Training Australia (Submission no 108).

<sup>7</sup> Australian Education Union (Submission no 87).

<sup>8</sup> Western Australian Equal Opportunity Commissioner (Submission no 100).

<sup>9</sup> See page 260.

area that has not been well researched in the past, so to the extent possible information was collected from a diverse range of disciplines, including industrial relations, occupational health and safety, human resource management, human rights, medicine and the law.

## The Guidelines

- 1.18 The terms of reference required HREOC to produce and publish a set of practical guidelines in order to
- provide employers, principals of commission agents and contract workers, partnerships and employment agencies with practical guidance on those provisions of the SD Act which apply to discrimination on the ground of pregnancy or potential pregnancy;
  - assist those parties to implement policies and to eliminate and prevent discrimination on the ground of pregnancy and potential pregnancy;
  - provide employees and potential employees with practical guidance on the provisions of the SD Act which apply to discrimination on the ground of pregnancy or potential pregnancy; and
  - assist all parties to understand and fulfil their obligations under the SD Act in relation to pregnancy and potential pregnancy.
- 1.19 In support of this, a clear finding of the inquiry was the immediate need for accurate information and education regarding the management of pregnancy and potential pregnancy at work. The Guidelines represent a significant component of the strategy needed to address this finding, as well as many of the other findings of the inquiry.
- 1.20 An overview of the Guidelines is provided at page 246. Individual provisions to be incorporated in the Guidelines are discussed throughout this report. The detail of the Guidelines will be settled in the near future following close consultation with relevant individuals and organisations. These consultations are being undertaken in addition to the extensive consultations conducted prior to and following the publication of the Issues Paper for the inquiry, distributed in December 1998, and the targeted consultations on this report. The Guidelines will be published as a separate document later this year.
- 1.21 The Guidelines will be produced under section 48(1)(ga) of the SD Act, which empowers HREOC to prepare and publish voluntary guidelines. The provisions allow HREOC to promote community awareness of the varying provisions in anti-discrimination legislation concerning pregnancy and potential pregnancy nationally by way of a non-enforceable code.
- 1.22 An alternative to a non-enforceable code is the introduction of semi-regulatory or enforceable standards. In 1995, the Australian Law Reform Commission, in the *Equality Before the Law: Justice for women* report, recommended that the SD Act include a provision allowing the introduction of enforceable standards to deal with systemic issues, similar to those present in the *Disability*

*Discrimination Act 1992* (Cth).<sup>10</sup> The *Disability Discrimination Act 1992* (Cth) enables the Minister to formulate disability standards in various areas such as the employment of persons with disabilities.<sup>11</sup> It is unlawful to contravene such a standard.<sup>12</sup> There are no exemptions from the operation of the standards and a breach may be the subject of a complaint to HREOC.<sup>13</sup> However, compliance with the standards also provides a defence to certain discrimination provisions under that Act.<sup>14</sup>

- 1.23 The Australian Law Reform Commission has repeated this recommendation as part of its submission to this inquiry.<sup>15</sup>
- 1.24 The power to set enforceable guidelines goes beyond the current power of HREOC under the SD Act. However, such a power would be beneficial in that it would allow HREOC to simplify the plethora of precedents developed on sex discrimination law. While enforceable standards may not be suitable for all kinds of work undertaken by HREOC on the SD Act, pregnancy and potential pregnancy discrimination law would benefit from such a power.
- 1.25 HREOC has considered both the positive and negative aspects of this recommendation and concluded that such provisions would be appropriate. HREOC agrees with the Australian Law Reform Commission that standard setting would be useful to provide guidance and clarity on the provisions of the SD Act. Until the SD Act enables such standards to be developed, the Guidelines will act as voluntary guidelines, drawing on legislation and case law.
- 1.26 In order to promote the Guidelines and educate the public on pregnancy and potential pregnancy workplace issues and how they affect women's ability to achieve equal opportunity at work, HREOC considers it important the Guidelines be properly distributed. It is proposed that HREOC jointly undertake a series of national workshops with the Affirmative Action Agency following the release of the Guidelines. HREOC recommends that this project be funded by the Affirmative Action Agency. State/territory anti-discrimination bodies could also provide valuable assistance in this regard.
- 1.27 It is also important that information about workplace management of pregnancy be made available in alternative formats for education and training purposes. HREOC considers that it is important to develop a video training package on pregnancy and work based upon the Guidelines. The video should be produced by an organisation with experience in the production of a range of material including training videos. It should be funded and coordinated by the Attorney-General's Department. It should be produced in consultation with HREOC.

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<sup>10</sup> Australian Law Reform Commission *Equality Before the Law: Justice for women* Report 69(1) ALRC Sydney 1994, 3.41.

<sup>11</sup> s 31 *Disability Discrimination Act 1992* (Cth).

<sup>12</sup> s 32 *Disability Discrimination Act 1992* (Cth).

<sup>13</sup> ss 33 and 69(1) *Disability Discrimination Act 1992* (Cth).

<sup>14</sup> s 34 *Disability Discrimination Act 1992* (Cth).

<sup>15</sup> Australian Law Reform Commission (Submission no 21).

**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.

## Findings and recommendations

1.28 Apart from the overall recommendation concerning the immediate need for education, guidance and awareness raising programs around pregnancy and work, inquiry findings and recommendations attempted to address two main areas of concern.

1.29 The first area emerged from the fact that legislation relevant to issues of pregnancy and work is highly fragmented. Legislation is divided between states/territories and the Commonwealth, and between the anti-discrimination, industrial relations and occupational health and safety jurisdictions. The diversity and distribution of legislation makes managing pregnancy and work within a legislative framework particularly difficult. For example, a large national trading company finds that a company wide policy or practice on pregnancy in the workplace may need to be informed by up to 24 separate pieces of major legislation, as follows.

- *Sex Discrimination Act 1984* (Cth)
- *Anti-Discrimination Act 1977* (NSW)
- *Equal Opportunity Act 1984* (SA)
- *Equal Opportunity Act 1984* (WA)
- *Anti-Discrimination Act 1991* (Qld)
- *Discrimination Act 1991* (ACT)
- *Anti-Discrimination Act 1992* (NT)
- *Sex Discrimination Act 1995* (Tas)
- *Equal Opportunity Act 1995* (Vic)<sup>16</sup>
- *Workplace Relations Act 1996* (Cth)<sup>17</sup>
- *Industrial Relations Act 1979* (WA)
- *Industrial Relations Act 1984* (Tas)
- *Industrial and Employee Relations Act 1994* (SA)
- *Industrial Relations Act 1996* (NSW)

<sup>16</sup> Other legislation such as *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* (Cth) may also apply.

<sup>17</sup> The *Workplace Relations Act 1996* (Cth) covers the federal jurisdiction as well as Victoria, Australian Capital Territory and the Northern Territory.

- *Workplace Relations Act 1997 (Qld)*<sup>18</sup>
- *Occupational Health and Safety (Commonwealth Employment) Act 1991 (Cth)*
- *Occupational Health And Safety Act 1983 (NSW)*
- *Occupational Safety and Health Act 1984 (WA)*
- *Occupational Health and Safety Act 1985 (Vic)*
- *Occupational Health, Safety and Welfare Act 1986 (SA)*
- *Workplace Health and Safety Act 1995 (Qld)*
- *Workplace Health and Safety Act 1995 (Tas)*
- *Work Health Act 1986 (NT)*
- *Occupational Health and Safety Act 1989 (ACT)*<sup>19</sup>

1.30 Even a small local business operating from one location may need to operate in compliance with separate anti-discrimination, industrial relations and occupational health and safety laws at both state/territory and federal levels. Submissions to the inquiry show that this, at times, makes managing pregnancy at work very complex for employers, confusing for employees and difficult for those seeking redress for grievances. In drafting recommendations, HREOC recognised that the system must be easy to understand and work within. Accordingly, the first set of findings and recommendations addressed ways to ensure that duplication and inconsistencies were minimised as far as possible.

1.31 HREOC hopes that this inquiry will encourage greater links between the federal and state/territory anti-discrimination bodies in order to further clarify areas of duplication and inconsistency.

1.32 The second area related 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 in the inquiry is reflected in the findings and the recommendations.

1.33 This report makes several recommendations for legislative change. HREOC is aware that the federal Attorney-General's Department is currently undertaking a federal anti-discrimination legislation consolidation project which will include the SD Act. This project may provide an opportunity for several of the recommendations to be considered. However, the appropriate method by which to implement the recommendations made in this report is a matter for the relevant Minister to consider. It is also important that recommendations are addressed in a timely manner.

