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Australian Human Rights Commission
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Dear Commissioners

The Women Lawyers' Association of South Australia provides the following submission to the Australian Human Rights Commission's (AHRC) National Review '*Supporting Working Parents: Pregnancy and Return to Work*' (the Review).

About WLASA

The Women Lawyers' Association of South Australia (WLASA) is the South Australian branch of the Australian Women Lawyers Association. The Association was founded with a number of objectives in mind. Our aim is to promote justice and equality for all women. We are also committed to improving the career prospects for women within the legal profession.

Our members come from all sectors of the legal profession – private practice, the public sector, courts, universities, the judiciary and women not currently practising. Our members include individuals, South Australian law firms and other organisations which employ lawyers.

This submission has been prepared by members of WLASA who work in the areas of employment and discrimination law. Comments made in the submission are based on their experiences as well as feedback from other members of WLASA, in particular, in verbal and written case studies provided to them. Comments are also drawn from WLASA's past research and examination of discrimination against women in the legal profession. This submission focusses in particular on the circumstances and experiences of women lawyers.

Submission

The WLASA considers that discrimination against women in the workplace on the basis of pregnancy, 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. In particular we have identified:

- The need for increased education amongst employers and employees regarding their rights and responsibilities in relation to pregnancy and related leave.
- The pervasiveness of workplace discrimination against women of child bearing age, both during pregnancy, and on return to work, including by being allocated work of lesser value to colleagues with similar skills and expertise.
- 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.
- The difficulties created by timeframes in relation to discrimination claims.

Response to the AHRC review’s guiding questions:

*‘Please provide any **case studies** of women and men’s experiences of discrimination with the National Review’*

The WLASA sought case studies from our membership and other women lawyers in South Australia. Many women lawyers reported experiencing, or witnessing colleagues experience, pregnancy related discrimination. However, due to the busy time of year only a few put these experiences into writing.

The following are the case studies received by WLASA. They have been de-identified to protect the identities of the women lawyers:

Case study 1

I was asked in a job interview at my government legal job, at the age of only 24, what my ‘family plans’ were. This indicated to me that they were already expecting that I would leave the workplace to have children, and implied that they saw me as a less worthy candidate than a man. Although I was successful in gaining the job, I experienced further comments pertaining to my gender and the fact that I would be ‘leaving to have kids soon anyway’ when I spoke up about not getting certain work, or not getting reclassified at the same time that a male, with less experience than I, was reclassified. When a colleague left for maternity leave, at her farewell, my manager said to the entire room words to the effect that *‘this is the problem with hiring women, they are always leaving to have babies’*. Ironically many women lawyers at that government practice had specifically chosen to work in the public service for the supposed better conditions for women with families. They did this, often sacrificing much larger pay packets and career possibilities in the private sector, only to discover that they were treated poorly and under-classified in the

public service, with little regard being given to, and snide comments made about, the work of part-time staff and working mothers.

Case study 2

Working as a solicitor our company changed buildings and changed computer systems. No one from management told my colleague, who was on maternity leave at the time, about the move date or the potential loss of data due to email systems. I organised for her to come in and helped move her belongings as well as let her know about the computer system issues which allowed her to back up her data. If I had not done this, no-one else would have and she could have lost belongings and data. I have observed when women are on maternity leave they are treated as if they are no longer there, differently to those on annual leave who were informed about the process. These women should be informed about major workplace changes while they are on leave; they are equally members of staff as are the people on annual leave.

Case study 3

While I was working as an employed solicitor in a small private law practice I believe I was subject to pregnancy related discrimination. I was employed at the practice for 4.5 years and was aged 31 to 35. During this time I was first engaged and then married and the two male principal partners of the firm were aware that I hoped to start a family.

A male colleague with one more year experience than me received higher annual pay increases than me.

The firm specialised in taxation law and I was originally employed with the promise and expectation that I would practice in tax law. Over time I was given fewer and fewer tax files and instead more and more litigation files. I had no experience in litigation and there was no other solicitor in the firm with litigation experience from whom I could learn. The work that I was given, due to the lack of senior staff support, caused me to suffer extreme anxiety and ultimately led to my resignation.

When I asked to be given less litigation work and more tax work I was advised that it was the economic downturn which had led to less tax work coming into the firm, however, at about the same time an additional male lawyer with tax experience was employed and given exclusively taxation work.

At a salary review I enquired with the partners if they would consider introducing paid maternity leave, this suggestion was rebuked on the basis that they would rather pay higher salaries than pay maternity leave. At the time I was being paid

marginally above the annual award wage, but due to the long additional hours I was working each week (45-50 hours) I was in fact being paid under the award – a fact I was not aware of during this meeting.

I felt that the firm partners did not give me the work I wanted as they saw no benefit in training me up in taxation law when I would soon leave to start a family.

I left this employment before I fell pregnant with my first child. However, I was unable to find alternative full time employment as when I came to look for new work I had just fallen pregnant. I therefore only secured casual work during my pregnancy and have not had the benefit of maternity leave.

I currently remain unemployed (somewhat by choice, although I did not have secure employ to return to) and I now have two young children. I hope to return to the workforce, but know I will find it difficult to find part-time work with an employer willing to provide the flexible work arrangements I will need.

Case study 4

I returned to work recently after having my baby and work 3 days per week. I have to admit that on the whole my colleagues, employers and clients have been very supportive of my part time role and in my particular circumstances it works well.

