

Replies to Questions on notice

Question 4

Hansard page reference: 57

Hansard extract:

Senator KAKOSCHKE-MOORE: Do you have any statistics about the number of complaints that have been brought to your office by women who are pregnant or have newborns?

Ms JENKINS: We do have that those statistics, and I can take that on notice and provide them before Monday.

REPLY

- 1) The Commission's statistics on pregnancy discrimination complaints (as set out in its 2015-16 Annual Report) are as follows:

2015-16 Complaints statistics

Source: Australian Human Rights Commission, *Annual Report 2015-16* (2016).

At: <http://www.humanrights.gov.au/our-work/commission-general/publications/annual-report-2015-2016>

Table 21: Sex Discrimination Act – Complaints received by ground

| Sex Discrimination Act – Grounds | Number | Percentage |
|---|---------------|-------------------|
| Sex discrimination | 421 | 43 |
| Marital or relationship status | 13 | 1 |
| Pregnancy | 105 | 11 |
| Sexual harassment | 217 | 22 |
| Family responsibilities | 40 | 4 |
| Breastfeeding | 10 | 1 |
| Gender identity | 29 | 3 |
| Intersex | 2 | - |
| Sexual orientation | 54 | 5 |
| Victimisation | 85 | 9 |
| Causes, instructs, induces, aids or permits an unlawful act | 8 | 1 |
| Advertisements | - | - |
| Total* | 984 | 100 |

*One complaint may raise multiple grounds.

Table 22: Sex Discrimination Act - Complaints received by area

| Sex Discrimination Act – Areas | Number | Percentage |
|--|------------|------------|
| Employment | 346 | 82 |
| Goods, services and facilities | 50 | 12 |
| Land | 1 | - |
| Accommodation | 1 | - |
| Superannuation & insurance | - | - |
| Education | 9 | 2 |
| Clubs | 1 | - |
| Administration of Commonwealth laws and programs | 11 | 3 |
| Requests for information | - | - |
| Registered organisations | - | - |
| Qualifying bodies | 2 | 1 |
| Total* | 421 | 100 |

* One complaint may relate to more than one area.

2) The Commission also notes the data it reported in its: *Headline Prevalence Data: National Review on discrimination related to pregnancy, parental leave and return to work* (April 2014), as follows:

Pregnancy, parental leave and return to work discrimination

Source: Australian Human Rights Commission, *Headline Prevalence Data: National Review on discrimination related to pregnancy, parental leave and return to work* (April 2014). At: <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/headline-prevalence-data-national-review-discrimination>

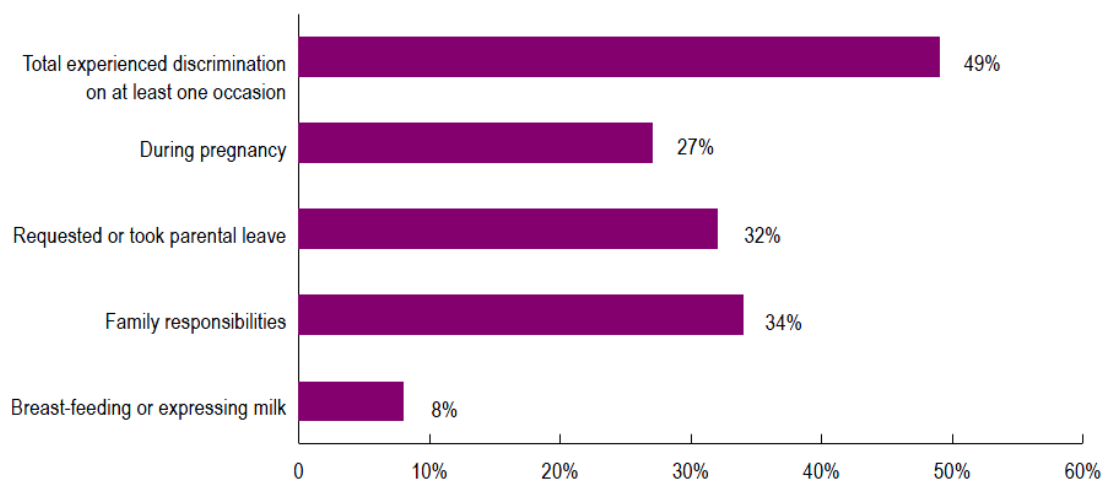
1.1 Mothers survey

(a) Prevalence of discrimination

Discrimination in the workplace against mothers is pervasive.

