



**Submission Number: 142**

**Date Received: 06/03/09**

*A.*

The Committee Secretary  
Standing Committee on Employment and Workplace Relations  
House of Representatives  
PO Box 6021  
Parliament House,  
Canberra ACT 2600

6 March 2009

Dear Sir/Madam

**Inquiry into pay equity and associated issues related to increasing female participation in the workforce**

We welcome the opportunity to make a submission to this Inquiry. This is a joint submission prepared by Kingsford Legal Centre, on behalf of the National Association of Community Legal Centres.

The National Association of Community Legal Centres (**NACLC**) is the peak body representing the eight State associations of community legal centres (**CLCs**) and 207 CLCs nationally.

CLCs are located throughout Australia in metropolitan, outer-metropolitan, regional, rural and remote Australia. CLCs are experts in “Community Law” – the law that affects our daily lives. They provide services to approximately 350,000 clients per year. They are often the first point of contact for people seeking assistance and/or the contact of last resort when all other attempts to seek legal assistance have failed.

Kingsford Legal Centre (KLC) is a community legal centre that provides legal advice, assistance and representation to people who live, work or study in the municipalities of Randwick and Botany in NSW on selected legal problems, and a state wide service on matters of discrimination law.

KLC conducts specialist services in discrimination and employment law. Over the last 5 years we have advised a large number of clients in this area:

|               | <u>Employment</u> | <u>Discrimination</u> |
|---------------|-------------------|-----------------------|
| 2003          | 292               | 140                   |
| 2004          | 277               | 87                    |
| 2005          | 255               | 112                   |
| 2006          | 287               | 99                    |
| 2007          | 278               | 95                    |
| 2008 (to May) | 109               | 35                    |

Of particular relevance to this Inquiry is the work KLC has done in advising a number of women on issues related to sex discrimination, including discrimination relating to pregnancy, maternity leave, and sexual harassment in the work place. There are clearly trends, recurring problems, and repeat perpetrators.

As specialists in employment law and discrimination law and in our work with other community legal centres around Australia, we are well aware of the extraordinarily high number of women who are treated poorly in the workplace for issues arising from being pregnant and being carers. What we find remarkable is that the presence of clear laws making it unlawful to discriminate and/or to terminate employees on discriminatory grounds has failed to bring about a change in behaviour in workplaces both large and small.

We regularly witness the dislocation and distress suffered as a result of these unlawful acts with many women calling us to say that, what was initially an exciting and happy

time, of pregnancy and motherhood, quickly turns into an extremely stressful time if employers' attitudes suddenly change for the worse. Apart from the stress arising from difficult workplace conditions, our clients tend to feel more vulnerable about their job security when pregnant because of the increased demands on income and the awareness that obtaining a new job will be much harder than continuing in an existing position. This gives employers greater bargaining power and many clients will recount ongoing harassment and loss of conditions which they endure in the hope of staying in employment. Participation in the workforce for these women is hence seriously compromised.

## **CASE STUDIES**

Please see the attached table which sets out 13 pregnancy/maternity related matters dealt with at Kingsford Legal Centre and gives some background to each case and the assistance provided. These are drawn from the many women who had come to us with workplace issues related to their gender.

In a period of just over one year Kingsford Legal Centre had many women seek advice in relation to workplace issues arising from being pregnant or a carer. Of a group of 49 we took the following case studies:

- 7 had been dismissed when they told the employer they were pregnant
- 3 had not been allowed to change their hours from full time to part time on return from parental leave
- 4 had been demoted after telling the employer they were pregnant.
- 4 were made redundant while on parental leave or, in one case, on the day our client returned to work from 12 months' maternity leave she was sent

- 1 was terminated while on parental leave
- 18 suffered sexual harassment at work
- 3 were refused flexible work arrangements when requested for family and carer responsibilities

The other clients suffered a range of discrimination and victimisation arising from being pregnant, being female and being a carer.

For example, our pregnant clients have suffered sudden changes in employer's attitudes, such as JS who had been employed for nearly 2 years, working full-time at a sports club in Sydney. Upon informing her boss that she was 6½ weeks pregnant he immediately became more vigilant about her work, and started harassing and humiliating her in front of fellow employees and customers. This behaviour included:

- Screaming at her in front of customers;
- Calling her 'stupid' via a note left in the staff diary/handover book;
- Harassing her about her visits to the toilet;
- Telling her 'your pregnancy is not the Club's problem. It's not feasible for you to take 12 months leave'; and

JS was forced to take annual leave and, on the basis of medical advice, sought workers' compensation for the consequent stress and anxiety.

