

Valuing Parenthood

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Options for Paid Maternity Leave: Interim Paper 2002

Sex Discrimination Unit



Human Rights and Equal Opportunity Commission

How to make a submission

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Closing Date: Friday 12 July 2002

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Abbreviations

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ABS	Australian Bureau of Statistics
ACIRRT	Australian Centre for Industrial Relations Research and Training
ACTU	Australian Council of Trade Unions
ADAM	Agreements Database and Monitor
AIFS	Australian Institute of Family Studies
AIRC	Australian Industrial Relations Commission
ALSS	Australian Living Standards Study
AMA	Australian Medical Association
AWA	Australian Workplace Agreement
AWARIS	Australian Workplace Agreements Research Information System
AWIRS	Australian Workplace Industrial Relations Survey
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CROC	Convention on the Rights of the Child
DEWR	Department of Employment and Workplace Relations
DEWRSB	Department of Employment, Workplace Relations and Small Business
EOWA	Equal Opportunity for Women in the Workplace Agency
FTB	Family Tax Benefit
FTB(A)	Family Tax Benefit Part A
FTB(B)	Family Tax Benefit Part B
HILDA	Household, Income and Labour Dynamics in Australia Survey
HREOC	Human Rights and Equal Opportunity Commission
ILO	International Labour Organization
ILO 183	Maternity Protection Convention
OECD	Organization for Economic Cooperation and Development
OSW	Office of the Status of Women
SEAS	Survey of Employment Arrangements and Superannuation
TFR	total fertility rate
UNICEF	United Nations Children's Fund
WAD	Workplace Agreements Database
WHO	World Health Organization

Foreword

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It has been a long journey from the male breadwinner family of the 1907 Harvester judgment to the modern families of today. The transformation of families has been one of the most significant social changes since the Second World War and arguably over the entire century. Landmark decisions by governments and industrial tribunals have endorsed and encouraged social changes along the way.

Modern Australian families live in a new social paradigm, where a majority of mothers are in part or full time work. Women and men struggle with combining responsibilities to their work and their families, not wanting to forego either part of life. Many couples decide to delay childbirth while they meet work and training commitments, and some decide not to have children at all.

The confluence of the demands of biology and economic security means that today families are faced with bringing up children at the same time that they are paying off high mortgages or establishing themselves in increasingly competitive workplaces. The inexorable shift to both women and men contributing to the family income and the increase in sole parent families mean it is highly unlikely that the numbers of working mothers will decline. A sensible family policy needs to work within this new framework and a national paid maternity leave scheme is one legitimate policy response to this paradigm shift.

Women are an integral part of the Australian workforce. While significant progress has been made to remove systemic discrimination in the labour force, women continue to suffer disadvantage because of their responsibility for bearing and caring for children. The social revolutions of the last half century have seen tremendous change, but have not resulted in men taking equal responsibility for child rearing or domestic labour. In workforce terms, this is reflected in pay inequities: women still only earn 84 cents in the male dollar, when comparing average weekly ordinary time earnings. When all earnings are taken into account, the disparity is even greater. A national paid maternity leave scheme would go some way to addressing this disadvantage and compensate women for their loss of income resulting from family responsibilities. It also supports working women

foreword

at a time of great vulnerability, the period surrounding childbirth. For this reason, paid maternity leave as a workforce entitlement is a starting assumption of this paper.

In developing this interim options paper I have consulted widely with employer and employee groups and a range of analysts, including critics, and many in the Commonwealth Public Service. They have generously given their time and knowledge and proposed a variety of approaches, informed and tested the arguments and proposed a range of options. I expect to further consult with these stakeholders over the next few months before the release of a final Options Paper.

There are a number of national objectives that a paid maternity leave scheme is potentially able to meet. Whether or not it can in fact do so depends on the nature of the scheme and for this reason the paper ranges widely; from the decline in fertility rates to the need to reduce indirect discrimination against women in the work force to the health and welfare needs of small babies and their mothers. Ambitious objectives generally require ambitious schemes and several such schemes are advanced in this interim options paper. The final paper is likely to be more specific in approach.

Currently Federal Government assistance for families is in excess of 10 billion dollars. The case for paid maternity leave requires government and the community to be satisfied that existing measures do not meet the objectives or fulfil the requirements of mandated paid maternity leave.

While at this stage realistic costings for a national paid maternity leave scheme are both premature and unavailable, a number of proponents of such a scheme estimate that certain options could cost in the vicinity of \$300 million a year, modest compared with some current government assistance programmes for families. Again, the final paper will gather the available data to clarify costs.

It should be emphasised that most of those consulted in the preparation of this paper were concerned that an individual employer funded scheme would prove disadvantageous to women in employment and to commercial competitiveness generally.

Paid maternity leave is one measure that recognises the social realities of modern Australian families, and supports them in their choices. You are invited to propose other or better alternatives as part of the national discussion I trust we will now have.

Pru Goward
Sex Discrimination Commissioner

Preface

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Background

In 1999, the Human Rights and Equal Opportunity Commission's (HREOC) Report of the National Pregnancy and Work Inquiry, *Pregnant and Productive*, recognised the importance of paid maternity leave to Australian women and recommended that the Federal Government commission economic modelling to assess the viability and consequences of such a scheme. This interim options paper has been developed in order to consult, inform the debate and examine the options for paid maternity leave in Australia. The economic modelling to support this debate has not yet been done.

The *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) identifies paid maternity leave as a right for women in order to eliminate discrimination on the ground of maternity and to ensure women's right to work.¹ By July 2002, Australia and the USA will be the only two OECD countries that do not have a paid maternity leave system. Eighteen of Australia's significant trading partners currently have some national scheme of paid maternity leave. This will increase to 19 when New Zealand's government-funded paid maternity leave scheme takes effect in July 2002.

The debate about the need for a paid maternity leave scheme in Australia is not new. The complaints record of HREOC continues to demonstrate that the onset of maternity is a major cause of discrimination against women and highlights the need for measures to eliminate this discrimination.

In recent months, paid maternity leave has received increased public attention, with the beginnings of a lively debate about the merits of such a scheme. The prominence

¹ *Convention on the Elimination of All Forms of Discrimination Against Women* GA Res 180 (XXXIV 1970), 19 ILM 33 (1980). CEDAW was ratified by Australia on 28 August 1983 and is annexed to the *Sex Discrimination Act 1984* (Cth) as a Schedule. Australia is a signatory to CEDAW. However, as outlined in Chapter 3 of this paper, Australia entered a reservation in respect of the maternity leave provision, art 11(2)(b).

of this issue reflects the high percentage of Australian women in paid work with dependent-aged children (and of two income families) and the increasing investment in women's education and training. It also reflects acknowledgement that women should not be disadvantaged in that investment by their decision to have a child. Paid maternity leave is also part of the broader issue of enabling people to better combine their work and family responsibilities, arguably as one of a suite of measures that would support these joint responsibilities.

The current level of interest in this issue makes it timely to reexamine whether existing support for maternity in Australia is sufficient, or whether there is a need for a national paid maternity leave scheme.

About this paper

The purpose of this paper is to provide a framework for discussing paid maternity leave options. The paper does not aim to provide a response to all of the questions surrounding possible arrangements for paid maternity leave. As an interim options paper, it raises some of these questions for consideration and seeks input from interested people, organisations and agencies.

The paper is divided into four sections.

Part A includes an introduction to the paper and provides an overview of the present circumstances of Australia's working mothers. This includes a statistical overview of women's labour force participation in Australia, with an emphasis on maternity leave and a description of current government and industrial arrangements for supporting maternity in Australia.

Part B provides an international context for considering paid maternity leave options. This includes a description of international standards in relation to paid maternity leave and a summary of paid maternity leave schemes operating internationally.

Part C sets out the possible objectives of a paid maternity leave scheme.

Part D outlines a number of criteria on which a paid maternity leave system could be based and potential options for establishing a paid maternity leave system in Australia.

Consultations and research

In developing this paper, the Sex Discrimination Commissioner has undertaken consultations on paid maternity leave with employer and industry groups, employee organisations, government, academics and community organisations.

There is a lack of statistical information, and in particular current statistical information, available about maternity, family responsibilities and work arrangements. This means that there are significant limitations on what can accurately be predicted about future provisions for paid maternity leave. HREOC did not have additional resources to conduct empirical research for this paper, and as such has had to rely on existing information. Future research in this area is vitally important and has been highlighted at relevant points throughout the paper.

The final options paper

A final options paper, including fully developed options for paid maternity leave, will be released later in 2002.

The final options paper will draw on public submissions received in response to this interim options paper. The interim paper will be distributed to all those who contributed to it and other interested individuals and organisations, for comment. In particular, correspondents will be invited to pay particular attention to the proposed options and to provide comment, additional analysis and detail on those they consider to be most relevant. Modelling or detailed analysis will be taken into account in the final paper.

Making a submission

Submissions are invited on the issues raised in this interim options paper. Electronic submission by email is encouraged.

Submissions should be sent to one of the following addresses:

By mail:

Paid Maternity Leave Submission
Sex Discrimination Unit
Human Rights and Equal Opportunity Commission
GPO Box 5218, Sydney, NSW 1042

By email:

paidmaternityleave@humanrights.gov.au

By fax:

02 9284 9789

The closing date for submissions is Friday 12 July 2002.

Part A : Background – working and having children in Australia

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CHAPTER 1: What is paid maternity leave?

1.1 Introduction

The desirability and nature of a national system of paid maternity leave is still being debated in Australia. This paper is a contribution towards that debate. In order to provide an effective starting point for a discussion of paid maternity leave options, the paper relies on an understanding of paid maternity leave as a workplace entitlement - a payment made to women that compensates for lost income at the birth of a child. The paper acknowledges that the Federal Government already provides various forms of support to women and families around childbirth; this paper is, in part, an attempt to identify what needs remain that a paid maternity leave scheme could usefully meet.

This chapter explores the characteristics of paid maternity leave and sets out the starting point for discussion in the paper. In particular, this chapter outlines the basis for a presumption in favour of paid maternity leave as a work related entitlement for women and the possible funding sources for such a scheme. One purpose of this paper is to open debate on the preferred scope and coverage of any future paid maternity leave scheme. The basic characteristics of paid maternity leave will therefore be discussed in detail at Chapter 10. Submissions are welcome on any of the points raised in this chapter.

1.2 A work related entitlement

This paper is concerned primarily with paid maternity leave as a work related entitlement and as such focuses on

women in the workforce and intending to return to work. One reason for considering paid maternity leave as a work related entitlement for women is that women's reproductive and parenting functions place them at a disadvantage relative to men in the workplace in terms of remuneration, appointment and promotion.² In particular, childbirth and the period shortly after constitute significant periods of absence from the workforce or reduced labour force activity. A system of paid maternity leave would go some way to addressing disadvantage and acknowledging the needs of women in the workforce who also bear and raise children. Women have high levels of attachment to the labour force in their prime child bearing years. Currently 70.8 per cent of women aged 25-34 participate in the labour force.³ This suggests that an effective system of support for maternity will be one that recognises the impact of paid work on the way women manage motherhood. These issues are discussed further in Chapter 7.

Further support for a system of paid maternity leave as a work related entitlement comes from the existence of current paid maternity leave provisions, which are tied to employment and offered primarily to women, but which are piecemeal and unevenly distributed throughout the workforce. The role of paid maternity leave in redressing women's workplace disadvantage and overcoming the current distribution of paid leave is further discussed in Chapter 6.

An additional reason for considering paid maternity leave as a work related entitlement is current international standards. Paid maternity leave or an equivalent form of compensation or benefit is acknowledged as a workplace right in international instruments such as the International Labour Organization's *Maternity Protection Convention*, 2000 (ILO 183)⁴ and Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).⁵ This international acknowledgement of the need for paid maternity leave is based on the health and welfare needs of new mothers as well as the financial disadvantage maternity confers upon women as the bearers and, for the most part, primary carers of children. Paid maternity leave as an international human right is further discussed in Chapter 3.

Finally, paid maternity leave as a work related entitlement has benefits for individual employers, the economy and society which are discussed in Chapters 8 and 9.

Any discussion of paid maternity leave also impacts on broader issues of work and family, and the support that society provides to all parents at the time of the birth of a child. It is beyond the scope of this paper to look at all work and family issues or all forms of maternity assistance provided to women. It should not be construed from this approach that the interests of mothers not in paid work are less important. Certainly this paper assumes that non-working mothers should receive appropriate financial support. Submissions are welcome, for example, on

² The work of the Human Rights and Equal Opportunity Commission (HREOC), and particularly the Sex Discrimination Commissioner, has identified the various ways in which women experience workplace disadvantage. See for example Human Rights and Equal Opportunity Commission *Glass Ceilings and Sticky Floors* HREOC Sydney 1997; Human Rights and Equal Opportunity Commission *Equal Pay Handbook* HREOC Sydney 1998; Human Rights and Equal Opportunity Commission *Sexual Harassment: A code of practice* HREOC Sydney 1998; Human Rights and Equal Opportunity Commission *Pregnant and Productive: It's a right not a privilege to work while pregnant* HREOC Sydney 2001.

³ ABS 6203.0 *Labour Force Australia* August 2001, 26.

⁴ art 4 International Labour Organisation *Convention Concerning the Revision of the Maternity Protection Convention (Revised)* 1952 International Labour Conference (88th: 2000: Geneva Switzerland).

⁵ art 11(2)(b) *Convention on the Elimination of All Forms of Discrimination Against Women* GA Res 180 (XXXIV 1970), 19 ILM 33 (1980).

whether or not it can be argued that the needs of non-working mothers should be considered separately from those of working mothers.

1.3 Maternity leave and parental leave

Maternity leave is a period of paid or unpaid leave from the workplace that is available to women at child birth, or upon the adoption of a child, as opposed to parental leave which is available to either parent. This paper makes a presumption in favour of maternity leave as the starting point for discussion. This presumption is made in recognition of current laws and practices favouring maternity leave; the fact that women bear children and breastfeed; the fact that women are overwhelmingly the primary carers of babies and are the most likely to suffer financial and career detriment following child birth. It also reflects the significance afforded to maternity under international instruments.

Debates about the relative merits of paid maternity leave and parental leave are acknowledged. The need for fathers to be active and fully engaged parents is an important consideration. This issue is further discussed in Chapter 10.

1.4 Funding paid maternity leave

The description of paid maternity leave as a work related entitlement often leads to the inference that it is the financial responsibility of employers. However, paid maternity leave may be financed by government, employers, employees or a combination of each.

In fact, most countries fund maternity leave through a combination of government, employer and employee contributions. This ranges from an entirely government funded scheme as in the United Kingdom and New Zealand to European social insurance schemes which involve contributions from employers, employees and government. Further along the spectrum are countries such as the Bahamas which provide for a 60-40 government-employer funded scheme and Haiti and Jamaica where the employer is mandated to be entirely responsible. Australia has mandated a generous period of unpaid leave to women employees who meet certain threshold criteria, but currently makes no other requirement of employers.

The International Labour Organization does not support a funding model for paid maternity leave in which employers are individually and directly liable for payments to employees unless such an arrangement is negotiated at the national level.⁶ This is discussed further at Section 3.2.3.

This paper is neutral about the preferred means of funding a paid maternity leave scheme, acknowledging the importance of stakeholders' views on this crucial point. Examples of various approaches by other countries to funding paid maternity leave are discussed in Chapter 4 and a number of options for funding a paid maternity leave system in Australia are discussed in Chapter 11.

⁶ art 6(8) International Labour Organisation *Convention Concerning the Revision of the Maternity Protection Convention (Revised) 1952* International Labour Conference (88th: 2000: Geneva Switzerland).

CHAPTER 2: Overview of current maternity leave arrangements

2.1 Introduction

This section of the paper provides an overview of available information on the ways in which women combine work, childbirth and the care of young children and current arrangements for both paid and unpaid maternity leave in Australia. More detailed information is included in Appendix A to this paper.

This information provides a useful backdrop for considering

- the relevance of paid maternity leave as a means for supporting women to better combine work and family responsibilities;
- the likely number of women who would access paid maternity leave; and
- the gap between existing arrangements and a national system of paid maternity leave.

2.2 Women, work and children in Australia

Women in Australia combine work and family differently, at childbirth and across their lifetimes. The majority of women (70.8 per cent) in the key childbearing years of 25-34 participate in the labour force.⁷ While the trend in the number of women participating in the labour force continues to increase,⁸ the number of children being born per woman has been falling since 1961.⁹ Australia's total fertility rate has fallen significantly during the last century, and is currently below the replacement rate.¹⁰ Women with higher income and educational attainment are likely to have few or no children.¹¹

The presence and age of young children has a direct impact on women's employment. Only two in five women with one child are in the labour force when that child is aged less than 12 months.¹² Women are less likely to work as the number of young children they have increases. Thirty three per cent of women with two or more children aged less than five years are in the labour force compared with 53 per cent of women with one child aged less than five years.¹³ Women in couple families with young children are significantly more likely to participate in the labour force than female sole parents with young children.¹⁴

Women increase their labour force participation as their children get older. Women with one child aged 3-4 years have the same participation rate as women with one child of primary school age.¹⁵

⁷ ABS 6203.0 *Labour Force Australia* August 2001, 26.

⁸ ABS 6203.0 *Labour Force Australia* August 2001, 16.

⁹ ABS 3301.0 *Births Australia* 2000, 13.

¹⁰ ABS 3301.0 *Births Australia* 2000, 13.

¹¹ ABS 3301.0 *Births Australia* 2000, 6.

¹² Peter McDonald "Work-family policies are the right approach to the prevention of low fertility" (2001) 9(3) *People and Place*, 17-27 at 18.

¹³ ABS 6224.0 *Labour Force Status and Other Characteristics of Families Australia* June 2000, 16, Table 8.

¹⁴ ABS 6224.0 *Labour Force Status and Other Characteristics of Families Australia* June 2000, 5-7.

¹⁵ Peter McDonald "Work-family policies are the right approach to the prevention of low fertility" (2001) 9(3) *People and Place*, 17-27 at 18.

Older studies have also shown that women are more likely to return to work if they are in work at the time of pregnancy.¹⁶

These data show that the presence of young children in a family does affect women's employment decisions, with women less likely to work if they have very young children, a number of pre-school aged children or if they are a sole parent. In addition, there is a distinct group of women who are choosing not to have children in preference to careers.

More detailed information is included in Appendix A to this paper.

2.3 Existing maternity leave arrangements

Australia currently has a variety of arrangements in place for maternity leave, as outlined below. While Australia's unpaid maternity leave arrangements are reasonably generous by international standards, existing paid maternity leave arrangements are limited, haphazard and fall significantly below what could be considered a national system. More detailed information is included in Appendix A to this paper.

2.3.1 Unpaid maternity leave

Legal provisions

The *Workplace Relations Act* 1996 (Cth) is the primary legislative instrument at the federal level which regulates employee entitlements. Under the *Workplace Relations Act*, permanent full time and part time employees who have 12 months continuous service with their employer have a minimum entitlement to 52 weeks of unpaid parental leave following the birth or adoption of a child. Except for one week, parents cannot take leave simultaneously as it is designed for the primary care-giver. Employees taking unpaid parental leave have a right to return to the position they held prior to taking leave, or to one nearest in status.¹⁷ State legislation generally mirrors the federal provision.¹⁸

In May 2001, an Australian Industrial Relations Commission (AIRC) decision granted access to unpaid parental leave to federal award-covered casual employees employed on a 'regular and systematic basis for several periods of employment or on a regular or systematic basis for an ongoing period of employment during a period of at least 12 months, and [who have] a reasonable expectation of on-going employment'.¹⁹ This new provision will be inserted into federal awards on application by the award parties on an award-by-award basis. Legislation in Queensland and New South Wales also covers casual employees who have regular, continuous service with one employer.²⁰

¹⁶ See for example Australian Institute of Family Studies *Maternity Leave in Australia: Employee and employer experiences – Report of a survey* Commonwealth of Australia Melbourne 1988, 4.

¹⁷ sch 14 cl 12 *Workplace Relations Act* 1996 (Cth).

¹⁸ s 54(1) *Industrial Relations Act* 1996 (NSW); s 18(2) *Industrial Relations Act* 1999 (Qld); sch 5 cl 1 *Industrial and Employee Relations Act* 1994 (SA); In Tasmania the provisions of the federal Act apply; sch 1A *Workplace Relations Act* 1996 (Cth) applies to Victorian workers; s 33 *Minimum Conditions of Employment Act* 1993 (WA); s 5 *Parental Leave (Private Sector Employees) Act* 1992 (ACT); in the Northern Territory the provisions of the federal Act will apply.

¹⁹ *Re Parental Leave - Casual Employees Test Case* Print 904631 31 May 2001 (2001) EOC 93-144, para 8.

²⁰ s 53 *Industrial Relations Act* 1996 (NSW); s16(1)(a) *Industrial Relations Act* 1999 (Qld).

Eligibility, take up and duration

The *Australian Living Standards Study* (ALSS) conducted in 1991-1992 found that three quarters of women in its full time employee sample were eligible for parental leave, while the number of eligible part time females was less than 40 per cent.²¹ Part time employees' lack of eligibility was most likely due to the high proportion of part time employees who worked on a casual basis. Some 47 per cent of full time male employees in the sample indicated that they were eligible for parental leave.

Comprehensive statistics are not available on the number of women who take unpaid maternity leave each year. While there were 249 600 births in Australia in 2000,²² the number of women who took unpaid maternity leave is likely to be significantly less than this. The figure would need to be adjusted downwards to account for women not in the labour force, women not eligible for unpaid maternity leave, and women who choose to resign from employment or take other forms of leave rather than take maternity leave.

A recent Australian Bureau of Statistics (ABS) survey of women in New South Wales estimated that 154 900 women aged 18-54 with a child under the age of 15 had taken unpaid maternity leave in the last five years.²³ ABS statistics on Victoria found that 44 per cent of women who took a break from employment to have a child took maternity leave.²⁴

In addition to the lack of information on the numbers of women taking unpaid maternity leave, there is also a lack of information on the duration of leave for those who do take unpaid maternity leave. A 1998 ABS survey of 232 women with children under six years, employed at the time the survey was conducted, found that 72 per cent of these women had returned to work within a year of the birth of their youngest child.²⁵ However, any leave taken was not necessarily unpaid maternity leave. A 1988 study by the Australian Institute of Families Studies (AIFS) found 65 per cent of women who were eligible for, and took, maternity leave²⁶ returned to work with the same employer within the 12 month statutory period.²⁷

2.3.2 Paid maternity leave

The most recent data on paid leave arrangements found that 38 per cent of female employees reported that they were entitled to paid maternity leave.²⁸ Therefore, approximately 62 per cent of women in employment do not have access to paid maternity leave.²⁹ When these women have children and by necessity take time away from the workplace, they receive no

²¹ Helen Glezer and Ilene Wolcott *Work and Family Life: Achieving integration* Australian Institute of Family Studies Melbourne 1995, 37- 8.

²² ABS 3301.0 *Births Australia* 2000, 8.

²³ ABS 4903.1 *Managing Caring Responsibilities and Paid Employment* NSW October 2000, 4.

²⁴ Cited in Bettina Cass "Expanding paid maternity/parental leave through family income support: Supporting early infant care as a social responsibility" (1994) *Social Security Journal* 3-18 at 12.

²⁵ ABS 6254.0 *Career Experience Australia* November 1998, 23.

²⁶ Maternity leave was defined in this study as 'time absent from work allowed by employers for an employee to have a baby...'. No differentiation was made between paid and unpaid maternity leave: Australian Institute of Family Studies *Maternity Leave in Australia: Employee and employer experiences – Report of a survey* Commonwealth of Australia Melbourne 1988, 15-16.

²⁷ Australian Institute of Family Studies *Maternity Leave in Australia: Employee and employer experiences – Report of a survey* Commonwealth of Australia Melbourne 1988, 52.

²⁸ ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

²⁹ ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

compensation for the income they lose.³⁰ Others may return to the workforce from financial necessity, leaving very young infants at home.

The 1995 *Australian Workplace Industrial Relations Survey* (AWIRS) found that 34 per cent of workplaces with more than 20 employees provided some form of paid maternity leave, potentially covering 36 per cent of employees working at workplaces with 20 or more employees.³¹

A nation-wide survey in 2000-01 by Equal Opportunity for Women in the Workplace Agency (EOWA) of firms with more than one hundred employees found that 23 per cent of employers offered some form of paid maternity leave to employees.³² The EOWA data suggest some increase in the provision of paid maternity leave provisions amongst Australia's largest organisations (from 15 per cent of organisations in 1997³³ to 23 per cent in 2000-01). However the number of organisations offering paid maternity leave between 1998-99 and 2000-01 has remained stable at 23 per cent.³⁴

Paid maternity leave by industrial instrument

In the absence of any legislated right to paid maternity leave, such leave may be provided for in awards, agreements or individual workplace policies. Awards and agreements are industrial instruments that regulate the employment relationship in terms of pay and conditions of employment. Awards are legally binding documents that set out the minimum entitlements of employees. Certified agreements are a form of collective agreement made between an employer and a group of employees, or a union acting as a representative of the employees. An Australian Workplace Agreement (AWA) is an individual agreement made between an employer and an employee.

A review of the top 100 federal awards by coverage of workers, undertaken by the then Department of Employment, Workplace Relations and Small Business (DEWRSB), found that only six awards included provision for paid parental leave.³⁵

The Workplace Agreements Database (WAD) found that, for the period 1997-2001, seven per cent of all federal certified agreements made provision for paid maternity leave.³⁶ For the same period, WAD found that 31 per cent of female employees covered by federal certified agreements potentially had access to paid maternity leave.³⁷

³⁰ As noted at Section 2.4 below, all women will potentially have access to some welfare based payments at the time of the birth of a child, which will offset lost income to a limited extent.

³¹ Alison Morehead et al *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey* Longman Melbourne 1997, 451.

³² Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

³³ Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 18.