- One in two (49%) mothersⁱ reported experiencing discrimination in the workplace at some point during pregnancy, parental leave or on return to work.ⁱⁱ
- Discrimination occurs at all stages:
 - A quarter (27%) of mothers reported experiencing discrimination in the workplace during pregnancy.
 - Almost a third (32%) of mothers reported experiencing discrimination in the workplace when they requested or took parental leave.
 - More than a third (35%) reported experiencing discrimination when returning to work after parental leave (34% related to family responsibilities and 8% related to breast-feeding or expressing milk).

Figure 1 - Prevalence of discrimination in the workplace during pregnancy, parental leave and return to workⁱⁱⁱ



Base: Total respondents: (n=2002); During pregnancy: biological mothers (n= 2001); when requested or took parental leave: mothers who took leave or would have liked to take leave (n=1902); mothers who returned to work as an employee (n=1576)

(b) Type of discrimination

** Please refer to the chart on page 9 for a key to the ‘types of discrimination’ that are included in the categories below.*

- Discrimination is experienced in many different forms ranging from negative attitudes in the workplace through to dismissal.
- Many women experience more than one form of discrimination during pregnancy, parental leave and return to work.
- One in five (18%) mothers indicated they were made redundant/restructured/dismissed or that their contract was not renewed, either during their pregnancy, when they requested or took parental leave, or when they returned to work.

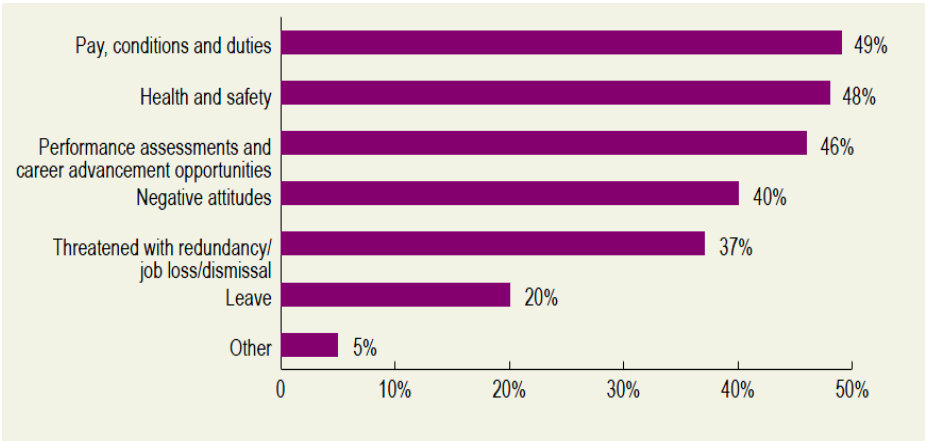
Types of discrimination experienced during pregnancy

Of the 27% of mothers that reported experiencing discrimination in the workplace during pregnancy:

- More than a third (37%) reported that they had been threatened with redundancy or dismissal, made redundant/restructured, were dismissed or did not have their contract renewed.
- Half (49%) reported discrimination related to pay, conditions and duties.
- 48% reported discrimination related to their health and safety.
- 46% reported discrimination related to their performance assessment or career advancements opportunities.
- 40% reported negative comments/attitudes from their manager/employer or colleagues.

Figure 2 – Types of discrimination during pregnancy^{iv}

Of the 27% of mothers who experienced discrimination during pregnancy ...