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<sup>18</sup> In addition to these Acts, supplementary legislation such as regulations and awards also apply.

<sup>19</sup> Various regulations and subordinate instruments under these Acts must also be considered.

## **What happens now?**

- 1.34 The findings detailed in this report and the resultant recommendations will be considered by the federal Government.
  
- 1.35 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 report and the follow up set of practical Guidelines reflect minimum standards and sound practice, state what the law is, where it works, where and why it fails, and how this affects employees and employers. It will play a valuable role in helping to bring the cultural and attitudinal change needed to eliminate pregnancy and potential pregnancy discrimination at work.

## Chapter 2 – The importance of eliminating discrimination

### The human rights context

2.1 The concept of human rights aims to ensure equality, justice and mutual respect as well as create a society which actively pursues and ultimately lives by human rights standards. The culture that emerges from such a society allows each individual to maximise their potential in the various aspects of their lives while simultaneously benefiting from a well balanced caring environment.

2.2 The rights enshrined in the *Sex Discrimination Act 1984* (Cth) (the SD Act) are grounded in fundamental human rights that have been acknowledged internationally and throughout Australia. A fundamental object of the SD Act is to promote recognition and acceptance within the community of the principle of equality of men and women.<sup>20</sup> Anti-discrimination laws, as they operate in relation to discrimination on the ground of pregnancy and potential pregnancy in employment, are concerned to remove unlawful discrimination so that women can realise the right to work in jobs that are appropriate to their abilities irrespective of whether they wish to have children or not.

2.3 The SD Act also reflects Australia's international obligations under the United Nations *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW)<sup>21</sup> which enshrines the fundamental human rights of women. A foundation of CEDAW is the recognition that

...discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity....<sup>22</sup>

2.4 As a signatory to CEDAW, Australia is obliged to

...modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women...<sup>23</sup>

<sup>20</sup> s 3(d) *Sex Discrimination Act 1984* (Cth).

<sup>21</sup> *Convention on the Elimination of All Forms of Discrimination Against Women* GA Res 180 (XXXIV 1970), 19 ILM 33 (1980) was ratified by Australia on 28 August 1983 and is annexed to the *Sex Discrimination Act 1984* (Cth) as a Schedule.

<sup>22</sup> Preamble, *Convention on the Elimination of all Forms of Discrimination Against Women* GA Res 180 (XXXIV 1970), 19 ILM 33 (1980).

<sup>23</sup> art 5 *Convention on the Elimination of all Forms of Discrimination Against Women* GA Res 180 (XXXIV 1970), 19 ILM 33 (1980).

- 2.5 Australia is also a signatory to the *Discrimination (Employment and Occupation) Convention 1958* (ILO No 111),<sup>24</sup> which denotes the importance of a workplace free from discrimination and sets out the principles on which national policy on the elimination of discrimination in employment should be based.
- 2.6 The Queensland Chamber of Commerce and Industry submission to the inquiry reflects on the importance of complying with global standards.

As Australian businesses expand both nationally and internationally, there has been a need for companies to be more competitive. Being competitive does not mean just from an economic perspective but also in terms of how the company is perceived.... By adopting family friendly policies and complying with legislative requirements with respect to discrimination, businesses are indicating the importance of these issues.... [I]t is important to businesses, especially on an international level to show that they are complying with these Conventions, not just for their own public image reasons.<sup>25</sup>

## Pregnancy is a workplace issue

- 2.7 The participation of women in the Australian workforce has increased considerably over the past decade. In 1986, women made up 39.6% of the Australian labour force.<sup>26</sup> In 1996, that proportion had grown to 43%.<sup>27</sup> During the decade from 1986 to 1996, the female labour force grew by 30% compared with the 14% increase in the male labour force.<sup>28</sup> As of May 1996, 56% of all employed women worked in two occupation groups: clerks and sales persons, and personal service workers.<sup>29</sup> In 1999 women represent both a significant and a permanent part of the paid workforce; they are substantial contributors to the Australian economy.
- 2.8 The increase in women's workforce participation rates has been assisted by growth in particular industries, such as the service sector, and by increased opportunities to participate in part-time and casual work. Significant also, have been changes in attitudes of women, with many asserting their right to economic independence.
- 2.9 Notwithstanding these changes, many workplace practices have failed to integrate the needs and rights of women workers. Submissions to the inquiry

<sup>24</sup> Australia ratified the *Discrimination (Employment and Occupation) Convention 1958* (ILO No 111) on 15 June 1973.

<sup>25</sup> Queensland Chamber of Commerce and Industry (Submission no 5).

<sup>26</sup> Australian Bureau of Statistics and Office of the Status of Women *Australian Women's Yearbook 1997* ABS Canberra 1997, 80 cat no 4124.0.

<sup>27</sup> Australian Bureau of Statistics and Office of the Status of Women *Australian Women's Yearbook 1997* ABS Canberra 1997, 71 cat no 4124.0.

<sup>28</sup> Australian Bureau of Statistics and Office of the Status of Women *Australian Women's Yearbook 1997* ABS Canberra 1997, 70 cat no 4124.0.

<sup>29</sup> Australian Bureau of Statistics and Office of the Status of Women *Australian Women's Yearbook 1997* ABS Canberra 1997, 73 cat no 4124.0.

clearly indicated that women continue to be disadvantaged when attempting to combine their right to work with their choice to be pregnant.

- 2.10 While workforce demographics have changed over the last generation, the fundamental relations of the sexes at work and in the home have failed to keep pace with these changes.

### **The workplace as a masculine construct**

- 2.11 One reason for the continued failure of some workplace practices to integrate the needs and rights of women workers may be that “work” is a fundamentally gendered construct. The arrangements for work in industrialised societies were made by and for the benefit of a “male breadwinner”, even though this model may well fit uncomfortably for significant numbers of women and men today.

The construction of “worker” presupposes that he is a man who has a woman, a (house) wife to take care of his daily needs ...the sturdy figure of the “worker”, the artisan, in clean overalls, with a bag of tools and a lunch box, is always accompanied by the ghostly figure of his wife.<sup>30</sup>

- 2.12 The factors that define and separate men and women are the different constructions of their sexuality<sup>31</sup> and their relationship to family and home. Women enter the workforce defined as sexualised and family oriented people. Men, despite the fact that they also possess sexuality and have families, are not defined in this way.<sup>32</sup>

Women's bodies - female sexuality, their ability to procreate and their pregnancy, breastfeeding and child care...- are suspect, stigmatised and used as ground for control and exclusion.<sup>33</sup>

- 2.13 It is argued that the adverse practical consequences to women of pregnancy and motherhood are not the result of chance but

...rather a reflection of the various perceptions of what it means to be a Pregnant Woman....The law constructs its own notion of Woman and in particular of Pregnant Woman, which is at odds with the way in which real women wish to lead their lives. As a consequence, women are forced by the law into behaving in certain ways and making certain choices.<sup>34</sup>

<sup>30</sup> C Pateman *The Sexual Contract* Polity Press Cambridge 1988, 131. See also R Hunter “Representing Gender in Legal Analysis: A case/book study in labour law” (1991) 18 *Melbourne University Law Review* 305.

<sup>31</sup> See also S Fitzpatrick (Submission no 12).

<sup>32</sup> See J Wajcman *Managing Like a Man: Women and men in corporate management* Allen & Unwin St Leonards 1999; C Pateman *The Sexual Contract* Polity Press Cambridge 1988; C Cockburn *In the Way of Women: Men's resistance to sex equality in organisations* Macmillan London 1991; R Hunter “Representing Gender in Legal Analysis: A case/book study in labour law” (1991) 18 *Melbourne University Law Review* 305.

<sup>33</sup> J Acker “Hierarchies, Jobs, Bodies: A theory of gendered organizations” (1990) 4 *Gender and Society* 139.

<sup>34</sup> A Morris and S Nott “The Law's Engagement with Pregnancy” in J Bridgeman and S Millns *Law and Body Politics: Regulating the female body* Dartmouth Publishing Co Aldershot 1995, 55.