Another pregnant client, on informing the employer of her pregnancy was told: 'Well I can't sack you.' Two days later the client was demoted and her pay reduced from \$45,000 pa to \$40,000 p.a. The client was terminated two months later.

On return to work from maternity leave, MB, who worked for a large financial company in Sydney, was transferred to a new position and was moved to another office further from her home. She was required to work long hours, given no assistance or options for part-time work; required to undertake regular performance meetings during which concerns were raised about the quality of her work; and demoted for a period of time to an administrative role with fewer hours and lower pay. The client eventually resigned after making a discrimination complaint and settling out of court.

YE took her maternity leave in January 2008 and prior to her agreed return date, in early November 2008, she was contacted by her manager to discuss details of her restart date and conditions. YE requested to work 3 days in the office and 2 days from home arguing she would be more than able to fulfil the requirements of her job. Although her manager agreed to get back to her within 2-3 days it took nearly 2 months to give her any meaningful response to her requests about her conditions on returning to work. In early October, her manager agreed to 4 days at work and just 1 working from home. However on 22<sup>nd</sup> October she was informed that the company had been restructured and her role had been made redundant, leaving her unemployed.

Another client and her colleagues were told by the manager that 'anyone thinking of becoming pregnant can think about their jobs'. This client was made redundant a week after telling the manager she was pregnant.

## **OBSERVATIONS**

In most cases the women dealt with by Kingsford Legal Centre want to either continue their employment, under the same conditions, up until their maternity leave or be able to return to work in circumstances that can reasonably accommodate their responsibilities as parents.

In order to facilitate this, employers would be required to simply acknowledge the pregnancy and, within reason, accommodate the possible needs of their employees both before and after maternity leave. Moreover, if concerns of discrimination are raised by an employee, our clients have generally indicated that mere acknowledgement of the discrimination and an apology by the employer would prevent many cases from going further.

Instead, there is a tendency among employers to raise performance-related issues and criticisms, as exemplified by the case studies. The result for many women taking or having taken maternity leave is a long, protracted and stressful process caused by employers adopting an unnecessarily hostile stance.

In MB's case (at no. 11 in the attached table and discussed above), despite frequent requests for part-time work, greater flexibility and more training her employer refused to even discuss the issues and maintained that there was no alternative to her working full-time. However, once MB had sought legal advice from our centre and filed a complaint with the Anti-discrimination Board of NSW, her employer offered MB a choice of two part-time positions. MB ultimately declined both offers, citing stress and disillusionment. The situation would have been much easier and less stressful for both sides had her employer engaged in the issues to see how it could respond to her concerns.

## **RECOMMENDATIONS**

As the raft of discrimination and employment laws have so far been ineffective in bringing about change for recalcitrant employers, there clearly needs to be more emphasis on education in the workplace – that sidelining women who are pregnant or who have carer's responsibilities is both unacceptable behaviour and makes no economic sense given the cost to all workplaces when there is high turnover and/or a loss of morale which frequently leads to reduced productivity.

Training and education could also work to dispel the myths surrounding pregnancy to address the misconception of pregnant women as 'less reliable' and poorer performers. Pregnancy does not necessarily create conflict between work and family duties if employers are willing to be flexible.

Apart from training to try to prevent discrimination and harassment occurring, we also believe employers should appreciate the costs involved – in both economic and human terms – when complaints are not dealt with quickly with compassion and a cool head.

**We therefore recommend:**

- 1. Greater training and education be made available to public and private sector employers.**
- 2. That Federal and State anti-discrimination bodies be adequately funded to provide such training.**
- 3. That orders to attend training be mandatory for employers who are repeatedly complained against and found to be discriminating against employees on the basis of pregnancy or carer's responsibility.**

An indication by an employer that the discrimination is acknowledged and an apology provided would prevent many cases from going much further.

Instead many employers respond by criticising the performance of the complainant – whether there are performance issues or not this is clearly irrelevant to a discrimination and harassment complaint and indicates the employer is unable or unwilling to engage in the issue at hand.

Presumably it is a fear of the prejudicial consequences of acknowledgement and apology that drives employers to take an aggressive approach in response to complaints. This only ramps up the dispute, causing unnecessary distress and, of course, the expenditure of greater time and money by the parties in resolving the matter.

