

## **THE UNPAID PARENTAL LEAVE STANDARD: WHAT STANDARD?**

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The provision of paid maternity leave has been a key focus in Australian policy debates around work/family balance. It has been assumed that the unpaid parental leave standard on which paid maternity leave would build functions as an effective, albeit limited, minimum standard. Drawing on recent research we question the effectiveness of this standard in practice, focusing in particular on the 'return to work guarantee' that is central to providing continuity of employment for women. We examine how this guarantee is undercut by dismissal, redundancy and having no job to return to as well as being placed in an inferior job on return to work. While the expansion of rights in paid maternity leave is a necessary precondition towards achieving equality for Australian women, urgent action to ensure full compliance with the existing minimum standard for unpaid parental leave is required.

The provision of paid maternity leave has been a key focus in Australian policy debates around work/family balance. In the course of its consultations on work and family in 2005-06 the Human Rights and Equal Opportunity Commission (HREOC) received a large number of submissions calling for paid maternity leave (HREOC 2007: 82). In 2007, HREOC again recommended the establishment of a paid maternity leave scheme following a similar recommendation in 2002 (HREOC 2002). In the months leading up to the 2007 federal election there were renewed attempts by women's groups and others to obtain commitments from the major political parties for a paid maternity leave scheme.

Underlying the emphasis in current policy debates on expanding legal rights to paid maternity leave appears to be an assumption that existing rights to unpaid parental leave provide an important and functioning minimum standard for working women. While there is a growing literature on the practical accessibility of family-friendly benefits entitlements which points to the gulf between formal policy and practical access (see Campbell & Charlesworth 2004: 42-50), there has been little focus on the meagre unpaid parental leave standard. However, despite the existence of a formal entitlement since 1979, there is evidence that women continue to face significant workplace difficulties when they are pregnant and when they try to negotiate a return to work after childbirth (HREOC 1999; Charlesworth 2005; McDonald & Dear 2006; Chase & Meizner 2007). Such difficulties are typically framed as discrimination issues and there has been little empirical analysis of these issues in terms of industrial rights under employment regulation such as the *Workplace Relations Act 1996* (Cth) (WRA). This is ironic as the Australian unpaid parental leave standard has its origins in the industrial relations system, which almost 30 years ago recognised not only the importance of leave, albeit unpaid, but crucially the importance of continuity of employment to enable women to maintain their connection to the labour force. That is, it was accepted that any right to a period of leave is extremely limited if this does not protect women from losing their jobs, being returned to work in an inferior job or being forced into less secure employment. As noted by the Australian Conciliation and Arbitration Commission in its 1979 maternity leave test case decision:

'The preservation of job security in the event of maternity might well facilitate career opportunities and encourage career aspirations amongst women who have hitherto regarded termination of employment as an inevitable consequence of motherhood'. (ACAC 1979, Print D9576: 3).

In this paper we are concerned with the practical availability and operation of the unpaid parental leave standard for women who are pregnant, on maternity leave and returning to work after childbirth. We present evidence from a recent Victorian study that suggests

breaches of this basic standard occur in large and small workplaces, across a range of industries and occupations and result in women losing their jobs or being moved to inferior jobs. While the immediate penalties for women affected by these breaches are considerable, the longer-term consequences are also significant. Job loss at a time when a woman is pregnant or has just had a child can fundamentally undermine her attachment to the labour force and is likely to have a profound effect on her future career and earnings.

### **The Unpaid Parental Leave Standard: A Brief History**

The unpaid parental leave standard (UPLS) has its origin in the 1979 Test case maternity leave decision. In 1990 the Australian Industrial Relations Commission (AIRC) reviewed its 1979 decision and extended it to the concept of parental leave (paternity, maternity and adoption leave), which was introduced into federal awards (O'Neill 2004: 1). From its inception an eligible employee's right to return to the position she had held previously, or to a comparable position in the event her own job no longer existed, was an integral part of the unpaid maternity/parental leave standard. While they were initially excluded, a further test case decision by the AIRC in 2001 allowed unpaid parental leave to be extended to casual employees with 12 months' continuous service. The entitlement to parental leave was first incorporated into the former *Industrial Relations Act 1998* (Cth) in 1993 and was incorporated into the minimum terms and conditions of employment of the *Workplace Relations Act 1996* (Cth) (WRA). However, it only applied to permanent employees, with casual employees having to rely on their award entitlements in this respect.

