



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**HOUSE OF REPRESENTATIVES**

**SEX DISCRIMINATION  
LEGISLATION AMENDMENT  
(PREGNANCY AND WORK) BILL 2000**

**First Reading**

**SPEECH**

**Monday, 13 March 2000**

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

---

## SPEECH

**Date** Monday, 13 March 2000  
**Page** 14444  
**Questioner**  
**Speaker** Macklin, Jenny, MP

**Source** House  
**Proof** No  
**Responder**  
**Question No.**

**Ms MACKLIN** (Jagajaga) (3.42 pm)—This private member's bill—the Sex Discrimination Legislation Amendment (Pregnancy and Work) Bill 2000—amends the Sex Discrimination Act 1984 and the Human Rights and Equal Opportunity Commission Act 1978 to ensure that pregnant, potentially pregnant and breastfeeding women are not discriminated against in the workplace. The amendments contained within this bill are overdue. It has been nine months since the need for these changes was brought to the attention of this government, and we have seen absolutely nothing as a result. The government has repeatedly demonstrated no concern for protecting the rights of woman. If the Howard government were committed to ensuring that the right to work while pregnant is a reality for every Australian woman, it would not continue to delay its response to the Human Rights and Equal Opportunity Commission's inquiry into pregnancy and potential pregnancy discrimination in the workplace. This report was presented to the Attorney-General in June 1999, and since then he has done nothing with it.

The reforms contained within this bill are one element of the Labor opposition's commitment to assisting families to balance work and family commitments. Fundamental reform is needed to our social and economic institutions to enable Australian families to regain control over their working lives and to place limits on the continual encroachment on family time. Long-term solutions that diminish the conflicts between work and family life must be developed and implemented. Governments in collaboration with unions and employers have a key role to play in developing these solutions. Governments must instigate—and this one should start immediately—a review of what policies and programs are predicated on the outdated male breadwinner model of the family and establish industrial relations, taxation and welfare policies that enable all Australians to live full family and work lives.

Rather than make life easier for working parents, the government has implemented a litany of changes that make it harder for Australians to balance their work and family responsibilities. For example, formal child care is essential for many working families, but cuts to the child-care budget have resulted in the cost of child care increasing by up to \$20 to \$30 a week, taking it out of the reach of many families. This government also promised that its individual contracts would allow employees greater flexibility to set working times. However, evidence suggests that the increased flexibility has been all one way and, instead of empowering the worker, it means that employers now have even greater flexibility to dictate what hours will be worked and when. This type of arrangement, coupled with the increasing casualisation of employment, makes it more and more difficult for families to plan their care arrangements and robs children of predictable family time. This type of workplace flexibility is not family friendly; it is a parents' and children's nightmare.

The present organisation of work requires millions of families to make impossible choices between their family commitments and their work commitments. If governments can remove the need for these choices to be made, or at least make the choices a little easier, they have an obligation to do so. Nine months ago, the government was presented with the Human Rights and Equal Opportunity Commission's Report *Pregnant and productive: It's a right not a privilege to work while pregnant*. This report found that 'erroneous tactics and exploitative practices are, to this day, being utilised to remove pregnant women from the workplace or deny pregnant and potentially pregnant women equal employment opportunity'.

The HREOC report includes 46 recommendations on ways Australian workplaces can be made more family friendly. Whilst discrimination and harassment on the grounds of pregnancy and potential pregnancy are grounds for a complaint under the Sex Discrimination Act 1984, the *Pregnant and productive* report found that workplace discrimination and harassment on these grounds remain a real issue for many women and that clarification of the act is needed in a number of areas. Direct and indirect discrimination on the basis of pregnancy and potential pregnancy was documented in the report. A reading of it indicates that many workplaces fail to accommodate the realities of pregnancy and that urgent action is needed. The commission reported that some employees conceal their pregnancy for as long as possible because they feared pregnancy discrimination and that some senior professional women took accrued holiday leave so that they would not be replaced or have maternity leave on their files. When the report was publicly released in August last year, the Sex Discrimination Commissioner,

Susan Halliday, said that the report had uncovered horror stories such as women miscarrying because they were not allowed to sit down at work, men sacked for attending their babies' births and women harassed about their appearance or removed from front desk work. In one case documented by the commissioner, a woman working in a car factory was denied a chair despite bleeding and severe pain. She collapsed at work when seven months pregnant and her baby was born prematurely with an underdeveloped heart. Ms Halliday said, 'Something has to be done. It is fair to say that there are lives at stake here.'