**We therefore recommend:**

- 4. Where appropriate, legislation be amended to allow confidential or public acknowledgement and apology without admission of liability, in the event of a complaint of discrimination.**

A common issue for our clients is that a primary aim in bringing an individual complaint against an employer is the hope that other employees won't suffer the same treatment. Certainly, the benefits of early acknowledgement should be pressed with employers as going beyond a quick and relatively amicable resolution of the particular complaint, and leading to the creation of a positive workplace, and the possible avoidance of further incidents of discrimination and harassment. However, an individual complaint necessarily leads to a specific individual remedy, even though the complainant might have hoped for a remedy with wider effect.

A significant gap therefore in the current legislative regime is the capacity to create systemic change benefiting other employees.

In the event that, despite education and training, a recalcitrant employer fails to address discriminatory practices in the workplace, the possibility of negative sanctions or prosecution should be available.

This would require a change to the regulatory mechanisms to create a positive duty on employers to develop and maintain a workplace free of discriminatory practices. Such a regime could conceivably be similar to or incorporated within current occupational health and safety legislation, as it is also aimed at ensuring the health, safety and welfare of employees. Clearly, an independent agency, with the resources, capacity and authority to investigate and prosecute is required for such a regulatory regime.



**We therefore recommend:**

- 5. The introduction of a regulatory mechanism which**
- (a) Creates a positive duty on employers to develop and maintain a workplace free of discriminatory practices; and**
  - (b) Facilitates prosecution of employers found to be in breach of this duty**

Such a mechanism would enable workplace culture and systems change in a way that remedies for individual complaints would not.

We trust these submissions and the table following are of assistance in the Committee's deliberations.

Yours faithfully

National Association of Community Legal Centres



Linda Tucker  
Convenor, Employment Network  
Solicitor, Kingsford Legal Centre



Elizabeth O'Brien  
National Convenor

| Matter & Date of Advice  | Length of Employment                        | Date when employer was informed of pregnancy OR date of taking maternity leave | Events occurring after employer was informed of pregnancy   | How KLC dealt with the matter  |
|--|---|--|---|--|
| <b>Clients <u>dismissed</u> directly/indirectly because of pregnancy/maternity leave</b> |   |  |   |  |
| [1]<br>JN<br>13-3-08   | Over 4 years (started in November 2003).    | Early March 2007 informed boss of pregnancy – commenced leave on 21-09-07.     | Prior to taking leave requested another assistant due to workload caused by another employee quitting and end of financial year. On day she returned from maternity leave (4-2-08) she was told to go home, a week later she was told she had been made redundant.              | KLC took case on and assisted with conciliation  |
| [2]<br>AT<br>13-9-07   | Unknown                                     | End of October 2006 informed boss about pregnancy.                             | Named 'Employee of the Month' for October 2006 but 3 weeks later, 2 weeks after telling of her pregnancy, her employment was terminated. Doctor had given clearance to work but employer said not ok.   | AT lodged complaint with ADB before seeing KLC. KLC took case on and assisted with conciliation. AT settled and received compensation from the employer. |
| [3]<br>CC<br>6-11-08   | Offered job Nov '07– offer revoked Jul '08. | June 2008 informed boss about pregnancy.                                       | July '08 received letter saying that offer would be postponed considering her 'current medical status'. Sept '08 received letter saying that she would no longer be recruited and Conditions of Service signed in Nov '07 was null & void due to 'change in medical condition'. | KLC provided advice on making claim to HREOC (AHRIC). Private solicitors took on her case.   |
| [4]<br>AM  | Unknown                                     | Maternity leave 4-2-08 to 4-8-08 but was                                       | While on maternity leave she was informed by her boss that 'since she was coming back he  | KLC provided initial advice as to her options, and client lodged an unfair dismissal claim.  |