With the introduction of WorkChoices, the entitlement to unpaid parental leave became one of the five Australian Fair Pay and Conditions (AFPC) Standards. The AFPC parental leave standard did not incorporate the 2005 AIRC Family Provisions Test Case decision – which provided for an employee entitled to parental leave to request: an extension of simultaneous unpaid parental leave for up to eight weeks when the baby is born; an extension of unpaid parental leave for up to 12 months; and a right to return from parental leave on a part-time basis until the child reaches school age (AIRC 2005, Print 082005). However, in at least two respects it was an improvement on what had existed as a minimum standard prior to WorkChoices. Firstly, by extending eligibility to casual employees, the WorkChoices changes ensured that those casual workers with 12 months service, who were not covered by an award provision as a consequence of the 2001 AIRC test case decision, were eligible for unpaid parental leave. Secondly, in relation to a transfer to a safe job, where a pregnant employee is not able to continue in her current position, the AFPC standard provided that where it is not reasonably practical for an employer to transfer an employee to a safe job, an employee is entitled to paid leave, such leave being in addition to any other leave entitlement and not to be treated as part of maternity leave.

The new standard was however arguably weaker in respect of the 'return to work' guarantee. The effect of the WorkChoices amendments was that if an employee's pre-parental leave position no longer exists, but she is qualified for, and can perform the duties of another position for her employer, then her entitlement is only to return to that position (regardless of its status and remuneration relative to her former position); or if there are two or more positions, to whichever of those positions is nearest in status and remuneration to the pre-parental leave position. Where only one position is available, WorkChoices removed the obligation that that position be as nearly as possible comparable in status and pay to that of her former position. As highlighted in the parliamentary debate before WorkChoices was introduced, the right of return is dependent on the employer determining that the employee is qualified and able to work for the employer (Baird et al 2006).

### **AFPC Unpaid Parental Leave Standard: Both Floor and Ceiling**

For the most part, the AFPC parental leave standard only applies to those who are not covered by provisions that are more generous in their award or workplace agreement. As HREOC notes, the parental leave standard is well below the standard available in most awards (HREOC 2005: 21). As parental leave was part of the AFPC standard, it was no longer an ‘allowable matter’ in awards. While the parental leave and maternity leave provisions in awards were ‘preserved award terms’, over time there was no guarantee that they would continue to exist (Baird et al 2006). In effect then the AFPC standard became both the ‘ceiling’ and the ‘floor’ in relation to parental leave (Owens & Riley 2007: 343).

It is assumed that women who have been employed for at least 12 months on a permanent or regular casual basis have access to the UPLS, with both the access to unpaid leave and return to work guarantee that are part of the standard. But as this study shows, how this standard is operationalised by employers and experienced by women workers who are pregnant, on leave or who have returned to work after maternity leave, depends on the level of knowledge of employers and employees about the rights of pregnant women as well as on the day-to-day calculations and decisions employers make.

### **The Functioning of the Unpaid Parental Leave Standard**

To investigate the extent to which the UPLS was in fact operating as a minimum standard, we draw on inquiry data from Job Watch Inc, a Victorian employment rights legal centre that provides information and assistance to workers about their rights at work. Our analysis of these data, collected as part of a larger study, is also complemented by in-depth interviews with women who experienced various workplace difficulties while they were pregnant, on leave or had just returned to work (see Charlesworth & Macdonald 2007a).

Between April 2006 and April 2007, 440 Victorian women contacted the Job Watch telephone service about pregnancy-related issues and difficulties in the workplace (seven percent of the female callers who contacted the Job Watch telephone service during this period). Data collected at the time of the call indicates that the overwhelming majority of the women were employed on a permanent basis, with almost two-thirds having been in their job for two years or more, and over a third of these being employed for six years or more. Just under a fifth had been in their jobs for less than one year. The workplaces in which the women had worked or had sought work (in the case of four job-seekers) were of a range of sizes. Small and medium-sized workplaces (fewer than 50 employees) accounted for just over a third of callers and over half the callers came from workplaces with more than 100 employees. Workplaces were spread across a range of industries with property and business services accounting for just under a quarter of callers and health and community services and retail trade each accounted for just over 10 percent of callers (see Charlesworth & Macdonald 2007a: 98-103).