³⁴ Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

³⁵ Research provided by the Department of Employment, Workplace Relations and Small Business dated 7 November 2000.

³⁶ Department of Employment and Workplace Relations *Workplace Agreements Database* dated 3 April 2002 unpublished data.

³⁷ Department of Employment and Workplace Relations *Workplace Agreements Database* dated 28 March 2002 unpublished data. The large number of employees can in part be explained by the inclusion of public sector employees with legislated rights to paid maternity leave.

0.7 per cent of AWAs operating in March 2002 provided for paid maternity leave.³⁸ The duration of the leave offered was either nine or 12 weeks.³⁹ This figure is even more negligible when it is considered that AWAs are generally limited to particular industries and apply to more highly skilled workers.

In addition to provision in awards and agreements, access to paid maternity leave may be provided for in individual company policies. Information about the extent and operation of company policies providing for paid parental leave is scant and represents a future area for research.

It is not possible from the available data to determine which industrial instrument is most commonly used to provide paid maternity leave. It is clear that paid maternity leave arrangements have not entered awards and agreements in any great numbers and that enterprise bargaining has not significantly increased women's access to paid maternity leave.

Paid maternity leave by organisation size and type

Available data suggest that paid maternity leave is predominantly available in the public sector and larger organisations.

The EOWA survey found that companies with more than 1,000 employees were more likely (38 per cent) to offer paid maternity leave than companies with between 100-499 employees (20 per cent).⁴⁰

The AWIRS of workplaces with more than 20 employees found that paid maternity leave was far more common in the public sector (59 per cent of workplaces offered some form of paid maternity leave, potentially covering 57 per cent of employees) than the private sector (23 per cent of workplaces offered some form of paid maternity leave, potentially covering 24 per cent of employees).⁴¹ AWIRS has not been repeated since 1995, leaving a gap in comprehensive information on paid maternity leave arrangements.

Paid maternity leave by employment status

The Survey of Employment Arrangements and Superannuation (SEAS) showed that highly skilled women in full time work have greater access to paid maternity leave than women in more marginal employment, with lower skills, and who are in part time or casual work. SEAS found the form of women's employment had a significant influence on access to paid maternity leave, with 51 per cent of women in full time work, 21 per cent of women in part time work and 0.4 per cent of women in casual employment reporting that they had access to paid maternity leave.⁴²

³⁸ Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor: Report 32* University of Sydney March 2002, 8.

³⁹ Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor: Report 32* University of Sydney March 2002, 8.

⁴⁰ Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

⁴¹ Alison Morehead et al *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey* Longman Melbourne 1997, 451.

⁴² ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

Paid maternity leave by occupation

The occupations with the highest incidence of paid maternity leave are those with high skill levels and higher education. SEAS found that 65 per cent of managers and administrators and 54 per cent of professionals had access to paid maternity leave.⁴³ In contrast, SEAS found that the occupations with the lowest incidence of paid maternity leave were elementary clerical, sales and service workers (18 per cent) and labourers and related workers (21 per cent).⁴⁴

Paid maternity leave by industry

EOWA found significant differences between industries in their research on private sector organisations with more than 100 employees. EOWA found the following rates of paid parental leave amongst organisations by industry: 56.4 per cent in the education sector; 33.5 per cent of property and business services; 30.1 per cent in the finance and insurance industry; 24.9 per cent in the health and community services industry; 15.4 per cent of manufacturing companies; 7.4 per cent of transport and storage organisations; 7.2 per cent of retail trade organisations; 5.2 per cent of accommodation, cafes and restaurants and 4.5 per cent of the wholesale trade organisations.⁴⁵

SEAS found a similar distribution amongst industries, with industries such as government administration and defence (68 per cent), finance and insurance (59 per cent) and education (57 per cent) having a higher incidence of paid maternity leave; while accommodation, cafes and restaurants (13 per cent), retail (20 per cent) and cultural and recreational services (28 per cent) had a lower incidence.⁴⁶

Duration of paid maternity leave

Available data suggest that there are very limited cases in Australia where women receive the international standard of a minimum of 14 weeks paid maternity leave and that in many cases available leave falls well short of this standard. It should be borne in mind that maternity leave may be taken before and after the birth of the child and usually expectant mothers take some leave before the birth.

Analysis by the former DEWRSB of federal agreements certified from January 1997 to June 2001 found that the average duration of paid maternity leave for this period was approximately six weeks, with the average in 2001 reaching almost eight weeks.⁴⁷ Paid maternity leave provisions in Certified Agreements ranged from one day to up to 18 weeks, with the most frequent periods offered being two weeks (39 per cent), six weeks (21 per cent) and 12 weeks (23 per cent).⁴⁸

⁴³ ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

⁴⁴ ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

⁴⁵ Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

⁴⁶ ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

⁴⁷ Department of Employment and Workplace Relations *Workplace Agreements Database* dated 3 April 2002 unpublished data.

⁴⁸ Department of Employment and Workplace Relations *Workplace Agreements Database* dated 3 April 2002 unpublished data.

Currently operating AWAs provide paid maternity leave of either nine weeks or 12 weeks.⁴⁹ However, it is important to note that women with AWAs are likely to be more highly qualified than other women in the workforce and therefore may have increased bargaining power.⁵⁰

For 2000-01, EOWA found that, amongst organisations with over 100 employees, 41 per cent of organisations that provide some form of paid maternity leave provided five to six weeks of leave,⁵¹ while another 33 per cent of these organisations provided nine to 12 weeks of paid maternity leave.⁵²

As was the case with availability of paid maternity leave, there was also variation across industries in the average length of paid maternity leave offered. Amongst federal Certified Agreements in 2001, the communication services industry offered on average 12 weeks, finance and insurance offered on average seven weeks, while retail trade and accommodation, cafes and restaurants both offered an average of four weeks.⁵³

In the public sector, the length of paid leave varies considerably from four weeks in South Australia to a maximum of 12 weeks at the federal level.

Comprehensive statistics on the duration of paid maternity leave provided for in individual company policies are not available.

Take up rate of paid maternity leave

Statistics are not available on the number of women who take paid maternity leave each year or on the length of leave they take.

For the period 1983-84 to 1988, the take up rate for paid maternity leave in the Commonwealth public sector was 'about 3.3 per cent of the female workforce and approximately 1.3 per cent of the total workforce'.⁵⁴

In 2000, the take up rate of paid maternity leave for the New South Wales public sector was 3.3 per cent of the female New South Wales public sector workforce, representing 1.9 per cent of the total New South Wales public sector workforce.⁵⁵

⁴⁹ Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor: Report 32* University of Sydney March 2002, 8.

⁵⁰ Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 28. See also the discussion on equity issues in Chapter 6.

⁵¹ Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

⁵² Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

⁵³ Department of Employment and Workplace Relations *Workplace Agreements Database* dated 3 April 2002 unpublished data.

⁵⁴ Submission by the Commonwealth Government of Australia to the *Parental Leave Case* Print J3596 26 July 1990 (1990) 36 IR 1 citing Department of Finance *Australian Public Service Statistical Year Book 1987-88* AGPS Canberra; and Department of Finance (2000) unpublished data in Lyn Fraser *Paid Maternity Leave in NSW Local Government: Employment equity aspects and anticipated take-up rate* Federated Municipal and Shire Council Employees Union of Australia Sydney 2001, 16.

⁵⁵ See the findings in the unpublished report of the Office of the Director of Equal Opportunity in Public Employment *The Workforce Profile* cited in Lyn Fraser *Paid Maternity Leave in NSW Local Government: Employment equity aspects and anticipated take-up rate* Federated Municipal and Shire Council Employees Union of Australia Sydney 2001, 17.

The Federated Municipal and Shire Council Employees Union of Australia, New South Wales Division has estimated that 'the take-up rate for paid maternity leave is likely to be around 1.2 per cent of the total local government workforce across NSW'.⁵⁶

2.3.3 Limitations with the data

A significant limitation with the majority of available data is that they only record whether workplaces or agreements provide some form of paid maternity leave. They do not provide information on the number of women who are actually eligible for paid maternity leave. Eligibility criteria, such as the need for 12 months service, mean that many women will not be eligible for paid maternity leave, even though they may work in organisations that provide for such leave. Employees that fall outside of these formal conditions, such as contract workers, will not have access to paid maternity leave. Similarly, casual employees' limited access to leave entitlements means that they will generally not have access to paid maternity leave, even where they work in organisations that offer this type of leave. This is highlighted by SEAS data which found that only 0.4 per cent of casual employees had access to paid maternity leave.⁵⁷ Further, paid maternity leave may only be offered by an organisation on a discretionary basis. This means that the figures outlined in this section of the paper are likely to significantly overstate the availability of paid maternity leave.

The available data do not record the number of women who take maternity leave. Even though paid maternity leave may be available, this does not mean that women actually use this leave. The take up rate of paid maternity leave is a crucial factor in determining the effectiveness of workplace provision of paid maternity leave. A range of factors, such as workplace culture or fear of affecting career prospects, may mean that women are unwilling to take paid maternity leave.

Significant gaps in data collection for arrangements and the availability of paid maternity leave remain. This limits the ability to assess the effectiveness of current paid maternity leave provisions. It also places limits on the ability of policy makers to predict behavioural responses to any changes in paid maternity leave provisions or to evaluate the effectiveness of alternative models of paid maternity leave. Future research in this area is vitally important.

More detailed information is included in Appendix A to this paper.

QUESTIONS

- Q.1 Are you aware of any more specific information that would assist calculation of the number of women who are in the Australian workforce at the time they have a baby?
- Q.2 Are you aware of any more specific information that would assist calculation of the number of women who are in the Australian workforce who are eligible for unpaid maternity leave?
- Q.3 Is there an accurate way to estimate take up rates for unpaid or paid maternity leave under current provisions based on current information about women and work?

⁵⁶ Lyn Fraser *Paid Maternity Leave in NSW Local Government: Employment equity aspects and anticipated take-up rate* Federated Municipal and Shire Council Employees Union of Australia Sydney 2001, 20.

⁵⁷ ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

- Q.4 Is there an accurate way to estimate take up rates for unpaid or paid paternity leave under current provisions based on current information about men and work?
- Q.5 Is it more likely that women or men would take leave if they were eligible for payments? Please provide details.

2.4 Government payments to parents⁵⁸

The Federal Government provides a range of income support payments to families to assist with the costs of raising children, including newborns. The stated aim of these payments is to recognise the needs and choices of both single and dual income families.

Government payments to parents through allowances and tax benefits are a means of supporting parents generally with the care of children, rather than directly assisting women to take leave from work at the time of childbirth. Government payments to parents are part of the framework of support for maternity in general and have been included for that reason.

The Human Rights and Equal Opportunity Commission (HREOC) recognises the need for government assistance to support the different circumstances of women, including those in work and those who are full time carers. Paid maternity leave should not be seen as a replacement to existing government support, but rather as a modification or addition that would support the needs of a particular group of women, namely women in employment. Paid maternity leave is only one of a suite of measures that would ideally be available to give women real choice in how they care for their children and how they combine work and family.

Current government payments to families include the following.

- Maternity Allowance: a means-tested payment of \$798.72 to help families with the extra costs associated with the birth of a new baby.⁵⁹
- Maternity Immunisation Allowance: a means-tested payment of \$208 paid when a child reaches 18 months old.⁶⁰
- Family Tax Benefit Part A (FTB(A)): a means-tested payment to help families with the costs of raising children up to 21 years and young people between 21 and 24 who are studying full time. Maximum rate of FTB(A) for each child aged under 13 years is \$122.92 per fortnight or \$3 204.70 per year.⁶¹
- Family Tax Benefit Part B (FTB(B)): a payment to provide extra assistance to single income families, including sole parents, with children up to 16 years and children between 16 and 18 years who are studying full time. The primary earner in a partnered

⁵⁸ This section is drawn from the Centrelink publications *Centrelink Information: A Guide to Payment and Services 2001-2002*: www.centrelink.gov.au/internet/internet.nsf/about_us/centrelink_info.htm; *Centrelink A Guide to Commonwealth Government Payments 20 March – 30 June 2002*: www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm and from Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001.

⁵⁹ *Centrelink A Guide to Commonwealth Government Payments 20 March – 30 June 2002*: www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm, 4.

⁶⁰ *Centrelink A Guide to Commonwealth Government Payments 20 March – 30 June 2002*: www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm, 5.

⁶¹ *Centrelink A Guide to Commonwealth Government Payments 20 March – 30 June 2002*: www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm, 2.

relationship and sole parents are not subject to an income test. Maximum rate for FTB(B) for a child under 5 years is \$105.56 per fortnight or \$2 752.10 per year.⁶²

- Parenting Payment: a means-tested income support payment to assist people, particularly low income families with children by providing an independent income.⁶³
- Child Care Benefit: means-tested assistance with the cost of child care for long day care, family day care, in-home care, occasional care, outside school hours care, vacation care and registered care.⁶⁴
- Proposed Baby Bonus (the Taxation Law Amendment (Baby Bonus) Bill 2002 is currently before Parliament): a refundable tax offset of up to \$2 500 a year paid for each of five years following the birth of a child, where the primary carer has given up or reduced paid employment to care for the child.⁶⁵

More detail on these payments is provided in Appendix A.

As can be seen from the above descriptions, many of these government payments actually relate to a significantly larger group of children and young people than newborns.

Government expenditure in 2000-01 on Maternity Allowance and Maternity Immunisation Allowance was \$218 million.⁶⁶ These payments both constitute a payment to families to support young children. Government expenditure in 2000-01 on FTB(A) and FTB(B) was \$10.087 billion.⁶⁷ While FTB does provide financial assistance to families with young children, it also extends to much older children. Government spending on the Baby Bonus is projected to reach \$510 million in 2005-06.

Of all government payments to families, Maternity Allowance comes closest to representing an alternative to paid maternity leave. However HREOC considers that \$798.72 falls significantly short of the international minimum standard of 14 weeks paid maternity leave, being less than one week of average weekly earnings⁶⁸ or about four and a half weeks of unemployment benefits.⁶⁹ It is also means-tested and operates as a welfare measure rather than a work related entitlement.

Existing government payments to parents recognise the social benefit that accrues from reproduction. The amount currently provided, however, falls short of income protection or

⁶² Centrelink *A Guide to Commonwealth Government Payments 20 March – 30 June 2002*: www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm, 4.

⁶³ Centrelink *A Guide to Commonwealth Government Payments 20 March – 30 June 2002*: www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm, 6.

⁶⁴ Centrelink *A Guide to Commonwealth Government Payments 20 March – 30 June 2002*: www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm, 5.

⁶⁵ Taxation Law Amendment (Baby Bonus) Bill 2002 Explanatory Memorandum para 1.4.

⁶⁶ Department of Family and Community Services *Annual Report 2000-2001* Commonwealth of Australia Canberra 2001, 42.

⁶⁷ Spending on FTB(A) and FTB(B) constitutes \$10.076 billion delivered via the social security system (Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, 42) and \$11 million delivered via the tax system (Treasury *Tax Expenditure Statement 2001* Commonwealth of Australia Canberra 2001, 7). Note that the amount delivered via the tax system is an estimate for spending in 2000-01 as opposed to the social security figure which is actual expenditure.

⁶⁸ Based on average weekly earnings of \$848.60. This figure is the seasonally adjusted average weekly earnings for November 2001 using full time adult ordinary time earnings. See ABS 6302.0 *Average Weekly Earnings* November 2001, 5.

⁶⁹ Based on the single rate of Newstart Allowance of \$369.00 per fortnight. See Centrelink *A Guide to Commonwealth Government Payments 20 March – 30 June 2002*: www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm, 11.

meeting the costs associated with a newborn child and as such may not be considered to constitute paid maternity leave.

QUESTIONS

- Q.6 Do you consider that government support for families with newborn children may be considered to approximate paid maternity leave?
- Q.7 Do you consider that government support for families with newborn children is appropriately targeted? If not what additional or alternative support do you consider is required?

2.5 Lack of statistical information

As noted in Section 2.3.3 above, there is a serious lack of statistical information available about maternity, family responsibilities and work arrangements. In addition, much of the available information is outdated and limited in scope. This means that it is difficult to get a clear picture of current arrangements for maternity leave in Australia. It also places significant limitations on what can accurately be predicted about future provisions for paid maternity leave.

In 1999, as part of the Report of the National Pregnancy and Work Inquiry, *Pregnant and Productive*, HREOC recommended

that the Minister for Employment, Workplace Relations and Small Business provide funding to the Sex Discrimination Commissioner to undertake economic modelling and analysis of possible paid maternity leave options. The project, to be conducted in consultation with the Department of Employment, Workplace Relations and Small Business, would also involve extensive and close consultation with all relevant and interested parties.⁷⁰

HREOC did not have additional resources to conduct empirical research for this paper. Future research in this area is vitally important.

QUESTIONS

- Q.8 Do you have any more information than provided in this paper on current arrangements that women and their families make to support themselves at the time of the birth of a new child?

⁷⁰ rec 46, Human Rights and Equal Opportunity Commission *Pregnant and Productive: It's a right not a privilege to work while pregnant* HREOC Sydney 2001, 229.

Part B - International context

.....

CHAPTER 3: International obligations

3.1 Introduction

A number of international instruments recognise paid maternity leave as a work related entitlement for women. Paid maternity leave, in these instruments, is one of a series of measures that states parties are encouraged to take to redress discrimination against women and support them in their mothering role.

Acceptance of these international standards is demonstrated by the widespread provision of and support for paid maternity leave internationally, as set out in Chapter 4.

3.2 Paid maternity leave in international instruments

Paid maternity leave is included in CEDAW and ILO 183 as a specific measure that fulfils state obligations to provide women with equal employment rights.

3.2.1 CEDAW

The right of all women to work is one of the central rights expressed in CEDAW. CEDAW also states, in relation to women's work, that women should not be discriminated against on the ground of maternity.⁷¹ As a means of fulfilling these rights, CEDAW specifies the measures that states parties should take to achieve these rights.

⁷¹ art 11(2).

Paid maternity leave is explicitly included as a measure which is required to be introduced by states parties.

Article 11

- 2 In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

...

- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; ...

The provision of paid maternity leave was regarded by the CEDAW working party as being an appropriate measure to support motherhood through the assumption by society of a share of the costs of raising a child.⁷² The working party identified paid maternity leave as one of a number of measures which enable 'women to combine the fulfilment of family and maternal obligations with activity in the labour force'.⁷³ In CEDAW the provision of paid maternity leave is seen as distinct from the general provision of assistance to parents who want to combine work and family responsibilities.⁷⁴ Paid maternity leave is a measure which specifically addresses the child-bearing role of women.

In discussing the implementation of measures such as paid maternity leave, the working party acknowledged the need to limit, as much as possible, measures which discourage employers from hiring women.⁷⁵ No reference was therefore made concerning who should bear the costs of paid maternity leave, or how these costs should be calculated.

Of CEDAW's 163 signatories, 158 provide paid maternity leave. The five nations that are signatories, but do not provide paid maternity leave are Australia, Lesotho, New Zealand, Papua New Guinea, Swaziland and the United States of America. New Zealand recently announced that it would introduce paid parental leave from 1 July 2002.

3.2.2 Australia's Response to CEDAW

Australia is a signatory to CEDAW. Australia enacted the *Sex Discrimination Act 1984* (Cth) to give effect to certain provisions in CEDAW. In particular, the Sex Discrimination Act prohibits discrimination on the grounds of sex, marital status, pregnancy or potential pregnancy; dismissal on the basis of family responsibilities; sexual harassment; and promotes the principle of equality between men and women.

⁷² Lars Adam Rehof *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women* Martinus Nijhoff Publishers Dordrecht 1993, 127.

⁷³ Lars Adam Rehof *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women* Martinus Nijhoff Publishers Dordrecht 1993, 126.

⁷⁴ art 11 para 2(c) deals specifically with assistance to parents for family responsibilities. The need for a separate Convention providing assistance to parents with family responsibilities was raised by the delegate from Finland. See Lars Adam Rehof *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women* Martinus Nijhoff Publishers Dordrecht 1993, 125.

⁷⁵ Lars Adam Rehof *Guide to the Travaux Préparatoires of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women* Martinus Nijhoff Publishers Dordrecht 1993, 125.

When Australia ratified CEDAW on 28 July 1983, it did so with the specific exclusion of Article 11(2)(b), the provision concerning paid maternity leave. Australia entered the following reservation.⁷⁶

The Government of Australia states that maternity leave with pay is provided in respect of most women employed by the Commonwealth Government and the Governments of New South Wales and Victoria. Unpaid maternity leave is provided in respect of all other women employed in the State of New South Wales and elsewhere to women employed under Federal and some State industrial awards. Social Security benefits subject to income tests are available to women who are sole parents.

The Government of Australia advises that it is not at present in a position to take the measures required by article 11 (2) to introduce maternity leave with pay or with comparable social benefits throughout Australia.

In 1999, HREOC's *Pregnant and Productive* Report recommended that the Federal Government remove its current reservation to Article 11 (2)(b).⁷⁷

The Government responded to this recommendation stating that

Australia lodged a reservation to Article 11(2)(b) in 1983. That Article asks Member States "to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances".

Since that time, there have been significant changes to workplace relations legislative provisions and income support arrangements. The *Workplace Relations Act* 1996 provides for up to 52 weeks of parental leave after 12 months continuous service. Maternity Allowance provides a means-tested lump sum payment to assist families with the additional costs incurred at the time of birth of a baby. The maternity payment has been designed to take into account income foregone while not participating in the paid workforce around the time of the birth of a child.

The removal of a reservation to any international treaty is subject to Australia's domestic treaties process. This requires extensive consultation with State and Territory governments and the community, and the agreement of both Houses of the Commonwealth Parliament.⁷⁸

This process is yet to be initiated and Australia's reservation to CEDAW remains in place.

3.2.3 ILO 183

In June 2000 the International Labour Organisation (ILO) adopted a new Maternity Protection Convention (ILO 183) and Recommendation (Recommendation 191).⁷⁹ The Convention replaces the 1952 Maternity Protection Convention 103.

ILO 183 applies to all employed women⁸⁰ and provides for a minimum of 14 weeks maternity leave.⁸¹ Recommendation 191 encourages states parties to extend the period of leave to 18 weeks.⁸²

⁷⁶ Australia has also entered a reservation to CEDAW in respect of combat duties.

⁷⁷ rec 44 Human Rights and Equal Opportunity Commission *Pregnant and Productive: It's a right not a privilege to work while pregnant* HREOC Sydney 2001, 229.

⁷⁸ *Government Response to the National Pregnancy and Work Inquiry Report*: www.law.gov.au/agh/home/legal/pol/cld/human/govt%5Fresponse.html 2000.

⁷⁹ International Labour Organization *Convention Concerning the Revision of the Maternity Protection Convention (Revised) 1952 and Maternity Protection Recommendation* International Labour Conference (88th: 2000: Geneva Switzerland).

⁸⁰ art 2.

⁸¹ art 4.

Article 6 of ILO 183 sets out the cash benefits that should be paid to women on maternity leave,⁸³ or who experience illness or complications in relation to their pregnancy.⁸⁴ Article 6 sets out minimum standards for maternity benefits in the following terms.

Article 6

1. Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leave referred to in Articles 4 or 5.

2. Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.

3. Where, under national law or practice, cash benefits paid with respect to leave referred to in Article 4 are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.

4. Where, under national law or practice, other methods are used to determine the cash benefits paid with respect to leave referred to in Article 4, the amount of such benefits shall be comparable to the amount resulting on average from the application of the preceding paragraph.

....

8. In order to protect the situation of women in the labour market, benefits in respect of the leave referred to in Articles 4 and 5 shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. An employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer's specific agreement except where:

(a) such is provided for in national law or practice in a member State prior to the date of adoption of this Convention by the International Labour Conference; or

(b) it is subsequently agreed at the national level by the government and the representative organisations of employers and workers.

Unlike other international treaties or conventions which countries adopt through a process of signing and ratifying, ILO Conventions have no signatory process. They are enforced only once a country has ratified the Convention. Since its adoption in 2000 three countries, Bulgaria, Italy and Slovakia have ratified this Convention. Forty countries ratified its predecessor, ILO 103.

3.2.4 Australia's Response to ILO 183

Australia has not ratified ILO 183. Australia responded to this Convention by noting that Australia does not have a tradition of social insurance and that employers fund various leave entitlements such as sick leave, long service leave and maternity leave where paid.⁸⁵ Further,

⁸² rec 1(1) *Maternity Protection Recommendation*.

⁸³ As defined in art 4.

⁸⁴ As set out in art 5.

⁸⁵ International Labour Organization *Maternity Report V(1) Protection at Work Revision of the Maternity Protection Convention (Revised) 1952 (No. 103) and Recommendation 1952 (No. 95)* International Labour Conference 87th Session Geneva 1999, 45-47.

Australia indicated that it is not appropriate to require all employers, particularly small employers, to fund maternity leave.⁸⁶

QUESTIONS

Q.9 If a paid maternity leave scheme were to be introduced in Australia what components would it need to include in order to meet relevant international agreements?

⁸⁶ International Labour Organization *Maternity Report V(1) Protection at Work Revision of the Maternity Protection Convention (Revised) 1952 (No. 103) and Recommendation 1952 (No. 95)* International Labour Conference 87th Session Geneva 1999, 45-47.

CHAPTER 4: International comparisons

4.1 Introduction

Many of the countries identified as Australia's major trading partners⁸⁷ and other Organization for Economic Co-operation and Development (OECD) member countries provide paid maternity leave. See the table at Appendix B for more detailed information on country provisions.

Eighteen (soon to be 19) of Australia's top 20 trading partners provide some form of paid maternity leave. In 14 of these countries, paid leave is a statutory entitlement. These countries share the same economic concerns as Australia, that is, the desire to remain competitive and productive in a globally competitive market. Unlike Australia, they provide paid maternity leave.

