



Australian Breastfeeding Association's Submission to the Review of the *Workplace Gender Equality Act 2012*

The Workplace Gender Equality Agency Review Team
Department of the Prime Minister and Cabinet

Thank you for the opportunity to make a submission in response to the review of the Workplace Gender Equality Act 2012.

Our submission includes important contextual information about breastfeeding, women and work, and the link to gender inequality, then offers responses to the consultation questions you have asked.

The Australian Breastfeeding Association gives permission for this submission to be made publicly available and is happy to be contacted by the Workplace Gender Equality Agency should there be any questions or clarification needed.

Victoria Marshall-Cerins
Executive Officer,
Australian Breastfeeding Association RTO 21659
[REDACTED]

About the Australian Breastfeeding Association

The Australian Breastfeeding Association (ABA, breastfeeding.asn.au) is a not-for-profit, member-based organisation that supports, educates, and advocates for a breastfeeding-inclusive society where breastfeeding is culturally normal and is valued by all Australians. Recognised as Australia's leading authority on breastfeeding, ABA provides mothers with practical mother-to-mother support and evidence-based information, to enable them to make informed decisions on their breastfeeding journey, while advocating to influence policy makers to ensure that the importance of breastfeeding is understood and incorporated into policies, action plans, and strategies.

The ABA has a long track record of supporting women wanting to combine breastfeeding with employment. Drawing on the experience of breastfeeding mothers, the Association developed resources on combining breastfeeding and work as early as the 1980s. It has advocated for 'breastfeeding friendly workplaces' for decades and developed initiatives such as the Mother Friendly Workplace Award and the Breastfeeding Friendly Workplace accreditation program to encourage employers to provide supportive work environments for new mothers.¹

ABA has also engaged in leading national research with Australian universities to develop a strong evidence base for advocacy on supportive work environments for new mothers and breastfeeding. For example, ABA partnered with the highly successful Australian Research Council (ARC) Linkage Project on breastfeeding friendly workplace and childcare settings that aimed to identify the key barriers to and supports for combining breastfeeding. This study found greater workplace support for breastfeeding through part time work, adjustable working hours, and perceived workplace support was significantly associated with exclusively breastfeeding at six months, while not exclusively breastfeeding was associated with more frequent infant hospitalisations and time off work caring for a sick infant.²

Australian mothers want to breastfeed. Last year ABA supported 72,922 mothers via its free, 24/7 National Breastfeeding Helpline and LiveChat service, and reached hundreds of thousands of people via digital platforms. Our Breastfeeding Friendly Workplace program supported 124 organisations with 237,616 employees to ensure a breastfeeding supportive work culture and awarded 35 with best practice. For 57 years, ABA has been providing up-to-date information, support and high quality and accessible training and education to pregnant women, mothers and their families, health professionals, employers, and the broader community. Importantly, ABA provides these services free of commercial influence.

Australian Breastfeeding Association recommendations

1. Amend the Workplace Gender Equality Act to prioritise driving changes towards gender equality, thereby effecting Australia's implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as required by the Workplace Gender Equality Act, better addressing sex discrimination, and reflecting breastfeeding as a human right.

2. Broaden Workplace Gender Equality Act powers to enable more effective employer education by the Workplace Gender Equality Agency (WGEA) and to mandate necessary change.
3. Government to provide greater resources to the WGEA to augment their currently limited capacity to educate employers and ensure compliance with the Workplace Gender Equality Act.
4. Government to fund the WGEA to contract out the provision of workplace education from organisations such as the ABA which can provide necessary specialist education beyond the WGEA's remit.
5. Amend the Workplace Gender Equality Act to reflect workplace support of breastfeeding women recommended by the Australian National Breastfeeding Strategy (ANBS).
6. WGEA prioritise its focus in the coming years on identifying international conventions that promote and underpin gender equality, including the ILO Maternity Protection Convention 183, which Australia has not ratified, then promoting the case for their ratification and implementation within Australian law so Australian women get international standard maternity protections including access to paid lactation breaks.
7. The WGEA should protect paid maternity leave so any future changes to provisions of the Paid Parental Leave scheme aimed at supporting partner leave are provided in addition and do not undermine the establishment and duration of infant breastfeeding.
8. Amend the Workplace Gender Equality Act to include a broader definition of *relevant employer* that takes in the Australian Public Service (APS) and all state and territory government agencies.
9. Amend the Workplace Gender Equality Act so it covers organisations with fewer than 100 employees.
10. Amend the Gender Equality Indicators (GEIs) to specifically cover sex-based harassment and discrimination and add a seventh GEI to account for other matters specified by the Minister.
11. Amend the Workplace Gender Equality Act to more explicitly state it is to give effect to the provisions of the *Sex Discrimination Act 1984*, rather than simply adopting its definition of 'discrimination'.
12. Amend the Workplace Gender Equality Act to include mandatory collection of data by the WGEA relating to cultural and linguistic diversity, disability, age, location, and socio-economic status in order to better understand where inequality lies and address it.

13. WGEA work with the ABA to develop a question that enables collection of more meaningful data and provides a better understanding of workplace support of breastfeeding which can then be used to educate employers and drive change.
14. Amend the Workplace Gender Equality Act and the *Workplace Gender Equality (Minimum Standards) Instrument 2014* to set out more comprehensive minimum standards and require employer action and progress on gender equality against these standards.
15. WGEA to provide more transparency on reports from organisations, perhaps in the form of score cards, so progress in gender equality initiatives can be better seen.
16. Amend the Workplace Gender Equality Act to make consultation with employees mandatory ahead of annual reports.

The importance of breastfeeding - for all Australians including employers

The evidence is now stronger than ever: breastfeeding is critically important for women and children in both high and low-income countries. But breastfeeding is important for the whole community, including employers, and for the workplaces of Australia. Research shows lower rates of hospitalisation and work absenteeism among mothers who are supported to exclusively breastfeed their babies during the process of returning to employment.² By supporting return to work after maternity leave, breastfeeding friendly work environments also help reduce recruitment costs and lower staff turnover.²

Breastfeeding supports the normal physical, emotional, social, and cognitive development of babies and young children. Breastfeeding is also an important preventative health behaviour with implications for infant and maternal health, national health costs, and the environment. Formula feeding substantially increases an infant's risk of ear infections that can lead to hearing impairment, respiratory and gastrointestinal infections and hospitalisations due to these infections, death due to SIDS, poorer cognitive development and lower IQ, overweight and obesity, and chronic diseases including diabetes^{3,4,5}.