Job Watch provided the researchers with access to short summaries made of the main problems/issues raised by each of the 440 callers. These summaries were coded according to when the issue arose (when the woman was pregnant; when she was on leave; or after she had returned to work) and the main event complained about as set out in Table 1. Among this group of callers were women whose inquiries related to workplace problems that arose because of responsibilities for children of unspecified ages or some time after the immediate return to work. These problems, coded as ‘post-RTW’, are not discussed in this paper. After outlining the main issues raised in general inquiries, we focus in the analysis below on the loss of employment and return to work in an inferior job.

**Table 1: Issues/Problems Raised by Callers to Job Watch**

Main problem/inquiry	Frequency	Percent
<b>If/When pregnant</b>	<b>171</b>	<b>38.9</b>
General inquiry about pregnancy rights	51	11.6
Dismissal/made redundant	49	11.1
Discrimination & harassment (inc forced resignation)	54 (5)	12.3 (1.1)
Refusal of paid/unpaid parental leave	10	2.3
RTW not to same job/one of lesser status	4	0.9
Refusal of part-time work on RTW	3	0.7
Made casual	2	0.5
<b>When on leave</b>	<b>152</b>	<b>34.5</b>
General inquiry about rights to/on RTW	35	8.0
Refusal of part-time work on RTW	28	6.4
No job to go back to	25	5.7
Made redundant	22	5.0
RTW in different role/ location/lesser pay/only part-time hours	22	5.0
Part-time work only if lesser role, casual, less hours, relocate	12	2.7
Other	8	1.8
<b>When returned to work (RTW)</b>	<b>54</b>	<b>12.5</b>
General inquiry about rights on RTW	1	0.2
Not given own job back/lesser job/ made casual	22	5.0
Dismissed/made redundant/forced resignation	11	2.5
Refusal of part-time work	5	1.1
Part-time work only in different/lesser job	6	1.4
Other	10	2.3
<b>Post RTW</b>	<b>55</b>	<b>12.5</b>
General inquiry re parental status rights	1	0.2
Parental status discrimination	54	12.3
<i>Unknown</i>	7	1.6
<b>Total</b>	<b>440</b>	<b>100.0</b>

The lack of knowledge about rights under the parental leave standard is highlighted by the general inquiries made by women in all stages of the motherhood journey in Table 1. The most frequent general inquiry made when women were pregnant was about their rights to leave. In most cases this was about rights to the statutory provision of 12 months' unpaid parental leave or paid maternity leave; about the duties of their employer to accommodate them including in respect of light duties; whether they were able to keep their permanent status; or able to return after leave. The most frequently raised inquiry for women on leave was about their rights on return to work, whether an employer was obliged to return them to the same job, whether they would be able to request part-time hours or the extent to which their employer was obliged to accommodate them. Many of these general inquiries appeared to be based on the callers' concern that their workplace rights might be or were being ignored by their employer.

### **Loss of Employment**

Apart from other potential breaches of the UPLS identified in our larger study, including refusal of unpaid parental leave, refusal to accommodate a woman's pregnancy, and forced transfer to casual status (Charlesworth & Macdonald 2007a: 61-63), loss of employment emerged as a major issue. A recent study of pregnancy discrimination complaints lodged with the Queensland Working Women's Service (QWWS) indicates that 38 percent related to claims where women had lost their jobs, either directly or indirectly as a result of being pregnant (McDonald & Dear 2006: 129). The Job Watch inquiry data also indicated that the loss of employment was significant for callers. It was the main problem raised by 107 women

callers; with another five women who reported discrimination when they were pregnant also stating said they were forced to resign as a result of harassment by their employer or manager. Fifty-four of the women lost their jobs after they became pregnant. They were dismissed, made redundant, resigned following harassment, and in one case, a woman did not have her contract renewed.

Maria has worked as a manager in a retail enterprise on a regular casual full-time basis for the past two years. After she became pregnant, she told her employer. He initially responded by saying that she could work reduced hours if she needed to at some point. She decided to take him up on this and asked him if she could work eight hours per day instead of 10 hours per day, as she was finding 10 hours per day too long given her pregnancy. The employer then told her that she was dismissed, as it was clear that she was no longer physically or mentally capable of doing her job.

While they were on leave and/or negotiating their return to work, another 47 of the women callers found out that they had no job to go back to or that they had been made redundant. In all 47 cases, these women were permanent employees, 34 full-time and 13 part-time, and all but two had been employed for more than one year. On return to work another 10 women callers reported losing their jobs through being dismissed or being made redundant and another woman resigned after her employer refused to accommodate her child care responsibilities.