Base: Biological mothers (n=2001); who experienced discrimination in the workplace during pregnancy (n=482)

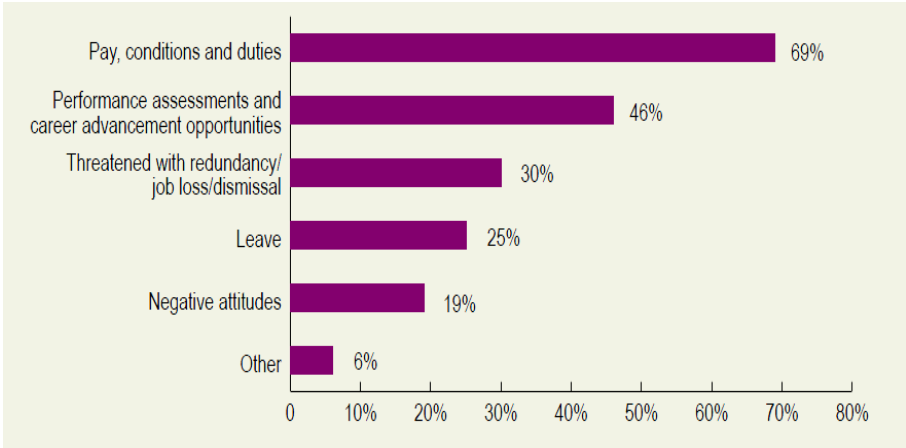
Types of discrimination experienced when requesting or on parental leave

Of the 32% of mothers that reported experiencing discrimination in the workplace when requesting or on parental leave:

- Over two thirds (69%) reported discrimination related to pay, conditions and duties.
- Almost half (46%) reported discrimination in relation to their performance assessment and career advancement opportunities.
- Nearly a third (30%) reported that they had been threatened with redundancy or dismissal, made redundant/restructured, were dismissed or did not have their contract renewed when they either requested or took leave.

Figure 3 – Types of discrimination when requesting or on parental leave^v

Of the 32% of mothers who experienced discrimination during pregnancy ...



Base: Mothers who took leave or would have liked to take leave (n=1902); experienced discrimination in the workplace when requested or on parental leave (n=615)

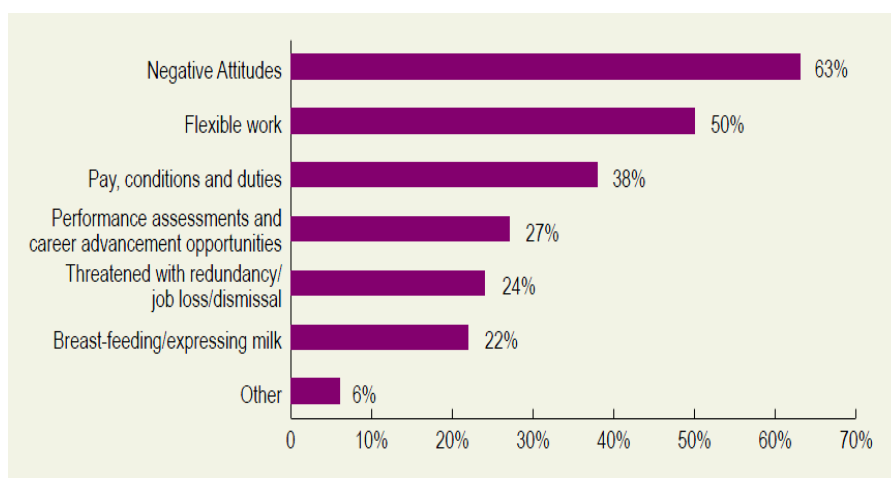
Types of discrimination experienced upon return to work

Of the 36% of mothers that reported experiencing discrimination in the workplace when returning to work after parental leave:

- Nearly two thirds (63%) reported receiving negative attitudes or comments from colleagues or managers/employers.
- Half (50%) reported discrimination when they requested flexible work arrangements.
- Two in five (38%) reported discrimination related to pay, conditions and duties.

Figure 4 – Types of discrimination on return to work^{vi}

Of the 36% of mothers that experienced discrimination on return to work ...