The health benefits of breastfeeding for women also form part of the reason the Australian National Health and Medical Research Council's (NHMRC) Infant Feeding Guidelines⁶ reflect the World Health Organization (WHO) infant feeding recommendation that infants be exclusively breastfed for the first 6 months of life, with ongoing breastfeeding until 2 years and beyond with appropriate complementary foods⁷. Women who breastfeed for 12 months will decrease their risk of breast cancer by 26 percent⁸, ovarian cancer by 37 percent⁸, endometrial cancer by 16 percent⁹, diabetes by 30 percent¹⁰, hypertension by 13 percent¹⁰, hospitalisation from cardiovascular disease by 14 percent¹¹ and dying from cardiovascular disease by 34 percent¹¹. Australian research shows that more than 200 women a year are diagnosed with breast cancer that is attributable to premature cessation of breastfeeding¹². Depriving employed new mothers of enabling environments for breastfeeding increases the disease burden on them personally, on the health system and on Australian society.

Furthermore, reduced breastfeeding rates such as we see in Australia are detrimental to personal, societal, and national economic costs. The significant health impacts from formula feeding include:

- Loss of workplace productivity due to parents' absenteeism due to infant ill health
- Impact of poor health due to chronic diseases in later life
- Health system burdened by the increase in chronic diseases and cancers
- Increased cost to state, territory and national health budgets from increased hospitalisation and health professional visits
- The increased morbidity and mortality of non-breastfed infants and children linked to formula feeding during emergencies such as bushfires, floods, and cyclones^{13,14}

Increasing breastfeeding rates have been shown to decrease the frequency of illness at a community level while premature weaning from breastfeeding results in an unnecessary disease burden on our health care system. The Australian NHMRC Infant Feeding Guidelines note the economic benefits of breastfeeding and Australian studies showing potentially hundreds of millions of dollars of savings a year to the health system from increasing rates of exclusive breastfeeding among infants⁶. A study from a developed country population found that hospitalisation rates for children under 12 months could be more than halved if all babies were fully breastfed for four months or more¹⁵. Another study looking at just three illnesses (lower respiratory tract illness, middle ear infection and gastrointestinal illness) found that for every 1000 babies never breastfed, compared with 1000 babies exclusively breastfed for 3 months, there were 2033 extra visits to the doctor, 212 extra days of hospitalisation and 609 extra prescriptions in the first year of life¹⁶.

Takeaway: Australia must support breastfeeding not only as it is integral to infants' good health outcomes and the health of their mothers throughout the life course but also because it is economically beneficial and conserves resources. Poor breastfeeding rates have significant costs at both a personal and societal level. Employers benefit from supporting their staff with breastfeeding friendly environments, and the ABA's Breastfeeding Friendly Workplace accreditation program is the central element of the Australian National Breastfeeding Strategy: 2019 and beyond priorities for breastfeeding friendly environments.

Australian National Breastfeeding Strategy: 2019 and beyond (ANBS)

Breastfeeding of infants and young children has been identified as a national priority by the Australian Government with the development of the Australian National Breastfeeding Strategy: 2019 and beyond (ANBS)¹⁷ and convening of a National Breastfeeding Advisory Committee to oversee the implementation of the Strategy. Launched by the Commonwealth Minister for Health, The Hon Greg Hunt MP, in August 2019 after close consultation with the sector, the ANBS recognises that breastfeeding reduces infant mortality, contributes to better health for mothers, protects against breast cancer, contributes substantial savings in health costs and is a smart, cost-effective investment in society. The ANBS quotes with approval a finding that human breastmilk is 'not only a perfectly adapted nutritional supply for the infant, but probably the most specific personalised medicine that he or she is likely to receive, given at a time when gene expression is being fine-tuned for life'³.

The ANBS sets two significant targets: 40 per cent of Australian babies to be exclusively breastfed until they are six months old by 2022 and 50 per cent by 2025. National Health Survey data revealed that only 25 per cent of Australian babies are exclusively breastfed to 6 months⁸⁶. Beyond this, the ANBS seeks breastfeeding until at least 12 months of age and beyond, for as long as both mother and child want, noting that the window for improved health outcomes is the first 1000 days of a child's life (from conception to 23 months of age).

To achieve these targets, one of the objectives of the ANBS (Action area 2.3) is to increase the number of breastfeeding-friendly settings/environments (baby-friendly health services, **workplaces**, early childhood education and care services, and public spaces). Of the many recommendations the Strategy makes, a number relate to breastfeeding women in the workplace.

The ANBS notes that almost all Australian mothers want to breastfeed their babies, evidenced by the fact that more than 90 per cent initiate breastfeeding¹⁹. However, in the context of breastfeeding and work, the Strategy identified that some workplaces deny mothers the physical space necessary to pump and store their milk and fail to provide convenient or flexible breaks to express milk by pump¹⁷.

The Strategy calls for supportive employment arrangements or workplace settings to empower mothers to breastfeed. Specifically, Action area 2.3 includes recommendations to:

- implement the Breastfeeding Friendly Workplace (BFW) program in government agencies, stating that all Commonwealth, state, and territory government departments must seek BFW accreditation from the ABA.
- Recognise employers that provide support for women to breastfeed, for example, through the Workplace Gender Equality Agency's Employer of Choice for Gender Equality citation.

The ANBS includes Paid Parental Leave in a key evaluation success criterion that seeks integration of relevant strategies with the needs of mothers and babies.

Takeaway: The Australian Government's National Breastfeeding Strategy prioritises breastfeeding and provides governments at all levels, policymakers, stakeholder organisations, the public and private health sectors, industry, researchers and academics, families, and communities with guidance on evidence-based approaches to protect, promote, support and monitor breastfeeding. Implementation of the ANBS recommendations needs to follow.