The OECD is made up of 30 developed countries. They are committed to the market economy and pluralistic democracy, and together these countries produce two thirds of the world's goods and services. All of these countries, except for Australia and the United States, provide paid maternity leave. Until recently New Zealand was the only other OECD member country that did not offer some form of paid leave, however it has legislated for the introduction of a paid parental leave scheme to be introduced from 1 July 2002. The majority of OECD member countries provide paid maternity leave schemes funded by social security or social insurance.

The periods of paid leave offered in these countries range from two to five months. Responsibility for payment varies across nations and reflects institutional and social arrangements, including preferences for social insurance or welfare models.

Three types of models are identified.

4.2 Social security and social insurance schemes

Social insurance is a scheme run by the state whereby employed and self employed people pay contributions from their earnings into a social insurance fund. Employers and the state also contribute to the social insurance fund. Members may claim from the fund if various contingencies occur.

Nine of Australia's trading partners provide either a social insurance or social security funded paid maternity leave scheme: Canada, France, Germany, Italy, Japan, the Netherlands, Taiwan, the United Kingdom and Vietnam. Twenty four OECD member countries fall into this group: Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxemburg, Mexico, the Netherlands, New Zealand (as of 1 July 2002) Norway, Poland, Portugal, Spain, Sweden, Turkey, and the United Kingdom.

In Sweden, paid maternity leave is funded through health and parental insurance. Employers provide the majority of contributions to these social insurance funds. The remaining

⁸⁷ Australia's top 20 trading partners are Japan, United States, China, Republic of Korea, New Zealand, the United Kingdom, Singapore, Taiwan, Germany, Malaysia, Indonesia, Italy, Hong Kong, Thailand, Saudi Arabia, Canada, France, Vietnam, India and The Netherlands as cited in Department of Foreign Affairs and Trade *Composition of Trade Australia 2000-01* Commonwealth of Australia Canberra 2001, 50.

contributions are made by government and employees. A general employee's contribution is made through health insurance contributions, which are charged in the form of a tax on employees and self employed people. All residents of Sweden may access this social insurance system provided they earn a base amount, or no more than seven and a half times this base amount. This amount is statistically determined annually by the government.⁸⁸

In Taiwan, contributions are made to insurance on a ratio of 2: 7: 1 by employees, employers and government. The funds pay for a range of benefits including unemployment benefits, sickness and disability benefits and, in some cases, holiday and workers compensation. Only people who are fully insured and can satisfy the relevant contribution requirements qualify for the benefits. Often members of the workforce such as civil and public servants, or casual workers are only insured for a limited number of benefits, if at all.

In the United Kingdom, employers pay employees the statutory maternity pay, which they then claim back from the Inland Revenue. To be eligible for this payment, which currently is paid for up to 18 weeks, pregnant employees must have been employed by their present employer for at least 26 weeks, 15 weeks before the baby is due, and earn at least £67 (before tax) per week within a specified period. Employed women not eligible for this payment may qualify for a maternity allowance. In November 2001 the United Kingdom introduced legislation into Parliament which, if passed, will see a new framework for maternity leave introduced from 2003. Under the new framework both the period of leave and amount paid will be increased.⁸⁹

In Canada, the government funded Employment Insurance Program provides maternity, parental and sickness benefits. The maternity benefits are available for a maximum of 15 weeks. The basic benefit rate is 55 per cent of the woman's average insured earnings up to a maximum payment of \$413 per week. The payment is a taxable income, meaning Federal taxes will be deducted. To be eligible for the benefit the woman must show that her regular weekly earnings have decreased by more than 40 per cent and she has accumulated 600 insured hours in the last 52 weeks.⁹⁰

New Zealand recently announced that it would introduce a social security funded scheme for paid parental leave from July 2002. The New Zealand plan provides 12 weeks of paid leave to women and men currently eligible for parental leave; that is 12 months service with an employer for 10 or more hours per week.⁹¹ The payment is set at a maximum level of NZ\$325 and will be taxed. Government estimates show that up to half of female wage and salary earners will receive 80 per cent of their earnings and about one third 100 per cent of previous earnings. The period of paid leave may be taken by a natural or adoptive parent and can be shared with a spouse or same sex partner where they would have been eligible for parental leave. Employees will remain eligible for 52 weeks unpaid leave.⁹²

⁸⁸ Swedish Institute *Fact Sheet on Sweden* Swedish Institute Stockholm 2001, 3; Laura Jordan *Background Information on European and Canadian Parental Leave Laws* OLR Research Report Connecticut 1999, www.cga.state.ct.us/ps99/rpt/olr/htm/99-r-1214.htm

⁸⁹ Department of Trade and Industry *Work and Parents: Competitiveness and choice* updated 20 November 2001: www.dti.gov.uk/er/individual/workparents_features.htm.

⁹⁰ Human Rights Development Centre *Maternity, Parental and Sickness Benefits* updated 8 April 2002: www.hrdc-drhc.gc.ca/ae-ei/pubs/in201_e.shtml#Who.

⁹¹ *Parental Leave and Employment Protection Act 1987* (NZ).

⁹² Hon Margaret Wilson Minister for Labour and Hon Laila Harré Minister for Women's Affairs and Associate Minister *Labour Paid Parental Leave – A Great Start* Media Statement New Zealand, 7 November 2001.

The amount paid by social insurance funds or social security schemes for maternity leave varies from 55 per cent of average weekly insurable earnings in the qualifying weeks in Canada to 100 per cent of the basic daily wage, in a number of European nations, including France. The duration of leave varies from eight weeks to six months.

In a number of these countries collective agreements may require an employer to top up a woman's wage whilst she is on maternity leave in addition to payments received under social insurance schemes.

4.3 Employer funded

Six of Australia's major trading partners require employers to pay for maternity leave: China, Korea, Malaysia, Indonesia, Hong Kong, and Saudi Arabia.

This is not the ILO's preferred source of payment for paid maternity leave because of the possible impact of discrimination against women in employment. The Government of the Republic of Korea has expressed concerns that requiring employers to fund paid maternity leave may disadvantage women, and has noted this concern to the United Nations, indicating that discussions on distributing the costs among social partners are underway.⁹³

Employer responsibility for payment does not necessarily reduce the amount paid or the length of the leave available as compared to other countries where paid maternity leave is sourced from social security or social insurance schemes or combinations of social security/social insurance and employer funded schemes.⁹⁴ For example, Malaysia, China and Indonesia each provide for three months employer funded maternity leave on full pay.

4.4 Combination of employer and social security

Three of Australia's major trading partners provide a combination of mandated employer and social security funded maternity leave: India, Singapore and Thailand. Two OECD countries, Switzerland and Germany, provide employer and social security funded maternity leave. These schemes differ from social insurance models because they involve separate payments by the employer and government rather than a single payment from pooled funds.

In Thailand, the employer pays the employee full wages for 45 days of their leave. Once this 45 day payment has been exhausted, social security will pay 50 percent of the wage, up to a maximum fixed amount for a maximum 60 day period.

In India employers are required to pay maternity leave unless the woman is entitled to social security payments. Payment is made for 12 weeks at the average daily wage.

In Singapore, employer funding dominates. Government funding in Singapore was introduced in April 2001 in direct response to Singapore's declining birth rate, which currently stands at 1.48 children per woman. The Singaporean Government has adopted a policy to encourage families to have three children or more. Former arrangements required employers to pay eight weeks maternity leave at full pay in respect of a family's first two children. The lack of paid

⁹³ United Nations Women's Anti-Discrimination Committee *Anti-Discrimination Committee Told of Adverse Effects of Economic Crisis on Situation of Women in Republic of Korea* Press Release WOM/1069 7 July 1998.

⁹⁴ International Labour Organization *More than 120 Nations Provide Paid Maternity Leave, Gap in Employment Treatment for Men and Women Still Exist* Press Release Washington 15 February 1998.

leave for a third child was seen as an impediment to increasing the birth rate. Under the new arrangements, employers are required to pay maternity leave for a third child and then recoup the payment from the government.

In Switzerland, the employer provides full pay to employees for a minimum of three weeks. If the employee has taken out special maternity insurance, these funds will pay between 70 – 80 per cent of the woman's wage for the period of leave which the employer will not cover. Usually sickness insurance funds provide payment for the minimum standard period of ten weeks leave, with six weeks being after the birth.

In Germany, women who have been paying into compulsory social insurance funds are entitled to receive their average net wage from six weeks before the birth date. Their average wage is based on the amount earned in the last 13 weeks before they became pregnant. Up to a certain amount of this will be paid per day by the state as a maternity benefit. The difference between this amount and the full average salary is usually covered by a supplement paid by the employer. In order to benefit from the state maternity pay a woman must have been a member of the compulsory state social security scheme, for 12 weeks between the tenth and fourth month before taking the payment. Non insured women receive a smaller amount paid by the state.⁹⁵

4.5 Parental or family leave

Four of Australia's main trading partners provide for paid paternity or family leave: Canada, France, Italy and New Zealand (to be introduced 1 July 2002) and a further three provide this leave unpaid.⁹⁶ Eighteen OECD member countries provide for paternity or family leave.⁹⁷ In all but five of these countries the leave is paid.⁹⁸ In most cases either parent can take this leave on top of a woman's right to maternity leave and in some cases the leave may be taken at any time up until the child is eight years of age.

The provision of extended periods of parental or family leave is consistent with the ILO standard and its recommendation that longer periods of maternity leave be granted where possible.

⁹⁵ Equal Opportunity Commission "Maternity, paternity and parental benefits across Europe – Part One" (2001) 329 *European Industrial Relations Review*, 21-27 at 26.

⁹⁶ Japan, the Netherlands and the United Kingdom.

⁹⁷ Austria, Belgium, Canada, Denmark, Finland, France, Hungary, Iceland, Italy, Japan, the Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, the United Kingdom,

⁹⁸ Japan, the Netherlands, Portugal, Spain and the United Kingdom.

Part C - Objectives of paid maternity leave

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CHAPTER 5: Introduction

It can be argued that paid maternity leave can go some way to meeting a number of identified national policy objectives. The structure of any paid maternity leave scheme may be varied depending on the objectives identified.

Possible objectives of a paid maternity leave scheme identified during consultations on this paper include

- ensuring that women are not disadvantaged in their employment through their intrinsic role in child bearing;
- maintaining a committed and competitive workforce;
- protecting significant capital investment by the government in the education and training of women;
- supporting economic security for women throughout their lives;
- accommodating the position of women as a significant proportion of the available skilled labour pool, thus enhancing Australia's economic competitiveness;
- supporting the health and welfare of mothers and newborn children;
- assisting women and men to manage their work and parental responsibilities so that the needs of children and families may be met in the context of modern Australian society;
- ensuring that working women do not unwillingly delay or avoid having children; and
- addressing the declining national birth-rate and its consequences for Australia as a society in the future, and its future tax and economic base.

Identifying and assessing relevant objectives for a paid maternity leave scheme is important in considering the possible characteristics of such a scheme, in particular the duration of paid leave, eligibility requirements, size of payments and funding source. In addition to this, there might be other policy measures which better or already meet these objectives.

Part C discusses the various policy objectives for paid maternity leave under the following headings.

- Equity issues, including addressing systemic discrimination, fairness to all employees, supporting women's choices and developing socially responsive workplaces (Chapter 6).
- Supporting women and families, including the health and welfare of mothers and newborn children and the economic security of women and their families (Chapter 7).
- Benefits to employers, including discussion of the commercial benefits of paid maternity leave (Chapter 8).
- Benefits to society, including economic benefits and the achievement of a sustainable population level (Chapter 9).

Paid maternity leave alone will not fully meet these policy objectives. Social and economic issues such as women's health, workplace equity and employment security are complex and cannot be guaranteed by any single action. Instead, paid maternity leave should be seen as one of a range of measures that could be used to meet these objectives.

QUESTIONS

- Q.10 Which objectives, whether discussed in this paper or not, do you consider should be the primary objectives of a paid maternity leave system? Why?
- Q.11 Do you consider that a paid maternity leave system would be able to meet any or all of these objectives? If so, to what extent?
- Q.12 Are there particular design elements for a paid maternity leave scheme that would be crucial for achieving particular objectives? If so, what are those elements?
- Q.13 Are you aware of any additional international or Australian evidence or studies that document the effectiveness of paid maternity leave in achieving any of these objectives?

CHAPTER 6: Objective — achieving equity

6.1 Addressing workplace disadvantage

6.1.1 Introduction

Women continue to experience unequal treatment in the workplace because of their role in bearing and caring for children. This unequal treatment can take the form of specific acts of discrimination such as dismissal as a result of pregnancy or childbirth, reduced wages or diminished workplace responsibilities. Some employers are unwilling to promote women with children. Even without discrimination, the cost and responsibilities of child bearing and rearing usually fall disproportionately on mothers. While families may agree to this allocation of responsibilities, the participation of women in unpaid as well as paid work frequently results in generalised workplace disadvantage for women. This level of disadvantage includes the disadvantage some women experience in performing paid work of low personal satisfaction.

One of the underlying principles of the *Sex Discrimination Act* 1984 (Cth) (and CEDAW) is that women and men should be treated equally. Equality does not require that men and women always receive identical treatment, but that any treatment does not unfairly disadvantage one sex. Men and women cannot and should not be treated the same in relation to the areas of life in which women are unique: pregnancy, childbirth and breastfeeding. In this sense, protection from discrimination and benefits for workers before and after childbirth are not exceptions to equal treatment but rather conditions for non-discrimination. Paid maternity leave is one of a raft of measures that can ameliorate women's workplace disadvantage.

6.1.2 Women and employment discrimination

Australia currently has legislation that prohibits employment discrimination on the basis of sex and pregnancy and provides some protection against discrimination based on family responsibilities. At the federal level, the relevant legislation is the *Sex Discrimination Act*.⁹⁹

The capacity of women to combine work and mothering responsibilities has been improved substantially by the existence of anti-discrimination legislation making maternity and pregnancy discrimination unlawful. Industrial and workplace relations legislation also provides protection against dismissal for pregnant employees and their partners, as well as guaranteeing a right to return to their employment after a period of leave.¹⁰⁰

However, women continue to experience discrimination at work based on pregnancy, breastfeeding, return to work issues and family responsibilities. In the year ending October 2001, pregnancy and family responsibilities discrimination alone made up 18 per cent of all complaints to the HREOC under the *Sex Discrimination Act*.¹⁰¹

⁹⁹ The relevant sections are s 5, which makes sex discrimination unlawful and s 7 which makes discrimination on the basis of pregnancy unlawful. See s 7A for discrimination on the grounds of family responsibilities. Family responsibilities discrimination is only unlawful under the *Sex Discrimination Act* where it involves dismissal.

¹⁰⁰ See for example sch 14 cl 12 *Workplace Relations Act* 1996 (Cth). This Act only applies to full time and part time employees. Casual employees may have these rights under state legislation or awards.

¹⁰¹ *Human Rights and Equal Opportunity Commission Annual Report 2000 – 2001* HREOC Sydney 2001, 73. Note that, in addition, many complaints of family responsibilities are brought as indirect sex discrimination complaints under the *Sex Discrimination Act*.

There is an argument that providing paid maternity leave could increase the incidence of sex-based discrimination. Were paid maternity leave provided solely by employers, they may seek to avoid this cost by preferring male employees over women of child bearing age. This is an important factor to consider in the design of a paid maternity leave scheme.

Paid maternity leave and indirect sex discrimination

It is arguable that a failure to provide paid maternity leave could constitute indirect sex discrimination under the Sex Discrimination Act. Indirect discrimination occurs when a condition, requirement or practice in the workplace appears to apply equally but is actually discriminatory in its effect.

Indirect sex discrimination under the Sex Discrimination Act arises where a person imposes, or proposes to impose a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging women or men and which is not reasonable in the circumstances.¹⁰² It is arguable that a failure to provide paid maternity leave imposes a requirement that disadvantages women.

In the case of maternity rights the [discriminatory] requirement could be identified as one that requires parental leave to be taken as unpaid leave. It is clearly arguable that such a requirement has the effect of disadvantaging women, because of their biological role in childbearing and because of the fact that it is predominantly women who take parental leave and suffer a consequential loss of income.¹⁰³

However, coverage of such disadvantage by the indirect sex discrimination provisions of the Sex Discrimination Act is subject to the requirement being unreasonable. It may be arguable that requiring women to take unpaid leave at childbirth is reasonable.

There have been no cases under the Sex Discrimination Act or other comparable legislation in Australia where a woman has established that a failure to provide paid maternity leave was unlawful sex discrimination.

Women and workplace disadvantage

In its recent report on the progress of the Maternity Protection Convention in signatory countries, the International Labour Organization noted that

... maternity protection in the last half century has been marked by progress in law, an evolution in workplace practice and rising social expectations regarding the rights of working women during their child-bearing years. Yet the gains registered have so far failed to resolve the fundamental problem experienced by most, if not all, working women at some point in their professional lives: unequal treatment in employment due to their reproductive role.¹⁰⁴

Submissions to the HREOC National Inquiry into Pregnancy and Work noted that the absence of paid maternity leave compounds other disadvantage flowing to women because of the

¹⁰² s 7B Sex Discrimination Act.

¹⁰³ Therese MacDermott "Who's rocking the cradle?" (1996) 21(5) *Alternative Law Journal* 207-212 at 211.

¹⁰⁴ International Labour Organization *Maternity Report V(1) Protection at Work Revision of the Maternity Protection Convention (Revised) 1952 (No. 103) and Recommendation 1952 (No. 95)* International Labour Conference 87th Session Geneva 1999, 5; and see also Women's Legal Services Network (submission no. 94) in Human Rights and Equal Opportunity Commission *Pregnant and Productive: It's a right not a privilege to work while pregnant* HREOC Sydney 2001, 231.

particular circumstances of maternity. For example, the absence of paid maternity leave compounds the disadvantage many women experience when pregnant at work.¹⁰⁵

The International Labour Organization considers paid maternity leave an essential element in establishing a process to overcome such unequal treatment.

As an indispensable means of protecting the health of any woman wage-earner and her child, the mother's *right to a period of rest* when a child is born, together with a guarantee of being able to resume work after the break with adequate means of supporting herself and her family, is the core element of any instrument seeking to reconcile women's procreative role with the demands of paid employment.¹⁰⁶

6.2 Developing equitable workplaces

Where women do have access to paid maternity leave, they may be deterred from making full use of such leave by the culture of an organisation. The attitudes of management and other employees to paid maternity leave and other family friendly policies may influence the likelihood of employees making use of these policies. Low take up of family-friendly policies can lead to a significant divergence between policy and practice within an organisation.

The influence of workplace culture on women's decisions about maternity leave was raised in the context of HREOC's National Inquiry into Pregnancy and Work.

During formal and informal consultations, several accounts from professional women identified that they, due to workplace culture, and in order to protect their roles, felt personally compelled to take annual or long service leave rather than maternity leave to have their babies.¹⁰⁷

This is supported by other anecdotal evidence. One example is the success of paid paternity leave at AMP. The leave was introduced in 1995, and one of the first men to take it was a senior manager. Despite the national trend of low paternity leave take up rates, 400 men at AMP have since taken six weeks paid parental leave and the take up is increasing each year. The organisation attributes the high rates of paternity leave take up to the example set by management, which contributed to a change in corporate culture.¹⁰⁸

The introduction of paid maternity leave may have a positive impact on corporate attitudes to balancing work and family. Government action on paid maternity leave will provide a strong signal to the community that supporting parents to balance work and family is an important issue that requires action, either in the form of paid leave or other family supports. It may also increase acceptance by organisations that employees should be supported in balancing work and family.

¹⁰⁵ See for example Australian Council of Trade Unions (submission no. 59) in Human Rights and Equal Opportunity Commission *Pregnant and Productive: It's a right not a privilege to work while pregnant* HREOC Sydney 2001, 231.

¹⁰⁶ International Labour Organization *Maternity Report V(1) Protection at Work Revision of the Maternity Protection Convention (Revised) 1952 (No. 103) and Recommendation 1952 (No. 95)* International Labour Conference 87th Session Geneva 1999, 31, emphasis added.

¹⁰⁷ Human Rights and Equal Opportunity Commission *Pregnant and Productive: It's a right not a privilege to work while pregnant* HREOC Sydney 2001, 178.

¹⁰⁸ B Curtis AMP's *Corporate Diversity* Unpublished speech delivered at Transforming Management Conference 18 September 2001.

6.2.1 *Paid maternity leave as an employee entitlement*

Maternity leave may be construed as an employee entitlement, like annual leave or sick leave. The question then is why maternity leave is not financially supported in the same way as other types of leave. There may be a strong argument on equity grounds that maternity leave be paid in the same way that other leave is paid.

Employee entitlements such as these assist in the building of trust and respect between employers and employees by acknowledging the personal needs and responsibilities of employees. They also build employee loyalty to employers, can improve productivity and reduce labour hire and retraining costs. Potential benefits for employers are further discussed in Chapter 8.

6.3 Fairness for all employees

The current spread of paid maternity leave through the Australian workforce is uneven. Whether any particular employee will have access to paid maternity leave will depend on the type of organisation and industry she works in as well as her occupation and employment status. While competitive labour markets necessarily contain distinctions, the social nature of maternity, in particular the clear benefits to society of children in addition to the macroeconomic benefits of the maintenance of the population, suggest that the provision of paid maternity leave cannot be treated entirely as a matter for the market and that uneven provision of benefits may produce less than optimal social and macroeconomic outcomes.

6.3.1 *Paid maternity leave by organisation size and type*

Women working in smaller organisations and the private sector are more limited in their access to paid maternity leave, compared to women working in the public sector and larger organisations, where paid maternity leave is more readily available. See the discussion in Section 2.3.2.

6.3.2 *Paid maternity leave by industry*

As shown in Section 2.3.2 access to paid maternity leave is also highly industry related. For example, SEAS found that 68 per cent of employees in government administration and defence had access to paid maternity leave whereas only 13 per cent of employees had these entitlements in accommodation, cafe and restaurant industries.¹⁰⁹

The ACTU has concluded that the uneven spread of paid maternity leave is the consequence of the high proportion of casual workers in some industries.¹¹⁰ For example, the hospitality industry has a 55.2 per cent rate of casual employment. Those on lower incomes are less likely to receive paid entitlements, further reducing their ability to manage a temporary separation from the workplace.

For women employed in these industries the ability to take paid parental leave and ensure their child's and their own health and wellbeing is reduced. This amplifies the disadvantage facing

¹⁰⁹ ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

¹¹⁰ Australian Council of Trade Unions *Job Security and Casual Work Fact Sheet* Australian Council of Trade Unions Melbourne 2001.

low income women who choose to have children. Parenting payments and other means-tested allowances may partially ameliorate this disadvantage.¹¹¹

6.3.3 Paid maternity leave by occupation

From the data available, discussed in Section 2.3.2, it appears that the occupations with the highest incidence of paid maternity leave are those where employees have higher skill levels and higher education.

These data indicate that access to paid maternity leave and other family-friendly policies is skewed towards those who already have higher incomes and greater individual workplace status.

This is partly because office work is often conducive to flexible working hours and because employers are generally keener to retain highly skilled staff than low skilled staff due to the higher costs associated with replacing professional staff. This keenness often translates to offering working conditions that are attractive to employees in a bid for the employer to be known as an 'employer of choice'.¹¹²

6.3.4 Paid maternity leave by employment status

Current requirements for accessing paid maternity leave generally restrict access to long term and permanent employees. Around 40 per cent of women employed on a casual basis have less than 12 months service.¹¹³ For women in permanent employment, 16 per cent of part time employees and 18 per cent of full time employees have less than 12 months service.¹¹⁴

ABS data show that 0.4 per cent of female casual employees are entitled to paid maternity leave, compared with 53.6 per cent of other female employees.¹¹⁵

Women in casual and short term employment often have more marginal attachment to the labour force. These positions are the most likely to go during periods of economic downturn. There is also very limited bargaining power attached to these positions. As such, the employment status of these women is significantly more vulnerable than for permanent employees. These women are more likely to need to resign in order to have time out of the workforce or to take leave at the birth of a child. Given their lower levels of income from work, these women may also be more likely to be forced to return to work within 14 weeks following the birth of a child, particularly if the available welfare benefits are inadequate compensation.

The high proportion of women in casual employment, and the increasing rate of casual employment in Australia, mean that the ability of some women to access paid maternity leave is likely to be deteriorating.

In addition, women who are self-employed or employed on a contract basis are unlikely to have access to paid maternity leave.

¹¹¹ See the discussion at Section 2.4.

¹¹² Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 28-29.

¹¹³ ABS 6254.0 *Career Experience Australia* November 1998, 10-11.

¹¹⁴ ABS 6254.0 *Career Experience Australia* November 1998, 10-11.

¹¹⁵ ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

QUESTIONS

- Q.14 Do you consider that a paid maternity leave scheme would assist to provide greater workplace equity?
- Q.15 Are there particular design elements for a paid maternity leave system that would be crucial for achieving workplace equity? If so, what are they?
- Q.16 Are you aware of any additional international or Australian evidence or studies that document the effectiveness of paid maternity leave in achieving workplace equity?

CHAPTER 7: Objective — supporting women and families

7.1 Introduction

Paid maternity leave is one means of providing direct support to women in the paid workforce following the birth of a child. Such support can contribute to women's and children's health following childbirth; enable women to better combine work and family; compensate for the loss of income at a time of increased expenses; and contribute to women's economic security.

The economic benefits for women of paid maternity leave include encouraging women's continuing attachment to the workforce. Uninterrupted labour force attachment does not suit everyone; many women prefer to remain out of the workforce for long periods to care for children. The economic benefits of paid maternity leave associated with continuous labour force attachment will apply differently to women according to their work and family choices.

7.2 Health and welfare of mothers and newborn children

One of the basic objectives of paid maternity leave is to ensure the health and welfare of mothers and newborn children. In consultations on paid maternity leave, there was general consensus that the role of bearing and raising children is a function that is socially desirable and should be supported by the community.