|   |  |  |  |  |
|---|--|--|--|--|
| 1-12-08   |  | formally extended to 5-1-09.                         | had to sack someone, how does that make you feel?' A meeting was held with employees to discuss firing her (without her present). Eventually when she asked for time to consider her options, her boss fired her.  |  |
| [5]<br>YE<br>27-10-08   | 2 months as casual then 2yrs & 8mths permanent | Maternity leave 29-1-08 to 3-11-08.                  | On 11-8-08 manager emailed asking to discuss restart date. She requested part-time work but did not receive a definite answer from her employer for the next 2 months, when he agreed to 4days/wk. Finally just before she returned she was made redundant.                  | KLC provided initial advice, relating to possibility of running an unfair or unlawful dismissal and also a discrimination complaint.                       |
| [6]<br>TB<br>15-5-08  | approx 2½ years                                | Informed boss when 16 weeks pregnant.                | Boss told her to resign at 35 wks. Office was shut from 5-8 <sup>th</sup> May 2008 so she took annual leave. When she returned to work on 9 <sup>th</sup> May boss gave her a termination letter – saying he needed 2 secretaries and could not properly with her not there. | KLC took client on and assisted with submissions to AIRC. At conciliation a settlement was reached and client received compensation and redundancy notice. |
| <b>Clients demoted/discriminated at work directly/indirectly because of pregnancy/maternity leave</b> |  |  |  |  |
| [7]<br>AD<br>10-7-08  | approx 7 yrs                                   | Beginning 2008 told new work partner about pregnancy | In June 2008 she was placed on a 6-wk performance appraisal program with potential termination if she does not meet the targets. There were 2 particularly unrealistic targets she was set that even her partner does not achieve.   | KLC provided advice on what were her options – including writing a letter about the performance targets and what she could do if terminated.               |
| [8]   | approx 3 yrs                                   | 18 <sup>th</sup> August 2008                         | 2 days later the rosters were changed. She was   | KLC assisted with advice regarding her filing  |

|  |  |   |   |   |
|--|--|---|---|---|
| DS<br>9-10-08  | with a break<br>of 1 yr                          | informed boss about<br>pregnancy  | employed P/T but had always worked 5 days<br>now cut to 3 days. She confronted employer on<br>that day and hasn't returned to work since.   | of a complaint to the ABD.  |
| [9]<br>SL<br>9-12-08   | 9 years and 3<br>months.                         | 11 February 2008<br>informed HR about<br>pregnancy. 36 wks<br>maternity leave from<br>5-5-08 to 9-1-09. | During pregnancy had been permitted to leave<br>work ½hr earlier to get seat on train. On<br>return after leave wanted to work 9-5pm 3<br>days and 8-4pm 2 days per week. Employers<br>refused because of financial problems.   | KLC advised that this was not an unreasonable<br>request to make of the company. Complaint<br>lodged to AHRC. |
| <b>Clients were forced to <u>resign</u> directly/indirectly because of pregnancy/maternity leave</b> |  |   |   |   |
| [10]<br>JS<br>16-6-08  | almost 2 yrs                                     | When 6 wks<br>pregnant (in March<br>2008)   | Boss became vigilant about her work, and<br>started harassing and humiliating her in front<br>of fellow employees and customers. Forced to<br>take annual leave because of stress and anxiety,  | JS lodged complaint with ADB – referred for<br>pro bono representation  |
| [11]<br>MB<br>6-8-08<br>&<br>2-9-08  | approx. 3 yrs<br>(started in<br>October<br>2005) | Commenced<br>maternity leave on<br>27 <sup>th</sup> April 2007  | Role and location of employment changed<br>while away on maternity leave. Although<br>promised adequate training, flexibility and<br>support upon her return, she was given no<br>assistance, the quality of her work was<br>criticised and she was temporarily demoted.<br>She eventually accepted an ex-gratia payment<br>and resigned. | KLC provided advice on whether or not to<br>accept the offer of 'compensation' from her<br>employer.          |
| [12]<br>DB   | approx. 1½<br>yrs                                | Returned from<br>maternity leave on 8 <sup>th</sup>   | When she returned from leave her role had<br>changed, she had additional duties which she   | KLC provided initial advice about her options.  |

|                        |              |  |  |   |
|------------------------|--------------|--|--|---|
| 10-11-08               |              | September 2008                           | couldn't fulfil and her manager kept changing his mind about work hours. She resigned.   |   |
| [13]<br>EL<br>11-10-07 | almost 2 yrs | December 2006 told employer of pregnancy | In Feb 2007, following doctor's orders she asked to be transferred to a smoke-free environment. Employer refused except to offer a 1-day/week cleaning job. She resigned 29 <sup>th</sup> March 2007 because of her baby's health. | EL filed complaint with HREOC (AHRC) before seeking KLC's advice. KLC assisted with advice on the conciliation process and reviewed the relevant law. |