- 2.14 The law has a central role in maintaining and reinforcing these perceptions. As one commentator has noted, "...not only do these rules *reflect* a notion of the worker that is based on the full-time male model...these rules actually construct this notion".<sup>35</sup>
- 2.15 In the Australian context, this is most clearly embedded in the *Harvester* judgement which awarded a wage based on the "normal needs of the average employee regarded as a human being in a civilised society", that is, a man with a wife and three children to support.<sup>36</sup> This case, decided in 1907, formally informed judicial decision making until 1974.<sup>37</sup>
- 2.16 The gender neutral language of parental leave and other family-friendly policies "...obscures the fact that present social arrangements for care benefit men".<sup>38</sup>
- Family-friendly policies primarily focus on allowing women to combine family and labour market responsibilities. Their purpose is to enable women to enter and remain in a workforce constructed by men for men without family involvement. The fact that men are also parents is incidental to these reforms....Policies that increase support for women's mothering role help to perpetuate the domestic definition of women workers.<sup>39</sup>
- 2.17 Rights associated with maternity leave are often dependent on length of service, a concept that reflects traditional male working patterns. This means that many women do not have access to these provisions because of their casual status or interrupted service. The very employees intended to benefit from those policies are less likely to be able to take advantage of them.<sup>40</sup>
- 2.18 Some argue that the terminology associated with pregnancy also has negative workplace connotations. One submission to the inquiry pointed out that the term "falling pregnant" "...makes pregnancy sound like an unfortunate and regrettable condition, and makes the person who 'finds' herself in this position to be a 'fallen' woman".<sup>41</sup>

<sup>35</sup> R Lifschitz *The Artisan and the Ghost: Rewriting the subject of labour law* Faculty of Law McGill University Masters Thesis (unpublished) Montreal November 1998, 16. See also R Owens "Women, Atypical Work Relationships and the Law" (1993) 19 *Melbourne University Law Review* 399; R Hunter "Representing Gender in Legal Analysis: A case/book study in labour law" (1991) 18 *Melbourne University Law Review* 305.

<sup>36</sup> *Ex Parte H.V. McKay* (1907) 2 CAR 1. See also S Deery and D Plowman *Australian Industrial Relations* 3rd ed McGraw-Hill Book Company Sydney 1991, 353; R Hunter "Representing Gender in Legal Analysis: A case/book study in labour law" (1991) 18 *Melbourne University Law Review* 305.

<sup>37</sup> R Hunter "Representing Gender in Legal Analysis: A case/book study in labour law" (1991) 18 *Melbourne University Law Review* 305.

<sup>38</sup> J Wajcman *Managing Like a Man: Women and men in corporate management* Allen & Unwin St Leonards 1999, 26.

<sup>39</sup> J Wajcman *Managing Like a Man: Women and men in corporate management* Allen & Unwin St Leonards 1999, 26.

<sup>40</sup> See *Parental Leave Case* (1990) 36 IR 1 sub nom *Federated Miscellaneous Workers Union v Angus Nugent & Son Pty Ltd*; R Lifschitz *The Artisan and the Ghost: Rewriting the subject of labour law* Faculty of Law McGill University Masters Thesis (unpublished) Montreal November 1998, 18; R Hunter "Representing Gender in Legal Analysis: A case/book study in labour law" (1991) 18 *Melbourne University Law Review* 305.

<sup>41</sup> S Fitzpatrick (Submission no 12).

- 2.19 Effecting flexible reforms that address the realities of the current workforce demographic, rather than perpetuating traditional paradigms based on male models of previous generations, is the challenge facing industrial relations and anti-discrimination policy makers and legislators. Turning these reforms into active and normal workplace practice is the challenge for employers, both large and small.
- 2.20 Policies and laws that promote the harmonisation of work, pregnancy and family responsibilities must apply and be seen as applying equally to men and to women. In the context of pregnancy and work, it is essential that policies and laws treat pregnancy and family responsibilities as neither a disability nor a liability, rather as part of the normal life cycle encountered by many workforce participants.<sup>42</sup>

### Family size, demographics and choice

- 2.21 The importance of pregnancy as a social function and the right of women to combine work, pregnancy and family are fundamental principles underpinning the SD Act. The need, over time, to reproduce as a society is also of fundamental importance to Australia, both socially and economically.
- 2.22 Fertility patterns in Australia indicate that, while the number of women in the workforce is rising, the number of children born per woman is falling. In 1993 3,259,100<sup>43</sup> women were working and 260,229<sup>44</sup> babies were born. In 1995 3,548,500<sup>45</sup> women were working and 256,190 births were recorded in Australia.<sup>46</sup> In 1997 3,643,600<sup>47</sup> women were working and 251,842<sup>48</sup> babies were born. In 1998 3,731,600<sup>49</sup> women were employed and 249,283<sup>50</sup> live births were recorded in Australia, which represents a 1% decrease from 1997.

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<sup>42</sup> Australian Council of Trade Unions, Queensland Branch (Submission no 50).

<sup>43</sup> This calculation is based on monthly figures to give the annual average number of women employed: Australian Bureau of Statistics *Labour Force Australia (Preliminary Publication)* ABS Canberra 1993, 6 cat no 6202.0.

<sup>44</sup> Australian Bureau of Statistics *Births* ABS Canberra 1997, 8 cat no 3301.0.

<sup>45</sup> This calculation is based on monthly figures to give the annual average number of women employed: Australian Bureau of Statistics *Labour Force Australia (Preliminary Publication)* ABS Canberra 1995, 6 cat no 6202.0.

<sup>46</sup> Australian Bureau of Statistics *Births* ABS Canberra 1997, 8 cat no 3301.0.

<sup>47</sup> This calculation is based on monthly figures to give the annual average number of women employed: Australian Bureau of Statistics *Labour Force Australia (Preliminary Publication)* ABS Canberra 1997, 6 cat no 6202.0.

<sup>48</sup> Australian Bureau of Statistics *Births* ABS Canberra 1997, 8 cat no 3301.0.

<sup>49</sup> This calculation is based on monthly figures to give the annual average number of women employed: Australian Bureau of Statistics *Labour Force Australia (Preliminary Publication)* ABS Canberra 1998, 6 cat no 6202.0.

<sup>50</sup> Australian Bureau of Statistics *Australian Demographic Statistics* ABS Canberra 1999, 24 cat no 3101.0.

- 2.23 The average age of mothers has increased from 27.3 years in 1985 to 29.1 years in 1995.<sup>51</sup> The average age at which a woman has her first child has increased from 26.3 in 1985 to 28.6 in 1995.<sup>52</sup>
- 2.24 In 1997 the total fertility rate per woman was around 1.8.<sup>53</sup> The average number of babies per woman in 1998 was 1.74, which is the lowest fertility rate ever for Australia.<sup>54</sup> If current trends continue, it is projected that during the 2030s natural increase will be reduced to zero.<sup>55</sup>
- 2.25 The lack of national statistics does not allow a more sophisticated analysis of pregnancy and workforce participation rates. However, these statistics provide a rough view of the trend that is occurring in Australia and clearly demonstrate the possibility that more women are deferring childbirth in favour of increased workforce participation.
- 2.26 Based on his own work regarding national fertility rates and that of similar international studies, Australian demographer Professor McDonald concluded that
- ...if women are provided with opportunities near to equivalent to those of men in education and market employment, but these opportunities are severely curtailed by having children, then, on average, women will restrict the number of children that they have to an extent which leaves fertility at a precariously low, long-term level.<sup>56</sup>
- 2.27 The low fertility rate indicates a growing trend by women actually making a choice between work and family rather than seeking both.
- 2.28 McDonald went on to state that, while policy makers have come to understand the momentum of population increase, the same understanding has not been attained about the momentum which applies to population decrease. A decreasing population results in a rapidly ageing demographic. However, "...economic policies designed to deal with ageing, such as cuts to government expenditure on family services and increased insecurity of employment, tend to depress fertility even further by making family life even less sustainable".<sup>57</sup> Further, McDonald stated that "[l]ow fertility is the result of conflict between a liberal economic agenda and the persistence of social institutions which are

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<sup>51</sup> Australian Bureau of Statistics and Office of the Status of Women *Australian Women's Yearbook 1997* ABS Canberra 1997, 8 cat no 4124.0.

<sup>52</sup> Australian Bureau of Statistics and Office of the Status of Women *Australian Women's Yearbook 1997* ABS Canberra 1997, 14 cat no 4124.0.

<sup>53</sup> Australian Bureau of Statistics *Births* ABS Canberra 1997, 19 cat no 3301.0.

<sup>54</sup> Australian Bureau of Statistics *Australian Demographic Statistics* ABS Canberra 1999, 11 cat no 3101.0.

<sup>55</sup> Australian Bureau of Statistics *Australian Demographic Statistics* ABS Canberra 1999, 9 cat no 3101.0.

<sup>56</sup> P McDonald "Gender Equity, Social Institutions and the Future of Fertility" *Working Papers in Demography No 69* Research School of Social Sciences ANU Canberra 1997, 1.