7.2.1 *Maternal recovery*

While maternity is no longer considered an illness or disability, there is no doubt that pregnancy, childbirth and the demanding feeding schedule of a newborn child affect a woman's health at this time. In addition, a large number of women in Australia give birth by caesarean section, which necessitates a period of post-birth recovery. It is usually necessary for a woman to leave the workplace for a period to ensure that she recovers from childbirth. This time is important in ensuring the health of the mother and the child. Paid maternity leave can assist by ensuring that women are able to take an adequate recovery period out of the workforce following birth. Without financial support, some women may find it necessary to return to the workforce at a stage which may be detrimental to either their health or the welfare of the child.

The exact period of time that is required will vary according to a woman's individual experience. The World Health Organization (WHO), in considering international standards for the health care of new mothers, considers that approximately 16 weeks absence from work after childbirth is necessary as a minimum to recover from childbirth and to accommodate breastfeeding.¹¹⁶ Longer periods of leave are advantageous to allow for ongoing care by either parent, however this 16 week period is considered essential for women purely on health grounds.

¹¹⁶ Health aspects of maternity leave and maternity protection as discussed in a statement to the International Labour Conference 2 June 2000:
www.who.int/reproductive-health/publicatins/French_FPP_93_3/Health_aspects_of_maternity_leave.en.html

WHO notes that

[a] period of absence from work after birth is of utmost importance to the health of the mother and the infant. This is conducive to both the optimal growth of the infant and the bonding between mother and infant. Absence from work also allows the mother to recover. The time needed depends on her health before, during and after birth, as well as on the health of the infant and whether or not the birth was complicated. After delivery maternal health problems that may arise include infections, anaemia, depression, backache, anxiety and extreme tiredness.¹¹⁷

The need to ensure maternal health was one of the primary objectives of the ILO 183 and its provisions for paid maternity leave.

Not only is maternity leave and appropriate medical care essential to enable a woman to retain or regain her health and to return to work, but income replacement during her leave period has become indispensable for the well-being of herself, her child and her family.¹¹⁸

The ILO in part adopted WHO's recommendations; the ILO's international standard requires a minimum period of 14 weeks paid maternity leave, preferably longer, with a minimum of six weeks leave after childbirth.¹¹⁹

On the other hand, some women can and do return to work within the 16 weeks following childbirth with no apparent detriment to their health. Women should not be forced to take leave if their health does not require it. HREOC considers that a compulsory period of leave for an employee with a newborn child who is willing to do her job is discriminatory. HREOC holds a similar view with regard to compulsory periods of maternity leave for pregnant employees prior to the birth of a child.¹²⁰ The purpose of paid maternity leave is not to enforce a period of leave but to ensure that financial concerns do not force women to return to work before they have recovered from childbirth.

7.2.2 Breastfeeding

Breastfeeding is widely recognised as one of the most important contributions to infant health, including improved growth, immunity and development.

WHO considers that

[b]reastfeeding is a major determinant of infant health. There is ample evidence on the advantages of breastfeeding for child health and development and for the prevention of child mortality and morbidity. Infants who are exclusively breastfed (that is, receiving only breast milk and no other food or drink) for at least 4 months have significantly less gastrointestinal and respiratory illness including ear infections and

¹¹⁷ Health aspects of maternity leave and maternity protection as discussed in a statement to the International Labour Conference 2 June 2000:

www.who.int/reproductive-health/publications/French_FPP_93_3/Health_aspects_of_maternity_leave.en.html

¹¹⁸ International Labour Organization *Maternity Report V(1) Protection at Work Revision of the Maternity Protection Convention(Revised) 1952 (No.103) and Recommendation 1952 (No.95)* International Labour Conference 87th Session Geneva 1999, 7.

¹¹⁹ International Labour Organization C183 *Maternity Protection Convention* Geneva 15 June 2000 and International Labour Organization R191 *Maternity Protection Recommendation* Geneva 15 June 2000. Further detail on this Convention is at Chapter 3.

¹²⁰ Human Rights and Equal Opportunity Commission *Pregnant and Productive: It's a right not a privilege to work while pregnant* HREOC Sydney 1999, 178.

asthma, than those who are not breastfed. Breastfeeding is particularly important for the preterm and/or low birth weight infant.¹²¹

The importance of breastfeeding for mothers and children is supported by a number of community and medical professional groups in Australia. For example, in a position statement on breastfeeding, the Australian Medical Association (AMA) has stated that

[t]he AMA supports breast-feeding because of its beneficial effects on an infant's nutritional, immunological and psychological development and because of the bonding promoted between mother and child.¹²²

The Federal Government's National Breastfeeding Strategy also recognises the importance of breastfeeding for maternal and child health. A report of the Strategy states that

[b]reastfeeding is one of the most important contributors to infant health. Breastfeeding provides a range of benefits for the infant's growth, immunity and development. In addition, breastfeeding improves maternal health and contributes economic benefits to the family, health care system and workplace.¹²³

Governments in Australia have implemented a range of strategies to promote and support breastfeeding and to increase the rate of breastfeeding in Australia.¹²⁴

Of particular concern in this regard are ABS statistics that indicate that

... although a high percentage of women commence breastfeeding, there is a rapid decline in the numbers of women breastfeeding by the time the infant is six weeks of age.¹²⁵

Various studies have noted the link between return to work and cessation of breastfeeding. In its *Guide to Combining Breastfeeding and Work*, the former federal Department of Industrial Relations notes that

[w]hile a return to work will not affect the initiation of breastfeeding it can have a negative impact on the breastfeeding relationship by contributing to its early cessation.¹²⁶

A 1990-91 survey in South Australia by Stamp and Crowther of 222 women found that seven per cent of women had stopped breastfeeding by six weeks due to an impending return to work.¹²⁷ Similarly a 1991 survey in Tasmania by Cox and Turnbull of 268 women found that seven per cent of women ceased breastfeeding because of a return to the paid workforce.¹²⁸

¹²¹ Health aspects of maternity leave and maternity protection as discussed in a statement to the International Labour Conference 2 June 2000:

www.who.int/reproductivehealth/publications/French_FPP_93_3/Health_aspects_of_maternity_leave.en.html

¹²² Australian Medical Association *Position Statement: Breast-Feeding*: domino.ama.com.au/AMASWeb/Position.nsf

¹²³ Department of Health and Aged Care *National Breastfeeding Strategy Summary Report* Commonwealth of Australia Canberra 2001, 2.

¹²⁴ Jane Svensson et al *Breastfeeding and You: A handbook for antenatal educators* Commonwealth of Australia Canberra 2000, 7.

¹²⁵ ABS data on breastfeeding from the 1995 *National Health Survey* AGPS Canberra 1995 quoted in Jane Svensson et al *Breastfeeding and You: A handbook for antenatal educators* Commonwealth of Australia Canberra 2000, 7.

¹²⁶ Department of Industrial Relations *Guide to Combining Breastfeeding and Work*: www.dewrsb.gov.au/workplacere/relations/workandfamily/breastfeedingguide/default.asp

¹²⁷ G Stamp and C Crother "Breastfeeding – Why start? Why stop? A prospective study of South Australian women" (1995) 3(1) *Breastfeeding Review* 18.

¹²⁸ S Cox and C Turnbull "Choosing to breastfeed or bottle-feed – An analysis of factors which influence choice" (1994) 11(10) *Breastfeeding Review* 459-464.

A US survey by Auerbach and Guss of 567 women drawn from across the US and five other countries found that timing of return to work influenced infant weaning. In particular ‘if the mother returned to work before her baby was 16 weeks old, the likelihood of early weaning from the breast increased’.¹²⁹ In contrast

[w]omen who begin working after 16 weeks often have a well-established milk supply, and may have successfully negotiated one or more transient breastfeeding crisis, thereby minimizing negative effects that employment can have on breastfeeding.¹³⁰

Feeding a newborn child by bottle or breast can be physically demanding as it creates regular sleep disruptions, particularly in the first months of a child’s life. Paid maternity leave would allow women the time and financial security to take time out of the workforce to establish and maintain breastfeeding. This would have significant health and welfare benefits for women and children, as well as broader benefits for the community.

HREOC notes that allowing a period of time to establish breastfeeding does not eliminate the need to ensure that women who return to work are able to continue to breastfeed their child. Employers are encouraged to support women who want to combine breastfeeding and work.

7.3 Enabling women to combine work and family

Paid maternity leave is part of the broader issue of enabling women to better combine their work and family responsibilities. Paid maternity leave allows women the choice to take time out from the workforce at the birth of a child without undue financial pressure.

Women retain the major responsibility for caring for children, as well as participating in increasing numbers in the paid workforce. Men have not altered their working hours in ways that allow them to take responsibility for the care of their children.¹³¹

Bowman and Russell¹³² cite various studies into the division of family responsibilities between men and women and conclude that

- the division of labour remains very rigid;
- women do 90 per cent of childcare tasks and 70 per cent of all family work; and
- only 15 per cent of fathers are highly participative in terms of time on family work.

The introduction of paid maternity leave would provide support for women who wish or need to continue working following the birth of a child. It would provide support at a crucial time and would increase the options available to these women.

¹²⁹ K Auerbach and E Guss “Maternal employment and breastfeeding” (1984) 138 *American Journal of Diseases of Children* 959.

¹³⁰ K Auerbach and E Guss “Maternal employment and breastfeeding” (1984) 138 *American Journal of Diseases of Children* 960.

¹³¹ Belinda Probert *Grateful Slaves or Self Made Women: A matter of choice or policy?* Clare Burton Memorial Lecture Melbourne 2001, 12-13.

¹³² Lyndy Bowman and Graeme Russell *Work and Family: Current thinking, research and practice* Macquarie Research Limited Sydney 2000, 16.

7.4 Direct cost of children

Children impose an additional economic burden on household finances. Household Expenditure Surveys conducted by the ABS suggest that a family budget for a two-parent family needs to increase by about 18 per cent to accommodate a first child without diminution in standard of living. A second child requires an overall 25 per cent increase in expenditure and a third child requires an overall 33 per cent increase to maintain a family standard of living. For single parent families the corresponding figures are 22 per cent for one child and 35 per cent for two or three children.¹³³

Families will experience a decline in standard of living following childbirth unless income is increased or substantial savings are held. This decline in income is even greater when combined with the fact that most women in paid employment forego income in order to take time out of the workforce at the birth of a child.

Paid maternity leave would assist with the costs of having children, and in particular the increased costs faced at the time of the birth of a child, in addition to providing some compensation for income foregone by those mothers in paid work.

7.5 Economic security for women

Economic security for women includes both the adequacy of their current income and their access to adequate financial support over their lifetime. Paid maternity leave is one of many possible means of promoting women's economic security, based on encouraging and enabling women's labour force participation. Paid maternity leave will not assist the economic security of those women who choose to care for their children full time over a number of years. Separate measures, such as retraining at the time of return to work and appropriate government assistance during time out of the labour force to raise children are also required.

Paid maternity leave may assist women to maintain their attachment to the labour force and hence contribute to improving their long term economic security. A strong labour force attachment can reduce the likelihood of long term unemployment, reduce the likelihood of welfare dependence and also improve women's retirement savings.

7.5.1 Assisting labour force attachment

Maintaining a woman's labour market attachment following maternity leave will assist her in re-entering the labour force, improve her job opportunities and assist with ensuring long term economic security for herself and her family. While many women will choose to remain out of the labour force to provide full time care for their children, this does not discount the fact that many women will need or choose to return to work, and that there are long term economic benefits for many women attached to returning to paid work.

¹³³ Cited in Rebecca Valenzuela "Costs of children in Australian households" (1999) 53 *Family Matters* 71-76 at 73-74. See also Lucy Sullivan *Taxing the Family* Centre for Independent Studies Policy Monograph 50 Sydney 2001, 47.

Depending on the structure of a paid maternity leave system, workforce incentives will operate in a number of ways.

- A payment that is limited to women in employment would encourage more women to work up to the point of childbirth in order to qualify for the payment. This increased engagement with work may also result in more women returning to work following child birth.
- Currently women with less than 12 months employment with a current employer are likely to have to resign in order to take a period of extended leave at the birth of a child. Introducing a system of paid maternity leave that allowed these women to return to the position they held prior to taking leave would mean that a proportion of these women would not resign and would return to work following the paid maternity leave period.
- A period of paid maternity leave would allow women to ameliorate the costs associated with leaving the workforce and may reduce the need for financially motivated lifestyle changes. As such, more women would be assisted to make the transition back to work following maternity leave.
- Introducing an employer funded maternity leave payment, one of the options discussed in Chapter 12, would generate goodwill between the employee and employer and create loyalty. This would provide an incentive for a proportion of women to return to work.

Structuring a paid maternity leave system to assist women to maintain their labour force attachment will particularly benefit women whose attachment to the workforce is marginal, who are in low income households and at risk of poverty and who wish or need to return to work.

Women who return to work relatively early in their child's life are more likely to retain their skill and expertise and therefore continue to earn reasonable incomes. Fagan and Rubery have found, based on cross-national studies, that women who continue to work during the pre-school years of their first child are more likely to remain in continuous employment thereafter.¹³⁴ This is important in the absence of more extensive retraining programmes for women returning to work.

Research on women who take extended career breaks found that women who take time out from the paid workforce experience a significant decline in skills.¹³⁵ By the time many mothers return to work, when their youngest child is five years of age,¹³⁶ the loss of skills and labour force experience may have begun to limit their opportunities.

In addition, for employees returning from maternity leave, negotiating changes to working hours is likely to be easier with an employer with whom a woman has an existing employment relationship rather than negotiating specific hours at the interview stage for a new job.

Labour market attachment gains increased significance when considered in the context of changes to the Australian labour market, and in particular, the significant and lasting increases

¹³⁴ C Fagan and J Rubery "Transitions between family formation and paid employment" in G Schmid et al (eds) *International Handbook of Labour Market Policy and Evaluation* Edward Elgar Cheltenham 1997, 348-378 at 350.

¹³⁵ Russell J Rimmer and Shelia Rimmer *More Brilliant Careers: The effect of career breaks on women's employment* Department of Employment, Education and Training Canberra 1994.

¹³⁶ See the statistics on return to work in Appendix A.

in the rate of unemployment and the numbers of people receiving government income support since the early 1970s.¹³⁷

In its 2000 Interim Report, the Reference Group on Welfare Reform noted the increasing incidence of jobless families in Australia, a trend which is particularly evident over the past few decades.

In June 1999, some 160,000 couples with dependent children had neither parent in paid work. At the same time, there were about 280,000 jobless lone parent households. These households contained around 860,000 children, representing 17 per cent of dependent children in Australia. Data collected by the OECD (1998) indicate that Australia has one of the highest levels of joblessness among families with children in OECD countries.¹³⁸

Evidence shows that, in the current labour market, once labour market attachment has been lost the unemployed are likely to become either long term unemployed or revolve through a series of short term jobs.¹³⁹ Many of the new jobs are 'precarious', that is temporary, casual or intermittent. An ABS longitudinal study found a large amount of labour market 'churning', where people remain in the labour market but are cycled in and out of work without finding a long term secure job.¹⁴⁰ The ABS found that in May 1995, the number of job seekers totalled 875 000.¹⁴¹ Between May 1995 and September 1996, about 70 per cent of these people worked for some period of time, however about two thirds of these jobs were casual and 90 per cent were short term.¹⁴²

International evidence

While providing women in Australia with up to 12 months unpaid leave is demonstrably able to increase labour market attachment, evidence for the role of paid maternity leave in enhancing labour market attachment is best evidenced by international experience.

International evidence from the United Kingdom and the USA supports increased rates of return to work where paid maternity leave is provided.

A major study of maternity leave and employee decision making in the United Kingdom found that the more generous the pay for maternity leave the higher the proportion of women who chose to return to work.¹⁴³ The United Kingdom has government funded paid maternity leave of between 18 and 29 weeks depending on length of service, which may be supplemented by employer payments at their discretion.

¹³⁷ Bond and Whiteford in Reference Group on Welfare Reform *Participation Support for a More Equitable Society: The interim report of the reference group on welfare reform* Department of Family and Community Services Canberra 2000, 10.

¹³⁸ Reference Group on Welfare Reform *Participation Support for a More Equitable Society: The Interim Report of the Reference Group on Welfare Reform* Department of Family and Community Services Canberra 2000, 6.

¹³⁹ ABS *SEUPDATE* Edition 3 Canberra 1997 quoted in Australian Centre for Industrial Relations Research and Training *Australia at Work* Prentice Hall Sydney 1999, 133.

¹⁴⁰ ABS *SEUPDATE* Edition 3 Canberra 1997 quoted in Australian Centre for Industrial Relations Research and Training *Australia at Work* Prentice Hall Sydney 1999, 133.

¹⁴¹ ABS *Australian National Accounts* Canberra 1997 quoted in Australian Centre for Industrial Relations Research and Training *Australia at Work* Prentice Hall Sydney 1999, 133.

¹⁴² ABS *Australian National Accounts* Canberra 1997 quoted in Australian Centre for Industrial Relations Research and Training *Australia at Work* Prentice Hall Sydney 1999, 133.

¹⁴³ Sonali Deraniyagala and Steve Lissenburgh *The Determinants of Women's Return to Work: Behaviour after childbirth and the role of maternity benefits* Women's Unit UK Cabinet Office London October 2000, 5.

The research found that women receiving additional payments from employers were almost three times as likely to return to work for the same employer as women receiving minimum entitlements. Women receiving additional periods of maternity leave, but at the basic level of payments, were almost twice as likely to return to work as women entitled to the minimum period of leave. The entitlement to additional benefits was a greater predictor of return to work for women having a second or subsequent child.¹⁴⁴

The USA Commission on Leave was created with the enactment of the *Family and Medical Leave Act* 1993 and was given the task of examining the Act's impact on workers and employers. The Commission undertook two major research surveys to provide statistically valid and reliable information on the national impact of these policies. The final report of the Commission on Leave in 1996 found that

[e]mployees in the lowest family income category who had returned to work (less than \$20,000 annually), and leave-takers with no wage replacement at all, are most likely not to return to work to the same employer.... This suggests that a leave-taker's level of compensation influences the decision about whether to return to work. Conversely, employees with higher family incomes, working at covered worksites and receiving full wage replacement are more likely to return to their same employers. Not surprisingly, then, salaried employees and unionised workers are more likely to return to their employers.

Leave-takers with full wage replacement are far more likely than those with either partial or no wage replacement to return to their employers after leave. Indeed, 94.2 per cent of those leave-takers who were fully paid, (compared with 73.8 per cent of those who were partially paid and 76.5 per cent of those who were not paid at all) returned to their same employer after taking leave.¹⁴⁵

Australian evidence

There is no equivalent research on this issue in Australia. However, as the following examples show, a number of individual organisations record substantial increases in return to work rates following the introduction of paid maternity or parental leave entitlements, suggesting that the United Kingdom results would be equally applicable to Australia.

- Westpac Banking Corporation introduced six weeks paid maternity leave in 1995. The proportion of women returning to work from maternity leave increased from 32 per cent in 1995 to 53 per cent in 1997.¹⁴⁶
- AMP reported an increase in retention rates from 52 per cent in 1992 to 90 per cent in 1997, following the introduction of paid parental leave.¹⁴⁷
- Hewlett Packard reported a greater than 90 per cent retention rate for staff returning from paid maternity leave.¹⁴⁸
- SC Johnson recorded 100 per cent return rates since introducing paid maternity leave.¹⁴⁹

¹⁴⁴ Sonali Deraniyagala and Steve Lissenburgh *The Determinants of Women's Return to Work: Behaviour after childbirth and the role of maternity benefits* Women's Unit UK Cabinet Office London October 2000, 4-6.

¹⁴⁵ The Family Leave Commission *A Workable Balance: Report to congress on family and medical leave policies* Family Leave Commission San Francisco 1996, 114.

¹⁴⁶ Department of Employment, Workplace Relations and Small Business *Best Practice Work and Family Initiatives* Commonwealth of Australia Canberra February 2000, 58.

¹⁴⁷ George Trumbell "Creating a culture that's good for business" in EM Davis and V Pratt (eds) *Making the Link: Affirmative action and industrial relations no. 8* Labour-Management Studies Foundation Sydney 1997, 31-33 at 32.

¹⁴⁸ Department of Employment, Workplace Relations and Small Business *ACCI National Work and Family Award Winners and Finalists: Business benefits of paid maternity leave* Commonwealth of Australia Canberra 2001, 2.

7.5.2 Loss of earnings

It is usual for mothers to forego earnings as a result of absences from the labour force. For 1997, Gray and Chapman calculated the foregone lifetime post-tax earnings of women as \$162 000 for the first child.¹⁵⁰ Additional losses of \$12 000 and \$15 000 come with a second and third child respectively.¹⁵¹ This loss is less than that projected in 1986, which Gray and Chapman attributed to increasing numbers of women with small children being in paid employment and the use of maternity leave.¹⁵²

A recent United Kingdom study found that low skilled mothers forego substantially greater amounts of lifetime earnings than mid and highly skilled women. The study claimed that motherhood reduced a low skilled woman's earnings by more than the gender gap attributable to lesser hours, education and sex discrimination.¹⁵³

For the young woman deciding on maternity, this loss of income constitutes a cost to be weighed against the benefits of motherhood. Paid maternity leave reduces the amount of lost earnings by providing direct compensation for a specified period, and by increasing women's attachment to the labour force following the birth of a child through assisting return to work.¹⁵⁴

7.5.3 Retirement incomes

Maternity leave paid to employees who return to the workforce, perhaps after some additional period of unpaid leave, enables women to maintain continuous connection with the workforce during a period of time that is not only their prime child-bearing years but also important working years. Returning to work enables mothers to retain continuity of superannuation coverage and to provide more adequately for their retirement years. As provision for retirement has become increasingly the responsibility of the individual, continuity of coverage has risen in importance.

This is not to suggest that women must return to the paid workforce as quickly as possible for the sake of their superannuation. There are a number of superannuation alternatives currently available to women and couples that are designed to enable women to return to paid work over a period of time taking into account their family responsibilities. However, such measures have largely been unsuccessful in addressing women's limited superannuation. For example, voluntary spouse contributions and the associated tax rebate have had a minimal impact on

¹⁴⁹ Department of Employment, Workplace Relations and Small Business ACCI *National Work and Family Award Winners and Finalists: Business benefits of paid maternity leave* Commonwealth of Australia Canberra 2001, 2.

¹⁵⁰ Bruce Chapman and Matthew Gray "Foregone earnings from child rearing: Changes between 1986 and 1997" (2001) 58 *Family Matters* 4 - 9 at 5.

¹⁵¹ Bruce Chapman and Matthew Gray "Foregone earnings from child rearing: Changes between 1986 and 1997" (2001) 58 *Family Matters* 4 - 9 at 5.

¹⁵² Bruce Chapman and Matthew Gray "Foregone earnings from child rearing: Changes between 1986 and 1997" (2001) 58 *Family Matters* 4 - 9 at 9.

¹⁵³ Katherine Rake *Women's Income Over the Lifetime: A Report to the Women's Unit* Women's Unit UK Cabinet Office London 2000.

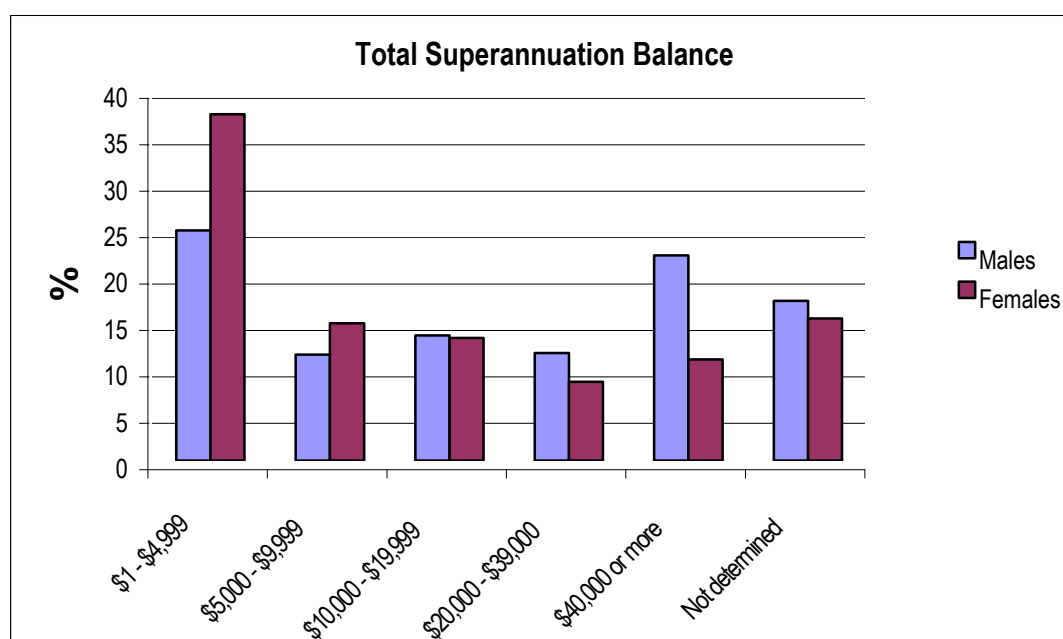
¹⁵⁴ See for example in the UK context as discussed in Sonali Deraniyagala and Steve Lissenburgh *The Determinants of Women's Return to Work Behaviour after Childbirth and the Role of Maternity Benefits* Women's Unit UK Cabinet Office London October 2000, 5.

women's superannuation due to a much lower take up rate than projected.¹⁵⁵ Alternative policy approaches should be developed to ensure the adequacy of women's retirement savings.

Compulsory superannuation contributions have dramatically increased the number of Australians with superannuation. ABS estimates suggest that 78 per cent of men aged 15-69 have superannuation. For women, 71 per cent of those aged 15-69 have some level of superannuation.¹⁵⁶

Despite relatively high levels of superannuation coverage, women are substantially more likely to have lower levels of superannuation savings than men. Chart 7.1 shows the proportion of men and women with particular total superannuation balances in June 2000.