Breastfeeding and Gender Equality

The connection between gender inequality and women's breastfeeding practice has long been recognised and much has been written setting out the link between women's status and breastfeeding practice. Gender inequality is one of the factors that impacts on whether, how exclusive, and for how long women will be able to breastfeed, contributing to the privileging of breastfeeding, even as its health message becomes stronger and human milk more desirable²⁰.

While breastfeeding is still largely seen as a lifestyle choice that women can give or take, it is in fact a primary physiological function of one of their bodily organs, which helps to protect maternal physical and mental health.

Most health behaviour change interventions focus on how to make change at the individual, interpersonal, community, or organisational level. ABA would suggest, however, that breastfeeding should not be seen as a constraint and solely a woman's responsibility, and that to make progress towards equal opportunity, focus should be given to developing and strengthening policies and practices that reduce and remove gender inequities and accommodate breastfeeding women.

As Dr Nigel Rollins of the World Health Organization (WHO) and co-author of the Lancet report series into breastfeeding (the most extensive research ever undertaken into the effects of breastfeeding globally) stated in an open letter 'The success or failure of breastfeeding should not be seen solely as the responsibility of the woman. Her ability to breastfeed is very much shaped by the support and the environment in which she lives. There is a broader responsibility of governments and society to support women through policies and programmes in the community.'²¹

To this end, Commonwealth Government responsibilities under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and domestic anti-discrimination law, which the Workplace Gender Equality Act is to give effect to (S5 Application of the Act) are relevant. By becoming a party to CEDAW on 17 July 1980, Australia committed to take all appropriate measures, including introducing legislation and temporary special measures, so that women could enjoy all their human rights and fundamental freedoms. CEDAW defines discrimination against women as '... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.' (Article 1)²².

Takeaway: There is a strong gender inequity aspect to breastfeeding and work, that needs to be recognised and addressed by workplace policies and practices that remove the workplace as a barrier to breastfeeding.

Breastfeeding, Women and Work

Evidence from a wide range of countries, including Australia, shows more women returning to paid employment after giving birth. The Australian Bureau of Statistics' 2017 Pregnancy and Employment Transitions survey found:

- An estimated 582,300 Australian women aged 15 years and over, with a child under two years old. Of these women:
 - 42% had started or returned to work after the birth of their infant,
 - 18% were on leave for the birth of their child (up from 9% in 2011), and
 - 51% were participating in the labour force, (up from 43% in 2011)²³.

Information from this survey showed that the majority of Australian women are returning to work when their babies are of an age when the WHO recommends they be

breastfed⁷ (74 percent after spending at least 4 months at home with their infant, 25 percent after 10 months or longer)²³.

Many mothers still face significant challenges balancing motherhood and work. Returning to paid employment is one of the reasons women stop breastfeeding earlier than they planned, and maternal employment has been found to have a negative impact on breastfeeding duration²⁴.

While Australian anti-discrimination legislation and National Employment Standards protect breastfeeding (see below), in practice these laws are regularly breached and women face barriers to breastfeeding, including negative attitudes to their needing time to express milk, no paid lactation breaks, and pumping difficulties. Women can be unaware of legislated protections, and many find it hard to ask for support to breastfeed, sometimes for fear of compromising their employment status. An Australian study of 178 childcare services also revealed unlawful discrimination against breastfeeding women²⁵.

A recent systematic review²⁶ aimed at providing insight into the experiences and views of women and employers on breastfeeding and returning to paid employment, found women encountered a range of physical and emotional challenges to breastfeeding on return to paid employment:

- Women experienced gender and employment inequalities when accessing support to continue to breastfeed.
- Some employers considered that providing breastfeeding breaks would not be cost-effective for their business.
- Women's right to breastfeed during paid employment requires implementation of breastfeeding-friendly workplace policies and women sought breastfeeding-friendly workplace legislation.
- Effective communication about breastfeeding support between women and their employers is needed in the workplace. Workplace education that aims to improve employers' and employees' attitudes about the need to support colleagues who are breastfeeding is urgently needed.

ABA regularly receives requests for information and support from women who feel discriminated against and from women whose employers are not supportive, or supportive enough of them breastfeeding. These women speak of the pressure they are under to wean their babies to return to the paid workforce. Common concerns raised by women include insufficient time or lack of a suitable work environment to express and store breast milk, lack of paid lactation breaks, negative attitudes from employers and/or colleagues, and lack of adequate access to their infant to breastfeed.

Case Study - A recent experience of a breastfeeding employee

The ABA Breastfeeding Friendly Workplaces team received an email from a mother asking if a business can expect a woman to express in a disabled toilet when returning to work after maternity leave. She stated she was not provided with a safe and clean area to express when she returned to work and that during a meeting to discuss her return, her manager said "We can put a sign on my office - 'Do not enter. Boobs out'" and the HR manager said "Don't worry, I have had to express in a night club toilet".

After this woman had returned and used the toilet to express in her lunch break, she reports that the HR manager commented "Oh how did you go? Sorry I was meant to put a chair in there for you" The woman said she did not want to lose her job, so she did not respond.

This illegal treatment impacted this woman's breastmilk supply, her ability to combine breastfeeding and work, and her levels of job satisfaction. Within two months she had resigned. She said she was contacting BFW to find out how to stop this from happening to other women.

A collaborative pilot study between ABA and the Menzies Centre for Health Policy at the University of Sydney found 50 percent of the group of breastfeeding women surveyed had no choice but to use unhygienic, communal and/or poorly equipped spaces to express at work (or breastfeed), including toilets/shower cubicles and storage rooms. A considerable variation was found in the level, type and cultural acceptance of workplace supports, and industry or organisation size was not a predictor of the level of support a breastfeeding mum would receive²⁷.

The data is difficult to find, but the WGEA does collect data based on self-reported responses from organisations with over 100 employees that gives insight into breastfeeding friendly workplaces across all industries. The data show that 50.5 per cent of the Australian workforce in these organisations are female and that paid primary carer's leave is offered to 52.4 per cent of them, both male and female. Seventy-six per cent of employers' state they have flexible working policies and strategies, while 68.8 per cent state they have policies or strategies aimed at supporting employees with family or caring responsibilities. The average length of primary carer's leave offered is 10.9 weeks. 7.1 per cent of women ceased employment while on parental leave.