Base: Mothers who returned to work as an employee (n=1576); who experienced discrimination in the workplace on return to work (n=578)

*This chart provides a key to the types of discrimination that fall within each category

| | |
|--------------------|---|
| Negative attitudes | You received inappropriate or negative comments from your employer/manager about your pregnancy (<i>pregnancy</i>) |
| | You received inappropriate or negative comments from your colleagues about your pregnancy (<i>pregnancy</i>) |
| | You received inappropriate or negative comments from your employer/manager because you requested or took leave to care for your child (<i>parental leave</i>) |
| | You received inappropriate or negative comments from your colleagues because you requested or took leave to care for your child (<i>parental leave</i>) |
| | You received inappropriate or negative comments about breastfeeding or expressing milk (<i>return to work</i>) |
| | You received inappropriate or negative comments about working part-time or flexible hours (<i>return to work</i>) |
| | You received inappropriate or negative comments about needing time off to care for your child due to illness (<i>return to work</i>) |
| | You were viewed as a less committed employee (<i>return to work</i>) |

| | |
|---|---|
| | You were unfairly criticised about your performance at work (<i>return to work</i>) |
| Pay, conditions and duties | Your hours were changed against your wishes |
| | Your roster schedule was changed against your wishes (<i>pregnancy and parental leave</i>) |
| | Your duties or role were changed against your wishes |
| | You were made casual (<i>pregnancy and parental leave</i>) |
| | You had a reduction in your salary or bonus |
| | You didn't receive a pay rise or bonus, or received a lesser pay rise or bonus than your peers at work |
| | You missed out on a salary increment or bonus (<i>parental leave</i>) |
| | Your position was replaced permanently by another employee (<i>parental leave and return to work</i>) |
| Your employer did not adequately backfill your position during your parental leave and this negatively impacted you (<i>parental leave</i>) | |
| Performance assessments and career advancement opportunities | You were unfairly criticised about your performance at work (<i>pregnancy</i>) |
| | You failed to gain a promotion you felt you deserved (<i>pregnancy and return to work</i>) |
| | You were denied access to training that you would otherwise have received (<i>pregnancy and return to work</i>) |
| | You missed out on opportunities for training (<i>parental leave</i>) |
| | You missed out on opportunities for promotion (<i>parental leave</i>) |
| | You missed out on a performance appraisal (<i>parental leave</i>) |
| Job loss/dismissal | You were treated so poorly that you felt you had to leave |
| | You were threatened with redundancy or dismissal |
| | You were made redundant/restructured |
| | You were dismissed |
| | Your contract was not renewed |
| Leave | You were unfit for work due to pregnancy-related illness or because your pregnancy ended and your employer denied you special unpaid maternity leave (<i>pregnancy</i>) |
| | You were denied leave to attend medical appointments for your pregnancy (<i>pregnancy</i>) |
| | Your employer encouraged you to start or finish your parental leave earlier or later than you would have liked (<i>parental leave</i>) |
| | You were denied leave that you were entitled to (<i>parental leave</i>) |
| Health and safety | You were unable to take toilet breaks as you needed (<i>pregnancy</i>) |
| | You were not provided with a suitable uniform (<i>pregnancy</i>) |
| | Your work/workload was not adequately adjusted to accommodate your pregnancy (<i>pregnancy</i>) |

