

Discrimination and the work of HREOC

Discrimination in employment is a major focus of work for the Human Rights and Equal Opportunity Commission (HREOC) because it consistently represents the greatest area of complaints made to the Commission. Consequently a large amount of the public awareness work of the Commission is directed towards informing workers and employers about their rights and responsibilities in relation to federal anti-discrimination legislation.

The Australian Human Rights and Equal Opportunity Commission is an independent statutory authority, established by the Australian Parliament in December 1986. The Commission administers federal laws relating to human rights infringements and discrimination. The Commission is responsible for conducting investigations into allegations of discrimi-

nation or human rights infringements. The Commission has the legal power to conduct inquiries and resolve matters of discrimination under four different laws:

- Racial Discrimination Act 1975
- Sex Discrimination Act 1984
- Disability Discrimination Act 1992
- Human Rights and Equal Opportunity Act 1986

“Discrimination in employment under this Act includes if a person has been refused a job, dismissed from employment, denied training opportunities or denied promotion”

The major objectives of the Commission are:

- to increase the understanding, acceptance and observance of human rights and equal opportunity in Australia; and
- to promote a fairer society by protecting basic human rights and ensuring that Australia complies with its human rights obligations under international law.

A high proportion of complaints made to the Commission are conciliated. Where the matter has been unsuccessfully conciliated, it can be referred to a public hearing for determination. Less than 10% of complaints received annually are referred for a public hearing. ▶

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"Evidence to the Inquiry shows discrimination on the ground of pregnancy ... substantially impacts upon women's decision to have children."



Susan Halliday, Sex Discrimination Commissioner

Under the *Racial, Sex and Disability Discrimination Acts*, complaints which appear to have substance but cannot be conciliated can be referred by the relevant Commissioner to the Commission for a hearing and determination. This function is carried out by Hearing Commissioners assisted by the Commission's Legal section. A determination by the Commission does not bind the parties and further proceedings must be taken in the Federal Court for an enforceable judgment.

Legislative amendment necessitated by the High Court's decision in *Brandy v Human Rights and Equal Opportunity Commission* is currently before Parliament. The legislation will remove the Commission's role in hearing and making determinations on unconciliated complaints. These matters will go directly to the Federal Court, whose judgments on complaints will be binding.

The *Human Rights and Equal Opportunity Commission Act* covers complaints of breaches of human rights and discrimination under international instruments to which Australia is committed. The Act applies to the Commonwealth and its agencies where breaches of human rights are concerned, but has wider coverage for complaints of discrimination in employment or occupation. Discrimination in employment under this Act includes if a person has been refused a job, dismissed from employment, denied training opportunities or denied promotion. Complaints which cannot be resolved by conciliation do not proceed to hearing and determination but may, after appropriate inquiry, be made the subject of a report to the Attorney-General for presentation to Parliament.

Pregnancy discrimination in the workplace

The greatest percentage of employment related complaints (84%) are made under the *Sex Discrimination Act*. The most recent focus of policy work for the Sex Discrimination Commissioner Susan Halliday has been pregnancy and work discrimination.

Pregnant and Productive: It's a right not a privilege to work while pregnant presents the findings of the first ever National Inquiry into Pregnancy and Work. HREOC conducted this inquiry under the auspices of the *Sex Discrimination Act 1984* at the request of the federal Attorney-General. The Inquiry was prompted by concern over the high number of pregnancy related complaints made under the *Sex Discrimination Act* (around 15%).

Evidence to the Inquiry shows discrimination on the ground of pregnancy and the inability to access paid maternity leave substantially impacts upon women's decision to have children.

The Inquiry also found that discriminatory practices are being used to remove pregnant women from the workplace and sideline their careers.

"Discrimination on the ground of pregnancy or potential pregnancy has been unlawful in one form or another for fifteen years under the Act", says Commissioner Halliday. "Evidence to the Inquiry shows however, that both direct and indirect discrimination against pregnant or potentially pregnant women in the workplace is still common."

"We found this type of discrimination takes many forms. It can be blatant and obvious, such as refusing to provide pregnant women with time off work to attend med-

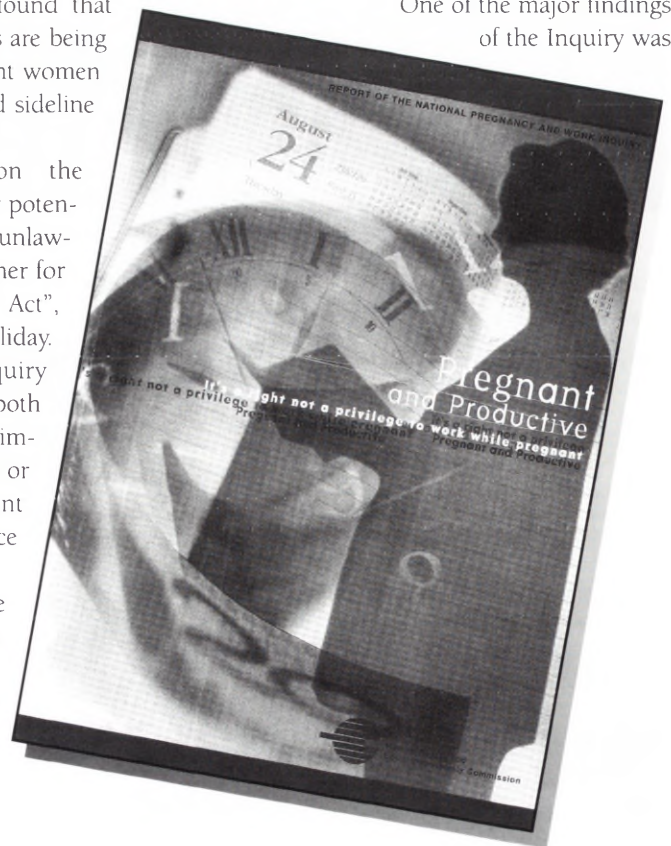
ical appointments, refusing pregnant women's access to seating while working, making offensive comments about changing body shape or denying a pregnant woman training."