Chart 7.1



Source: ABS 6360.0 *Superannuation: Coverage and financial characteristics Australia* April – June 2000.

Projections suggest that women will continue to have substantially lower superannuation balances than men. Clare recently reported various research findings demonstrating that women's current and projected superannuation savings are significantly less than men's. One estimate is that an average balance for men in 2004 will be \$74 000, while for women it will be \$40 000. Projected to 2019 the figures for men and women were \$121 000 and \$77 000 respectively.¹⁵⁷

¹⁵⁵ Ross Clare *Women and Superannuation* paper presented to the Ninth Annual Colloquium of Superannuation Researchers UNSW School of Economic and Actuarial Studies, Association of Superannuation Funds Australia 2001, 15.

¹⁵⁶ ABS 6360.0 *Superannuation: Coverage and financial characteristics Australia* April – June 2000, 4.

¹⁵⁷ Ross Clare *Women and Superannuation* paper presented to the Ninth Annual Colloquium of Superannuation Researchers UNSW School of Economic and Actuarial Studies, Association of Superannuation Funds Australia 2001, 22.

Clare attributes these lesser contributions to a range of factors including women's lower labour force participation rate and part time employment. He calculates that

[w]omen currently work 35.8 per cent of total paid hours, up only 0.2 percentage points from five years earlier. For those hours they receive an hourly pay rate on average of only 0.89 times that for men. Putting the two together suggests that employer contributions for women are at most 31.8 per cent of those currently being received by men.¹⁵⁸

Loss of superannuation contributions for women during periods of unpaid maternity leave also contributes to women's lower superannuation levels.

Under the current system, limited labour market attachment and lower earnings following the arrival of children have a significant negative impact on the accumulation of superannuation. Women's lack of sufficient superannuation to support themselves in retirement means that they are more likely to be reliant on government income support during their retirement years – involving an increased cost for government and in general a lower standard of living than for self-funded retirees. By enabling more women to maintain their labour force attachment, paid maternity leave could assist in addressing limited retirement savings by many women.

QUESTIONS

- Q.17 Do you consider that a paid maternity leave scheme would provide appropriate support for women and families with new babies?
- Q.18 Are there particular design elements for a paid maternity leave system that would be crucial for providing appropriate support for women and families? If so, what are they?
- Q.19 Are you aware of any additional international or Australian evidence or studies that document the effectiveness of paid maternity leave in supporting women and families?

¹⁵⁸ Ross Clare *Women and Superannuation* paper presented to the Ninth Annual Colloquium of Superannuation Researchers UNSW School of Economic and Actuarial Studies, Association of Superannuation Funds Australia 2001, 23.

CHAPTER 8: Objective — benefits to employers

8.1 Commercial benefits of paid maternity leave

8.1.1 Introduction

While there are significant social and family based benefits to be gained from providing support to new mothers, employers also benefit from supporting their employees to accommodate work and family responsibilities. Apart from increased productivity through enhanced employee loyalty, research shows that paid parental leave can reduce attrition rates, particularly for women, and encourage women to return to the workforce earlier. For many employers this enables them to retain women staff who may otherwise have decided not to return to work.

8.1.2 The business case for paid maternity leave

In establishing the business case for paid maternity leave, it is necessary to consider both the costs and benefits to employers of any system. Introducing paid maternity leave would impose an additional cost on employment in Australia that would need to be borne by government, individual employers or spread across all employers.¹⁵⁹ A system that required individual employers to pay the full cost of paid maternity leave for their employees may result in some employers paying a greater cost than the benefit they receive, depending on the nature of their business.

Employers often cite the importance of attracting and retaining good employees as the basis for implementing paid parental leave policies. A case study of Australian organisations providing paid maternity leave found that the decision to introduce paid maternity leave was linked to the organisation's business goals of providing excellent service to clients by retaining highly skilled employees and reducing the costs of recruitment.¹⁶⁰ Other business rationales for introducing paid maternity leave included being recognised as an employer of choice and the benefit this has in attracting skilled staff, which is crucial to competitiveness.¹⁶¹

The cost of replacing a staff member is significant. Costs include the following.¹⁶²

- Separation costs – undertaking exit interviews and administrative costs associated with deletion of the employee from the payroll, separation certificates and references and completing personnel files.

¹⁵⁹ See discussion of options Chapter 12.

¹⁶⁰ Kerry Brown and Rachel Wynd "Australian employers' motivations for providing paid maternity leave" papers from the AIRAANZ Conference *Crossing Borders: Employment, work markets and social justice across time, discipline and place* New South Wales 2001 volume 1, 357-363 at 362. The organisations in this study were ABN AMRO, Bain International, SAS Institute of Australia and St George Bank.

¹⁶¹ Kerry Brown and Rachel Wynd "Australian employers' motivations for providing paid maternity leave" papers from the AIRAANZ Conference *Crossing Borders: Employment, work markets and social justice across time, discipline and place* New South Wales 2001 volume 1, 357-363 at 362.

¹⁶² Derived from Department of Industrial Relations *The Business Case for a Family Friendly Workplace* Department of Industrial Relations Canberra 1996; Equal Opportunity for Women in the Workplace Agency website www.eowa.gov.au and Department of Employment, Workplace Relations and Small Business *Guide to Evaluating Work and Family Strategies* Commonwealth of Australia Canberra 1997.

- Replacement costs – including time taken to place an advertisement, human resources time in preparing the advertisement and responding to telephone enquiries about the advertisement, cost of placing the advertisement, cost of short listing applicants and interviewing costs.
- Training costs – induction training and training in the organisation's systems and processes to specific professional training. There is a reduced investment return to employers for training provided to an employee who does not return from maternity leave.
- Loss of productivity – this component factors in the greater efficiency an experienced employee contributes to the organisation compared with a new employee. Other things being equal, a new employee does not perform at optimal efficiency immediately. The period over which an employee builds his or her skills to that of an experienced employee is a period of loss to the employer.

Other costs may include the extra cost of providing temporary cover to absorb the workload of the departing employee until a replacement is found and lost business opportunities because of customer relationships with that staff member.

Obviously the overall cost will vary according to the organisation, the length of service of the employee concerned, the skills required of the employee and other industry or occupational factors. Various organisations have attempted to quantify these costs with the following estimates being offered.

- In 1996 Westpac Banking Corporation calculated that replacement costs were \$40 000 for a staff member with eight years experience and \$60 000 for a senior manager.¹⁶³ As the age at which women have their first child increases, replacement costs are likely to rise.
- Even in less skilled positions, recruitment costs are significant. A major retailer has found that it costs a minimum of \$3 800 to recruit a new full time employee.¹⁶⁴ This does not include calculations for training costs or loss of experience.
- It is estimated that the cost to retailers of staff turnover is \$397 million, including training, lost productivity and recruitment and separation costs.¹⁶⁵

Paid maternity leave increasingly provides a competitive advantage to those firms who are able to afford to offer such a scheme. In the absence of a national system of paid leave, a number of Australian companies are already using paid maternity leave to attract and retain high quality staff. Women anticipating child bearing, who have significant qualifications and experience or who work in areas of labour shortages, may increasingly seek out employers providing paid leave entitlements.

¹⁶³ NSW Department of Industrial Relations *The Business Case for a Family Friendly Workplace* DIR Sydney 1996, 11.

¹⁶⁴ Human Rights and Equal Opportunity Commission consultation with Phil Naylor, CEO Australian Retailers Association 19 September 2001; Australian Retailers Association, Department of Employment and Workplace Relations and Equal Opportunity for Women in the Workplace Agency *Balancing the Till: Increasing profits and building a better workforce* Commonwealth of Australia Canberra 2002, 11.

¹⁶⁵ Australian Retailers Association, Department of Employment and Workplace Relations and Equal Opportunity for Women in the Workplace Agency *Balancing the Till: Increasing profits and building a better workforce* Commonwealth of Australia Canberra 2002, 7.

This not only widens the pay gap but also the social advantage gap between skilled and unskilled workers and between those in highly competitive versus those in less competitive industries and companies.

For those companies, in particular small businesses, with a high component of operating costs tied up in wages and operating on narrow profit margins, employer-provided paid maternity leave may disproportionately affect wage costs and in some cases be unaffordable. Organisations unable to afford paid maternity leave will be more likely to have women resign or not return to work following maternity leave. It may also make it more difficult for them to recruit women.

Mixed views were expressed about this issue in consultations with the Sex Discrimination Commissioner. While some employer groups expressed concern about the industrial disadvantage currently experienced, others considered this was an acceptable part of the competitive environment. Other groups were more concerned with the impact of non-mandated paid leave on the widening social support gap between skilled and unskilled workers.

QUESTIONS

- Q.20 Do you agree that a paid maternity leave scheme would provide commercial benefits for employers?
- Q.21 To what extent would paid maternity leave create workforce incentives for women to maintain labour force attachment?
- Q.22 Are there particular design elements for a paid maternity leave system that would ensure commercial benefits to employers? If so, what are they?
- Q.23 Are you aware of any additional international or Australian evidence or studies that document the commercial benefits to employers of paid maternity leave?

CHAPTER 9: Objective — benefits to society

9.1 Economic benefits to society

In addition to the economic benefits for individuals and employers outlined in Chapters 7 and 8, continued labour force participation by women following the birth of a child also has economic benefits for the community at large. This section outlines those economic benefits.

9.1.1 Economic growth

Developing and maintaining a highly skilled workforce contributes to Australia's international competitiveness. Increased labour market participation and the retention of skilled employees raises productivity levels for both individual enterprises and the economy more broadly, which in turn contributes to economic growth.

The importance of human capital for Australia's economic growth has been acknowledged by both government and business groups. For example, the Business Council of Australia recently commented that

...the skills, ingenuity and knowhow of our people will be the primary determinant of our social, political and economic success.¹⁶⁶

In the longer term, Australia's ageing population will place greater importance on ensuring maximum levels of workforce participation by those of workforce age. In the absence of increased fertility or an age specific immigration programme this will be necessary to ensure the adequacy of the tax base and support the increase in the ratio of dependents to contributors.

To the extent that paid maternity leave encourages women to return to work it will contribute to improved productivity and economic growth. The potential contribution is even greater when the emergence of professional women as a significant proportion of the available skilled labour pool is considered. At present 25.3 per cent of women in the workforce are managers, administrators or professionals.¹⁶⁷

9.1.2 Return on investment in education and training

Women work for a combination of financial, social and personal reasons. Many have invested years and considerable money in their education and training and expect to earn a reasonable return on this investment through their participation in paid work. In addition to this personal investment, there is also a substantial community investment in education and training, with significant public funds being required. In 2000, women made up 57.9 per cent of all bachelor degree commencements, and the ABS found that females made up 45.8 per cent of Australians with post-school qualifications.¹⁶⁸

¹⁶⁶ John Schubert *Towards a Fair, Clean, Safe and Prosperous Australia* Speech delivered at the Business Council of Australia Annual Dinner Sydney October 11 2001: www.bca.com.au/upload/speech_j_schubert_agm_2001.doc.

¹⁶⁷ ABS 6203.0 *Labour Force Australia* September 2001, 51.

¹⁶⁸ ABS 4102.0 *Australian Social Trends 2001 Australia* 2001, 92.

Current maternity arrangements often do not enable women to derive the same level of return from their professional investment as men. In particular the absence of paid maternity leave constitutes a significant amount of foregone income, as does the decision to leave the workforce to care for children. Women may choose to invest in their careers and deny themselves motherhood in order to maximise their return. Their decision will be based on balancing a number of economic considerations against the personal fulfilment and rewards of motherhood. Alternatively, women may under-invest in their education and training despite their abilities, resulting in a loss for both themselves and society.

9.1.3 Return to government

Paid maternity leave is already available to most federal public servants. Extending it to the private sector would constitute a business subsidy. Extending it to all women with children would constitute a welfare and business measure. The total cost of the subsidy would depend on eligibility and the level of payment.

The benefit of paid maternity leave to government lies in the provision of an equitable measure that supports the decision to combine work and family being made by an increasing number of Australian families.

Depending on the nature and duration of the paid leave, women will be able to take appropriate time from work during those first vital months of a child's life leading to potential savings in health and welfare expenditure.

A means-tested payment would limit the cost to government and may provide better targeting in the case of limited government funding. A non-means tested payment would recognise that a woman, whatever her family's income, needs to be able to make a real choice between paid work and remaining with her infant during the first few months of life.

Longer term implications of a paid maternity leave scheme that encourages greater female attachment to the workforce include improved taxation revenues and reduced retirement welfare expenditure. Self-funded retirement is more possible for women who retain their attachment to the workforce. Welfare support for families during periods of crisis or breakdown is also likely to be reduced if women have remained in some form of paid employment. Costs involved in retraining and reskilling women to return to the workforce after periods of absence would also be reduced.

9.2 Social benefits

Encouraging and assisting parents to raise their children has significant social benefits. These include ensuring the ongoing viability and social cohesion of communities. The social importance of supporting maternity and parenting is recognised in a range of international instruments, as well as being well supported in domestic legislation and programmes.

The United Nations Children's Fund (UNICEF) considers that 'the healthy development of children is crucial to the future well-being of any society'.¹⁶⁹

¹⁶⁹ UNICEF *Why Make a Special Case for Children?*: www.unicef.org/crc/specialcase.htm.

The Convention on the Rights of the Child (CROC) recognises the importance of and social responsibility for children. Australia is amongst the 191 countries that have ratified this convention. CROC establishes the human rights of children, and the role of government in supporting and promoting these rights. CROC recognises the primary role of parents in raising children, and obliges governments to support parents in this role.¹⁷⁰

The social significance of maternity is also included in the preamble as a foundation of CEDAW.

The Federal Government has recognised the importance of supporting maternity and families through legislation, direct payments and programmes. For example, the *Stronger Families and Communities Strategy* 'focuses on community involvement in strengthening families and communities' by providing funding for community level projects.¹⁷¹

Paid maternity leave is one possible mechanism for recognising and supporting the social benefit of maternity and increasing women's choices around childbearing.

9.3 National fertility and population policy

Australia's birth rate is currently below replacement rate. There is a view that the declining birth rate is in part the result of the financial, professional and social disadvantage encountered by families. It is also the consequence of the greater opportunities provided to women, resulting in maternity being only one of a number of life options available to them. Having children, if not avoided altogether, is often delayed. In addition, extended periods of education and training, now lasting until young people are well into their twenties, also delays the onset of family formation for both men and women. This further contributes to a reduction in the number of children born to each family over a given period.

A declining birth rate has a range of negative implications for the long term wealth and prosperity of Australia.

This section provides an overview of current fertility trends in Australia, outlines the significance of these trends, and considers ways of addressing the declining birth rate.

9.3.1 Current trends in fertility

In 2000 there were 249 600 births in Australia,¹⁷² representing a fertility rate of 1.75,¹⁷³ down from 3.6 in 1961.¹⁷⁴

The median age of Australian mothers has risen from 26.3 years in 1978 to 29.8 years in 2000.¹⁷⁵ In 2000, women were most likely to have children between the ages of 30 and 34.¹⁷⁶ A

¹⁷⁰ art 5 and art 18 *Convention on the Rights of the Child* GA Res 44/25 20 November 1989.

¹⁷¹ Department of Family and Community Services *Stronger Families and Communities Strategy: Together we can make a difference*: www.facs.gov.au/sfcs/images/info_dl.pdf

¹⁷² ABS 3301.0 *Births Australia* 2000, 8.

¹⁷³ ABS 3301.0 *Births Australia* 2000, 8.

¹⁷⁴ ABS 3301.0 *Births Australia* 2000, 46.

¹⁷⁵ ABS 3301.0 *Births Australia* 1998, 6.

¹⁷⁶ ABS 3301.0 *Births Australia* 2000, 16.

significant majority of children are born to mothers aged 25-34.¹⁷⁷ The most significant drop over the past forty years has been in births to women aged 20-24.¹⁷⁸

Three quarters of Australia's total birth rate is accounted for by first and second births; 43 per cent were first births, and 32 per cent were second births, indicating that the majority of women who are mothers will at most have two children.¹⁷⁹

The fertility levels of women also appear to be inversely related to their attachment to the labour force, educational attainment and income, with this relationship strongest among younger women.¹⁸⁰ For women with these characteristics there is most likely to be a significant opportunity cost in leaving the workplace, even if only temporarily, to have a child.

9.3.2 Significance of the fertility rate

Projections suggest that the natural increase in population in Australia will begin to fall in the 2030s. Immigration at current rates will only keep Australia's population growing for about 20 years beyond this.¹⁸¹ In a stable population with a total fertility rate of 1.7 per cent, population size would drop to 50 per cent of its initial size in a 100 year period. Low birth rates also imply that as the population decreases, it ages.

The ageing of the population and the increase in the number of non-working Australians compared to those in the workforce raises issues for long term social support. The number of people in the tax paying ages will shrink and bear a higher tax burden to support those in the 65 years and over group.

Strategies for addressing the consequences of this demographic shift to a declining and older population include

- providing better support for families so that they choose to have more children;
- extending working life spans;
- encouraging labour force participation of those of workforce age; and
- increasing inward migration (often seen only as a temporary solution).

These strategies can assist by either raising the size of population or reducing the dependency ratio so that there is a higher ratio of tax payers to users of social services and consequently a more adequate provision of essential government services.

9.3.3 Addressing the declining birth rate

As noted above, one option for addressing the declining fertility rate is to consider ways in which society can better support families so that they choose to have more children. This approach recognises the social benefit of children and maternity and the community's concomitant responsibility to provide some assistance and support for families raising children.

¹⁷⁷ ABS 3301.0 *Births Australia* 2000, 16.

¹⁷⁸ ABS 3301.0 *Births Australia* 2000, 46.

¹⁷⁹ ABS 3301.0 *Births Australia* 2000, 41.

¹⁸⁰ ABS 3301.0 *Births Australia* 2000, 6.

¹⁸¹ Allison Barnes *Low Fertility: A discussion paper* Department of Family and Community Services Canberra 2001, v.

Economic, psychological, social and cultural reasons are all important determinants of whether people choose to have children. However, as McDonald has argued, 'if the economic costs of children rise, some individual psychological thresholds will be crossed and decisions will be made not to have the next child'.¹⁸² History bears this out; fertility rates declined during the Great Depression and rose to such record levels during a sustained period of post war prosperity that the period became known as the Baby Boom.

Paid maternity leave is one possible mechanism for ensuring that economic considerations do not prevent families from choosing to have children and better enabling women to combine work and family as they choose.

While significant attention is now given to work and family policies, raising a family and working continues to present challenges and problems for women. While workplace culture has changed significantly with the introduction of anti-discrimination legislation and the dramatic rise in women's workforce participation, direct support for women with children is limited.

McDonald has written extensively on this issue¹⁸³ and in light of international comparisons argues that in societies that offer women comparatively equal educational and employment opportunities to men but do not facilitate continued opportunities once women have children, women will restrict the number of children that they have.¹⁸⁴ Women will choose not to have children because of the opportunity cost involved. This is reflected in the lower birth rate for employed women in Australia. Systems that fail to accommodate continued opportunities can include taxation arrangements that penalise second income earners and limited access to family friendly workplace arrangements.

Other commentators, such as Anne Manne, argue that women are most likely to have children when they can provide care themselves.¹⁸⁵ Large government investment in subsidising work and family policies, such as child care, she argues is a high price to pay for marginal increases in fertility rates.

It is difficult to argue that a period of paid maternity leave alone will enable more women to choose to exercise their right to have children. A period of weeks compared with the long years of financial dependency is not necessarily significant. It is most likely to provide the necessary support to those women for whom remaining in paid work is essential. For those couples who save money in order to afford each child, a period of paid leave enables them to bring forward their decision to do so and may encourage some to have the additional child they had wanted. As part of a suite of family-enabling work provisions however, paid maternity leave would also play a useful role in enabling more women to effectively combine work and motherhood.

¹⁸² Peter McDonald "The toolbox of public policies to impact on birth – A global view" Paper prepared for the *Annual Seminar of the European Observatory on Family Matters, Low Fertility, Families and Public Policies* Sevilla 15-16 September 2000, 5.

¹⁸³ See for example Peter McDonald "Gender equity, social institutions and the future of birth" (2000) 17 *Journal of Population Research* 1-16.

¹⁸⁴ Note that there is significant debate at the national and international level on the causes of and solutions to low fertility. For an alternative view that questions some of MacDonald's arguments see Anne Manne "Women's preferences, fertility and family policy: The case for diversity" (2001) 9(4) *People and Place* 6-25.

¹⁸⁵ Anne Manne "Women's preferences, fertility and family policy: The case for diversity" (2001) 9(4) *People and Place* 6-25.

QUESTIONS

- Q.24 Do you agree that a paid maternity leave scheme would provide benefits to society?
- Q.25 Are there particular design elements for a paid maternity leave scheme that would be crucial for imparting social benefits? If so, what are they?
- Q.26 Are you aware of any additional international or Australian evidence or studies that document the social benefits of paid maternity leave?

Part D – Implementing a paid maternity leave scheme

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CHAPTER 10: Scope and coverage of paid maternity leave

10.1 Introduction

The starting point for this paper was that paid maternity leave should be considered a work related entitlement for women. This assumption is discussed in this chapter and comments sought. However, the question remains as to whether paid maternity leave needs to be recast in some more fundamental way. In particular, this section considers who should be covered by a system directed towards supporting parents at the time of the addition of a new child to the family. The specific questions considered are whether payments should be available to men, adoptive parents and/or non-working mothers.

10.2 Payment to women versus payment to both men and women

As noted in Chapter 1, a presumption in favour of maternity leave has been used in this paper as a starting point for discussion. However, the decision on whether paid parental leave should be available to women only or both men and women is not clear cut or uncontested. To a large extent, any decision about the most appropriate recipients of paid leave depend on the objectives of the scheme.

10.2.1 Payment for women

Part C of this paper outlined a series of possible objectives and benefits as a result of providing women access to paid maternity leave. Of particular significance in determining whether payment should be made to women or to both men and women is the fact that a number of these objectives and

benefits apply to women only, such as the health impacts of childbirth or the need to address discrimination against women in employment that results from their child-bearing role.

Arguably, a system for women only may compensate for and assist in addressing the unequal impact of children on men's and women's labour force participation. It is women's labour force participation that changes most significantly due to the presence of children or the likely presence of children. Where children under the age of four are present, women's labour force participation, during prime childbearing years drops to 51 per cent down from an average of 70.8 per cent.¹⁸⁶ For men, the presence of children has little or no impact on labour force participation. It is therefore women who are most likely to lose income as a result of having a child.

Special significance is afforded to maternity under international instruments, resulting in an emphasis on women's access to paid leave at the time of the birth of a child. CEDAW considers that access to paid maternity leave recognises the social significance of maternity and assists in ensuring that women are not discriminated against because of their child-bearing responsibilities. The ILO stresses the need to protect the health and welfare of the new mother and infant through access to paid maternity leave.¹⁸⁷

In countries that do provide for parental leave, it is common to have a period of time exclusively set aside for women in recognition of the health impact of childbirth.

It should be noted that the provision of pregnancy and childbirth benefits exclusively to women, including paid maternity leave, does not infringe anti-discrimination laws.¹⁸⁸ This was most recently recognised by the New South Wales Industrial Relations Commission in deciding that the New South Wales Municipal Employees Union claim for maternity leave was not discriminatory.¹⁸⁹

10.2.2 Payment for men and women

On the other hand, it is important that men are not dissuaded from participating in family life by limiting paid parental leave to mothers only. Allowing fathers time to bond with newborn children and facilitating their balancing of work and family responsibilities are also important.

A system which limits paid leave to women may further entrench women in their role as primary caregivers and the expectation that it is women who will take time out of the workforce to care for children. Further, to provide benefits only to mothers would not support men who are responsible for infants, for example adoptive fathers, those whose partners have died after the birth of the child or where the family elects to have the father be the primary carer. Making paid leave available to both men and women may foster a greater sharing of family and child caring responsibilities. Alternatively, as mentioned above, a period of maternity leave could be followed by a period of leave available to either parent.

¹⁸⁶ ABS 6203.0 *Labour Force* Australia August 2001, 26.

¹⁸⁷ See Section 7.2.1.

¹⁸⁸ See for example s 31 *Sex Discrimination Act* 1984 (Cth); s 35 *Anti-Discrimination Act* 1977 (NSW); s 46 *Equal Opportunity Act* 1984 (SA); s 28 *Equal Opportunity Act* 1984 (WA); s 37 *Discrimination Act* 1991 (ACT); s 54 *Anti Discrimination Act* 1992 (NT); may be covered by s 24 *Anti Discrimination Act* 1988 (Tas); s 82(2) *Equal Opportunity Act* 1995 (Vic).

¹⁸⁹ Local Government (State) Award 2001 [2001] NSWIRComm 281, per Schmidt J.

The importance of men's participation in family life and the need to change traditional gender roles is acknowledged in CEDAW.

Bearing in mind the great contribution of women to the welfare of the family and to the development of society... but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole.

...

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women.¹⁹⁰

Australian commentators have suggested that workplace and managerial cultures impede men's use of existing unpaid parental leave provisions. Income maintenance may assist in encouraging fathers to take time out of the workforce to care for children.¹⁹¹

The former Department of Employment, Workplace Relations and Small Business has suggested that men are less likely to take periods of unpaid leave, but appear relatively keen to use periods of paid parental leave.¹⁹² This has been attributed to an unwillingness or inability to forego income, particularly where men's income is generally higher than women's.¹⁹³

International evidence supports these arguments. A study of Swedish men taking parental leave found that the number of men taking paternity leave steadily rose from 1974 when it was introduced until 1995, at which point the number of men taking leave started to decline. Björnberg postulates that the reduction in men using paternity leave can be attributed to the drop in income replacement from 90 per cent to 75 per cent of previous earnings.¹⁹⁴ Another commentator argues that the decline related to the continued pay inequities between men and women, meaning that families 'choose' to have the lower income earner out of the workforce for the longer period of time.¹⁹⁵

QUESTIONS

Q.27 Should a paid parental leave scheme provide payment to women or both men and women? Why?