Non-leave-based measures offered included employer subsidised childcare (7.6 per cent), onsite childcare (10.4 per cent), breastfeeding facilities (72 per cent), childcare referral services (10.3 per cent), internal support networks (23.3 per cent), information packs to support new parents (20.5 per cent), parenting workshops targeting mothers (7.8 per cent), coaching employees on returning to work from parental leave (27.9 per cent) and referral services to support employees with family/caring responsibilities (53 per cent).

The data reflect the minimal support many women in the workplace receive related to their primary care giving role, and the need for the Workplace Gender Equality Act to include powers that require and drive change towards gender equality, over and above its focus on data collection.

It is important to note that the high number of organisations reporting the provision of breastfeeding facilities does not equate to adequate facilities, organisation-wide supportive culture and policies, or paid lactation breaks.

Too often ABA hears from women like the one in the case study above, saying the facilities they are offered to breastfeed or express in are inappropriate and/or unhygienic. Furthermore, the WGEA does not collect data related to breastfeeding policies that specifically secure paid lactation entitlements, nor the human resource procedures involved in communicating these policies, as is required by ABA's best practice Breastfeeding Friendly Workplace accreditation program.

The mere provision of facilities does not mean women are being encouraged to use them or provided with paid lactation breaks to enable them to do so. WGEA data suggests what ABA already knows: that breastfeeding women in the workplace are being forced to make significant trade-offs – either to their careers and possibly well-being in order to provide appropriate nutrition and optimum health for their infants, or by way of sacrificing their infant's health and nutrition to return to employment.

Takeaway: More Australian women are returning to work at an age when it is recommended they be breastfeeding their infant. Much more needs to be done to support them to continue to breastfeed.

International human rights frameworks

The ANBS sets out the International human rights framework established to protect and support breastfeeding:

- The WHO and UNICEF Global Strategy for Infant and Young Child Feeding⁷ is based on respect, protection, facilitation and fulfilment of accepted human rights principles. Nutrition is a crucial, universally recognised component of the child's right to the highest attainable standard of health as stated in the United Nations Convention on the Rights of the Child (Article 24)²⁸.
- Article 12 of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women requires that women have equal access to health services in relation to pregnancy and postnatal care and that mothers have the right to make decisions about their own lives and their children's (including infant and young child feeding decisions)²².
- In 2016, the Office of the UN High Commissioner on Human Rights released a joint statement urging member states to do more to support and protect breastfeeding and to end inappropriate marketing of breastmilk substitutes (infant formula and toddler milks). The joint statement recognises that breastfeeding is a human rights issue for both the child and the mother. Women have the right to accurate, unbiased information needed to make an informed choice about breastfeeding. They also have the right to good quality health services, including comprehensive sexual, reproductive and maternal health services. And they have the right to adequate maternity protection in the workplace and to a friendly environment and appropriate conditions in public spaces for breastfeeding which are crucial to ensure successful breastfeeding practices.'²⁹

- In 2000, the International Labour Organization (ILO) adopted a revised Maternity Protection Convention 183 and Recommendation 191, establishing women's right to paid maternity leave, paid lactation breaks and facilities in the workplace to allow for continued breastfeeding³⁰.
 - Australia is currently not a signatory to this Convention, but ABA advocates that we should be.
- Also, important to note in the context of the international human rights framework, is the 2030 Agenda for Sustainable Development, which Australia signed on to in September 2015, committing to working towards the Agenda's 17 Sustainable Development Goals. Of particular relevance are Goal 3 (Ensure healthy lives and promote well-being for all at all ages), Goal 5 (Achieve gender equality and empower all women and girls), Goal 8 (Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all), Goal 10 (Reduce inequality within and among countries), and Goal 16 (Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels)³¹.

Australian legislative framework

- The Sex Discrimination Act 1984 makes it unlawful to discriminate against women who are breastfeeding, including those who need to take short breaks at work to express milk³². (Australian Government, 2014).
 - In reality, it can time consuming and stressful, even costly, to pursue a claim.
 - ABA considers that human rights agencies should be resourced to provide full support for complaints by new mothers who are particularly vulnerable and hindered from pursuing their rights under the Act because of the time pressures of having a young child.
- The Fair Work Act 2009³³ does not contain specific provisions that relate to breastfeeding breaks or breastfeeding in the workplace. According to the Fair Work Ombudsman: A best practice employer can support employees who are breastfeeding by making sure they have suitable facilities available - examples are a private room for breastfeeding, somewhere where the employee can store a breast pump, and a fridge where they can store breastmilk. Employees should also be given appropriate lactation breaks so that they can breastfeed or express.
 - Breastfeeding is a protected ground of discrimination³². Making an employee feel uncomfortable about breastfeeding, or not providing adequate facilities or breaks, may constitute discrimination. It may also not meet the duties set out in work health and safety laws.
- Under the National Employment Standards in the Fair Work Act 2009³³, employees with 12 months' service have a right to request flexible working arrangements in a range of circumstances, including when an employee is the parent, or has the responsibility for the care, of a child who is school aged or younger. An employer may only refuse a request on reasonable business grounds.
- All modern awards contain provisions that supplement the right to request flexible working arrangements in the National Employment Standards³⁴. An employer who receives a request for flexible working arrangements from an employee whose terms and conditions are set by a modern award must discuss the request with the employee and genuinely try to reach an agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances.

- ABA's experience is that many women are not aware of legislative protections and if they are, are often not assertive enough to enter into discussion with their employers about the support they need to continue to breastfeed when they return to work.

Takeaway: Breastfeeding is upheld and protected by international and national conventions, legislations and polices. However, Australia is not a signatory to all relevant conventions so not all necessary protections are legislated, and legislation is regularly breached.

Breastfeeding-Friendly Workplaces



ABA's Breastfeeding-Friendly Workplace (BFW) accreditation program is an initiative that was developed in the knowledge that workplaces CAN make the transition to paid work easier for breastfeeding women and that an ongoing partnership through an accreditation process works more effectively than one-off awards.