<sup>57</sup> P McDonald "Gender Equity, Social Institutions and the Future of Fertility" *Working Papers in Demography No 69* Research School of Social Sciences ANU Canberra 1997, 3.

premised upon the male-breadwinner model of the family. It is this combination which is fatal to contemporary child bearing.”<sup>58</sup>

- 2.29 Research on European fertility rates found that women in European countries have high expectations about the number of children that they will have when they are young but that, as they get older, the number of children that they eventually have falls well short of their early expectations. The extent of the reduction tends to be higher for those who have more to lose by reducing their attachment to the paid labour force.<sup>59</sup>
- 2.30 These conclusions are similar to those of research undertaken subsequently in Australia. This research found that Australian women graduating from secondary school have high expectations about the number of children they wish to have. In reality, however, they give birth to approximately half of the number of children originally desired. This outcome is most prevalent amongst women with a post-school qualification.<sup>60</sup> Based on the 1996 Census, women with university degrees average a fertility rate of 1.55, while women with no post-school qualifications average a fertility rate of 2.15.<sup>61</sup>
- 2.31 A recent survey of managers in high technology multi-national companies showed that two-thirds of female managers did not have children, while two-thirds of male managers did.<sup>62</sup>
- 2.32 Fertility rates are particularly low in southern and eastern European countries and Japan where there are relatively far fewer adjustments for work and family commitments. Rates are higher in the Scandinavian countries that have achieved greater advancements in family-oriented social institutions.<sup>63</sup>
- 2.33 Demographic research, such as that of McDonald, suggests that low fertility is not a result of people rejecting the idea of having a family in principle. Rather, it suggests that the failure of workplace practices to accommodate the realities of pregnancy and family responsibilities affects the decision to have children. It is simplistic to depict these decisions as merely the exercise of free choice. There are a number of contributing factors, in particular economic, personal

<sup>58</sup> P McDonald “Contemporary Fertility Patterns in Australia: First data from the 1996 Census” (1998) 6(1) *People and Place* 12.

<sup>59</sup> D van de Kaa “Postmodern Fertility Preferences: From changing value orientation to new behaviour” *Working Papers in Demography No 74* Research School of Social Sciences ANU Canberra 1998. See also P McDonald “Contemporary Fertility Patterns in Australia: First data from the 1996 Census” (1998) 6(1) *People and Place* 4.

<sup>60</sup> P McDonald “Gender Equity, Social Institutions and the Future of Fertility” *Working Papers in Demography No 69* Research School of Social Sciences ANU Canberra 1997, 4.

<sup>61</sup> P McDonald “Gender Equity, Social Institutions and the Future of Fertility” *Working Papers in Demography No 69* Research School of Social Sciences ANU Canberra 1997, 9. See also MDR Evans and J Kelley “Small Families or Large? Australia in international perspective” (1999) 2(1) *Australian Social Monitor* 13.

<sup>62</sup> Judy Wajcman *Managing Like a Man: Women and men in corporate management* Allen & Unwin Sydney 1998, 139. See also G Whitehouse (Submission no 103).

<sup>63</sup> P McDonald “Contemporary Fertility Patterns in Australia: First data from the 1996 Census” (1998) 6(1) *People and Place* 1.

and systemic discrimination. Some of the financial disincentives that affect these decisions are discussed in the following section.

## Economic consequences of having a family

- 2.34 While women's ability to bear children is a great privilege, it is also a great burden.<sup>64</sup>

In industrialised nations there has been increased participation of women in the paid workforce, in dual-earner and single-parent families and a decline in households with full-time home-makers since the 1960s. This has profound social implications for families, workplaces and society, as individuals struggle to combine work and family responsibilities. Governments, employers and unions are coming to realise the stress and conflict associated with combining work and family roles.<sup>65</sup>

- 2.35 Beggs and Chapman found that Australian women who had left the workforce to have children had significantly lower lifelong earnings than women who had not. A woman with average education who had one child, had a lifetime earnings loss of about \$336,000. Earnings and period of leave affect career progression, retirement income and life options.<sup>66</sup> These results are evident in the occupations such as nursing that consist predominantly of female employees. For example, the membership of the Queensland Nurses' Union is 92.2% female.<sup>67</sup> Despite this, research conducted by the Queensland Nurses' Union in 1990 found that male registered nurses earn an average of around \$100 per week more than female registered nurses.<sup>68</sup> Other research also supports the conclusion that breaks taken from the labour force to have children are an important contributor to earnings inequality.<sup>69</sup>

Members say to us that they "can't afford to have children right now" or "We'll wait until we're better established". These statements reflect members' concerns to be able to provide materially for their children and increasingly to be able to do that, couples are delaying parenthood.<sup>70</sup>

- 2.36 Submissions to this inquiry indicated that work practices and policies, economic issues and job security had a significant impact on the choices that women

<sup>64</sup> A Morris and S Nott "The Law's Engagement with Pregnancy" in J Bridgeman and S Millns *Law and Body Politics: Regulating the female body* Dartmouth Publishing Co Aldershot 1995, 53.

<sup>65</sup> C Breakspear "From Juggling to Managing? The evolution of work and family policies in three Australian organisations" *Studies in Organisational Analysis and Innovation No 14* Australian Centre for Industrial Relations Research and Training Sydney 1998, 1.

<sup>66</sup> Beggs and Chapman *The Foregone Earnings from Child-Rearing in Australia* ANU Centre for Economic Policy Research Discussion Paper No 190, 1988. See also New South Wales Government (Submission no 99).

<sup>67</sup> Queensland Nurses' Union (Submission no 37).

<sup>68</sup> Queensland Nurses' Union (Submission no 37).

<sup>69</sup> S Rummery "The Contribution of Intermittent Labour Force Participation to the Gender Wage Differential" (1992) 68 *Economic Record* 351; J Waldfogel *Women Working for Less: Family status and women's pay in the US and UK* Working Paper #D-94-1 Malcolm Wiener Center for Social Policy Harvard University US 1994; J Waldfogel "The Effect of Children on Women's Wages" 1997 *American Sociological Review* 62, 209. See also G Whitehouse (Submission no 103).

<sup>70</sup> Shop, Distributive and Allied Employees' Association (Submission no 74).

made in relation to having children.<sup>71</sup> Australian consultants Families At Work conducted research in 1997 that showed that for some families, the combined effects of increased part-time and casual work along with fee increases for children's services had impacted on whether a family will plan to have more children.<sup>72</sup>

- 2.37 Submissions noted downsizing, unemployment, diminution of terms and conditions and job insecurity as reasons for delaying or deciding against pregnancy.<sup>73</sup> Studies into pregnancy decisions indicate that factors such as these are leading some women to choose between pregnancy and a career.<sup>74</sup>
- 2.38 Submissions to the inquiry highlighted that in the eyes of employees trying to decide whether or not to have children, financial issues related to the pregnancy and to maternity leave were inextricably linked.<sup>75</sup> The period surrounding the birth of a child is financially expensive in itself and, where the woman has been in paid employment, there is generally a reduction in family income during the period of her maternity leave. Several submissions clearly indicated that access to paid maternity leave was certainly a positive factor in assisting the decision to have a child.<sup>76</sup>
- 2.39 Consultations and submissions indicated that employees in workplaces that have access to well articulated, comprehensive frameworks for pregnancy and maternity leave felt a sense of security, reduced anxiety and were better placed to plan for their future.<sup>77</sup> One large enterprise noted that, after the implementation of a comprehensive parental leave policy, including paid maternity leave and flexible work practices, its retention rate for staff taking maternity leave increased from 52% in 1995 to 94.5% in 1998.<sup>78</sup>

<sup>71</sup> Australia Liquor, Hospitality and Miscellaneous Workers Union (Submission no 32).

<sup>72</sup> Families At Work *Report on the Impact of Changes in Commonwealth Child Care Policy and Funding on Families in NSW* New South Wales Department of Community Services Sydney 1997, 13. See also Families At Work (Submission no 40); Women's Legal Services Network (Submission no 94).

<sup>73</sup> Women's Electoral Lobby Australia (Submission no 97); Working Women's Centres (Submission no 88).

<sup>74</sup> AS Bourne and JD Kerr "The Characteristics of Two Samples of Women Seeking Abortion in Queensland" (1982) 17 *Australian Journal of Social Sciences* 213; P Adelson, M Frommer and E Weisberg "A Survey of Women Seeking Termination of Pregnancy in New South Wales" (1995) 163(8) *Medical Journal of Australia* 421. See also ACT Right to Life Association (Submission no 48).

<sup>75</sup> Shop, Distributive and Allied Employees' Association (Submission no 74); Working Women's Centres (Submission no. 88); Women's Electoral Lobby Australia (Submission no 97).