¹⁹⁰ Preamble *Convention on the Elimination of All Forms of Discrimination Against Women* GA Res 180 (XXXIV 1970) 19 ILM 33 (1980).

¹⁹¹ John Buchanan and Louise Thornthwaite *Paid Work and Parenting: Charting a new course for Australian families* Chifley Research Foundation University of Sydney Sydney 2001, 24.

¹⁹² Department of Workplace Relations and Small Business "Working fathers and working mothers – Do their needs differ?" (1998) 17 *Work and Family* Insert No. 17.

¹⁹³ Department of Workplace Relations and Small Business "Working fathers and working mothers – Do their needs differ?" (1998) 17 *Work and Family* Insert No. 17; John Buchanan and Louise Thornthwaite *Paid Work and Parenting: Charting a new course for Australian families* Chifley Research Foundation University of Sydney Sydney 2001, 13.

¹⁹⁴ Ulla Björnberg "Equity and backlash: Family, gender and social policy in Sweden" in Linda L Haas, Philip Hwang and Graeme Russell (eds) *Organizational Change and Gender Equity* Sage Publications California 2000, 57-76 at 61.

¹⁹⁵ Linda L Haas and Philip Hwang "Programs and policies promoting women's economic equality and men's sharing of childcare in Sweden" in Linda L Haas, Philip Hwang and Graeme Russell (eds) *Organizational Change and Gender Equity* Sage Publications California 2000, 133 - 161 at 146.

10.3 Payment to natural parents versus payment to both natural and adoptive parents

While adoptive parents do not necessarily have to deal with the physiological side of giving birth, the health needs of a young baby and the bonding of the baby or child with his or her new parents remains important.

In 1999-2000 there were 566 adoptions of children in Australia. 159 were 'known' adoptions – where the child is adopted by step-parents, carers or other relatives. Some 71 per cent of known adoptions are of children over the age of five years (71 per cent) and 72 per cent of known adoptions are adoptions by step-parents.¹⁹⁶ Current unpaid adoption leave provisions do not provide entitlements to leave in these circumstances.¹⁹⁷

Of the 407 placement adoptions, 83 per cent were of children under the age of five years, and would therefore be eligible for unpaid adoption leave, subject to other eligibility criteria.

The relatively small number of adoptions where leave is currently available suggests that a minimal additional cost would arise from extending a paid maternity leave scheme to include adoption. Paid adoption leave would result in employer benefits from retention and recruitment, as well as broader social and economic benefits.

QUESTIONS

Q.28 Should a paid maternity leave scheme provide payments to adoptive parents?

Q.29 If paid leave is made available to adoptive parents, should eligibility be limited to parents with adopted children of a particular age?

10.4 Payment to all women versus payment to women in employment

This paper has taken as a starting point that paid maternity leave is a payment relating to employment. However, paid maternity leave discussions necessarily raise social policy issues about how to best support women and families around childbirth.

A number of other countries provide the same level of payment to working and non-working women, however the payment comes from different sources. For example, in the United Kingdom, non-working women receive support through social assistance while working women receive payments through social insurance.

10.4.1 Extending maternity payments to all women

Those who argue that any maternity payment should be available to all women largely do so on equity grounds. The burden of additional costs at the birth of a child, and the need to ensure

¹⁹⁶ Australian Institute of Health and Welfare *Adoptions Australia 1999-00* (Child Welfare Series no. 26) Australian Institute of Health and Welfare Canberra 2001, 3.

¹⁹⁷ reg 30H(2) Workplace Relations Regulations 1996 (Cth).

the health and wellbeing of mother and child applies to all families, and not just those where the mother is employed prior to the birth of a child. Similarly, if the payment is designed to recognise the social significance of maternity, then society should be contributing to the cost of all children, and not just those born to women employed prior to the birth of a child.

Extending maternity payments to all women would also ensure that coverage extends to women in casual employment, those working under contract or self-employed. These groups of women may otherwise be denied access to work entitlements that, in practice, are often limited to permanent employees.

It can be argued that limiting payments to women in employment will not just result in unequal treatment, but that it will actually exacerbate inequality within our society. In effect, it will target payments to high income earners, while the unemployed and social security recipients miss out. This is also an argument in favour of means-testing any system of maternity payments.

The Australian welfare system, which is a means-tested social security system, aims to target government support at those people who are most in need. The need to target government support and assistance has been used as a reason to argue against providing paid maternity leave to women with income from employment.

Prior to its decision to introduce paid maternity leave, the New Zealand Government had argued in similar terms when defending the lack of paid maternity leave in New Zealand to the United Nations Women's Anti-Discrimination Committee.

[I]t would be difficult to ask New Zealand's taxpayers to fund a programme that would benefit those already earning above-average salary. If such a programme was implemented, it should be for those earning less than a certain amount. Resources for strategic priorities such as health and education should not be redirected to maternity leave.¹⁹⁸

10.4.2 Limiting maternity leave to women in employment

There are also arguments in favour of limiting paid maternity leave to women in employment, in particular in relation to workforce incentives, employment rights and the benefits to employers, the economy and government revenues of maintaining women's labour force attachment.

Limiting payments to those in employment can create workforce incentives for women to be employed prior to childbirth and to return to work following the birth of a child. As outlined in Section 7.5, maintaining workforce attachment can improve women's economic security, both in the short and longer term, by providing higher levels of income and allowing the build up of greater amounts of superannuation for retirement. Long periods out of the workforce can lead to the erosion of skills and to the potential for long term reliance on income support. In addition, in the not too distant future Australia's ageing population will place greater importance on ensuring maximum levels of workforce participation by those of workforce age in order to ensure the adequacy of the tax base.

Paid maternity leave for women in the workforce provides those women with a realistic choice between returning to work with a very young infant or remaining at home for at least the initial period. This is not a choice faced by women who are not in paid work.

¹⁹⁸ United Nations Women's Anti-Discrimination Committee *Legislative Measures Needed to Erase Gender Disparities in New Zealand* Committee Experts Say Press Release WOM/1072 8 July 1998, 6.

Limiting paid maternity leave to women in employment also recognises the benefits to employers of maintaining women's labour force attachment. As outlined in Section 8.1, increasing women's likelihood to remain in employment up to the birth of a child and to return to work following the birth of a child represents an economic benefit to many employers, by increasing returns on investment in staff development and training and reducing costs associated with the recruitment and training of new staff. This benefit has led to a number of larger organisations in Australia introducing paid maternity leave.

ILO 183 and CEDAW both support the provision of paid maternity leave as a right of employment. CEDAW identifies paid maternity leave as a mechanism to 'prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work'.¹⁹⁹ The ILO considers paid maternity leave essential to ensuring 'equality of opportunity and treatment of women workers'.²⁰⁰ Time out from the workforce is considered essential to maternal recovery, and hence should not lead to loss of income during this necessary break from the workforce.

As suggested in Section 9.3 of this paper, targeting payments to women in employment may also reduce some disincentives to childbirth and hence assist in raising Australia's fertility rate. Statistics show that it is women attached to the labour force who are less likely to have higher numbers of children and that women on higher incomes are also less likely to have any children. Loss of income and employment discrimination may be acting as a disincentive to childbirth for these women. By providing a degree of income replacement for lost earnings, paid maternity leave may influence a couple's or a woman's decision to have a family, when to begin that family and the size of that family.

This is not to suggest that government policy should give precedence to the needs of working women over those who leave the labour force to care for children. Women who are not in the labour force still require appropriate government support.

QUESTIONS

Q.30 Do you consider that there are stronger reasons for a work related entitlement or a universal payment? Why?

¹⁹⁹ art 11(2). See further discussion at Section 3.2.

²⁰⁰ See discussion at Section 3.2.

CHAPTER 11: Structure of a paid maternity leave scheme

11.1 Introduction

The focus of this paper has been on paid maternity leave as a work entitlement for women. While Chapter 10 of this paper raised the issue of whether there is a need to broaden the focus to include men and non-working women with newborn children, the concept of paid maternity leave as a work entitlement is returned to here as a means of focusing discussion.

This section outlines some of the parameters on which paid maternity leave, as a work-related entitlement for women, may be structured. It considers how the benefits and objectives of introducing paid maternity leave may be translated into an entitlement. Eligibility requirements, duration of payment, level of payment and funding source are all considered. The issues discussed in this section would also be relevant if a future scheme were to apply to men and non-working women.

11.2 Eligibility requirements

If paid maternity leave is limited to those in employment, a decision will need to be made as to what constitutes sufficient employment to qualify for paid maternity leave.

Current arrangements for unpaid maternity leave require 12 months employment with a single employer prior to taking leave. As discussed, leave is sometimes available to casual employees, but is not presently available to self-employed workers.²⁰¹ Applying this eligibility requirement to a paid maternity leave scheme would effectively limit the cost of providing this payment.

However, consideration should be given to whether a 12 month eligibility requirement for paid maternity leave is necessary or appropriate. Australia's trading partners generally do not require such an extensive period of employment to qualify for paid leave, even where this is funded by the employer. However, New Zealand does require a minimum 12 month period of paid work for qualification.²⁰²

Extending paid maternity leave to women with less than 12 months employment may create workforce incentives for these women. Women would be encouraged to remain in employment before childbirth in order to be eligible for the payment, and would not be forced to resign to allow for childbirth. Many of these women are likely to have marginal attachment to the labour force and are also at higher risk of becoming reliant on income support if they do leave the workforce. Alternatively, providing paid maternity leave only after 12 months may encourage some women, where they are able, to remain in employment or extend their employment and delay a decision to have a child so that they will be eligible for this form of maternity support.

Making paid maternity leave available to women with less than 12 months employment may also be important in eliminating workplace discrimination. Evidence from the National Inquiry into Pregnancy and Work noted that women who are pregnant and seeking to obtain

²⁰¹ See discussion at Section 2.3.1.

²⁰² See discussion at Section 4.2.

employment suffer high levels of discrimination.²⁰³ Discrimination may also arise from the failure to accommodate a reasonable period of leave where an employee has less than 12 months service.²⁰⁴

If paid maternity leave is to be a payment to women in the workforce, it may be desirable to have some minimum requirement for employment history, in order to establish that the person is genuinely employed. This may be particularly important if there is no equivalent payment to women who are not working.

The appropriateness of an eligibility requirement also depends upon the funding source. It would be unfair to employers in an employer funded scheme not to have a length of service eligibility requirement, while such a requirement may be unnecessary in a fully government funded scheme.

Eligibility for women in casual employment, working on contract and self-employed women would also need to be considered depending on the model of paid maternity leave adopted.

QUESTIONS

- Q.31 Should eligibility for paid maternity leave be limited to women with a minimum length of employment? If so, what length of employment do you consider is appropriate? Would this need to be with a single employer?
- Q.32 Do you consider that the same eligibility requirements should apply for both unpaid and paid maternity leave?

11.3 Duration of payment

The duration of paid maternity leave depends to a large extent on the objectives of the payment. For example, if ensuring the health and wellbeing of the mother and child following birth were the primary concern, 14 weeks of paid leave may be adequate. However, if increasing the fertility rate or significantly improving the long term attachment of women to the labour market is the desired outcome, a longer period of leave of one year or more and/or other family support measures may be required.

In differentiating between paid and unpaid maternity leave, a distinction can be made between the period of time required to ensure the health and wellbeing of the mother and child and a longer period to allow for the care of a young child.

Arguments in support of paid maternity leave that focus on ensuring the health and wellbeing of the mother and child suggest a leave period of 16 weeks after the birth of a child.²⁰⁵ International labour standards have adopted 14 weeks (with at least six weeks after birth) as a minimum with a recommendation for longer leave where possible.²⁰⁶

²⁰³ Human Rights and Equal Opportunity Commission *Pregnant and Productive: It's a right not a privilege to work while pregnant* HREOC Sydney 2001, 161-162.

²⁰⁴ Human Rights and Equal Opportunity Commission *Pregnant and Productive: It's a Right not a Privilege to Work While Pregnant* HREOC Sydney 2001, 144-145.

²⁰⁵ World Health Organization "Health aspects of maternity leave and maternity protection as discussed in a statement to the International Labour Conference 2 June 2000": www.who.int/reproductive-health/publications/French_FPP_93_3/Health_aspects_of_maternity_leave.en.html

²⁰⁶ See discussion at Section 3.2.

Currently, employer funded paid leave arrangements average around four to six weeks, while in the Commonwealth public sector 12 weeks is paid.²⁰⁷ Other comparable countries provide for a range of paid leave periods from two to six months.²⁰⁸

In European countries such as France, with fertility rates of just over one child per woman and facing rapid declines in population, significant amounts of government funding have been allocated to paid maternity leave for periods of up to six months on full pay.²⁰⁹

QUESTIONS

Q.33 For how many weeks should paid maternity leave be available?

Q.34 Should the duration of paid maternity leave be extended in special circumstances, such as illness of the mother or child?

11.4 Level of payment – fixed amount versus proportion of income

In part, the level of payment may depend on the structure of any paid maternity leave scheme. Most of Australia's trading partners have tended to adopt models that involve a form of employer payment or insurance payment based on previous earnings. Similarly, most workplace based employer-funded paid maternity leave schemes currently operating in Australia provide payment based on previous earnings. This squarely links paid maternity leave to maintaining financial support for the period of time a woman is absent from the workplace because of having and raising children. Setting paid maternity leave as a proportion of previous earnings also better equates to income replacement.

Under a capped or flat-rate government funded or contributory scheme, the link between previous income and any paid maternity leave payment becomes less clear. In these cases, a flat-rate payment may be preferred to avoid creating significant disparity between high and low income earners, and potentially those without previous earnings.

ILO 183 states that paid maternity leave benefits, where 'based on previous earnings ... shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits',²¹⁰ or a comparable amount to the average result of this calculation.²¹¹

Options raised in consultations include

- unemployment benefits or parenting payment;
- the federal minimum award wage;
- average weekly earnings or a proportion of it;
- women's average weekly earnings or a proportion of it; and

²⁰⁷ See discussion in Section 2.3.

²⁰⁸ See the table in Appendix B.

²⁰⁹ France provides 26 weeks of paid maternity leave in respect of the third and later children.

²¹⁰ art 6(3) ILO 183 .

²¹¹ art 6(4) ILO 183.

- an individual woman's full pay or a proportion of it.

QUESTIONS

- Q.35 Do you consider that paid maternity leave should be paid as a fixed amount or a proportion of income? Why?
- Q.36 If paid maternity leave were to be a fixed amount what should that amount be? For example:
- unemployment benefits or parenting payment;
 - the federal minimum award wage;
 - average weekly earnings or a proportion of it;
 - women's average weekly earnings or a proportion of it; or
 - an individual's full pay or a proportion of it.
- Q.37 If paid maternity leave were to be a proportion of income, what proportion should it be and should there be a cap or maximum rate for payments?

11.5 Funding source

As noted in Chapter 1, a system of paid maternity leave may be funded by government, employers, employees or a combination of each. There is significant diversity internationally with regard to the funding of paid maternity leave.

Arguments in favour of employers funding or contributing to paid maternity leave relate to the direct economic benefits to many employers that result from such a system. Recruitment and training costs may be reduced, employee retention rates may increase and the employer may achieve a business advantage through becoming a preferred employer. This is discussed in detail at Chapter 8.

These direct benefits suggest that individual employers should be responsible for funding paid maternity leave. However, this may result in discrimination in relation to the employment of women, with employers refusing to employ women of child bearing age in order to avoid these costs.²¹² In addition, not all employers will gain the same economic benefits from paid maternity leave. In this case, a system which shares the cost across all employers, such as a levy, may be preferred. It would also be possible to exempt certain businesses, such as those with less than 20 employees, from paying the levy if it were considered that such businesses could not afford this expense.

Chapter 9 details the social benefits of a paid maternity leave system. These include economic growth, return on the investment in women's education and training, improved taxation revenues and reduced retirement welfare expenditure, supporting childbirth as a social good, and increasing Australia's fertility rate. These arguments support a system of government funding and/or contributions from across all employees.

The alternative to some form of paid maternity leave is a system of self-provision, as applies currently for most families in Australia. In this case, the argument is that it is women and families who benefit from having children and who should bear the total cost.

²¹² See discussion above at Chapter 6.

QUESTIONS

- Q. 38 How do you consider paid maternity leave should be funded? Why?
- Q.39 Do you consider that there is a stronger case for funding by government, employers or employees? If so, why? Would a form of combined funding work effectively? How?
- Q.40 If employers were to contribute to paid maternity leave, do you think this funding should be provided by individual employers or be spread across all employers?
- Q.41 If employers were to contribute to paid maternity leave, should there be any exemptions for certain types of employers (eg. those with less than 20 employees)?

CHAPTER 12: Options

12.1 Introduction

This chapter presents a sample of possible options for paid maternity leave. The options presented are not intended to limit alternative proposals, but are offered as a means for generating discussion. Submissions are welcome on every aspect of these options for paid maternity leave and alternative proposals.

This section sets out five possible models for providing paid maternity leave.

- A government funded employment based payment
- An individual employer funded payment
- A government funded universal payment
- A social insurance/superannuation style system
- An employer levy

An outline of possible structure, advantages and disadvantages are given for each of the options.

Other options that were raised in consultations with the Sex Discrimination Commissioner include

- continuing the current system of self-funded maternity leave and ad hoc individual workplace paid leave provisions;
- employees and/or employers to contribute to a portable insurance scheme to fund a period of paid maternity leave;
- removal of the means test on the Maternity Allowance and possible increase of the amount of the payment;
- a special levy on all taxpayers to fund paid maternity leave, along the lines of the Medicare levy;
- government to pay a base amount, with employers required to top up this payment to a proportion of previous earnings;
- an employee entitlements model that required business to pay an insurance levy to cover paid maternity leave;
- individual income insurance to provide income replacement during periods of maternity leave;
- tax concessions for employers that provide paid maternity leave;
- employees to be given the choice of signing up for either long service leave or paid maternity leave at the beginning of their contract with an employer;
- a system of purchased leave, whereby employees can opt to have a proportion of their salary set aside which will then be paid during the period of maternity leave; and
- an employer funded payment to women in employment, with a corresponding government payment to women who are not in employment.

The purpose of this section is to focus discussion on how a paid maternity leave system could be structured, should Australia choose to introduce such a system. The final options paper will include more detailed analysis, drawing on the feedback received on this interim paper.

12.2 Option one: Employment based payment – government funded

12.2.1 Structure of payment

Flat rate of payment to either

- women on unpaid maternity leave;
- women who have had 12 months continuous employment with any number of employers prior to the birth of a child;
- women who have had 12 months continuous employment with a single employer prior to the birth of a child; or
- women in employment prior to the birth of a child.

The payment could be

- paid directly from the government to women through the tax or social security system; or
- paid by employers to women and then reimbursed to employers by government.

Employers would be encouraged to provide incentives for women to return to work after maternity leave. This may be done by employers providing a top-up payment to the level of a woman's actual earnings (as per Option Two).

12.2.2 Advantages

A government funded, employment based payment would

- ensure the health and wellbeing of mothers and babies by allowing a financially secure period of time out of the workforce;
- recognise paid maternity leave as a workplace issue;
- create workforce incentives for women to be employed prior to childbirth and to return to work following the birth of a child;
- provide a degree of income replacement for lost earnings;
- recognise the social significance of maternity;
- reduce disincentives to the employment of women that may arise if employers were required to directly fund paid maternity leave; and
- limit the cost to government compared to a universal payment.

12.2.3 Disadvantages

Disadvantages of a government funded, employment based payment include

- the potential to create an imbalance between those women in and out of the workforce;
- possible cost-shifting to government by employers that currently provide paid maternity leave;
- limited recognition of the increased costs faced by all families at the birth of a child, and not just those in the workforce;

- limited recognition of the benefits to employers of maintaining women's labour force attachment;
- the possibility of increased administration costs to employers if they are expected to make payments and then seek reimbursement from government; and
- increased costs to government compared to the status quo or an employer funded model.

12.3 Option two: Direct payment from employer to employee – employer funded

12.3.1 Structure of payment

Employers would be required by legislation to provide paid maternity leave to eligible female employees.

The payment would be paid directly by the employer to women who have had 12 months continuous employment with the current employer prior to the birth of a child.

Payment could be

- a mandated percentage of previous earnings; or
- a flat-rate of between two-thirds and 100 per cent of average weekly earnings.

Alternatively, this could operate in conjunction with Option One or Option Three as a top-up payment for women with above average weekly earnings, and could then be mandatory or optional.

12.3.2 Advantages

An employer funded model would

- recognise the benefits to employers of maintaining women's labour force attachment;
- create workforce incentives for women to be employed prior to childbirth and to return to work following the birth of a child;
- ensure the health and wellbeing of mothers and babies by allowing a financially secure period of time out of the workforce;
- provide a degree of income replacement for lost earnings;
- recognise paid maternity leave as workplace issue; and
- have no cost (or minimal cost for regulation) to government.

12.3.3 Disadvantages

Disadvantages of an employer funded model include

- the potential to create an imbalance between those women in and out of the workforce;
- possible difficulties for low profit businesses and small businesses in bearing increased costs;
- the creation of disincentives to employ women;

- the cost would have an uneven impact on particular industries;
- limited recognition of the social significance of maternity, as the direct cost is borne by the employer and not wider society; and
- limited recognition of the increased costs faced by all families at the birth of a child, and not just those in the workforce.

12.4 Option three: Universal payment - government funded

12.4.1 Structure of payment

The payment would be paid through the social security system, and would consist of two parts

- a non-means tested payment to women in work at the time of birth (with no minimum length of employment required for eligibility); and
- a maternity assistance payment to women who are unemployed or not in the labour force at the time of birth (this could be a top-up payment or temporary replacement payment for those women in receipt of income support payments).

Employers would be encouraged to provide incentives for women to return to work after maternity leave. This may be done by employers providing a top-up payment to the level of a woman's actual earnings (as per Option Two).

12.4.2 Advantages

A universal payment would

- assist in covering the increased costs faced by parents at the time of childbirth;
- maintain equity between those in and out of the workforce;
- maintain equity between those with different lengths and types of employment;
- recognise the social significance of maternity;
- ensure the health and wellbeing of mothers and babies by allowing a financially secure period of time out of the workforce;
- ensure that women who are in casual employment, working on contract or self-employed have access to the payment;
- be relatively administratively simple; and
- reduce disincentives to the employment of women that may arise if employers were required to directly fund paid maternity leave.

12.4.3 Disadvantages

Disadvantages of a universal payment include

- possible cost-shifting to government by employers that currently provide paid maternity leave;
- limitation of workforce incentives that would be provided by limiting paid maternity leave to those in employment;
- limited recognition of the benefits to employers of maintaining women's labour force attachment; and

- increased cost to government.

12.5 Option four: Social insurance/superannuation style system – jointly funded

12.5.1 Structure of payment

Contributions would be made to a maternity leave fund which would be used to pay for paid maternity leave. Contributions could come from employers, employees and government.

Employer contributions could be based on total salaries paid by the organisation, in order to avoid disincentives to employ women.

The payment would be paid by the fund to eligible women.

Paid maternity leave payments could be either

- a flat rate;
- based on previous earnings; or
- based on previous contributions.

12.5.2 Advantages

A social insurance/superannuation style payment would

- recognise the benefits to employers of maintaining women's labour force attachment;
- create direct workforce incentives for women to be employed prior to childbirth and to return to work following the birth of a child;
- recognise the social significance of maternity;
- provide a degree of income replacement for lost earnings;
- ensure the health and wellbeing of mothers and babies by allowing a financially secure period of time out of the workforce;
- recognise paid maternity leave as workplace issue;
- spread the cost between employers, employees and government; and
- reduce disincentives to the employment of women that may arise if employers were required to directly fund paid maternity leave.

12.5.3 Disadvantages

Disadvantages of a social insurance/superannuation style payment include

- the potential to create an imbalance between those women in and out of the workforce;
- the payment is in effect a new tax, in part paid by all employers and in part by all employees;
- possible difficulties for low profit businesses in bearing increased costs;
- potential for some working women (especially part time and casual employees) to miss out if they have not made sufficient contributions to the fund;

- limited recognition of the increased costs faced by all families at the birth of a child, and not just those in the workforce;
- potential for significant administrative costs in establishing and maintaining the system; and
- potential for significant government spending, particularly in the early years, to cover any shortfalls in funding.

12.6 Option five: Employer levy

12.6.1 Structure of payment

Employers would be required to pay a levy based on total salaries paid by the organisation, in order to avoid disincentives to employ women. Small businesses, for example those with less than 20 employees, could possibly be exempted from the levy.

The levy payments could be administered by government or an independent authority, and would be used to pay for paid maternity leave.

The payment would be paid by the levy administrator to eligible women.

Paid maternity leave payments could be either

- a flat rate; or
- based on previous earnings.

12.6.2 Advantages

An employer levy would

- recognise the benefits to employers of maintaining women's labour force attachment;
- create direct workforce incentives for women to be employed prior to childbirth and to return to work following the birth of a child;
- provide a degree of income replacement for lost earnings;
- ensure the health and wellbeing of mothers and babies by allowing a financially secure period of time out of the workforce;
- recognise paid maternity leave as workplace issue; and
- reduce disincentives to the employment of women that may arise if employers were required to directly fund paid maternity leave.

12.6.3 Disadvantages

Disadvantages of an employer levy include

- the potential to create an imbalance between those women in and out of the workforce;
- the payment is in effect a new tax, paid by all employers;
- possible difficulties for low profit businesses in bearing increased costs;
- limited recognition of the increased costs faced by all families at the birth of a child, and not just those in the workforce;

- limited recognition of the social significance of maternity, as the direct cost is borne by the employer and not wider society; and
- potential for significant administrative costs in establishing and maintaining the system.