I have experienced some negativity, primarily from an interstate, senior male lawyer, who used my part-time position to accuse me of delaying the progress of a matter because I had so many days "off" and that because I was not in the office full time I didn't check emails often enough. These allegations were unfounded, as my emails are constantly checked by either myself remotely or my assistant and any delay in the matter had been caused by his client's evasion of his disclosure obligations. In any event, it was just a spiteful dig at me to deflect attention from his client's tardiness. I felt particularly incensed by it because it is hard enough juggling part time work and parenting, and constantly feeling guilty about having to choose one over the other at times, without members of the profession with outdated attitudes making you feel worse about it.

Case study 5

Working as a young woman lawyer and speaking to friends who are women lawyers, many of us have realised that the quality of files we are given is generally poorer than those given to our male colleagues of similar age and experience. Similarly, we have noticed a disparity in pay. When challenged, the high profile files that our male colleagues work on are used as examples of why they are on a higher wage, an argument of merit, however when we are not given the opportunity (often because

they think we will just leave the firm to have children etc) then how can we demonstrate that we have the abilities required to get the equivalent pay increases?

Case study 6

Despite the fact that I am employed as an employment lawyer with a so-called “employer of choice” for women, myself and other members of my team have experience a lack of support in relation to maternity leave and returning to work. I used to be one of the best performers (and billers) and have effectively been squeezed out. All my clients have been reallocated to other lawyers, and I have been given only the worst matters. I was not allocated enough work to make my budget, and then quasi performance managed for not meeting my budget. I know that other members of my team have been treated similarly.

Case study 7

I don't have children yet, although I would like to. However, I am concerned about how it will impact on my career, and how I am treated at work. I am treated well by my employer now, but I am a very good biller. I have seen what happens when other female solicitors announce that they are expecting a baby. Their work is allocated to other lawyers, and by the time they go on maternity leave they have already ceased to exist as far as the partners are concerned. When they return, they aren't taken seriously any more. They don't have performance reviews anymore, and it clear to everyone that they aren't going to progress any further at the firm once they have kids.

*‘Identify any **limitations or gaps in the legislative and policy framework in relation to pregnancy discrimination and return to work. What are the key challenges in the relevant legislative and policy framework?’***

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. Further education for employers and employees regarding each party's legislative rights and obligations is required. In particular, an increased awareness that parental leave is an entitlement that either parent, or a combination of parents, may take would encourage families to discuss shared

parenting and may encourage more fathers to access these entitlements so that their partners may return to work.

3. Timeframes for making and dealing with complaints in relation to pregnancy discrimination protections should be improved. In particular consideration should be given to the following:
 - i) The likelihood 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) Consideration should be given to giving matters relating to pregnancy discrimination 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) however 10 days may be insufficient 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 from leave she will need to be kept up to date and provide assistance more often. This is particularly the case for female lawyers.

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

The WLASA received the following case studies.

Case study 8

The firm where I was formerly employed was by no means perfect in terms of how it dealt with parental leave, but it did do some things very well. One of those was that it provided a private and comfortable space, including a small bar fridge, to enable a solicitor returning to work to express breast milk regularly, and safely store it.

Another thing they did very well was to assign a junior solicitor to “buddy” with a part-time senior solicitor. The junior solicitor would manage the senior’s files on the days when the senior was not at work, and be responsible for allocating work to other junior lawyers. The juniors given this responsibility were both associates who were close to promotion to senior associate, and this gave them the opportunity to take a leadership role, while still having close supervision from the part-time partner.

For the partner, it meant that she did not receive calls whenever there was an issue with her files on her home days, but only if it was something that the junior couldn't deal with. I think these sorts of "buddy" arrangements can work very well to ensure part time employees are able to work effectively.

The last thing I want to mention that the firm did well is that while on maternity leave women were still invited to every social function held by the firm, including Christmas lunch and the annual dinner. This is so important in making mums feel that they are still valued and part of the team.

Case study 9

It is really important that firms are flexible in terms of what they expect from women taking maternity leave and returning to work. Women are different and the arrangements they make when they have a family will be different. My firm does well at this – there is not just one acceptable way to be a working mum. Some women have returned full-time after only a few months, some returned a few days a week after taking a full year (or on one occasion more than a year). Some women wanted to continue to be considered for promotion, and to put in the hours that are necessary to make that possible. Others would prefer to "tread water" professionally for a while, in exchange for shorter hours and less responsibility, but don't want to lose the chance to be taken seriously for promotion in the future. Not assuming every woman who has a child will behave the same way is important. Actively discussing women's plans with them, and continuing to assess and manage their needs is just good people management.

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

WLASA would like to see the suggestions above in relation to legislative and policy changes taken into account in the review. That is:

- That 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 (point 1 above);
- That there be an increase in education for employers and employees regarding each party's legislative rights and obligations (point 2 above);
- That there be improved timeframes for making and dealing with complaints in relation to pregnancy discrimination protections (point 3 above);

- That work value be protected on return to work and in the lead up to taking leave (point 4 above); and
- That keeping in touch day be expanded as well as other means to ensure people on parental leave are informed about major workplace changes or changes in the workplace affecting them (point 5 above and see also case study 2).

In addition to the above recommendations WLASA also suggests the following:

- That workplace audits are carried out in relation to workplace protections in this area, by the Fair Work Ombudsman or another body, in a similar way to how the FWO examines underpayments of wages, including industry based specific investigations or studies.
- That measures be encouraged which reduce return to work impediments.
- That the gender pay gap be addressed. Gender based pay inequality impacts family decisions about caring arrangements and who works part time. The decision becomes almost purely financial when the pay gap is excessive.

Yours sincerely,



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