The Inquiry heard many examples of direct discrimination, including an instance where an employer dismissed a pregnant bar attendant because she might fall on the slippery floors. This is discrimination because slippery floors were relevant to all employees, any one of whom was at risk of slipping. The pregnant employee and others should have been provided with safe working conditions, not dismissed.

"Discrimination on the ground of pregnancy can also be subtle, such as restructuring work so that the pregnant worker is made redundant or given lesser duties prior to leaving for maternity leave, or upon returning to work", said Commissioner Halliday.

The Report also details examples of indirect discrimination. One such example occurred when a law firm insisted that a partner work full time. This is not to say that an employer must provide part time work, but they should ensure that any decision to refuse a part time option is done in a non-discriminatory manner.

One of the major findings of the Inquiry was



the immediate need for all workplace participants to be made aware of their rights and responsibilities in relation to pregnancy and potential pregnancy. Many of the recommendations concern ways of educating workers and employers. Guidelines on how to manage workplace pregnancy will be produced by HREOC and distributed next year.

Women from marginalised groups, such as young women, rural women, women with disabilities, and women from culturally and linguistically diverse backgrounds can face particular challenges combining work and pregnancy. For instance, young women who work casually are often not entitled to the same rights as other workers, such as unpaid maternity leave.

One submission to the Inquiry told of how a casual teacher who had been at her school for two years applied for maternity leave payment. Her daily teaching load was half an hour short of a full-time teacher's load. Because of this her payment was denied.

Women from a range of backgrounds noted they experienced difficulty accessing culturally appropriate information and services. For example, Indigenous women often like to have their babies at home, but the Inquiry heard how many Indigenous women were pressured to stay in the area they were working in and give birth in hospitals.

Recommendations in the Report seek to address and overcome the difficulties and discrimination identified during the Inquiry.

The following are case studies based on recent employment related complaints to the Commission:

Alleged racial discrimination in employment

The complainant claimed that she was the subject of a racially offensive comment made by the wife of the owner of the shop in which she worked. The complainant claimed that the owner's wife instructed the supervisor to "Chop that Asian bitch's hours until we get rid of her." The complainant claims that she resigned because of the pressure placed on her by the owners and was so distressed that she sought counselling. The respondent denied that the complainant

was treated less favourably because of her race and claimed that the complainant resigned because she could not do the work. The complaint was resolved through the conciliation process. The respondent agreed to provide the complainant with a written apology and financial compensation comprising four weeks wages and reimbursement of counselling expenses.

Alleged pregnancy and sex discrimination in employment

The complainant alleged that her employer discriminated against her on the basis of her sex and pregnancy. After returning to work from 12 months maternity leave, her employer advised that her previous job was no longer available and offered her a job at a lower level with hours that did not suit her. The complainant also claimed there was a general hostility within the workplace towards women who returned from maternity leave. The complainant ultimately resigned from her employment.

The respondent company denied that it had discriminated against the complainant on the basis of her sex or pregnancy. The company submitted that the complainant's experiences after she returned from maternity leave resulted from personality clashes and misunderstandings. The company claimed that the ability to work flexible hours was an essential requirement of the job. The company also claimed that it had taken all possible steps to accommodate the complainant's family responsibilities by offering her other positions at the same remuneration level as her original position.

The matter was resolved through the conciliation process with payment of \$7,000 compensation to the complainant.

Alleged disability discrimination in employment

The complainant has a severe vision impairment and requires adaptive computer equipment. The complainant claimed he applied for a position with a private company and at the interview requested that, if appointed, he be able to use his adaptive technology. The complainant stated he was advised that he was the successful applicant for the job but on the following day was told he could not

be employed as there was a risk that the adaptive computer equipment might corrupt the company's computer network.

The matter was resolved by conciliation. The complainant was provided with an apology and paid \$6,000 compensation.

Contact information:

Further information about the Commission can be found on our website: www.hreoc.gov.au

Human Rights and Equal Opportunity Commission, GPO Box 5218 Sydney NSW 2001 phone: 1300 369 711 (General enquiries) phone: 1300 656 419 (Complaints)

TTY: 1800 620 241

Pregnant and Productive: It's a right not a privilege to work while pregnant is available for \$25 from HREOC. It can also be accessed through our website. ■

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