Our BFW team works closely with employers as they establish facilities and develop the necessary policies and procedures to develop a workplace culture that support breastfeeding women. Formal BFW accreditation demonstrates a commitment to providing a fair, equitable, family-friendly working environment that recognises and values diversity.

Through the BFW Program, ABA has developed an understanding of the benefits employers gain and perceive from supporting staff to combine work and breastfeeding - benefits that have a real impact on the bottom-line for their organisation. Employers cite benefits of improved retention of female employees after maternity leave, thus preventing loss of skilled staff and the costs associated with recruitment and retraining or replacement. Other benefits include reduced absenteeism and staff turnover because of the improved health of mother and baby, and increased staff loyalty from the support they provide.

ABA strongly supports implementation of the ANBS recommendation that all Australian Government agencies at Commonwealth, state, and territory level must become BFW accredited, as the BFW provides best practice support for women to continue to breastfeed while working. If more government agencies are accredited for providing the necessary time, space, and supportive policies that women need to successfully breastfeed and work, other employers will be encouraged to follow.

Takeaway: The ANBS called for BFW to be extended to all Australian government departments as a priority action. BFW program partners with employers to assist them to introduce best practice breastfeeding support in the workplace. Greater uptake of BFW accreditation across Australian workplaces would help remove workplace barriers to breastfeeding women and support gender equity.

Breastfeeding as a human right

Breastfeeding and human milk is the biological norm for human infants and has been identified by a number of international conventions and agreements as a human right.

As outlined above, Article 24 of the UNICEF Convention on the Rights of the Child²⁸ states that breastfeeding is an essential component in assuring the child's right to the highest attainable standard of health. As a signatory, Australia is obliged under this Convention to ensure an environment conducive for women to breastfeed their children.

A woman's right to breastfeed her infant is protected under the Sex Discrimination Act 1984³², and she does not lose this right when she returns to paid employment.

Takeaway: Women who wish to breastfeed should have the right to do so whenever and wherever they choose, with the full support of their families, communities, employers, and governments.

Paid Maternity Leave

ABA believes that paid maternity leave is a legal and social recognition of the important contribution of mothering. As a society, all Australians have a vested interest in providing conditions that enable our most vulnerable members to receive the intensive care they need to thrive into healthy, independent, and productive adults. The quality of the attachment that forms between infants and their caregivers can have a profound influence on children's social, emotional, and cognitive development. The foundations that are laid down in infancy have a significant influence on the psychological, physical, and mental health of the mature adult. It is the extensive experiences through interactions with the caregiver that have been identified as necessary for the growth of brain and neurological functions³⁵. A consistent and responsive carer assists with secure attachment that promotes good social and psychological development³⁶.

Australia's Paid Parental Leave (PPL) scheme is based on the weekly rate of the national minimum wage payable for up to 18 weeks, which is less than the six months ABA advocates which is consistent with the NHMRC's recommended period for exclusive breastfeeding.

The introduction of a PPL scheme in 2011 extended paid maternity leave to virtually all new mothers and had benefits for breastfeeding and the health of children, as well as for the mental health of mothers. Single mothers increased their rates of exclusive breastfeeding, and more children were breastfed for longer during the first year³⁷. A study done on the introduction of the PPL found that paid maternity leave benefits women's health, in addition to supporting and valuing women's caregiving and reproductive contributions and ensuring that having children does not exclude women from holding jobs or earning income³⁸.

Consideration needs to be given to extending paid maternity leave to 6 months, in line with the recommended period of exclusive breastfeeding. Time use research shows that exclusive breastfeeding during the first six months involves around 18 hours a week,

and premature cessation of exclusive breastfeeding is encouraged by time pressures. Exclusive breastfeeding is also closely associated with extra nurturing care time³⁹.

ABA supports provisions that allow families to decide how they access leave, to provide flexibility for families to make choices that best suit their individual circumstances. However, while ABA acknowledges the important role of partners and their need for leave and workplace flexibility to assist in providing care for children, we strongly urge that any leave provisions for partners be made available in addition to current PPL, not within the current offering, so as not to undermine breastfeeding.

Beyond paid maternity leave, ratifying ILO Maternity Convention No. 183 would commit Australia to international standards around maternity protection in the workplace.

Takeaway: Australian women need paid maternity leave that supports them to establish breastfeeding and exclusively breastfeed in line with WHO recommendations. Paid maternity leave provisions should be protected, and any partner or other leave provisions must be offered in addition to maternity leave.

Paid Lactation Breaks

There is a popular misconception that breastfeeding is free and easy. In fact, it takes time to breastfeed or express milk and often requires trained support³⁹.

The ILO's Maternity Protection Convention 183³⁰ recommends up to an hour of paid lactation breaks a day. While paid lactation breaks for employees is an internationally recognised solution and is offered in at least 92 countries, Australia has not ratified this convention, so most Australian women are not entitled to paid lactation breaks.

Globally, exclusive breastfeeding rates of infants younger than 6 months have been found to be nine percent higher in countries where work breaks for breastfeeding were mandated²⁶.

ABA urges the Government to ratify the ILO Maternity Convention 183 and include paid lactation breaks and facilities for all working women by including these elements in industrial relations legislation.

Takeaway: Australia should ratify ILO Maternity Convention 183 and support breastfeeding by providing paid lactation breaks.

ABA responses to Consultation questions

Consultation question 1

Are the functions and powers of WGEA appropriate for promoting and improving gender equality in the workplace? How effective is WGEA in achieving its functions to promote and improve gender equality in the workplace including by enabling relevant employers to report on the gender equality indicators, developing benchmarks and reports, undertaking research, education and leading practice programs and contributing to the public discussion on gender equality?

While the Workplace Gender Equality Act enables WGEA to collect data from employers to gain a good understanding of workplace gender equality, our experience is that many workplaces do not provide women with the support they need to be able to continue to breastfeed when they return from paid maternity leave. Clearly something is missing, and the Act needs to include powers that enable WGEA to drive change that leads to workplace gender equality, not just to collect information about the current state.