Sue worked as a manager/administrator in a property and business services workplace. She had worked on a permanent full-time basis for more than two years. When she was on leave she went into work for a meeting to discuss her return to work. She was offered a lesser position and a 20 percent pay cut. She was told her employer had gone into administration and was now trading as a new company that would now be her employer. She had not been informed her old position was made redundant. She advised her employer by email that she was unhappy about being offered less pay. She received a response saying she was not to come into the office on the day she was due to return as the manager did not want bad feelings in the office. When Sue went on leave she was replaced by a young woman she had supervised. A temp was employed to cover this young woman. The temp is now working full-time and the young woman has remained in Sue's position.

Of the 112 women who reported losing their jobs, all but 22 had worked for at least twelve months at the time they lost their jobs, and would have been covered by the UPLS. While the UPLS does not explicitly prohibit the dismissal of women when they are pregnant, the whole premise of the standard assumes they will not be. Where the clearest breaches of the standard occurred was where women were on leave and or just about to return to work and were made redundant, dismissed or simply told they had no job to return to.

Georgia had been employed as a finance officer in a small construction business for just over two years on a permanent basis working 30 hours a week. When she went on unpaid maternity leave, Georgia planned to return after about six months and she discussed this with her employer, who said he was happy with that. When Georgia contacted her employer to discuss her return to work date, he told her he was happy with the arrangement he had with two new employees sharing Georgia's job. He told Georgia she could be 'on stand by'. Effectively this means Georgia has no job.

Among the women we interviewed were several who lost their jobs in such circumstances. Other women were dismissed or made redundant during their pregnancies. Jessica was dismissed without reason during her pregnancy after first having her role downgraded. She had no clear evidence of discrimination and was unsuccessful in seeking a remedy for unlawful termination on the basis of her pregnancy. Under the WorkChoices changes, Jessica was unable to pursue an unfair dismissal claim as her employer did not have over 100 employees.

Elena's plan had been to leave work two weeks prior to her baby's birth. However, this did not work out as her doctor told her she would need to have an emergency caesarean earlier than this. When Elena submitted a new leave form with a revised departure date on it to her new manager he refused to sign the form. He told Elena he wasn't sure if she would have a position when she returned from leave. Elena wanted a redundancy payment, but was told she would not be paid this as the company was a small business and under the new industrial relations laws her employment could be terminated without reason. Elena didn't pursue the issue further at the time as she felt very stressed about the problems with her pregnancy.

A qualitative study of inquiries made by women to the QWWS (Chase & Meizner 2007) highlights the nature of loss of job through redundancy when women are on leave; where callers were made redundant to a fabricated restructure, such as was Sue's experience; where women were made redundant due to a genuine restructure; and where women were made redundant due to the transfer of business (2007: 9) In the latter two situations while such treatment may not be directly discriminatory, redundancy works to disproportionately disadvantage women who are on leave (2007: 11). Termination and the failure to honour the return to work guarantee can also be a result of direct discrimination and employer perceptions that a woman who leaves work to have a child has no intention to return to the workforce (Chester & Kleiner 2001: 143). Indeed an industrial advocate interviewed as part of the larger project suggests some employers 'know' only 50 percent of women will return from maternity leave and that they want to cut their losses by getting rid of women who may not return or who they believe will not have their mind on the job if they do (Charlesworth & Macdonald 2007a: 56). They may thus rationalise dismissal and redundancy of pregnant or returning female employees by arguing they would leave anyway. Problems also occur where employers put someone else permanently into a woman's role when she is on leave, such as occurred to Sue and to a number of the women we interviewed, including Georgia and Elena, who were all replaced by employees who were being paid less than the women had been.

### **Return to Work in an Inferior Job**

Another significant area of concern was the difficulty many women experienced in trying to return to work, either to their original job, or to a comparable job if their job no longer exists. As can be seen in Table 1, this was the main issue raised in their call to Job Watch for 48 women callers. For four women of these women who contacted Job Watch when they were pregnant, the major issue was that their employer had already told them that they would not be able to return to work to their same job and if they returned would have to accept a job of lesser status. Each of these women has been employed for more than 12 months at the time they contacted Job Watch. A problem for another 22 women callers who were on leave occurred when they tried to negotiate the basis of their return to work. They were all informed that they would not be able to return to their previous position. In eight cases they were told that if they returned to work they would be placed in a different role, in nine cases in a different role on lesser pay and in two cases in a different work location. Another three

women who wanted to return to their full-time jobs were only offered part-time hours. In all 22 cases the women had been employed on a permanent basis; 17 full-time and five part-time. Another 22 women who returned to work after parental leave contacted Job Watch when they found that they were not given their old job back. In 11 cases they were placed in a job of inferior status, in six cases they were offered only casual work, in two cases they were offered only part-time hours, in one case hours of work were changed and in another the work location was changed. Once again all 22 women had been employed in a permanent position prior to going on leave.