<sup>76</sup> Shop, Distributive and Allied Employees' Association (Submission no 74); Queensland Nurses' Union (Submission no 37); Working Women's Centres (Submission no 88);

<sup>77</sup> Australia Post (submission no 44); Westpac Banking Corporation (Submission no 66); Australian Council of Trade Unions (Focus Group, 18 September 1998); Taronga Park Zoo (Focus Group, 2 February 1999); Westpac, Concord Centre (Focus Group, 24 February 1999).

<sup>78</sup> Westpac Banking Corporation (Submission no 66).

- 2.40 In addition to these concerns, several submissions to the inquiry noted the comparatively low awareness of pregnancy discrimination laws in comparison to other anti-discrimination laws.<sup>79</sup>
- 2.41 The statistics and the trends are telling, and as a community there is a need to ask whether or not we are concerned. It is clear however, that, for a variety of reasons, women are choosing between work and family or work and fewer children. The pregnancy inquiry has indicated that discrimination on the basis of pregnancy and potential pregnancy and the lack of legitimate family friendly practice, irrespective of policies, has a significant impact on the decisions of Australian women in relation to work and family. The implications of a low fertility rate for Australia are significant, both in terms of society and the economy. Providing a workplace free from discrimination and harassment, which allows women to be productive and reproduce, will go a long way to providing women with fertile ground to pursue both work and family.

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<sup>79</sup> Confidential (Submission no 14); Confidential (Submission no 23); Australia Liquor, Hospitality and Miscellaneous Workers Union (Submission no 32); Families At Work (Submission no 40).

## Chapter 3 - Statistics and the extent of discrimination

### Pregnancy and work statistics

- 3.1 Detailed and comprehensive statistics are an important means of determining where the real issues of discrimination lie. This chapter pulls together the statistics on pregnancy and pregnancy discrimination that are available and makes recommendations regarding the better collection and use of discrimination statistics.
- 3.2 Despite the fact that a significant proportion of women become pregnant while participating in the paid workforce, there has never been a national collection of statistics on the number of women who work during pregnancy. This is quite an oversight when such a significant number of workers fall within this category. Such statistics, whether national or by industry sector, would have assisted considerably in the analysis and understanding of workplace pregnancy and potential pregnancy issues. Future administration of anti-discrimination laws and occupational health and safety practices would also be assisted by this information.
- 3.3 The severe lack of statistical information available on workplace pregnancy was also noted by the New South Wales Anti-Discrimination Board during a 1993 inquiry into pregnancy and maternity leave issues. The inquiry report entitled *Why don't You Ever See a Pregnant Waitress?* stated

[t]he Inquiry was hampered by the lack of research on pregnancy and maternity discrimination in Australia in comparison with many other countries. Although many individuals, unions, employers, and other organisations provided detailed information, there is a clear and urgent need for comprehensive research and analysis of employee and employer experience of pregnancy and maternity in the workplace and its impact on women's career paths. This Inquiry is a first step in documenting the experiences of women and their employers in dealing with pregnancy, maternity, and family responsibilities.<sup>80</sup>

- 3.4 The Australian Workplace Industrial Relations Survey (AWIRS) was a survey undertaken by the then equivalents of the Department of Employment, Workplace Relations and Small Business on workplace issues in 1990 and again in 1995.<sup>81</sup> The 1995 survey provided information about the prevalence and distribution (by workplace size, employer numbers, industry and sector) of paid maternity and paternity leave.<sup>82</sup> The survey included the use of an employee questionnaire which canvassed personal questions relating to employees' working life.

<sup>80</sup> New South Wales Anti-Discrimination Board *Why Don't You Ever See a Pregnant Waitress? Report of the Inquiry into Pregnancy Related Discrimination* NSW ADB Sydney 1993, 4.

<sup>81</sup> A Morehead et al *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey* Longman South Melbourne 1997.

<sup>82</sup> A Morehead et al *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey* Longman South Melbourne 1997, 115-116.

- 3.5 However, AWIRS 1995 did not collect information that specifically related to the number of women working during pregnancy, the incidence of discrimination on the ground of pregnancy or potential pregnancy, the management of pregnancy at work or the attitudes of employees and employers regarding pregnancy at work. A further AWIRS would be well placed, and has the expertise, to canvass issues of pregnancy and potential pregnancy. The number of women who fall into these categories would of course outnumber the number of women on paid maternity leave, the only related group about whom data has so far been collected.
- 3.6 Other annual or occasional surveys, such as those undertaken by the Australian Bureau of Statistics on workforce participation rates, could also be expanded to include relevant survey questions on pregnancy and potential pregnancy in the workplace. For example, the *1999 Australian Yearbook* is compiled by the Australian Bureau of Statistics to provide a comprehensive overview of contemporary Australia. Statistical analysis of industries and labour market characteristics by industry are included and information is provided on the proportion of women to men employed within specific industries and, in some cases, the proportion of married men and women to unmarried men and women.<sup>83</sup>
- 3.7 The Australian Bureau of Statistics *Labour Force Statistics*, collected monthly, are another valuable source of information that provided an excellent opportunity to gather information on pregnancy and potential pregnancy by industry sector.<sup>84</sup>
- 3.8 Valuable statistical information was recently collected at a state level in a survey of private sector employers in the Perth metropolitan area. The survey aimed to ascertain employer levels of awareness of discrimination. It was undertaken jointly by the Western Australian Equal Opportunity Commissioner and the Australian Bureau of Statistics.<sup>85</sup> The survey concluded that knowledge of equity and discrimination issues varied dramatically between industries and by employer size. Employers of large businesses (81.2%) were more likely to know that discrimination on the grounds of pregnancy is unlawful than employers of small (62%) and medium sized (69.7%) businesses. Levels of awareness were low in industries such as construction and utilities (58.3%), wholesale (57%) and retail (59.4%), and comparatively high in the mining industry (86.8%).<sup>86</sup>
- 3.9 Other surveys indicated which industries are the most likely to have an awareness of, and offer, family friendly conditions of employment. A recent study of enterprise agreements concluded that family friendly provisions were most likely to occur in public administration (19.6%), community service

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<sup>83</sup> Australian Bureau of Statistics *1999 Australian Yearbook* ABS Canberra 1999 cat no 1301.0.

<sup>84</sup> Australian Bureau of Statistics *Labour Force Australia* ABS Canberra cat no 6203.0.

<sup>85</sup> Commissioner for Equal Opportunity *Private Sector Employers and Equal Opportunity* CEO Perth 1998. See also Affirmative Action Agency (Submission no 76).

<sup>86</sup> Commissioner for Equal Opportunity *Private Sector Employers and Equal Opportunity* CEO Perth 1998, 13.

(16.5%), and finance industries (15.3). Poor industries in this regard were found to be manufacturing (5.5%) and recreational and personal services (5.8%).<sup>87</sup> Another recent survey indicated that manufacturing, support, retail, construction and engineering have some of the poorest records for fostering family friendly workplaces.<sup>88</sup> These findings were partially supported by those of the Affirmative Action Agency which found that the following industries have the highest proportion of employers who are minimally complying with the *Affirmative Action Act 1986* (Cth): basic material wholesaling, construction, personal and household goods wholesaling, wood and paper product manufacturing and food retailing.<sup>89</sup>

3.10 The Australian Institute of Family Studies has produced several valuable research reports regarding work and family issues, although it has no recent research specifically addressing pregnancy in the workplace.<sup>90</sup> This Institute would be well placed to conduct further research in this area.

**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.

<sup>87</sup> Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor (ADAM)* Report No 16 ACIRRT Sydney 1999.

<sup>88</sup> Morgan and Banks *Job Index February – April 1998* Morgan and Banks Sydney 1998.

<sup>89</sup> Affirmative Action Agency (Submission no 76).

<sup>90</sup> D de Vaus and I Wolcott *Australian Family Profiles: Social and demographic patterns* Australian Institute of Family Studies Melbourne 1997; J Jackson *Taking the Children to Work* Australian Institute of Family Studies Melbourne 1991; G Ochiltree and D Edgar *Today's Child Care, Tomorrow's Children* Australian Institute of Family Studies Melbourne 1995; A VandenHeuvel *When Roles Overlap: Workers and family responsibilities* Australian Institute of Family Studies Melbourne 1993; I Wolcott *A Matter of Give and Take: Small business views of work and families* Australian Institute of Family Studies Melbourne 1993; I Wolcott and H Glezer *Work and Family Values, Preferences and Practice* Australian Institute of Family Studies Melbourne 1997; I Wolcott and H Glezer *Work and Family Life: Achieving integration* Australian Institute of Family Studies Melbourne 1995.