As it currently stands, failure to comply with the Workplace Gender Equality Act turns on an employer's compliance with reporting requirements, as opposed to their failure to implement and drive initiatives aimed at eliminating workplace gender inequality. Workplace support for breastfeeding does not mean just providing facilities for women to express or breastfeed in, which is what the WGEA collects data on. Supportive policies and practices are required, together with paid lactation breaks and educational programs and strategies aimed at promoting positive cultural attitudes towards breastfeeding and breastfeeding support are required.

Recommendation 1 - Amend the Workplace Gender Equality Act to prioritise driving changes towards gender equality, thereby effecting Australia's implementation of CEDAW, as required by the Workplace Gender Equality Act, better addressing sex discrimination, and reflecting breastfeeding as a human right.

Recommendation 2 - Broaden Workplace Gender Equality Act powers to enable more effective employer education by WGEA and to mandate necessary change.

Recommendation 3 - Government to provide greater resources to the WGEA to augment their currently limited capacity to educate employers and ensure compliance with the Workplace Gender Equality Act.

Recommendation 4 - Government to fund the WGEA to contract out the provision of workplace education from organisations such as the ABA which can provide necessary specialist education beyond the WGEA's remit.

Consultation question 2

What is your experience of what works to improve gender equality in your workplace? How do you currently engage with WGEA and use the reporting process and their resources to improve gender equality? What changes, if any, would you like to see in the areas of future focus for WGEA to further promote and improve gender equality over the next ten years?

What improves gender equality in the workplace?

Our experience of workplaces, gained from more than two decades of providing workplace education and support through our BFW program, is that workplace support for breastfeeding women improves workplace culture and gender equality. This support can make the difference between a woman continuing to breastfeed and prematurely weaning – which is detrimental to the health of her infant, to her own health and mental health and wellbeing (many women grieve when breastfeeding ends before they and their infant are ready), and to the broader Australian community.

ABA's vast experience in this area has been recognised by the Australian Government and this recognition led to the ANBS requirement that:

- ABA's Breastfeeding Friendly Workplace (BFW) program should be implemented all Commonwealth, state, and territory government departments, and
- Employers that provide support for women to breastfeed should be recognised for example, through the Workplace Gender Equality Agency's Employer of Choice for Gender Equality citation.

How do you engage with WGEA?

With decades of advocating on behalf of breastfeeding women and the vulnerable and voiceless youngest members of the Australian community, our association is well aware of the successive pieces of legislation and agencies that have been enacted and put in place to seek to address discrimination and gender inequality. We have sought engagement with the WGEA more recently to try to highlight the gender inequality that working breastfeeding women experience and its impact. In particular, we have sought support for implementation of the ANBS recommendation that all Australian state and territory government agencies must become BFW accredited because while the Strategy was launched in August 2019, there has been little to no movement towards implementing this and other recommendations.

While we have long been aware of the role of the WGEA, ABA has only recently come to learn how to engage with and drill down into its dataset to use this information. This is perhaps indicative of the lack of knowledge among the broader community of the rich dataset WGEA collects and suggests the need for greater promotion, not only of the dataset, but the ways in which it is and can be used towards achieving workplace gender equality.

Recommendation 5 - Amend the Workplace Gender Equality Act to reflect workplace support of breastfeeding women recommended by the Australian National Breastfeeding Strategy (ANBS)

What changes in WGEA's future focus?

Recommendation 6 - WGEA prioritise its focus in the coming years on identifying international conventions that promote and underpin gender equality, including the ILO Maternity Protection Convention 183, which Australia has not ratified, then promoting the case for their ratification and implementation within Australian law so Australian women get international standard maternity protections including access to paid lactation breaks.

Recommendation 7 - WGEA should focus on protecting paid maternity leave so any future changes to provisions of the Paid Parental Leave scheme aimed at supporting partner leave are provided in addition and do not undermine the establishment and duration of infant breastfeeding.

Consultation question 3

Should the coverage of the Workplace Gender Equality Act be further changed? Specifically, should the definition of 'relevant employer' be expanded? If so, would additional considerations need to be factored in for new reporting employers?

Our experience with the ANBS recommendation relating to BFW accreditation for all government agencies is that few agencies know about the recommendation and fewer still have gained accreditation. Since its endorsement through COAG by all Commonwealth, State, and Territory Health Ministers, there has been no whole of Government effort towards implementation of this or other recommendations, and there is no imperative for individual agencies to pursue accreditation. Had the APS and state and territory agencies been included as relevant employers in the Workplace Gender Equality Act, they would have been required to report in the same way other large employers are and we could have anticipated more movement towards BFW accreditation.

Recommendation 8 – Amend the Workplace Gender Equality Act to include a broader definition of *relevant employer* that takes in the Australian Public Service (APS) and all state and territory government agencies.

Many Australian workplaces are smaller than those with 100 employees that the Workplace Gender Equality Act covers and they have a huge role to play in implementing initiatives to support breastfeeding women and gender equality.

Recommendation 9 – Amend the Workplace Gender Equality Act so it covers organisations with fewer than 100 employees.

Consultation question 4

Are the gender equality indicators (GEIs) in the Workplace Gender Equality Act, and the data collected with respect to the GEIs, appropriate to promote and improve gender equality? How could they be improved?

When ABA looks to the GEIs to identify where the workplace gender inequality we see breastfeeding women experiencing is addressed, we come to GEI 6 – ‘Other’. Sadly, too many Australian breastfeeding women experience sex-based harassment and discrimination in the workplace.

Recommendation 10 – Amend the GEIs to specifically cover sex-based harassment and discrimination and add a seventh GEI to account for other matters specified by the Minister.

Recommendation 11 - Amend the Workplace Gender Equality Act to more explicitly state it is to give effect to the provisions of the *Sex Discrimination Act 1984*, rather than simply adopting its definition of ‘discrimination’.

Consultation question 5

In addition to gender, should WGEA collect other data on diversity and inclusion criteria on a mandatory basis, to enable a more nuanced analysis of men and women’s experiences in the workplace? If yes, please specify criteria (eg cultural and linguistic diversity, disability, age, location of primary workplace). If not, why not?