Terri had worked as professional in a large retail trade workplace. She had worked on a permanent part-time basis for more than two years. While she was on leave her department had been restructured. She was offered another role and was told this would make things easier as another girl was doing Terri's role. She verbally accepted this other role. When she returned to work she was presented with a fixed-term contract that expired in six months. The contract also took away benefits she had had in her old position including a mobile phone and a laptop.

Like Georgia, who was told she could be 'on stand-by', another woman we interviewed, Claire, effectively had no work at all when she attempted to return from maternity leave. She was told she could have casual work if it became available. She took her long service leave over four months to ensure she had some income. It was not until a year after she had intended to return to work that Claire, who had been a permanent employee with the business for 10 years, was finally given some casual work by her employer. Similarly Marita, a permanent employee for seven years, was only given one day a week on a casual basis on her return from leave. She is also asked to fill in at short notice when the employee who replaced her is absent due to illness. Marita told us she feels 'disposable, like I am not valued. I am just a bum on a seat'. While Marita initially told her employer she was unhappy about not being returned to her job, she has not pursued the matter for fear she will end up without even the one day's work she currently has. Like Marita many of the women we interviewed experienced being treated as if they had lost any right to permanent employment and were no longer valued employees.

The Job Watch inquiry data and several of the interviews point to the vulnerability of women when the return to work guarantee in the UPLS is not observed. As McDonald and Dear note placing a woman in an inferior job on her return from leave can constitute a covert employer strategy of coercing the woman to resign from her job rather than dismissing her outright (2006: 130).

### **How Widespread are Breaches Of the Unpaid Parental Leave Standard?**

It is difficult to estimate with precision just how wide spread such breaches of the UPLS have been. There is no prevalence data on pregnancy discrimination more generally despite specific recommendations of the 1999 HREOC Pregnancy Inquiry such data should be collected (HREOC 1999: 19–21). However the findings of two recent national surveys do provide some indication that these problems may not be uncommon. A recent Australian Bureau of Statistics (ABS) survey found a substantial minority (22%) of women with children under two years of age, who had worked while pregnant, had experienced problems at work during their pregnancy (ABS 2006). The *Parental Leave in Australia Survey* findings show that of women who were employed in the 12 months prior to the birth of their child, took leave and returned to work within 15 months, around a third changed jobs or employers. There was also an increase in the proportion of women on casual contracts after the birth of their child.

(Whitehouse et al. 2006). However, the survey does not indicate whether those who changed jobs did so willingly; whether the new jobs were at the same level or paid the same; nor whether the transfer to casual status was something freely agreed to or not.

However, both our study and the two recent studies drawing on data from complaints lodged through, and caller inquiries made to, the QWWS (MacDonald & Dear 2006; Chase & Meizner 2007) suggest that breaches of the UPLS are more common than popularly assumed. This is unsurprising given some recent evidence of employer ignorance about the quantum of leave in the UPLS. A recent survey of hospitality and retail industry employers by the Victorian Workplace Rights Advocate found that many employers had little knowledge of the entitlement of full-time employees to 52 weeks unpaid leave. Of those who stated unpaid parental leave was applicable, more than a third indicated they were unsure of the quantum and more than a quarter indicated the quantum was less than 12 months (WRA 2007). There is also some indication that termination on the grounds of pregnancy may have worsened since WorkChoices as suggested by Elena's experience and media reports that there has been a 'remarkable shift' towards pregnant women being sacked since WorkChoices (Bachelard & Shaw 2007).

### **Practical Access to Remedies**

There have been limited practical rights of redress where an employer breaches the AFPC parental leave standard. Under WorkChoices, an employee could take action in the Federal Magistrates Court (FMC) for a breach of the AFPC standards or the Workplace Ombudsman can take such action on an employee's behalf. However, a review of the litigation taken by the Workplace Ombudsman suggests compliance action has been concentrated around the recovery of overpayment underpayment of wages, rather than breaches of the APFC standard. The unlawful termination provisions in the WRA provided some avenue of redress where the claim is framed as a discrimination one. However the process in the latter case is a formal AIRC process, which, if unsuccessful, can lead to costly litigation in the Federal Court or the FMC, with a risk that costs could be awarded against the employee. Prior to WorkChoices, the AIRC conciliated many claims of unlawful termination as part of unfair dismissal matters. At a practical level this provided a quick, low cost avenue for the settlement of a dispute about the dismissal of a pregnant employee or about the return to work 'guarantee'. This option was effectively cut off for those employees who could no longer access the unfair dismissal jurisdiction because they worked for organisations where there are 100 or fewer employees. This directly affected three of the thirteen women interviewed in our study.