## The nature of complaints and the limitations of discrimination statistics

- 3.11 Complaint statistics provide information over and above specific discrimination complaints. They are an important indicator of the type of discrimination that occurs in the Australian community.
- 3.12 Statistics do, however, have limitations. The Human Rights and Equal Opportunity Commission (HREOC) is aware that the number of complaints made about discrimination on the ground of pregnancy and potential pregnancy represent only a portion of the actual discrimination of this kind within the workplace. To this extent, HREOC agrees with the following statement.

The Issues Paper indicates that about 15% of all initial complaints under the *Sex Discrimination Act 1984* (Cth) included an allegation of discrimination on the grounds of pregnancy. This by itself is not enough to indicate whether discrimination on the grounds of pregnancy is an increasing or decreasing problem, or whether it is specific to particular sectors of the economy. It simply indicates that a number of complaints about pregnancy discrimination, a minority of total complaints, are made each year.<sup>91</sup>

- 3.13 Statistics from state/territory anti-discrimination bodies and anecdotal information from practitioners managing complaints internally, detailed accounts from employer organisations, legal firms and trade unions managing complaints privately plus consultations and formal submissions to the inquiry, indicated that the extent of pregnancy and potential pregnancy discrimination is considerably greater than that which statistics at the federal and state/territory level indicate. As one submission noted, anecdotal evidence revealed

...a common theme, which is quite disturbing, given the random way they were selected. This theme is a reluctance or eventual refusal of these women to take legal action to remedy their situations. Having a law in place to prevent discrimination has little effect if people do not use it or have faith in the system to fix their employment problems....Out of the fifteen women we interviewed to assist us with preparing this submission only three actually pursued any form of legal action...<sup>92</sup>

- 3.14 Another noted that

...the level of complaints and enquiries about pregnancy discrimination in no way reflects the extent of the problems women experience in the workplace. Rather, ignorance of their rights, low expectations, fear of victimisation and the obvious difficulty of pursuing legal complaints when you are pregnant or have just had a baby, all contribute to keeping the problems submerged.<sup>93</sup>

<sup>91</sup> Australian Chamber of Commerce and Industry (Submission no 84). See also Business Council of Australia (Submission no 52).

<sup>92</sup> Job Watch Inc (Submission no 60).

<sup>93</sup> Women's Legal Services Network (Submission no 94).

- 3.15 Academic analysis of sex discrimination complaints has indicated that historically, complaint processes established by anti-discrimination legislation are under-utilised.<sup>94</sup>
- 3.16 There appear to be a number of reasons for this.
- 3.17 Pregnancy discrimination goes unreported because some of those who suffer the discrimination fail to recognise that discrimination is occurring. Others choose not to complain, even where they believe they have been treated unfairly. Sometimes this is because they are not in an emotional or financial position to bring a complaint. Complainants who do lodge complaints may be financially or emotionally “stronger” and not necessarily representative of individuals suffering pregnancy discrimination.
- 3.18 In relation to discrimination that occurs during the period of pregnancy, some women find that the pregnancy itself is challenging enough to cope with and ignore discrimination in the hope that it will go away, basically doing the best they can to survive. Case studies provided to the inquiry particularly reflected this element.

Eventually she resigned from the position because she felt that her treatment by management and the human resources department were far less favourable since her pregnancy and in anticipation of future pregnancies. She chose not to take any legal action due to the fact that she had a five month old baby at the time...<sup>95</sup>

Even though she investigated taking legal action, and had two witnesses willing to testify for her, she decided against it because she did not want to risk any further stress.<sup>96</sup>

She didn't proceed to conciliation because her baby was already born and it was too difficult.<sup>97</sup>

I could not afford the cost of legal representation and did not want to proceed without it.<sup>98</sup>

[She] didn't take legal action against her employer, she was tired and ill and knew the stress would impact negatively upon her pregnancy.<sup>99</sup>

- 3.19 Discrimination on the ground of potential pregnancy may be particularly difficult to prove, even where suspicions of discrimination are strong. This also constitutes a disincentive to proceed with a complaint.
- 3.20 The meaning to be drawn from external complaint statistics is also open to contention. High levels of complaints may be taken to indicate high levels of discrimination. They may also indicate that informal resolution of internal complaints through organisational procedures are not operating effectively.

<sup>94</sup> See for example, R Hunter *Indirect Discrimination in the Workplace* Federation Press Sydney 1992, pt 5.

<sup>95</sup> Job Watch Inc (Submission no 60).

<sup>96</sup> Job Watch Inc (Submission no 60).

<sup>97</sup> Job Watch Inc (Submission no 60).

<sup>98</sup> Job Watch Inc (Submission no 60).

<sup>99</sup> Job Watch Inc (Submission no 60).

However, the lodgement of external complaints may also indicate that complainants believe their complaint will be dealt with seriously if they pursue an external option to address the discrimination. It has also been suggested that workplaces or industries that have higher rates of complaints, be they either internal or external, may reflect the fact that employees feel secure in their employment and confident that the complaints procedure available to them will be effective.<sup>100</sup>

- 3.21 Low levels of external complaints may also indicate that internal grievance procedures effectively address discrimination.

She took no legal action but pursued the issue via the company's equal opportunity policy with the human resources department and was eventually offered a suitable pay out.<sup>101</sup>

- 3.22 However, this is not necessarily the case and low levels of external complaints should not necessarily be taken to indicate that discrimination does not occur or is adequately dealt with internally. Submissions suggested that employees who felt insecure in their employment were reluctant to complain, either internally or externally. Sometimes these employees may inquire about their rights, but they will take very little action to enforce them.<sup>102</sup> In addition, one of the greatest disincentives to lodge a formal external complaint is the widespread perception that complainants are troublemakers. Making an external complaint is often perceived by employees as likely to hinder future job prospects.

- 3.23 The reasons found by the New South Wales Anti-Discrimination Board Inquiry into Pregnancy Related Discrimination for why women did not proceed with pregnancy-related complaints were

- stress and anxiety, accompanied by the belief that the outcome of the complaint may not justify the effort;
- difficulty in pursuing the complaint once the child is born;
- fear that, if a complaint is referred to a hearing, the complainant may find facing legal proceedings perturbing or disruptive – especially in rural areas;
- fear that the complaint will damage their employment prospects.<sup>103</sup>

- 3.24 HREOC found that concerns about the effect of pursuing a complaint arose irrespective of the woman's occupation level or status. The Women Lawyers Association of New South Wales said

[i]t cannot be said that women who work in the legal profession are disempowered in the ordinary sense. All must be considered highly educated and are generally aware of the existence and scope of anti-discrimination laws and of their rights as employees.

<sup>100</sup> Labor Council of NSW (Focus Group, February 1999).

<sup>101</sup> Job Watch Inc (Submission no 60).

<sup>102</sup> Job Watch Inc (Submission no 60).

<sup>103</sup> New South Wales Anti-Discrimination Board *Why Don't You Ever See a Pregnant Waitress? Report of the Inquiry into Pregnancy Related Discrimination* NSW ADB Sydney 1993, 24. See also New South Wales Government (Submission no 99).

Notwithstanding this, very few women lawyers pursue formal complaints in instances where they feel they are being denied their entitlements, such as maternity leave, or where they have been discriminated against in relation to pay or promotion.

The reasons for this reticence are no doubt multi-faceted and complex. However, WLA members generally reported that they had decided not to pursue complaints because of the potentially adverse effects on their current or future employment. Several also noted that they did not wish to be seen as “whingers” or were concerned that fellow employees would think they were making a complaint of discrimination because they “couldn’t cut it” and were looking for excuses. A further factor was the fear of taking on a law firm. One member considered that it would have been futile to even try as the firm’s access to resources and expertise would have ultimately defeated her claim anyway.<sup>104</sup>

- 3.25 Accordingly, the level of complaint statistics may be read in either a positive or negative light. Either way, there exists ample evidence that pregnancy discrimination is a part of many workplace cultures and that it continues to deny both senior and junior women the opportunity to participate and be treated in a fair and equitable manner at work.
- 3.26 Despite the limitations this inquiry faces with respect to the interpretations of complaint statistics, HREOC considers that complaint statistics perform an important function identifying trends and highlighting workplace pregnancy issues.

### **Federal and state/territory complaints statistics**

- 3.27 It is important that anti-discrimination bodies maintain adequate procedural and outcomes-based statistical records. Records of this type allow for an analysis of complaints made to the organisation and provide a general indication of social and legal trends.
- 3.28 It is for this reason that organisations such as HREOC and state/territory anti-discrimination bodies maintain statistics regarding the number and type of complaints made, the content of the complaints, and complainant and respondent details such as type and demography. Anti-discrimination bodies may also maintain other statistics, according to the size and needs of the organisation.
- 3.29 Such statistics have been extremely useful to this inquiry and, indeed, initially created interest in its undertaking. The following sections of the report will examine pregnancy discrimination statistics currently available in Australia and discuss areas where the collection of more comprehensive statistics would be beneficial to a better understanding of discrimination in the Australian workplace.