QUESTIONS

Q.42 Who should be responsible for funding paid maternity leave?

Q.43 Do you support a particular option or model for a paid maternity leave scheme?

Q.44 Do you have any information relevant to costing these models?

Appendices

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Appendix A: Technical Appendix

A.1 Introduction

This Appendix sets out currently available information describing women's labour force participation and the ways in which women combine work and family responsibilities in Australia. The Appendix also includes information about existing maternity and parental leave arrangements to provide a background to discussing any future paid maternity leave scheme.

A.2 Statistical overview

There remains a serious lack of statistical information available about maternity, family responsibilities and work arrangements. As can be seen below, some of the available research is also outdated and limited in scope.

A.2.1 Women, work and children in Australia

A.2.1.1 Women and work

- In August 2001, 55 per cent of women aged 15 and over participated in the labour force,²¹³ making up 44 per cent of the overall labour force.²¹⁴
- Women's labour force participation rate in August 2001 was over 70 per cent for women aged 20-54 years.²¹⁵
- In August 2001, 55 per cent of employed women worked in full time employment and 45 per cent worked in part time employment.²¹⁶
- In 2000, women constituted 73 per cent of all part time employees.²¹⁷

²¹³ ABS 6203.0 *Labour Force Australia* August 2001, 14.

²¹⁴ ABS 6203.0 *Labour Force Australia* August 2001, 26.

²¹⁵ ABS 6203.0 *Labour Force Australia* August 2001, 26.

²¹⁶ ABS 6203.0 *Labour Force Australia* August 2001, 14.

²¹⁷ ABS 4102.0 *Australian Social Trends* Commonwealth of Australia Canberra 2001, 118.

- Casual workers comprised 27 per cent of the Australian workforce in 2000.²¹⁸ Thirty two per cent of all women employed in 2000 were employed on a casual basis (ie without leave entitlements).²¹⁹
- An ABS survey in 2000 found that women were almost twice as likely as men to be employed on a casual basis, with 25 per cent of female jobholders and 13 per cent of male jobholders identifying their work as casual.²²⁰
- In August 1998, women made up 60 per cent of the casual workforce.²²¹

A.2.1.2 Women and childbirth

- There were 249 600 births registered in Australia during 2000.²²²
- In 2000, Australia's total fertility rate (TFR) was 1.75 babies per woman.²²³
- Australia's TFR has varied over time. The replacement rate, that is the number of children each woman would need to have to maintain the current population size, is estimated at 2.1 per woman.²²⁴ The actual fertility rate has trended down over the last part of the twentieth century. The TFR was 1.91 in 1990, 1.90 in 1980, 2.9 in the early 1970s, 3.5 in 1961, 2.1 in the 1930s and 3.1 during the early 1920s.²²⁵ While the 2000 rate is similar to the 1999 rate, it represents a significant decrease on previous TFRs.²²⁶
- Women are most likely to have children when they are between the ages of 30 and 34.²²⁷ A significant majority of children are born to mothers aged 25-34.²²⁸
- The fertility levels of women appear to be inversely related to their attachment to the labour force, educational attainment and income, with this relationship strongest among younger women.²²⁹
- For women aged 30 years and over, more than one third of women (36 per cent) who earned more than \$52 000 per year had not had any children. These high earners had an average of 1.6 children compared to 2.3 for all women in the 30 and over age group.²³⁰

A.2.1.3 Women, work and children

- Published data are not available on the number of births to women in employment.
- Forty five per cent of women with dependent children aged 0-4 years are employed (four per cent are unemployed).²³¹

²¹⁸ Australian Council of Trade Unions ACTU Fact Sheet: Job Security and Casual Work Australian Council of Trade Unions Melbourne 2001: www2.actu.asn.au/campaigns/election/FAC2CASU.pdf; ABS 4102.0 *Australian Social Trends* Commonwealth of Australia Canberra 2001, 118.

²¹⁹ ABS 4102.0 *Australian Social Trends* Commonwealth of Australia Canberra 2001, 118.

²²⁰ ABS 6361.0 *Employment Arrangements and Superannuation Australia* April to June 2000, 10.

²²¹ ABS 6359.0 *Forms of Employment Australia* August 1998, 14.

²²² ABS 3301.0 *Births Australia*, 2000, 8.

²²³ ABS 3301.0 *Births Australia*, 2000, 8.

²²⁴ ABS 3301.0 *Births Australia*, 2000, 13.

²²⁵ ABS 3301.0 *Births Australia*, 2000, 46.

²²⁶ ABS 3301.0 *Births Australia*, 2000, 46.

²²⁷ ABS 3301.0 *Births Australia*, 2000, 16.

²²⁸ ABS 3301.0 *Births Australia*, 2000, 16.

²²⁹ ABS 3301.0 *Births Australia*, 2000, 6, 30, 33.

²³⁰ ABS 3301.0 *Births Australia*, 2000, 34.

²³¹ ABS 6224.0 *Labour Force Status and Other Characteristics of Families Australia* June 2000, 15.

- The 1996 Census showed the labour force participation rates of mothers with one child as 39 per cent when the child is aged up to one year, 57 per cent when the child is aged 1-2 years and 68 per cent when the child is aged 3-4 years.²³²
- The 1996 Census found that 'the participation rate of a mother with one child aged 3-4 years is the same as that for a mother with one child of primary school age.'²³³
- Women with two or more children aged under five years are more likely to be out of the labour force than women with one child aged under five years (67 per cent versus 47 per cent).²³⁴
- There is a significant difference in the labour force participation rate for women in sole parent families versus couple families. For women with dependent children aged 0-4 years, only 25 per cent of female sole parents are employed (eight per cent are unemployed) versus 46 per cent of women in couple families (three per cent are unemployed).²³⁵
- Eighty two per cent of female sole parents with two or more dependent children aged under five are not in the labour force (versus 57 per cent of women in couple families).²³⁶
- In Victoria, the ABS found that the number of women resigning from employment to have a child was 39 per cent in 1990-91, down from 88 per cent in 1975-79.²³⁷

A.2.1.4 Return to work after childbirth

- Earlier research, such as the 1988 AIFS study, found that women who are in work at the time of pregnancy are more likely than not to return to work. Forty-six per cent (or 921 of 2 012) of respondents were in employment during their pregnancy.²³⁸ Of this group, 60 per cent returned to the workforce within 18 months of birth.²³⁹
- The AIFS study also found that overall, women are less likely to return to work as the number of children they have increases. For the total survey sample (2 012) 39 per cent of first birth women, 24 per cent of second birth women and 14 per cent of those who had three or more children returned to the workforce after the pregnancy.²⁴⁰
- In contrast, women who have demonstrated commitment to workforce participation by returning after the first birth are more likely to return after second or subsequent births. The AIFS study found that of those in employment during pregnancy, 55 per cent of first birth women, 64 per cent of second birth women and 72 per cent of women who had three or more children returned to work.²⁴¹

²³² Peter McDonald "Work-family policies are the right approach to the prevention of low fertility" (2001) 9(3) *People and Place*, 17-27 at 18.

²³³ Peter McDonald "Work-family policies are the right approach to the prevention of low fertility" (2001) 9(3) *People and Place*, 17-27 at 18.

²³⁴ ABS 6224.0 *Labour Force Status and Other Characteristics of Families Australia* June 2000, 16.

²³⁵ ABS 6224.0 *Labour Force Status and Other Characteristics of Families Australia* June 2000, 15.

²³⁶ ABS 6224.0 *Labour Force Status and Other Characteristics of Families Australia* June 2000, 16.

²³⁷ Cited in Bettina Cass "Expanding paid maternity/parental leave through family income support: Supporting early infant care as a social responsibility" (1994) *Social Security Journal* 3-18 at 12.

²³⁸ Australian Institute of Family Studies *Maternity Leave in Australia: Employee and employer experiences - Report of a survey* Commonwealth of Australia Melbourne 1988, 4.

²³⁹ Australian Institute of Family Studies *Maternity Leave in Australia: Employee and employer experiences - Report of a survey* Commonwealth of Australia Melbourne 1988, 6 and 32.

²⁴⁰ Australian Institute of Family Studies *Maternity Leave in Australia: Employee and employer experiences - Report of a survey* Commonwealth of Australia Melbourne 1988, 69.

²⁴¹ Australian Institute of Family Studies *Maternity Leave in Australia: Employee and employer experiences - Report of a survey* Commonwealth of Australia Melbourne 1988, 69.

- A 1998 ABS survey of 232 employed mothers with children under six years found that 72 per cent of these women had returned to work within a year of the birth of their youngest child.²⁴²

A.2.2 Access to maternity and parental leave

A.2.2.1 Unpaid Parental Leave

- Published data are not available on the number of women who take unpaid maternity leave each year.
- A recent survey of New South Wales women estimated that 154 900 took unpaid maternity leave in the last five years, meaning an annual average of 30 980 women in New South Wales.²⁴³
- ABS statistics on Victoria found that 44 per cent of women who took a break from employment to have a child took maternity leave. The survey does not specify whether this break was paid or unpaid leave.²⁴⁴
- The 1988 AIFS study found 65 per cent of women who were eligible for, and took maternity leave²⁴⁵ returned to work with the same employer within the 12 month statutory period.²⁴⁶
- Fifty-nine per cent of the partnered women had partners who had taken time off work at the time of the birth. On average, the partners took 9.7 days leave and this was most likely to be taken as recreation leave.²⁴⁷
- Women in casual employment are less likely to have 12 months service with their current employer,²⁴⁸ and hence are less likely to qualify for unpaid parental leave than permanent employees. The proportion of full time and part time casual employees who have been with their current employer for 12 months or more are 63 per cent and 57 per cent respectively, versus 83 per cent for both full and part time permanent employees.²⁴⁹

A.2.2.2 Paid Parental Leave

- AWIRS 1995, surveying workplaces with 20 or more employees, found that 34 per cent of workplaces and 36 per cent of employees had access to paid maternity leave.²⁵⁰
- AWIRS 1995 also found that, in workplaces with 20 or more employees, 57 per cent of employees (59 per cent of workplaces) in the public sector and 24 per cent of

²⁴² ABS 6254.0 *Career Experience Australia* November 1998, 23.

²⁴³ ABS 4903.1 *Managing Caring Responsibilities and Paid Employment NSW* October 2000, 11.

²⁴⁴ Bettina Cass "Expanding paid maternity/parental leave through family income support: Supporting early infant care as a social responsibility" (1994) *Social Security Journal* 3-18 at 12.

²⁴⁵ Maternity leave was defined in this study as 'time absent from work allowed by employers for an employee to have a baby'. No differentiation was made between paid and unpaid maternity leave: Australian Institute of Family Studies *Maternity Leave in Australia: Employee and employer experiences - Report of a survey* Commonwealth of Australia Melbourne 1988, 15-16.

²⁴⁶ Australian Institute of Family Studies *Maternity Leave in Australia: Employee and employer experiences - Report of a survey* Commonwealth of Australia Melbourne 1988, 52.

²⁴⁷ Australian Institute of Family Studies *Maternity Leave in Australia: Employee and employer experiences - Report of a survey* Commonwealth of Australia Melbourne 1988, 39.

²⁴⁸ ABS 6254.0 *Career Experience Australia* November 1998, 10-11.

²⁴⁹ ABS 6254.0 *Career Experience Australia* November 1998, 10-11.

²⁵⁰ Alison Morehead et al *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey* Longman Melbourne 1997, 451.

employees (23 per cent of workplaces) in the private sector had access to paid maternity leave provisions.²⁵¹

- A nation-wide survey in 2000-01 by EOWA of 1935 firms with more than 100 employees found that 23 per cent of organisations reported that they provided some form of paid maternity leave.²⁵²
- DEWR analysis of the Workplace Agreements Database found that for the period 1997-2001, seven per cent of all federal Certified Agreements made provision for paid maternity leave.²⁵³
- DEWR analysis of federal agreements certified to June 2001 found that the average duration of paid maternity leave for the period 1997-2001 was approximately six weeks, with the average in 2001 reaching almost eight weeks. Paid maternity leave across industries varied from 2-12 weeks.²⁵⁴
- The Agreements Database and Monitor (ADAM) showed that 6.7 per cent of currently operating Certified Agreements (federal, New South Wales, Queensland, Western Australia and South Australia) provide paid maternity leave of between two days and 36 weeks.²⁵⁵
- ADAM showed that 0.7 per cent of currently operating AWAs provide paid maternity leave of either nine weeks or 12 weeks.²⁵⁶
- The Survey of Employment Arrangements and Superannuation (SEAS) found that 38 per cent of female employees responded that they were entitled to paid maternity leave (51 per cent of full time employees and 21 per cent of part time employees).²⁵⁷

A.3 Parental leave: industrial arrangements

A.3.1 Introduction

This section sets out current parental leave arrangements in Australia. It refers to parental leave because most existing arrangements for unpaid leave, and some for paid leave, provide for parental rather than maternity leave.

Section A.3.2 looks at current unpaid parental leave provisions in Australia. Attention is given to data on the take up rates and the average duration of parental leave.

Section A.3.3 provides an overview of available information on paid parental leave.

²⁵¹ Alison Morehead et al *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey* Longman Melbourne 1997, 451.

²⁵² Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

²⁵³ Department of Employment and Workplace Relations *Workplace Agreements Database* dated 3 April 2002 unpublished data.

²⁵⁴ Department of Employment and Workplace Relations *Workplace Agreements Database* dated 3 April 2002 unpublished data.

²⁵⁵ Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor Report 32* University of Sydney March 2002, 8.

²⁵⁶ Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor Report 32* University of Sydney March 2002, 8.

²⁵⁷ ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

A.3.2 Unpaid parental leave

A.3.2.1 Current arrangements for unpaid parental leave

Maternity or accouchement leave provisions have existed in the public sector since 1973 with the enactment of the *Maternity Leave (Commonwealth Employees) Act* 1973. Australia's national standard of 12 months unpaid maternity leave was first introduced into federal industrial awards following the Maternity Leave Test Case in 1979.²⁵⁸ The entitlement to leave was extended to adoptive mothers in 1985²⁵⁹ and to natural and adoptive fathers (on a shared basis) in 1989.²⁶⁰ This standard is now established in Commonwealth legislation.

The *Workplace Relations Act* 1996 is the primary legislative instrument at federal level which regulates employee entitlements. Under the Workplace Relations Act, permanent full time and part time employees who have 12 months continuous service with their employer have a minimum entitlement to 52 weeks of shared unpaid parental leave following the birth or adoption of a child. Except for one week, parents cannot take leave simultaneously as it is designed for the primary care-giver. Employees taking unpaid parental leave have a right to return to the position they held prior to taking leave, or to one similar in status.²⁶¹

State legislation generally mirrors the federal provision. Legislation in two States, Queensland and New South Wales, also covers casual employees who have regular/continuous service with one employer.

In May 2001, an AIRC decision granted access to unpaid parental leave to federal award-covered casual employees employed on a 'regular and systematic basis for several periods of employment or on a regular or systematic basis for an ongoing period of employment during a period of at least 12 months, and has a reasonable expectation of on-going employment'.²⁶² These new provisions will be inserted into federal awards on application by the award parties on an award-by-award basis.

Generally speaking, this minimum entitlement does not distinguish widely between maternity, paternity and adoption leave. Parental leave entitlements allow either the mother or the father to take leave as they determine between themselves. This contrasts with arrangements in many of Australia's top 20 trading partners and the majority of OECD member countries, where a designated period of maternity leave is followed by further entitlements to parental or family leave, which can be taken by either parent.²⁶³

Originally maternity leave entitlements did require a compulsory period of maternity leave, generally six weeks before and six weeks after the birth. As HREOC's *Pregnant and Productive* Report observed, the requirement for a pregnant employee who is willing to do her job to commence maternity leave at a specified time is considered discriminatory.²⁶⁴ While it is recognised that a period of leave generally will be taken, it is up to women to decide on the

²⁵⁸ Print D9576 9 March 1979 (1979) 218 CAR 120.

²⁵⁹ *Adoption Leave Test Case* Print F9852 16 August 1985 (1985) 298 CAR 321.

²⁶⁰ *Parental Leave Test Case* Print J3596 26 July 1990 (1990) 36 IR 1.

²⁶¹ sch 14 cl 12 *Workplace Relations Act* 1996 (Cth).

²⁶² *Re Parental Leave - Casual Employees Test Case* Print 904631 31 May 2001 (2001) EOC 93-144, para 8.

²⁶³ See discussion of international models in Chapter 4.

²⁶⁴ Human Rights and Equal Opportunity Commission *Pregnant and Productive: It's a right not a privilege to work while pregnant* HREOC Sydney 2001, 178.

period of leave they require. For some women, in the absence of paid leave, this decision may unfortunately be made largely on financial grounds.

The compulsory period of leave was removed from the standard federal award clause during the Award Simplification Process,²⁶⁵ however some awards, enterprise agreements and statutory provisions may still provide for a compulsory period of leave.²⁶⁶ Federal legislation and some State legislation continues to provide additional entitlements that recognise the different circumstances of pregnancy. These include

- transfer to a safe job where there is a risk to the mother or the unborn child;²⁶⁷ and
- pre-natal leave for illnesses associated with the pregnancy or in the case of still birth.²⁶⁸

These provisions recognise that women, during pregnancy, have certain needs to be accommodated. They recognise the different circumstances of pregnancy and operate to ensure that women are not disadvantaged because of their child bearing role.

A.3.2.2 Employees eligible for unpaid parental leave

Background

The 1988 AIFS study based on a survey of 2 012 women who gave birth in 1984 found that 76 per cent of those women employed during pregnancy (921 or 46 per cent of total sample) were eligible to take maternity leave as they were permanent employees with more than 12 months service.²⁶⁹

The Australian Living Standards Study (ALSS) conducted in 1991 - 1992 found that 75 per cent of women in its full time employee sample were eligible for parental leave. Some 47 per cent of full time male employees in the sample indicated that they were eligible for parental leave, while the number of eligible part time females was less than 40 per cent.²⁷⁰ Part time employees' lack of eligibility was most likely due to the high level of part time employees that worked on a casual basis. For men, lack of eligibility reflects delays in implementation of the 1989 Parental Leave decision and the absence of a statutory entitlement until 1993.

A recent ABS survey of women in New South Wales estimated that 154 900 women aged 18-54 with a child under the age of 15 had taken unpaid maternity leave in the last five years.²⁷¹ ABS statistics on Victoria found that 44 per cent of women who took a break from employment to have a child took maternity leave.²⁷²

²⁶⁵ *Award Simplification Decision* Print P7500, 23 December 1997 (1997) 43 AILR 3-683.

²⁶⁶ See for example s 34 *Minimum Conditions of Employment Act* 1993 (WA).

²⁶⁷ See for example sch 1A cl 7 *Workplace Relations Act* 1996 (Cth) (applying to Victorian workers); s 70 *Industrial Relations Act* 1996 (NSW); s 36 *Industrial Relations Act* 1999 (Qld).

²⁶⁸ See for example sch 1A cl 10 *Workplace Relations Act* 1996 (Cth) (applying to Victorian workers); s 71 *Industrial Relations Act* 1996 (NSW); s 37(2) *Industrial Relations Act* 1999 (Qld).

²⁶⁹ Australian Institute of Family Studies *Maternity Leave in Australia: Employee and employer experiences - Report of a survey* Commonwealth of Australia Melbourne 1988, 4.

²⁷⁰ Helen Glezer and Ilene Wolcott *Work and Family Life: Achieving integration* Australian Institute of Family Studies Melbourne 1995, 37-8.

²⁷¹ ABS 4903.1 *Managing Caring Responsibilities and Paid Employment* NSW October 2000, 4.

²⁷² Cited in Bettina Cass "Expanding paid maternity/parental leave through family income support: Supporting early infant care as a social responsibility" (1994) *Social Security Journal* 3-18 at 12.

Current eligibility for unpaid parental leave

Current labour force data allow for an estimation of employees eligible for unpaid parental leave based on 12 months service with their current employer. Assessment of eligibility should include casual employees as the entitlement is gradually being extended to employees under federal awards, and in States and Territories.²⁷³ Nonetheless, some casual employees may fall outside the definition of 'regular and systematic employment' and as a consequence not be eligible for leave.

Table A.1 shows that, based on the length of time with their current employer, about 80 per cent of permanent employees, both male and female, would meet the statutory requirement of 12 months employment for parental leave. A little over half of all casual employees would also meet the basic length of service requirement.²⁷⁴

Table A.1: Length of time with current employer, permanent and casual employees by gender, Australia, November 1998 (per cent)

	Full time permanent employees	Part time permanent employees	Full time casual employees	Part time casual employees
Males				
Less than 1 year	16.1 %	26.3 %	35.8 %	53.2 %
1 year or more	83.9 %	73.7 %	64.2 %	46.8 %
Total	100 %	100 %	100 %	100 %
Females				
Less than 1 year	18.0 %	16.1 %	41.6 %	38.7 %
1 year or more	82.0 %	83.9 %	58.4 %	61.3 %
Total	100 %	100 %	100 %	100 %

Source: ABS 6254.0 *Career Experience, Australia* November 1998, 10-11.

A.3.2.3 Unpaid parental leave take up rates

Eligibility for leave does not provide a reliable guide to the numbers of employees taking parental leave. To start, the number of births in any year is significantly less than the number of employees. For example, there were just under a quarter of a million births in 2000 (including births to women not in the labour force) compared to approximately nine million employed persons.²⁷⁵

Added to this is the fact that women and men may choose to resign from employment or take other forms of leave rather than take parental leave for a number of reasons, such as preferring to concentrate solely on family responsibilities. In addition, although both parents may be eligible for leave, usually only one person in a couple can take parental leave at any given time.

The 1988 AIFS study found that 57 per cent of women employed during pregnancy who were eligible for unpaid maternity leave actually took this leave.²⁷⁶ Eligibility for maternity leave in this

²⁷³ Employees in the Territories are covered by federal awards.

²⁷⁴ However where provision is made for parental leave for casuals, additional requirements apply, such as having worked on a regular and systematic basis.

²⁷⁵ ABS 6203.0 *Labour Force Australia* August 2001, 3.

²⁷⁶ Australian Institute of Family Studies *Maternity Leave in Australia: Employee and employer experiences - Report of a survey* Commonwealth of Australia Melbourne 1988, 25. Maternity leave was defined in this study as

context relates to eligibility requirements such as working continuously for the same employer for 12 months and being employed on a permanent, rather than temporary or casual, basis. It is reasonable to argue that take up rates may have increased since the 1980s as women's labour force participation increased, anti-discrimination provisions were implemented, the relative novelty of maternity leave subsided, and, more recently, since unpaid parental leave has been extended to casual employees under certain circumstances.

A.3.2.4 Duration of unpaid parental leave

While the statutory maximum is 12 months, parents have a choice about the length of leave that they take.²⁷⁷ Data on the actual duration of leave taken are scant. This section of the paper sets out available data.

Older studies, such as the one conducted by AIFS, found that 73 per cent of women taking maternity leave returned to work within 18 months. About 65 per cent of women who were eligible for and took maternity leave returned to work with the same employer within the 12 month statutory period.²⁷⁸ In this survey, male partners of women were asked about the leave they had taken at the time of the birth. On average, male partners took 9.7 days and this was most likely to be taken as recreation leave.²⁷⁹

Table A.2: Duration of breaks from the workplace of employed people who had taken a break from work in the last six years when their youngest child was born.

Duration of leave	Percentage of women	Percentage of men
less than 6 weeks	8.33	96.5
6 weeks to less than 3 months	11.51	2.1
3 months to less than 6 months	18.66	*
6 months to less than 12 months	30.64	*
12 months or more	27.10	*

* subject to sampling variability too high for most practical uses.

Source: ABS 6254.0 *Career Experience* November 1998, 23.

This ABS survey referred to in Table A.2 involved 232 employed mothers with children under six years. It found that 72 per cent of these women had returned to work within a year of the birth of their youngest child.²⁸⁰ Almost 60 per cent took more than six months leave. Note that the proportion of all women who are working within a year of the birth of their youngest child is likely to be significantly lower than indicated, as this survey did not include women who were not employed at the time of the survey and women who did not return to work within six years of the birth.

'time absent from work allowed by employers for an employee to have a baby'. No differentiation was made between paid and unpaid maternity leave: Australian Institute of Family Studies *Maternity Leave in Australia: Employee and employer experiences - Report of a survey* Commonwealth of Australia Melbourne 1988, 15-16.

²⁷⁷ s 170KA and sch 14 cl 1 *Workplace Relations Act* 1996 (Cth).

²⁷⁸ Australian Institute of Family Studies *Maternity Leave in Australia: Employee and employer experiences - Report of a survey* Commonwealth of Australia Melbourne 1988, 52.

²⁷⁹ Australian Institute of Family Studies *Maternity Leave in Australia: Employee and employer experiences - Report of a survey* Commonwealth of Australia Melbourne 1988, 39.

²⁸⁰ ABS 6254.0 *Career Experience Australia* November 1998, 23.

For the vast majority of men any break taken was for less than six weeks and most took some form of paid leave.²⁸¹ It is most likely that this was paid annual or long service leave.

Industry variations are of course likely. For example the Shop Distributive and Allied Employees Union estimates that 90 per cent of its members who take up unpaid maternity leave take the full 12 months.²⁸²

A.3.3 Paid maternity leave

A.3.3.1 Introduction

While minimum maternity leave entitlements provide for unpaid leave, a proportion of Australian employers also provide some form of paid maternity or parental leave. Entitlement to such leave may be available under awards, enterprise agreements or individual agreements, company policies or legislation covering public sector employees. This section considers available data on the incidence of paid maternity leave across the Australian workforce. Information on paid paternity and adoption leave has also been included where available, to provide a more comprehensive view of existing paid parental leave arrangements. Each of the key nationwide surveys are considered. There are also a number of State based surveys, including ABS surveys, which have not been included here, however none of these State surveys are conducted on a regular basis.