An alternative remedy where a woman is dismissed because of pregnancy or family responsibilities is to lodge a formal complaint under state or federal anti-discrimination laws. However such remedies are generally much slower and less effective in the case of termination of employment than the pre-WorkChoices unfair dismissal, grievance and dispute procedures (Chapman 2006: 257). In any case there is evidence that women may be unaware of remedies for unlawful termination or discriminatory treatment and also that the process of getting information about entitlements and the action that could be taken is extremely confusing (Bertone et al 2007; Charlesworth & Macdonald 2007b; Elton et al 2007). The data from interviews discussed in this paper also point to other some of the factors limiting women's access to formal remedies. For example, Shelley did not pursue a remedy in the AIRC because she thought she would need to pay for legal representation and possibly costs. Elena knew she needed to lodge her claim with the AIRC within 21 days. But the time limit came and went during a period when she was having problems with her pregnancy and



managing with her first baby. Marita feared she would lose the one day's work she had with her employer if she took action to get her old job back.

While this research points to inadequacies with the UPLS, it should be noted that WorkChoices limited any possibility of improving it. With the removal of the test case mechanism, there was no machinery in the WRA to improve the current standard apart from specific legislative amendment. The only legislative amendments made under WorkChoices arguably weakened the rights of employees under the UPLS by limiting paid leave to the basic rate of pay where it is not possible to transfer an employee to a safe job, and by introducing a right for employers to require a medical certificate from employees who continue to work beyond six weeks of their due date of confinement.

## **Conclusion**

The workplace difficulties and conflict around pregnancy and return to work illuminated in this paper test the UPLS's ability to adequately protect pregnant workers and women returning after leave. They reflect a gap between what the law provides in terms of employee rights and employer responsibilities and what happens to many women in reality (see James 2007: 173). Any lack of employer compliance with the UPLS has very real costs for the individual women who experience it. The loss of employment in particular disadvantages women when they are pregnant. Not only have these women lost a job with all that entails for loss of income, self-esteem and independence (see also Elton et al. 2007: 84–8; Chester & Kleiner 2001:142-143), but they are highly unlikely to get another job while they are pregnant. Further, when they want to return to work they have no job to return to. The loss of this attachment to the labour market has profound implications for women's careers and earnings over the life course and their capacity to provide for themselves in old age. The experiences of women we interviewed also point to the difficulty many women have in pursuing any avenue of redress open to them at a time when they are also trying to juggle the needs of their pregnancy and their baby when it is born.

Adequate and enforceable workplace rights are critical for women workers who are pregnant, on maternity leave or who return from leave. The findings of this study point to the inadequacy of the AFPC unpaid parental leave standard both in terms of the minima established in the standard, in its operation in the workplace, and the lack of practically available avenues of redress when the standard was breached. It is not yet entirely clear what alternative mechanism will be used to deal with such breaches when the new Labor Government's Fair Work Australia is established. However, this body needs to be adequately resourced to enable timely investigation and prosecution where the UPLS is breached. There is also an urgent need for an education and compliance campaign focusing on pregnancy and return to work, including placing priority on investigation and audits in this area.

However, workplace rights for pregnant women must be more than simply the right to pursue individual redress under a functional UPLS, anti-discrimination and unfair dismissal provisions. In the case of one of our interviewees, Shelley, a mediation hearing occurred six months after she lost her job. The company settled with the equivalent to a redundancy payment. Shelley said 'Basically I feel I was sort of successful in that respect, but I still feel that I would love to be working'. Shelley's case highlights the limits of post-facto remedies for women who are pregnant or who have just had a baby in providing crucial continuity of employment. What women workers need is access to labour markets under terms and conditions that do not disadvantage those who become pregnant, who take paid or unpaid maternity leave and who seek to maintain their labour force attachment after they have

children. Clearly part of any such conditions includes the right to paid maternity leave and practical access to working-time and leave arrangements that allow *all* employees to better balance work and family responsibilities.

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