### **HREOC statistics**

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<sup>104</sup> Women Lawyers Association of New South Wales (Submission no 81).

- 3.30 Since 1996, HREOC has gathered comprehensive statistics on both formal complaints lodged under the federal legislation and informal telephone and written inquiries. This statistical collation primarily serves the function of a complaints management system. Some limitations exist for research purposes, particularly in the production of ground specific data. However, the statistics gathered do provide a useful and comprehensive basis for statistical analysis. Prior to 1996, HREOC complaint statistics were significantly less comprehensive but provided general figures on complaints made.
- 3.31 The following data are currently entered and recorded by HREOC to provide monthly, quarterly and annual reports.
- Complaints received by location of office.
  - Complaints received by ground of complaint, for example discrimination on the ground of sex, pregnancy, potential pregnancy, marital status, family responsibilities or concerning sexual harassment.
  - Complaints received by area of complaint, for example, whether the complaint was made about behaviour in employment, education, the provision of goods and services, land or accommodation, the administration of Commonwealth laws, or other areas of unlawful discrimination under the *Sex Discrimination Act 1984* (Cth) (the SD Act), as well as the event that caused the complaint.
  - The gender of the complainant.
  - Other information about the complainant obtained from an optional questionnaire distributed to all complainants including ethnicity, disability, part of a minority group, occupation and type of employment.
  - Whether the complaint was made by an individual or group, or whether it is a joint or multiple complaint.
  - Whether the complainant has a representative.
  - Details of the respondent (including, from 1999, the type and size of respondent organisations.)
  - Whether the respondent has a representative.
  - Details of any witnesses.
  - Progress and outcome of the complaint, for example, withdrawn or declined, settled prior to conciliation or hearing, complaint conciliated or referred to hearing.
- 3.32 Table 3.1 shows the number of formal complaints of pregnancy and potential pregnancy discrimination received under the SD Act since 1989-1990.<sup>105</sup> The table includes complaints lodged under the federal SD Act through state/territory anti-discrimination bodies pursuant to co-operative agreements.<sup>106</sup>

<sup>105</sup> These statistics are taken from annual reports published by HREOC from 1989-90 to 1997-98.

<sup>106</sup> These bodies are the Western Australian Equal Opportunity Commission, the South Australian Equal Opportunity Commission, the Victorian Equal Opportunity Commission and the Tasmanian Human Rights and Equal Opportunity Commission, the Australian Capital Territory Human Rights Office, the Queensland Anti-Discrimination Commission, the Northern Territory Anti-Discrimination

**Table 3.1 Pregnancy and potential pregnancy discrimination complaints received under the SD Act by place of lodgement.**

	Central Office	Qld	NT	Tas	ACT	NSW	Vic	SA	WA	Total	Proportion of all SD Act complaints
1984-85	-	-	-	-	-	-	-	-	-	57 <sup>107</sup>	6.9%
1985-86	11	9	N/A	N/A	N/A	5	4	12	0	40	5%
1986-87	1	10	2	1	N/A	15	19	3	0	43	10.8%
1987-88	4	7	1	3	N/A	2	14	10	0	41	9%
1988-89	2	13	0	2	N/A	-	21	12	2	52	9%
1989-90	13	14	1	4	N/A	33	7	10	1	83	14%
1990-91	8	39	5	1	N/A	70	18	12	3	156	17.3%
1991-92	27	28	5	3	2	N/A	17	19	0	101	12.6%
1992-93	25	18	2	5	2	N/A	21	13	3	89	11.4%
1993-94	19	0	2	4	2	N/A	111 <sub>108</sub>	11	4	153	11.7%
1994-95	33	5	1	7	1	N/A	36	25	1	109	6.9%
1995-96	26	0	1	4	3	N/A	28	19	2	83	7.2%
1996-97	39	N/A	1	9	N/A	N/A	22	22	0	93	10%
1997-98	29	N/A	0	5	N/A	N/A	12	13	2	61	10.0%

3.33 Complaints levels change periodically. For example, the calculation for the 1996-97 financial year indicated that 10% of all initial complaints under the SD Act were pregnancy complaints. However, calculated over the 1997 calendar year, the result was that 14.7% of all initial complaints accepted under SD Act included an allegation of discrimination on the ground of pregnancy.<sup>109</sup>

3.34 Figures for complaints under the SD Act lodged at the Sydney office for the 1998-99 financial year, calculated up to June 9 1999, indicate a substantial increase in the number and proportion of pregnancy and potential pregnancy complaints made. During this period, 40 complaints of pregnancy and potential pregnancy discrimination were made, constituting 17.7% of complaints made under the SD Act during that year. This increase is undoubtedly due to

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Commission and the New South Wales Anti-Discrimination Board. The absence of a co-operative agreement with one of these bodies is indicated in the table with 'N/A'.

<sup>107</sup> The origin of the complaints by office is not specified for this year.

<sup>108</sup> The large number of complaints from Victoria was due to changes made to the *Equal Opportunity Act 1995* (Vic) at that time. As a consequence, complainants from Victoria appeared to prefer the federal legislation over the Victorian legislation: Human Rights and Equal Opportunity Commission *Annual Report 1993/1994* HREOC Sydney 1994, 80.

<sup>109</sup> R Clifford *A Review of Outcomes of Complaints Under the Sex Discrimination Act 1984* (Cth) unpublished paper HREOC Sydney 1998, 13.

increased awareness of pregnancy and potential discrimination laws as a result of the pregnancy inquiry.

- 3.35 At 3 May 1999, after the commencement and publicity of this inquiry, this figure stood at 17.4%.<sup>110</sup>
- 3.36 The detailed information collected on complaints by HREOC since 1996 allows for a more detailed breakdown of complaints characteristics.
- 3.37 The statistics in Tables 3.2 to 3.7 reflect the characteristics of all open pregnancy and potential pregnancy discrimination complaints as at 3 May 1999. These figures are intended to act as a “snapshot” of pregnancy complaints before HREOC at that date.<sup>111</sup>

**Table 3.2: Pregnancy discrimination complaints at 3 May 1999 – Allegations**

Dismissed because of pregnancy	16
Inappropriate or negative comments/questions about pregnancy	8
Hours of work reduced because of pregnancy	2
Demoted because of pregnancy	3
Indirect pregnancy discrimination based on lifting requirements or inability to comply with timeframes in internal investigation	3
Less favourable assessment of work performance	1 <sup>112</sup>

**Table 3.3: Pregnancy discrimination complaints at 3 May 1999 - Complainant demographic**

<i>Employment status</i>	Casual/contract work	4
	Permanent part time	4
	Permanent full time	18

<sup>110</sup> Based on all pregnancy complaints accepted under the *Sex Discrimination Act 1984* open as at 3 May 1999. The total proportion of all pregnancy and pregnancy related (including maternity leave) complaints is 27.7%.

<sup>111</sup> Only complaints related to alleged discrimination during the period of pregnancy have been selected. At this date, an additional 15 complaints regarding pregnancy related discrimination were unresolved. These included employees who were terminated while on maternity leave (3) or on return from maternity leave (2); whose employment status was changed while on maternity leave (2) or on return from maternity leave (3); who were not provided with a redundancy because they were on maternity leave (3) or whose employers failed to accommodate their family responsibilities upon returning from maternity leave (2). The total number of pregnancy and pregnancy related discrimination complaints as at 3 May 1999 constituted 27.7% of all complaints current under the *Sex Discrimination Act 1984* at that date.

<sup>112</sup> Some complaints contain more than one allegation.

**Table 3.4: Pregnancy discrimination complaints at 3 May 1999 – Complainant occupation**

Manager/administrator	-
Professional	2
Para-professional	2
Trades person	-
Clerk	10
Personal service worker	9
Plant or machine operator	1
Labourer	1
Other	1

**Table 3.5: Pregnancy discrimination complaints at 3 May 1999 - Representation of complainants**

Self	18
Trade Union	-
Legal representative – private	5
Legal aid	1
Community legal centre	2

**Table 3.6: Pregnancy discrimination complaints at 3 May 1999 - Respondent employer size**

Between 1-5 Employees	3
Between 5-19 Employees	11
Between 20-99 Employees	5
Between 100-499 Employees	1
Over 500 Employees	6

**Table 3.7: Pregnancy Discrimination Complaints at 3 May 1999 - Respondent employer type**

Educational institution	-
Commonwealth government department	3
Commonwealth government statutory authority	-
Non-Government Organisation – not for profit	1
Private enterprise	22
Club	-
Other	-

3.38 This snapshot provides some useful information on the nature of pregnancy discrimination complaints that are made to HREOC.