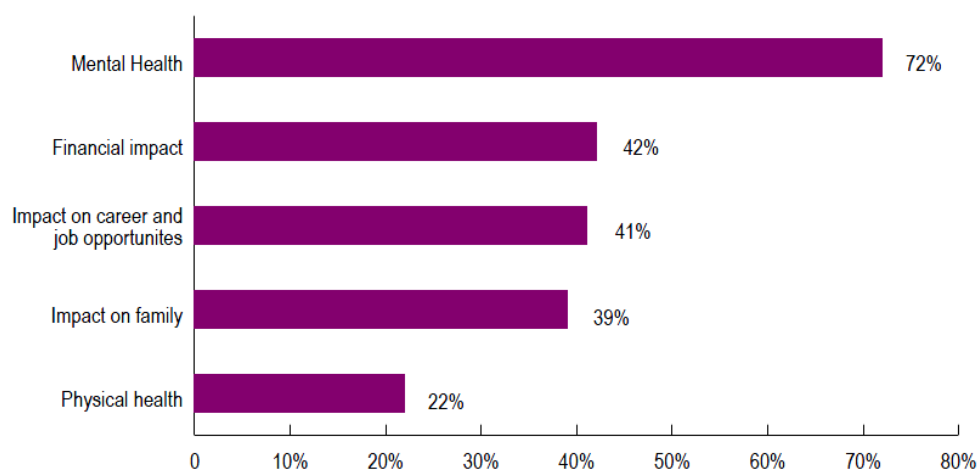
| | |
|---------------|--|
| | Your health and safety were jeopardised by failure to accommodate your pregnancy (<i>pregnancy</i>) |
| | You were not provided with a safe job (<i>pregnancy</i>) |
| | You were transferred to a safe job but it involved a different number hours of work that you did not agree to (<i>pregnancy</i>) |
| | You were transferred to a safe job but did not have the same terms and conditions of employment (<i>pregnancy</i>) |
| | You were not provided with appropriate breastfeeding or expressing facilities (<i>return to work</i>) |
| Flexible work | Your requests for flexible hours or work from home were denied (<i>return to work</i>) |
| | Your requests for time off to cope with illness or other problems with your baby were denied (<i>return to work</i>) |
| | You were given unsuitable work or workloads (<i>return to work</i>) |
| | You were given work at times that did not suit your family responsibilities (<i>return to work</i>) |

(c) *Impact of discrimination*

Discrimination has a significant negative impact on women's health, finances, career and job opportunities and their family.

- 84% of mothers who experienced discrimination on at least one occasion, reported a negative impact as a result of discrimination. Of this group: More than two thirds (72%) reported that the discrimination impacted on their mental health, including their level of stress and loss of self-esteem and confidence.
- Two in five (42%) reported that the discrimination had a financial impact on them, while a similar proportion (41%) felt it impacted on their career and job opportunities.

Figure 5 – Impact of discrimination experienced^{vii}



Base: Total experienced discrimination on at least one occasion (n=978)

Discrimination has a negative impact on women's engagement in the workforce and their attachment to their workplace.

- 22% of mothers who reported experiencing discrimination at work during their pregnancy did not return to the workforce as an employee, compared to 14% who reported that they did not experience discrimination.^{viii}
- 23% of mothers who reported experiencing discrimination at work during their pregnancy did not return to the 'main employer'^{ix} they had before the birth/adoption of their child, compared to 13% of mothers that reported they did not experience discrimination.^x

Question 5

Hansard page reference: 59

Hansard extract:

Senator DASTYARI: Mr Hall, the Australian Human Rights Commission's submission discussed the Australian changes in the context of the international human rights obligations. I do not know whether you or Ms Jenkins are the right person to comment on that. Can you just expand on that?

Mr HALL: The submission refers to the two primary conventions that are relevant: the International [Covenant on Economic Social and Cultural] Rights and the CEDAW.

Senator DASTYARI: Yes, I have it here.

Mr HALL: I can certainly take on notice a more detailed explanation.

REPLY

The Commission's position, with respect to the relevant international law obligations upon Australia regarding the accessibility of paid parental leave, articulated in its submission to the Committee (and its attached 2015 submission), reflects the Commission's earlier reports and submissions on this issue.

More detail on the Commission's position can be found in the following extracts from these documents:

- *HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION (HREOC) submission to the Productivity Commission on the Inquiry into Paid Maternity, Paternity and Parental Leave.*, 2 June 2008 – **paragraphs 38 to 71.**
 - See: <https://www.humanrights.gov.au/hreoc-submission-productivity-commission-inquiry-paid-maternity-paternity-and-parental-leave>

- *Inquiry into Paid Maternity, Paternity and Parental Leave: Submission of the Australian Human Rights Commission to the Productivity Commission*, 24 November 2008 – **paragraphs 95 to 99; and 115 to 122**
 - See: <https://www.humanrights.gov.au/submission-inquiry-paid-maternity-paternity-and-parental-leave-2008>
- AHRC Inquiry and Report: *Pregnant and Productive: It's a right not a privilege to work while pregnant* (1999) – **paragraphs 14.7 5to 14.17**
 - See: https://www.humanrights.gov.au/sites/default/files/content/pdf/sex_discrim/pregnant_productive/part_d.pdf
- The Commission also notes the Attorney-General's 2012 Public Sector Guidance sheet on the 'Right to Maternity Leave', which the Commission was consulted on and agrees with.
 - See: <https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Righttomaternityleave.aspx>

ⁱ 'Mothers' refers to women aged 18-49 years and in the workforce as an employee at some time during their pregnancy (or while adopting a child) with a child of approximately 2 years of age.