Despite the report's disturbing findings, the government has shelved it, and hence the need today for the opposition to pursue the recommended legislative reforms through this private member's bill. The amendments contained in this bill address 10 of the *Pregnant and productive* report's 46 recommendations. The bill enhances the rights of pregnant and potentially pregnant women by: empowering the Human Rights and Equal Opportunity Commission to publish enforceable standards in relation to pregnancy and potential pregnancy; ensuring unpaid workers are covered by the Sex Discrimination Act 1984; removing the exemption for employment by an instrumentality of state from the Sex Discrimination Act; removing the exemption for educational institutions established for religious purposes in relation to pregnancy and potential pregnancy; allowing punitive damages to be awarded; specifically including breastfeeding as a ground of unlawful discrimination; allowing the Sex Discrimination Commissioner to refer discriminatory awards or agreements to the Australian Industrial Relations Commission without the requirement to receive a written complaint; clarifying that a complaint about a discriminatory advertisement may be made by any person; clarifying that the asking of questions to elicit information about whether and when a woman intends to become pregnant and/or her intentions in relation to meeting her current or pending family responsibilities is unlawful; and, finally, clarifying that it is unlawful to discriminate in medical examinations of pregnant women during the recruitment processes.

I am pleased to say that this bill also extends the antidiscrimination provisions to employees who are in the process of adopting a child. The bill does not give effect to the recommendations that require amendments to other pieces of legislation.

In addition to the legislative changes resulting from this bill, there is a need for attitudinal and cultural changes towards pregnant and potentially pregnant women in the workplace. An immediate education, guidance and awareness raising program around pregnancy, potential pregnancy and work should be undertaken. Until these attitudinal and cultural barriers to women working while pregnant are removed and family friendly workplaces become a reality, families will be forced to endure the stresses of balancing work and family or delay or even forgo completely having a family. This situation is unacceptable and must be addressed as a priority.

Women should not have to choose between working and family life. The research of ANU demography professor Peter McDonald into fertility rates indicates a growing trend by women to choose between work and family rather than pursuing both. Their choices are linked, and it is the job of governments to work to make social and economic institutions family friendly. To quote Professor McDonald:

The countries, through their social institutions, which make it difficult or unrewarding for women to combine work and family, or which provide incentives for mothers to stay at home rather than to be employed are the countries that have very low fertility. Faced with a choice between an uninterrupted career or having a child and withdrawing from the work force for an extended period, women in these countries often make the decision not to have the child.

Professor McDonald's work therefore suggests that the barriers to combining work and family are at the heart of the trend for women to delay, limit or forgo having children. Australia's declining fertility rate may, therefore, be directly related to the inability of our governments and our social and economic institutions to respond to a trend which has at its source increasing gender equality.

Australia's fertility level is below the level of generational replacement and is declining. Business organisations and employers who argue against family friendly reforms to their workplaces because of their costs must be shown the true long-term consequences of these actions. Halting a declining labour force is far more difficult than removing the barriers to providing family friendly workplaces.

One barrier to combining work and family responsibilities that requires a substantial reform is the provision of workers' benefits such as paid sick leave, holiday leave, long service leave, maternity leave, family or carers leave. All the research indicates that the loss of these benefits due to women temporarily exiting the labour market to have children is a considerable burden and occurs at a time when access to these benefits is most needed. Greater flexibility in the use of benefits and the provision of benefits to casual and part-time positions must be a central part of a 21st century work and family policy.

This bill goes some way to addressing the discrimination that is a reality for some pregnant, potentially pregnant and breastfeeding women in our workplaces. The inability of many workplaces to manage pregnancy and work issues threatens a woman's human right to work while pregnant. The amendments contained in this bill are not radical but they will make a substantial contribution to ensuring our workplaces are more family friendly—a goal worthy of the parliament's support. I ask leave of the House to present the explanatory memorandum to this bill.

Leave granted.

**Ms MACKLIN**—I present the explanatory memorandum to the bill.

Bill read a first time.

**Mr DEPUTY SPEAKER (Mr Jenkins)**—In accordance with standing order 104A, the second reading will be made an order of the day for the next sitting.