- The majority of complaints relate to dismissal on the basis of pregnancy.
- Most complainants are either in clerical jobs or work in the services sector.
- The vast majority, 69%, of complainants are not legally represented.

- The majority of complaints, 55%, were made against employers with less than 20 staff.
- The majority of respondents to complaints, 84.6%, were private enterprises.

3.39 Most complaints accepted under the SD Act are resolved at conciliation.<sup>113</sup> Since 1986, only 28 complaints of pregnancy and potential pregnancy discrimination in the workplace under the SD Act have gone before a hearing commissioner.<sup>114</sup> These decisions also provide an interesting overview of the characteristics of complaints. The following points provide a qualitative overview of the main characteristics.

- Of the 28 decisions, the complainant was successful in 16.
- Most complainants were women from lower income or unskilled employment where it is relatively easy to replace the employee.
- Most cases concerned employees who were dismissed shortly after announcing their pregnancy to their employer. The most common arguments in reply from respondents were that the employee was dismissed due to poor work performance, due to restructuring of the company on the basis of financial problems, due to a shortage of work or due to safety reasons based on pregnancy.
- Award amounts tended to be calculated only on the economic loss suffered by the complainant.
- Compensation for non-economic loss (suffering and humiliation) tended to be awarded only in cases where the discrimination had been particularly serious and blatant.

## States and territories

3.40 Each state/territory anti-discrimination body compiles complaint statistics under their own legislation. However, statistics tend to be compiled according to the need and capacity of the individual anti-discrimination body, which results in inconsistent statistical collection between the various bodies and HREOC.

3.41 Table 3.8 gives an indication of the number of pregnancy discrimination complaints made under state/territory legislation.<sup>115</sup> The figures provided demonstrate that the level of pregnancy complaints at a state/territory level have been at high levels over the past 3 years.

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<sup>113</sup> In 1997/98, 74 % of all complaints accepted under the *Sex Discrimination Act 1984* (Cth) were resolved at conciliation.

<sup>114</sup> A further five cases heard concerned maternity leave discrimination.

<sup>115</sup> These figures are obtained from the annual reports of each state/territory anti-discrimination body. The figures provided do not distinguish between pregnancy discrimination in the workplace and other areas.

**Table 3.8: Initial pregnancy discrimination complaints made under state/territory legislation 1995-1996 to 1997-1998**

State	1995-1996	1996-1997	1997-1998
NSW	50	38	29
VIC	66	49	70
SA	24 <sup>116</sup>	31	15
WA	22	14	20
TAS	0	7	4
Qld	48	34	30
NT	10	14	3
ACT	2	0	0
<b>Total numbers</b>	<b>222</b>	<b>187</b>	<b>171</b>

3.42 Several state/territory anti-discrimination bodies also maintain statistics on inquiries made regarding pregnancy and potential pregnancy discrimination.

3.43 Statistical information regarding pregnancy complaints and inquiries made under state/territory legislation was received in submissions from some anti-discrimination commissions.

3.44 The submission of the New South Wales Government indicated that the level of telephone inquiries received by the New South Wales Anti-Discrimination Board regarding pregnancy discrimination has been at a consistent level over the past three years.<sup>117</sup> This is reproduced in Table 3.9.

**Table 3.9: Pregnancy Discrimination telephone inquiries made to the New South Wales Anti-Discrimination Board 1995-96 to 1997-98**

Year	Number of telephone inquiries	Proportion of all telephone inquiries
July 95 – June 96	574	3%
July 96 – June 97	532	3%
July 97 – June 98	657	3%

3.45 The submission from the Commissioner for Equal Opportunity in Western Australia provided statistical information to show trends in the number of inquiries and complaints received regarding pregnancy discrimination from 1993-94 to 1997-98.<sup>118</sup> These statistics are shown in Table 3.10 and demonstrate that inquiries regarding pregnancy discrimination received by the Equal Opportunity Commissioner are consistent at approximately 2% each

<sup>116</sup> The South Australian figures for this year include complaints made under the *Sex Discrimination Act 1984* (Cth) lodged with the South Australian Equal Opportunity Commission.

<sup>117</sup> New South Wales Government (Submission no 99).

<sup>118</sup> Western Australian Equal Opportunity Commissioner (Submission no 100).

financial year period. The level of complaints regarding pregnancy discrimination have been consistent and significant over the past four financial years.<sup>119</sup>

**Table 3.10: Office of Western Australian Equal Opportunity Commissioner – pregnancy discrimination complaints from 1993-94 to 1997-98**

	1993-94		1994-95		1995-96		1996-97		1997-98	
	No	%								
<b>Inquiries</b>										
Pregnancy	241	2.9	184	2.1	217	2.4	193	2.3	139	2.0
Other grounds	8187	97.1	8426	97.9	8675	97.6	8103	97.7	6874	98.0
<i>Total</i>	8428	100	8610	100	8892	100	8296	100	7013	100
<b>Complaints</b>										
Pregnancy	41	8.8	22	4.7	22	4.7	14	2.4	20	5.0
Other grounds	427	91.2	442	95.3	442	95.3	567	97.6	384	95.0
<i>Total</i>	468	100	464	100	464	100	581	100	404	100

3.46 Consultations undertaken by the Sex Discrimination Commissioner with the heads of state anti-discrimination bodies provided some insight into the progress of complaints at the state level since the launch of the pregnancy inquiry.

3.47 The South Australian Commissioner for Equal Opportunity noted that pregnancy discrimination inquiries under the *Equal Opportunity Act 1984* (SA) had increased and that she attributed this to the growing numbers of women in the workforce, many of whom were more aware of their rights. She was of the view that the HREOC national pregnancy inquiry and related press undertaken by the Sex Discrimination Commissioner and herself had drawn the issue to the attention of the broader community, which encouraged women to speak out about their own experiences. Some of the experiences related to her concerned job recruitment and selection processes where women were asked questions about their future intentions regarding pregnancy.<sup>120</sup>

3.48 The Queensland Anti-Discrimination Commissioner stated that the proportion of pregnancy complaints lodged under the *Anti-Discrimination Act 1991* (Qld) had doubled to 8%.<sup>121</sup> Her considered view was that there were several reasons for this. Firstly, that more women were becoming aware of their rights generally under anti-discrimination law and secondly that the HREOC pregnancy inquiry had stimulated specific awareness about pregnancy discrimination. The Commissioner was not of the view that there was

<sup>119</sup> These percentages represent a proportion of total complaint statistics under all areas of discrimination. This is in contrast to statistics under the *Sex Discrimination Act 1984* (Cth) which are calculated as a proportion of sex discrimination complaints.

<sup>120</sup> South Australian Commissioner for Equal Opportunity (Personal consultation with Sex Discrimination Commissioner, 3 June 1999).

<sup>121</sup> These percentages represent a proportion of total complaint statistics under all areas of discrimination. This is in contrast to statistics under the *Sex Discrimination Act 1984* (Cth) which are calculated as a proportion of sex discrimination complaints.

necessarily more pregnancy discrimination happening in the workplace compared to recent years. Rather she believed that heightened awareness led to increased exposure of inappropriate and discriminatory practices. She was of the view that in the long-term this was important, despite the fact that it may well mean in the short-term that an increased number of complaints needed her attention.<sup>122</sup>

### **Other complaints statistics**

- 3.49 Statistics from other organisations may also be helpful in obtaining an indication of the extent of pregnancy discrimination and its characteristics. Such organisations include industrial relations tribunals empowered to hear claims of unfair dismissal or unlawful termination and employer organisations, working women's centres, community legal services, other community organisations and trade unions, all of which provide advice on pregnancy and potential pregnancy discrimination and have the potential to gather statistics on the number and type of inquiries made.
- 3.50 While it was not within the capacity of this inquiry to conduct a full examination of the extent and availability of statistics on pregnancy discrimination complaints throughout Australia, such an examination would certainly be of benefit to all public, private and community organisations involved in pregnancy and potential discrimination issues.
- 3.51 HREOC encourages the collection of comprehensive statistics on pregnancy and potential pregnancy discrimination by any organisation involved in the issues, and particularly encourages further research to be undertaken to compile statistics on the incidence of discrimination in the workplace and specific recommendations made.

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<sup>122</sup> Queensland Anti-Discrimination Commissioner (Personal consultation with Sex Discrimination Commissioner, 20 May 1999).