Discrimination does not sit in specific categories and gender-based inequality intersects in many ways because Australia’s workforce is very diverse. Due to inadequate supports, breastfeeding, which is a primary physiological function of mothers, is becoming a privileged activity when women return to the workplace.

Recommendation 12 - Amend the Workplace Gender Equality Act to include mandatory collection of data by the WGEA relating to cultural and linguistic diversity, disability, age, location, and socio-economic status in order to better understand where inequality lies and address it.

Consultation question 6

How could data be better collected and/or used by WGEA to promote and improve gender equality? Should there be some form of pay transparency – should remuneration data in some form be public?

The WGEA collects data that is relevant to understanding the level of support provided for breastfeeding women in the workplace. However, the question only asks employers to report on whether they provide breastfeeding facilities and offers no explanation of what constitutes an appropriate facility. This leaves the interpretation/definition resting solely on the understanding of the person completing the survey.

Furthermore, while the survey asks for reasons where a facility is not provided, this useful information is not included in the presentation of the data on the WGEA website. The data is not reflected in the full XLS data set downloaded from the website either, suggesting this section of the question may have been omitted from the electronic version of the survey.

Importantly, the WGEA only collects information about the provision of facilities for women to breastfeed or express in, but not about breastfeeding policies securing lactation entitlements. No data is collected or available about the quality of facilities and whether women are being supported and encouraged to use them.

Recommendation 13 - WGEA work with the ABA to develop a question that enables collection of more meaningful data and provides a better understanding of workplace support of breastfeeding which can then be used to educate employers and drive change.

Consultation question 7

Are there changes that could be made to the Workplace Gender Equality Act that would help reduce the regulatory burden on relevant employers while continuing to enable WGEA to promote and improve gender equality? Should other data sources, such as Single Touch Payroll data, be used by WGEA instead of employers providing the same data to two Government agencies?

Nil response

Consultation question 8

Could the minimum standards be expanded to improve the way they drive practical gender equality outcomes in workplaces? What would employers need to do to implement these changes in their workplace? Should Minimum Standards apply to all reporting employers, not just those with 500 or more employees?

The Workplace Gender Equality (Minimum Standards) Instrument 2014 requires employers to have policies or strategies in place that aim to achieve particular objectives in support of specific gender equality indicators. In its current form, the Instrument has proved inadequate for driving workplace change towards these objectives.

Recommendation 14 – Amend the Workplace Gender Equality Act and the *Workplace Gender Equality (Minimum Standards) Instrument 2014* to set out more comprehensive minimum standards and require employer action and progress on gender equality against these standards.

Consultation question 9

Are the compliance mechanisms in the Workplace Gender Equality Act, and consequences for non-compliance, effective to promote and improve gender equality? If not, how could they be improved?

As outlined in our response to Consultation question 1, compliance with the Workplace Gender Equality Act currently turns on an employer's compliance with reporting requirements, as opposed to their failure to implement and drive initiatives aimed at eliminating workplace gender inequality. Compliance mechanisms include powers for the WGEA to review compliance by seeking further information, and by naming non-compliant workplaces in a report to the Minister that is placed on the WGEA website.

Recommendation 15 – WGEA to provide more transparency on reports from organisations, perhaps in the form of score cards, so progress in gender equality initiatives can be better seen.

Currently there is only an assumption that organisations consult with their employees ahead of the reporting period, so there is no guarantee that these reports are transparent, even to an organisation's own employees.

Recommendation 16 – Amend the Workplace Gender Equality Act to make consultation with employees mandatory ahead of annual reports.

Consultation question 10

Are there any other matters you want to comment on in relation to the Workplace Gender Equality Act and improving and promoting gender equality in the workplace in Australia?

Nil response

References

1. Eldridge, S., & Crocker, A. (2005). Breastfeeding friendly workplace accreditation. Creating supportive workplaces for breastfeeding women. *Breastfeeding Review*, 13(2), 17-22.
2. Smith, J. P., McIntyre, E., Craig, L., Javanparast, S., Strazdins, L., & Mortensen, K. (2013). Workplace support, breastfeeding and health. *Family Matters*, (93), 58-73.
3. Victora, C. G., Bahl, R., Barros, A. J., França, G. V., Horton, S., Krasevec, J., ... & Group, T. L. B. S. (2016). Breastfeeding in the 21st century: epidemiology, mechanisms, and lifelong effect. *The Lancet*, 387(10017), 475-490.
4. Thompson, J. M., Tanabe, K., Moon, R. Y., Mitchell, E. A., McGarvey, C., Tappin, D., ... & Hauck, F. R. (2017). Duration of breastfeeding and risk of SIDS: an individual participant data meta-analysis. *Pediatrics*, 140(5).
5. Qiao, J., Dai, L. J., Zhang, Q., & Ouyang, Y. Q. (2020). A meta-analysis of the association between breastfeeding and early childhood obesity. *Journal of Pediatric Nursing*, 53, 57-66. <https://doi.org/10.1016/j.pedn.2020.04.024>
6. National Health and Medical Research Council (NHMRC) (2012), *Infant Feeding Guidelines: Information for Health Workers*, Canberra: National Health and Medical Research Council. https://www.eatforhealth.gov.au/sites/default/files/files/the_guidelines/n56_infant_feeding_guidelines.pdf
7. World Health Organization (WHO) (2003). *Global Strategy for Infant and Young Child Feeding*. Geneva: WHO
8. Chowdhury, R., et al (2015). Breastfeeding and maternal health outcomes: a systematic review and meta-analysis. *Acta Paediatrica*, 104, 96-113.
9. Jordan, S. J., et al (2017). Breastfeeding and endometrial cancer risk: an analysis from the epidemiology of endometrial cancer consortium. *Obstetrics and Gynecology*, 129(6), 1059.
10. Rameez, R. M., et al (2019). Association of maternal lactation with diabetes and hypertension: a systematic review and meta-analysis. *JAMA Network Open*, 2(10), e1913401-e1913401.
11. Nguyen, B., Gale, J., Nassar, N., Bauman, A., Joshy, G., & Ding, D. (2019). Breastfeeding and cardiovascular disease hospitalization and mortality in parous women: evidence from a large Australian cohort study. *Journal of the American Heart Association*, 8(6), e011056.
12. Jordan, S. J., Wilson, L. F., Nagle, C. M., Green, A. C., Olsen, C. M., Bain, C. J., ... & Webb, P. M. (2015). Cancers in Australia in 2010 attributable to total breastfeeding durations of 12 months or less by parous women. *Australian and New Zealand Journal of Public Health*, 39(5), 418-421.
13. McKay, C. (2018). Floods, cyclones bring sickness threat to babies, USC News. <https://www.usc.edu.au/about/usc-news/news-archive/2018/december/floods-cyclones-bring-sickness-threat-to-babies>
14. Gribble, K. D., & Berry, N. J. (2011). Emergency preparedness for those who care for infants in developed country contexts. *International breastfeeding journal*, 6(1), 1-13.
15. Talayero, J. M. P., Lizán-García, M., Puime, Á. O., Muncharaz, M. J. B., Soto, B. B., Sánchez-Palomares, M., ... & Rivera, L. L. (2006). Full breastfeeding and hospitalization as a result of infections in the first year of life. *Pediatrics*, 118(1), e92-e99.