ⁱⁱ An overall incidence of the level of workforce discrimination was calculated as the total number of individuals who were treated unfairly or disadvantaged at least once either during their pregnancy, when requesting or on parental leave, or when returning to work following parental leave.

ⁱⁱⁱ Questions asked to respondents: Q8. At work, were you ever treated unfairly or disadvantaged because you were pregnant with <NAMEOFCHILD>/your child born in <MONTHYEAR>? Q10/a/b. Do you think that during your pregnancy with <NAMEOFCHILD>/your child born in <MONTHYEAR>, you were treated in any of the following ways as a result of your pregnancy? Q20. At work, were you treated unfairly or disadvantaged because you took or requested to take leave to care for <NAMEOFCHILD>/your child born in <MONTHYEAR>? Q22/a/b. Did you personally experience any of the following because you requested or took leave to care for your child?

Q47. After the/in the first job you had after the adoption/birth of your child, were you ever treated unfairly or disadvantaged because of your family responsibilities for <NAMEOFCHILD>/your child born in <MONTHYEAR>?

Q49. After the/in the first job you had after the birth/adoption of your child, were you ever treated unfairly or disadvantaged because you were breast-feeding or expressing milk?

Q50/a/b. After the/in the first job you had after the birth/adoption of your child, have you ever personally experienced any of the following because of your family responsibilities for <NAMEOFCHILD>/your child born in <MONTHYEAR>?

^{iv} Questions asked to respondents: Q8. At work, were you ever treated unfairly or disadvantaged because you were pregnant with <NAMEOFCHILD>/your child born in <MONTHYEAR>?

Q9. What kind of unfair treatment or disadvantage did you face?

Q10/a/b. Do you think that during your pregnancy with <NAMEOFCHILD>/your child born in <MONTHYEAR>, you were treated in any of the following ways as a result of your pregnancy?

^v Questions asked to respondents: Q20. At work, were you treated unfairly or disadvantaged because you took or requested to take leave to care for <NAMEOFCHILD>/your child born in <MONTHYEAR>?

Q21. What unfair treatment or disadvantage did you experience because you requested or took leave to care for your child?

Q22/a/b. Did you personally experience any of the following because you requested or took leave to care for your child?

^{vi} Questions asked to respondents: Q47. After the/in the first job you had after the adoption/birth of your child, were you ever treated unfairly or disadvantaged because of your family responsibilities for <NAMEOFCHILD>/your child born in <MONTHYEAR>?

Q48. What unfair treatment or disadvantage did you experience because of your family responsibilities for your child?

Q49. After the/in the first job you had after the birth/adoption of your child, were you ever treated unfairly or disadvantaged because you were breast-feeding or expressing milk?

Q50/a/b. After the/in the first job you had after the birth/adoption of your child, have you ever personally experienced any of the following because of your family responsibilities for <NAMEOFCHILD>/your child born in <MONTHYEAR>?

^{vii} Question asked to respondents: Q11/Q23/Q51. Thinking about this, what impact, if any did this treatment have on you?

^{viii} Mothers who have finished their parental leave and experienced discrimination at work during their pregnancy were less likely to return to work as an employee (78%) compared to mothers who were not discriminated against during their pregnancy (86%).

^{ix} 'Main employer' refers to the job they had just prior to parental leave. If they had more than one job at the time it refers to the job for which they did the most number of hours per week.

^x Mothers who have finished their parental leave and experienced discrimination at work during their pregnancy were less likely to return to the main employer they had before the birth/adoption of their child (77%), compared to mothers who didn't experience discrimination during their pregnancy (87%).