



C/- Murray Chambers
12 Coglein St
Adelaide SA 5000

Ms Sarah Moulds

Senior Policy Lawyer
Law Council of Australia
GPO Box 1989
Canberra ACT 2601
(by email: sarah.moulds@lawcouncil.asn.au)

16 December 2013

Dear Ms Moulds,

Supporting Working Parents: Pregnancy and Return to Work National Review

The Women Lawyers' Association of SA Inc (WLASA) provides the following contribution to the Law Council of Australia's (LCA) written submission it is preparing for the Australian Human Rights Commission's (AHRC) National Review '*Supporting Working Parents: Pregnancy and Return to Work*' (the Review).

WLASA considers that discrimination against women on the basis of pregnancy in the workplace whether it is related to returning to work or otherwise is unacceptable, and believes that employers in the legal profession should put in place genuine flexible workplace practices.

By way of background, WLASA is currently also preparing an independent submission to the Review which will include case studies from its members who have experienced discrimination in the workplace due to pregnancy and address the following broad areas of concern:

- That female lawyers of child bearing age, during pregnancy, and on return to work are discriminated against by not being given work of equal value to colleagues with the same skills and expertise.
- The need for increased education amongst employers and employees regarding their rights and responsibilities in this area.
- The importance of the Review to address background issues which directly impact upon the decisions of female lawyers when returning to work, on a full or part-time

basis. For example pay inequity, inflexibilities of Court processes, access to breastfeeding rooms and childcare.

- Timeframes in relation to discrimination claims.

WLASA understands that the LCA's submission to the Review will focus on the relevant legislative framework and other related legal issues. In relation to this WLASA has identified the following key legislative and policy issues:

1. The current protections in the *Fair Work Act 2009* (Cth) and the *Paid Parental Leave Act 2010* (Cth) should be maintained and expanded upon rather than reduced.
2. An increase in education for employers and employees regarding each party's legislative rights and obligations. In particular, an increased awareness that parental leave is an entitlement that either parent or a combination of parents may take to allow families to discuss shared parenting and potentially encourage more fathers to access these entitlements so that their partners may return to work.
3. Improved timeframes for making and dealing with complaints in relation to pregnancy discrimination protections. In particular consideration of the following:
 - i) The likely fact that the person being discriminated against may often have other major health concerns and may be less able to deal with the stress of contesting a decision by an employer. Due to these health reasons they may not file their discrimination or general protections application (with the Equal Opportunity Commission (EOC), the AHRC or Fair Work Commission) within the correct timeframe. This is particularly the case for the limited 21 day time period for general protection applications relating to dismissal under the *Fair Work Act 2009* (Cth).
 - ii) Matters relating to pregnancy discrimination be given priority over other discrimination matters when listing a conciliation conference. The timeframes for dealing with pregnancy discrimination mean that once a complaint is made to the EOC or AHRC it can take months before a conciliation is listed, by which time the woman is likely to have already had their child. If the matter cannot be conciliated, it proceeds to the Federal Court, again a lengthy and expensive process, and many women 'drop out' of the process if the conciliation fails, leaving them with no remedy and often no job.
4. The gap in the current protections relating to return to work should be addressed. Although there is a notional right to be returned to the same position with the same pay [s 84 *Fair Work Act 2009* (Cth)], it is the experience of many female lawyers that the quality of work assigned to them upon returning from maternity leave is substantially diminished from that which was allocated to them prior to going on leave. The return to work guarantee [s 84 of the *Fair Work Act 2009* (Cth)] provides:

'On ending unpaid parental leave, an employee is entitled to return to (a) the employee's pre-parental leave position; or (b) if that position no longer exists—an available position for which the employee is qualified and suited nearest in status and pay to the pre-parental leave position.'

In particular we note the following:

- i) Upon returning from leave female Lawyers may be returned to their position of Associate, Senior Associate, etc., however, many experience discrimination in relation to the types of files they are allocated. They also often feel excluded from their team and from making decisions due to their returning part time or as a result of the leave they have taken.
 - ii) This type of discrimination can also occur prior to women taking leave in the form of being allocated less valuable work or experiencing a reduction in responsibilities as the leave becomes imminent. It can also be that women who are not even pregnant, but recently married, or simply of child bearing age experience this type discrimination in allocation of work in anticipation that they will take time out to have children.
5. There is potential for expansion of the *keeping in touch* days [s 79A *Fair Work Act*, and ss 49-50 under the *Paid Parental Leave Act 2010* (Cth)]. At the moment, only 10 days are allowed while an employee is on unpaid parental leave. Any more days taken ends the entitlement to unpaid leave.

We acknowledge that many people may not wish to work during this period (and should not be required to), 10 days may be ineffective in some instances. For example where a woman is working on a very lengthy dispute spanning a few years, it may be that in order to be able to re-join the team when she returns she will need to be kept up to date and provide assistance more often. This is particularly the case for female lawyers.

WLASA requests that these comments be considered in the preparation of the LCA's submission to the Review.

Yours sincerely,



Christina von Muenster
for

Taruna Heuzenroeder
President

Women Lawyers' Association SA Inc
(E) taruna@murraychambers.com.au