16. Ball, T. M., & Wright, A. L. (1999). Health care costs of formula-feeding in the first year of life. *Pediatrics*, 103(Supplement 1), 870-876.
17. COAG Health Council (2019). *Australian National Breastfeeding Strategy: 2019 and beyond*. <http://www.coaghealthcouncil.gov.au/Portals/0/Australian%20National%20Breastfeeding%20Strategy%20-%20FINAL%20.pdf>
18. Australian Bureau of Statistics (2017). 4362.0.55.002—Health Service Usage and Health Related Actions, Australia, 2014–15—Breastfeeding. <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4364.0.55.002~2014-15~Main%20Features~Breastfeeding~10000>
19. AIHW (2011). 2010 Australian national infant feeding survey: indicator results. <https://www.aihw.gov.au/reports/mothers-babies/2010-australian-national-infant-feeding-survey/summary>
20. Paige Hall Smith (2013) Breastfeeding and Gender Inequality, *Journal of Women, Politics & Policy*, 34:4, 371-383, DOI: 10.1080/1554477X.2013.835682
21. WBTI Breastfeeding Trends UK (n.d). Open letter on the current crisis in breastfeeding in the UK – UK mothers are being let down. <https://ukbreastfeedingtrends.files.wordpress.com/2016/02/open-letter-uk-response-to-lancet-updated7.pdf>
22. UN Women (n.d). Convention on the Elimination of all Forms of Discrimination Against Women. <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article1>
23. Australian Bureau of Statistics, Pregnancy and Employment Transitions, Australia, Nov 2017. <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4913.0>
24. Smith JP, Cattaneo A, Iellamo A, Javanparast S, Atchan M et al. Review of effective strategies to promote breastfeeding: an Evidence Check rapid review brokered by the Sax Institute (www.saxinstitute.org.au) for the Department of Health, 2018. <https://www.saxinstitute.org.au/wp-content/uploads/Review-of-effective-strategies-to-promote-breastfeeding.pdf>
25. Smith, J. P., Javanparast, S., McIntyre, E., Craig, L., Mortensen, K., & Koh, C. (2013). Discrimination against breastfeeding mothers in childcare. *Australian Journal of Labour Economics*, 16(1), 65-90.
26. Chang, Y. S., Harger, L., Beake, S., & Bick, D. (2021). Women's and employers' experiences and views of combining breastfeeding with a return to paid employment: a systematic review of qualitative studies. *Journal of Midwifery & Women's Health*. 66, 641-655.
27. Rowbotham, S., Marks, L., Tawia, S., Woolley, E., Rooney, J., Kiggins, E., ... & Hawe, P. (2021). Using citizen science to engage the public in monitoring workplace breastfeeding support in Australia. *Health Promotion Journal of Australia*. doi: 10.1002/hpja.476.
28. UNICEF Australia (n.d). Children's rights, simplified. <https://www.unicef.org.au/our-work/information-for-children/un-convention-on-the-rights-of-the-child>
29. UN Human Rights (n.d). Joint statement by the UN Special Rapporteurs on the Right to Food, Right to Health, the Working Group on Discrimination against Women in law and in practice, and the Committee on the Rights of the Child in support of increased efforts to promote, support and protect breastfeeding. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20871&LangID=E>

30. International Labour Organization (n.d). C183 - Maternity Protection Convention, 2000 (No. 183). https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C183
31. United Nations Sustainable Development (n.d). Transforming our world: the 2030 Agenda for Sustainable Development. <https://sdgs.un.org/2030agenda>
32. Australian Government (2014). Sex Discrimination Act 1984. <https://www.legislation.gov.au/Details/C2014C00002>
33. Australian Government (2009), Fair Work Act 2009. <https://www.legislation.gov.au/Series/C2009A00028>
34. Australian Government Fair Work Ombudsman (n.d). National Employment Standards. <https://www.fairwork.gov.au/employment-conditions/national-employment-standards>
35. Schore, R. (1997). *Rethinking the brain*. New York, Families and work institute.
36. Stanley, F., Richardson, S., Prior M. (2005) *Children of the Lucky Country? How Australian society has turned its back on children and why children matter*. Macmillan, Sydney
37. Martin, B., Baird, M., Brady, M., Broadway, B., Hewitt, B., Kalb, G., . . . Xiang, N. (2014). PPL Final Report: Name of project: Paid Parental Leave Evaluation.
38. Hewitt, B., Strazdins, L., & Martin, B. (2017). The benefits of paid maternity leave for mothers' post-partum health and wellbeing: Evidence from an Australian evaluation. *Social Science & Medicine*, 182, 97-105. doi:10.1016/j.socscimed.2017.04.022
39. Smith, J. P., & Forrester, R. (2017). Maternal time use and nurturing: Analysis of the association between breastfeeding practice and time spent interacting with baby. *Breastfeeding Medicine*, 12(5), 269-278.