A.3.3.2 The 1995 Australian Workplace Industrial Relations Survey (AWIRS 95)²⁸³

AWIRS 95 is a national survey of workplaces with 20 or more employees, that includes information about workplaces and employees. A structured questionnaire was used to survey 2 001 workplaces. This sample represents a population of about 37 200 workplaces, employing 3.6 million employees. Workplaces were selected from each State and Territory, and cover all industries except agriculture, forestry and fishing, and defence. AWIRS was also conducted in 1990, but has not been conducted again since 1995. The AWIRS database is managed by DEWR.

A limitation of AWIRS 95 for current analysis is that it relates to the period prior to the introduction of the *Workplace Relations Act* 1996 (Cth), and hence to some extent represents a different industrial context.

AWIRS 95 made the following findings.

- Thirty-four per cent of workplaces with 20 or more employees provided paid maternity leave, potentially covering 36 per cent of employees working at workplaces with 20 or more employees.²⁸⁴ Forty-two per cent of all full time and part time female employees

²⁸¹ ABS 6254.0 *Career Experience Australia* November 1998, 23.

²⁸² Correspondence from Therese Bryant, National Women's Officer, Shop Distributive and Allied Employees' Association to Pru Goward, Sex Discrimination Commissioner, 8 October 2001.

²⁸³ The description of this survey is drawn from Alison Morehead et al *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey* Longman Melbourne 1997, 25 and Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 65.

²⁸⁴ Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 42.

in workplaces with 20 or more employees were potentially covered by paid maternity leave provisions.²⁸⁵

- Eighteen per cent of workplaces with 20 or more employees provided paid paternity leave, potentially covering 16 per cent of employees working at workplaces with 20 or more employees.²⁸⁶ Smaller workplaces were more likely to have paid paternity leave arrangements.²⁸⁷
- Public sector workplace were more than twice as likely to have paid maternity leave than private sector workplaces.²⁸⁸ Paid paternity leave was also more common in the public sector than the private.²⁸⁹

Table A.3: Paid maternity and paternity leave in workplaces with 20 or more employees, 1995

Workplace characteristics	Paid maternity leave		Paid paternity leave	
	% workplaces	% employees	% workplaces	% employees
All workplaces	34	36	18	18
Employment size				
20-49	32	32	18	18
50-99	37	38	18	19
100-199	32	31	17	18
200-499	30	30	14	14
500 or more	38	44	11	13
Sector				
Private	23	24	13	12
Public	59	57	31	23
Industry				
Mining	29	28	11	10
Manufacturing	19	22	8	10
Electricity, gas and water supply	36	30	23	22
Construction	15	19	12	13
Wholesale trade	18	12	10	8
Retail trade	20	18	11	11
Accommodation, cafes and restaurants	21	21	7	8
Transport and storage	26	23	14	11
Communication services	87	93	26	33
Finance and insurance	38	26	24	20

²⁸⁵ Alison Morehead et al *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey* Longman Melbourne 1997, 116.

²⁸⁶ Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 42.

²⁸⁷ Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 42.

²⁸⁸ Alison Morehead et al *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey* Longman Melbourne 1997, 116.

²⁸⁹ Alison Morehead et al *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey* Longman Melbourne 1997, 116.

Property and business services	23	27	7	11
Government administration	54	43	26	16
Education	66	73	43	38
Health and community services	48	48	23	12
Cultural and recreational services	31	43	22	27
Personal and other services	43	40	31	26

Source: AWIRS 95 main survey employee relations management questionnaire in Alison Morehead et al *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey* Longman Melbourne 1997, 451.

A.3.3.3 Workplace Agreements Database (WAD)²⁹⁰

WAD includes all approved Certified Agreements under federal legislation since January 1997. This database is managed by the Department of Employment and Workplace Relations (DEWR).

A limitation of WAD is that it only records formal arrangements included in Certified Agreements. This means that provisions included in underlying awards, earlier agreements or personnel practices are not recorded, thus potentially underestimating the extent of family friendly provisions available in workplaces. In addition, Certified Agreements are not evenly distributed across industries.

In particular, CAs [Certified Agreements] are over-represented in the manufacturing, construction, transport and storage and government administration and defence industries and under-represented in the wholesale trade, retail trade, property and business services and education industries.²⁹¹

For the period January 1997 to June 2001, DEWR analysis of WAD found

- 2 330 federal Certified Agreements, representing seven per cent of all Certified Agreements made provision for paid maternity leave.²⁹² Paid maternity leave provisions in certified agreements ranged from one day to up to 18 weeks, with the most frequent periods offered being two weeks (39 per cent), six weeks (21 per cent) and 12 weeks (23 per cent).²⁹³
- Thirty one per cent of female employees covered by federal Certified Agreements potentially had access to paid maternity leave.²⁹⁴

²⁹⁰ The description of this survey is drawn from Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 62.

²⁹¹ Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 62-63.

²⁹² Department of Employment and Workplace Relations *Workplace Agreements Database* dated 3 April 2002 unpublished data.

²⁹³ Department of Employment and Workplace Relations *Workplace Agreements Database* dated 3 April 2002 unpublished data.

²⁹⁴ Department of Employment and Workplace Relations *Workplace Agreements Database* dated 3 April 2002 unpublished data. This included employees with legislated rights to paid maternity leave.

- 936 federal Certified Agreements, representing three per cent of all Certified Agreements provided for paid paternity leave.²⁹⁵ The most common period of paid paternity leave, in those organisations that provide it, was one week (82 per cent).²⁹⁶
- 423 federal Certified Agreements, representing two per cent of all Certified Agreements provided for paid adoption leave.²⁹⁷
- A number of industries in which a significant number of women are employed such as retail trade, accommodation, cafes and restaurants (57 per cent of employees are women), property and business services (46 per cent of employees are women), and personal and other services (46 per cent of employees are women) have among the lowest incidence of paid maternity leave provided for in federal Certified Agreements.

Table A.4: Periods of paid maternity leave and paid paternity leave in federal Certified Agreements (CAs) 1997-2001

Period of paid leave	Number of CAs		% of CAs	
	Maternity Leave	Paternity Leave	Maternity Leave	Paternity Leave
Days: 1	1	8	#	1
2	13	29	1	3
3	7	33	0.3	4
Weeks: 1	196	766	8	82
2	913	27	39	3
3	24	11	1	1
4	73	10	3	1
5	2	3	0.1	0.3
6	500	37	21	4
7	2	1	0.1	0.1
8	21	*	1	*
9	24	3	1	0.3
10	1	*	#	*
12	539	8	23	1
13	6	*	0.3	*
14	4	*	0.2	*
16	1	*	0.04	*
18	3	*	0.1	*
Number of CAs with Paid Leave	2330	936		
As a % of all CAs	7	3		

Source: Department of Employment and Workplace Relations *Workplace Agreements Database* dated 3 April 2002 unpublished data for Period 1/1/97 to 31/12/01

* no incidence recorded

less than 0.05 per cent

²⁹⁵ Department of Employment and Workplace Relations *Workplace Agreements Database* dated 3 April 2002 unpublished data.

²⁹⁶ Department of Employment and Workplace Relations *Workplace Agreements Database* dated 3 April 2002 unpublished data.

²⁹⁷ Department of Employment and Workplace Relations *Workplace Agreements Database* dated 3 April 2002 unpublished data.

Table A.5: Incidence and Duration of Paid Maternity Leave By Industry, 1997 – 2001

INDUSTRY	1997 Incidence of Federal Agreements % (average wks per yr)	1998 Incidence of Federal Agreements % (average wks per yr)	1999 Incidence of Federal Agreements % (average wks per yr)	2000 Incidence of Federal Agreements % (average wks per yr)	2001 Incidence of Federal Agreements % (average wks per yr)
Mining	*(*)	*(*)	*(*)	*(*)	5(12)
Manufacturing	2(5)	3(4)	4(4)	5(5)	5(4)
Electricity, Gas and Water Supply	11(11)	5(13)	7(11)	28(8)	38(12)
Construction	2(1)	2(2)	2(2)	1(2)	2(1)
Wholesale Trade	7(9)	*(*)	3(6)	9(4)	33(1)
Retail Trade	3(5)	1(6)	4(7)	5(7)	3(4)
Accommodation, Cafes and Restaurants	*(*)	*(*)	*(*)	2(6)	5(4)
Transport and Storage	2(8)	1(7)	*(*)	4(8)	2(7)
Communication Services	11(6)	*(*)	29(8)	21(8)	20(12)
Finance and Insurance	24(7)	37(7)	12(5)	34(7)	35(7)
Property and Business Services	*(*)	3(8)	6(8)	9(8)	6(9)
Government Administration and Defence	4(9)	16(9)	15(9)	20(10)	34(10)
Education	43(11)	32(9)	32(9)	53(10)	44(11)
Health and Community Services	8(7)	57(2)	51(2)	37(3)	23(6)
Cultural and Recreational Services	2(9)	6(10)	19(9)	24(9)	38(10)
Personal and Other Services	*(*)	2(6)	12(8)	14(11)	8(6)
Agriculture, Forestry and Fishing	*(*)	*(*)	9(12)	7(-)	*(*)
TOTAL	4(7)	10(4)	9(4)	6(7)	11(7)

Source: Department of Employment and Workplace Relations *Workplace Agreements Database* dated 3 April 2002 unpublished data.

* industry agreements recorded no paid maternity leave provisions

- industry agreements recorded no female employees

A.3.3.4 Equal Opportunity for Women in the Workplace Agency (EOWA) Data²⁹⁸

EOWA collects data on paid parental leave as part of the reporting process under the *Equal Opportunity for Women in the Workplace Act 1999* (Cth). Organisations in the private sector with over 100 employees are required by the Act to provide an annual report on the equal opportunity programmes that are provided within their organisation. Data on paid parental leave were collected through telephone conversations between EOWA assessors and the reporting organisations. EOWA's predecessor, the Affirmative Action Agency, collected similar data through surveys of reporting organisations.

In 2001, 2 541 organisations reported to EOWA. 2 104 organisations were surveyed and 92 per cent (1 935) of these organisations responded to the questions on paid maternity and paternity leave.²⁹⁹

²⁹⁸ The description of this data is drawn from information provided by Equal Opportunity for Women in the Workplace Agency .

²⁹⁹ Equal Opportunity for Women in the Workplace Agency Unpublished statistics 2002.

For 2000-01, EOWA data indicated the following.

- Twenty-three per cent of organisations reported that they provide some form of paid maternity leave.³⁰⁰
- Fifteen per cent of organisations reported that they provide some form of paid paternity leave.³⁰¹
- In general, the duration of paid maternity leave provided is considerably longer than that provided for paid paternity leave.
 - Forty-one per cent of organisations that provide paid maternity leave provided five to six weeks of leave, while another 33 per cent of organisations provided nine to 12 weeks of paid maternity leave.³⁰²
 - Sixty-seven per cent of organisations that provide paid paternity leave provided less than three weeks of leave.³⁰³
- There was considerable variation in the provision of paid maternity leave across industries. Around 56 per cent of education institutions are likely to offer paid maternity leave, versus five per cent of employers in the hospitality industry (accommodation, cafes and restaurants).³⁰⁴
 - The survey found the following rates of paid maternity leave amongst organisations by industry: 56.4 per cent in the education industry; 33.5 per cent of property and business services; 30.1 per cent in the finance and insurance industry; 24.9 per cent in the health and community services industry; 15.4 per cent of manufacturing companies; 7.4 per cent of transport and storage organisations; 7.2 per cent of retail trade organisations; 5.2 per cent of accommodation, cafes and restaurants and 4.5 per cent of wholesale trade organisations.³⁰⁵
- Companies with more than 1 000 employees were more likely (37 per cent) to offer paid maternity leave than companies with between 100-499 employees (19 per cent) or companies with 500 to 999 employees (23.5 per cent).³⁰⁶
- The EOWA data suggest some increase in the provision of paid maternity leave provisions amongst Australia's largest organisations (from 15 per cent in 1997³⁰⁷ to 23 per cent in 2000-01).
- The number of organisations offering paid maternity leave benefits has increased from 12 per cent in 1994-95 to 23 per cent in 1998-99.³⁰⁸ However the number of organisations offering paid maternity leave between 1998-99 and 2000-01 has remained stable at 23 per cent.³⁰⁹

³⁰⁰ Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

³⁰¹ Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

³⁰² Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

³⁰³ Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

³⁰⁴ Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

³⁰⁵ Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

³⁰⁶ Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

³⁰⁷ Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 18.

³⁰⁸ Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

³⁰⁹ Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

A.3.3.5 Agreements Database and Monitor (ADAM)³¹⁰

ADAM is a database of registered Certified Agreements. It contains information on over 9 500 Certified Agreements in the Federal, New South Wales, Queensland, Western Australian and South Australian jurisdictions. It also contains over 1 200 federal Australian Workplace Agreements (AWAs).³¹¹ The database is managed by Australian Centre for Industrial Relations Research and Training (ACIRRT).

ADAM shows the following.

- 6.7 per cent of currently operating Certified Agreements provide paid maternity leave of between two days and 36 weeks.³¹²
- 3.3 per cent of currently operating Certified Agreements provide paid paternity leave.³¹³
- 0.7 per cent of currently operating AWAs provide paid maternity leave of either nine weeks or 12 weeks.³¹⁴
- 0.4 per cent of currently operating AWAs provide paid paternity leave.³¹⁵
- '[T]he incidence of paid maternity leave in enterprise agreements over the years has stabilised ... hovering between 6 and 6.5 percent'.³¹⁶

³¹⁰ The description of this survey is drawn from the Australian Centre for Industrial Relations Research and Training website at www.acirrt.com/research/default.htm.

³¹¹ Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor Report 32* University of Sydney March 2002, 31.

³¹² Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor Report 32* University of Sydney March 2002, 8.

³¹³ Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor Report 32* University of Sydney March 2002, 8.

³¹⁴ Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor Report 32* University of Sydney March 2002, 8.

³¹⁵ Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor Report 32* University of Sydney March 2002, 8.

³¹⁶ Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor Report 32* University of Sydney March 2002, 9.

Table A.6: Incidence of paid maternity leave provisions in currently operating Certified Agreements

	% agreements
All current agreements	6.7
Union agreements	7.9
Non-union agreements	2.6
Public Sector	21.2
Private Sector	3.4
Industry group:	
Mining/Construction	0.5
Food, Beverage and Tobacco Manufacturing	2.9
Metal Manufacturing	4.3
Other Manufacturing	0.8
Electricity, Gas and Water	22.6
Wholesale/Retail Trade	2.0
Transport/Storage	3.6
Communications	-
Financial Services	7.4
Public Administration	17.7
Community Services	19.0
Recreational and Personal Services	6.0

Source: ADAM Database, 2002, ACIRRT, University of Sydney, (n=2208) in Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor Report 32* University of Sydney March 2002, 8.

Table A.7: Incidence of paid maternity leave provisions in certified agreements, 1992-2001

Year	% of certified agreements
1992	2.0
1993	0.7
1994	1.0
1995	0.3
1996	3.2
1997	5.2
1998	6.6
1999	6.1
2000	6.4
2001	6.5

Source: ADAM Database, 2002, ACIRRT, University of Sydney, (n=9524) in Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor Report 32* University of Sydney March 2002, 8.

A.3.3.6 Australian Workplace Agreements Research Information System (AWARIS)³¹⁷

The AWARIS contained a sample of AWAs, and was managed by the Office of the Employment Advocate up to 31 December 1999. Information on AWAs is now collected as part of ADAM which is maintained by ACIRRT.

³¹⁷ The description of this survey is drawn from Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 63-64.

The data on AWAs reported here were prepared by the former Department for Employment, Workplace Relations and Small Business (DEWRSB), based on AWARIS data and was reported in *Work and Family State of Play*.³¹⁸

The sample used by the former DEWRSB

... comprises AWAs from the 1 056 employers with approved AWAs as at 31 December 1998. The sample comprises the earliest approved AWA for each employer. [DEWRSB] have weighted the sample by the number of employees with AWAs for each of these employers to provide indicative population estimates for family-friendly provisions applying to around 42 106 employees.³¹⁹

The potential for significant variation between AWAs within an organisation mean that this method of analysis may not provide a true reflection of existing AWAs. As such these figures should be used with care.

In considering AWAs as a measure of access to paid maternity leave, it is important to recognise that AWAs are not evenly spread across industries.

Government administration and defence and communication service industries have a higher representation of AWAs, while manufacturing, wholesale trade, retail trade, education, and health and community services have a relatively lower representation of agreements.

Similarly, managers and administrators, and intermediate clerical, sales and service workers have a higher representation of AWAs, while tradespersons and related workers, intermediate production and transport workers, elementary clerical, sales and service workers and labourers and related workers were under-represented.

AWAs are more common in smaller organisations, with 42 per cent of AWAs in the sample made in organisations with less than 20 employees compared to four per cent in organisations with 500 or more employees.³²⁰

Fifty-eight per cent of AWAs were made with men and 42 per cent were made with women.³²¹

Former DEWRSB analysis of AWARIS shows

- thirty per cent of AWAs include paid maternity leave;³²²
- twenty-eight per cent of AWAs include paid paternity leave;³²³
- ninety-two per cent of AWAs that included paid maternity leave allowed for 12 weeks leave;³²⁴ and

³¹⁸ Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 63-64.

³¹⁹ Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 28.

³²⁰ Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 64.

³²¹ Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 29.

³²² Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 31.

³²³ Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 31.

- ninety-nine per cent of AWAs that included paid paternity leave allowed for one week leave.³²⁵

Table A.8: Period of paid maternity and paid paternity leave by Australian Workplace Agreement, up to 31/12/98

Period of paid leave	Number of AWAs	
	Paid maternity leave	Paid paternity leave
Days: 3	0	27
Weeks: 1	216	11493
2	65	1
4	114	0
5	1	1
6	116	9
8	501	0
12	11390	1
13	26	0
Number AWAs with paid leave	12429	11532
As a % of all AWAs	30	27

Source: AWARIS data up to 31/12/98, unweighted n=1056, weighted by number of employees gives n=42 106 quoted in Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 91.

A.3.3.7 Survey of Employment Arrangements and Superannuation (SEAS)³²⁶

SEAS is an ABS household survey that collected information on the diversity of employment arrangements and superannuation coverage in Australia. The survey collected information from individuals (April to June 2000) and superannuation funds and administrators (May to October 2000). The survey was a special stand-alone survey. SEAS collected information on paid maternity and paternity leave, however these data are unpublished.

SEAS found

- thirty-eight per cent of female employees responded that they were entitled to paid maternity leave (51 per cent of full time employees and 21 per cent of part time employees);³²⁷
- women in casual employment had almost negligible access to paid maternity leave (0.4 per cent of self-identified casuals responded that they were entitled to paid maternity leave, compared to 53.6 per cent of other female employees);³²⁸
- industries with the highest incidence of paid maternity leave were government administration and defence (68 per cent of female employees), communication

³²⁴ Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 31.

³²⁵ Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, 31.

³²⁶ The description of this survey is drawn from ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

³²⁷ ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

³²⁸ ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

services (59 per cent of female employees), finance and insurance (59 per cent of female employees) and education (57 per cent of female employees);³²⁹

- industries with the lowest incidence of paid maternity leave were accommodation, cafes and restaurants (13 per cent of female employees), retail (20 per cent of female employees) and cultural and recreational services (28 per cent of female employees);³³⁰
- occupations with the highest incidence of paid maternity leave were managers and administrators (65 per cent) and professionals (54 per cent);³³¹ and
- occupations with the lowest incidence of paid maternity leave were elementary clerical, sales and service workers (18 per cent) and labourers and related workers (21 per cent).³³²

Table A.9: Entitlement to paid maternity or paternity leave - Employees (excluding owner-managers)

	Entitled to paid maternity/paternity leave		Not entitled	Did not know	Total
	('000)	(%)	('000)	('000)	('000)
Female					
Self identified casuals	3.4	0.4%	891.5	59.9	954.8
Other employees	1232.4	53.6%	537.5	529.9	2299.8
<i>Total</i>	<i>1235.8</i>	<i>38.0%</i>	<i>1429</i>	<i>589.8</i>	<i>3254.6</i>
Male					
Self identified casuals	3.7	0.6%	583.1	54.7	641.5
Other employees	1204.1	40.9%	758.1	985.2	2947.4
<i>Total</i>	<i>1207.8</i>	<i>33.7%</i>	<i>1341.2</i>	<i>1039.9</i>	<i>3588.9</i>
Total					
Self identified casuals	7.1	0.4%	1474.7	114.6	1596.4
Other employees	2436.6	46.4%	1295.7	1515.1	5247.4
<i>Total</i>	<i>2443.7</i>	<i>35.7%</i>	<i>2770.4</i>	<i>1629.7</i>	<i>6843.8</i>

Source: ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

³²⁹ ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

³³⁰ ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

³³¹ ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

³³² ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

Table A.10: Female employees (excluding owner-managers) entitled to paid maternity leave

	Public sector ('000)	Private sector ('000)	Not determined ('000)	Total ('000)	% of total female employees
Labour force status					
Employed full time	402.4	537.9	9.1	949.4	50.9%
Employed part time	116.5	167.9	2.0	286.5	20.8%
Industry					
Agriculture Forestry and Fishing	-	1.8	-	1.8	4.5%
Mining	-	3.2	-	3.2	47.1%
Manufacturing	-	86.2	-	86.2	36.7%
Electricity Gas and Water Supply	2.9	1.9	-	4.7	49.5%
Construction	0.5	12.3	-	12.8	32.0%
Wholesale Trade	0.3	37.1	-	37.4	33.8%
Retail Trade	1.2	108.6	-	109.7	20.2%
Accommodation Cafes and Restaurants	0.1	28.2	0.6	28.9	13.4%
Transport and Storage	5.5	14.8	-	20.3	30.8%
Communication Services	20.1	4.2	0.7	25.0	59.1%
Finance and Insurance	11.2	92.7	0.4	104.2	59.0%
Property and Business Services	8.6	104.1	0.6	113.2	30.5%
Government Administration and Defence	113.1	1.4	0.4	114.9	68.1%
Education	180.1	59.0	0.6	239.7	57.0%
Health and Community Services	147.7	120.0	6.8	274.4	44.9%
Cultural and Recreational Services	10.7	13.3	0.9	24.9	28.2%
Personal and Other Services	17.2	17.4	0.1	34.6	31.4%
Occupation					
Managers and Administrators	27.1	24.1	-	51.3	64.6%
Professionals	247.4	136.4	5.9	389.7	54.2%
Associate Professionals	56.8	83.7	0.6	141.2	46.0%
Tradespersons and Related Workers	3.3	15.8	-	19.0	24.3%
Advanced Clerical and Service Workers	27.0	80.6	0.4	108.1	44.1%
Intermediate Clerical, Sales and Service Workers	121.0	231.1	2.9	355.0	37.4%
Intermediate Production and Transport Workers	0.8	26.0	-	26.7	25.6%
Elementary Clerical, Sales and Service Workers	20.3	69.7	0.9	91.0	17.9%
Labourers and Related Workers	15.0	38.4	0.3	53.8	20.5%
Time worked in job					
Less than 1 year	47.3	157.0	2.4	206.7	23.7%
1 year to less than 5 years	133.3	271.3	4.2	408.8	34.2%
5 years to less than 10 years	110.4	136.3	3.0	249.7	48.4%
10 years and over	227.9	141.4	1.4	370.7	55.2%
Total	518.9	705.8	11.1	1235.9	

Source: ABS 6361.0 Survey of Employment Arrangements and Superannuation April – June 2000 unpublished data.

A.3.3.8 Household, Income and Labour Dynamics in Australia (HILDA) Survey³³³

HILDA is a household-based panel survey that collects information on economic and subjective well-being, labour market dynamics and family dynamics. The survey is funded by the federal Department of Family and Community Services. The Melbourne Institute of Applied Economics and Social Research (University of Melbourne), the Australian Council for Educational Research and the Australian Institute of Family Studies are jointly responsible for design and management of the survey.

Wave 1 of the survey was conducted in the second half of 2001. Four questionnaires (three personal interviews and one self-completion questionnaire) were used to collect the information from 13 962 members of 7 680 households. The sample was drawn from 488 different neighbourhood regions across Australia.

Data from Wave 1 of the survey are expected to be available in October 2002.

Preliminary HILDA data show the following.

- 49.8 per cent of female employees under 40 years of age potentially have access to paid maternity leave.³³⁴
- 45.7 per cent of female employees with children under 15 years of age potentially have access to paid maternity leave.³³⁵

These data are based on a raw data set that is still subject to further editing and cleaning. The data are unweighted and subject to further change.

A.3.3.9 Awards

A review of the top 100 federal awards undertaken by the former DEWRSB found that six awards included provision for paid parental leave.³³⁶

A.3.3.10 Conclusions

Conclusions that can be drawn from the available data are limited. Each of the data sets outlined above measure a different group of employees in a different way, and as such are not directly comparable.

In very general terms, conclusions can be drawn from the data that

- a number of workplaces in Australia do make paid maternity leave available to their employees through a range of mechanisms such as awards, Certified Agreements, AWAs and company policies, however the majority of working women do not have access to paid maternity leave;

³³³ The description of this survey is based on information prepared by the Melbourne Institute of Applied Economic and Social Research. Information on HILDA can be obtained from www.melbourneinstitute.com/hilda/

³³⁴ Prepared by Mark Wooden and Simon Freidin, Melbourne Institute of Applied Economic and Social Research, University of Melbourne. Used with the permission of the Department of Family and Community Services.

³³⁵ Prepared by Mark Wooden and Simon Freidin, Melbourne Institute of Applied Economic and Social Research, University of Melbourne. Used with the permission of the Department of Family and Community Services.

³³⁶ Research provided by the Department of Employment, Workplace Relations and Small Business as of 7 November 2000.

- the length of time available for paid maternity leave varies widely, from one day up to 36 weeks. The average length of time available falls considerably short of the ILO recommendation of a minimum of 14 weeks paid maternity leave;
- paid maternity leave is more commonly available than paid paternity leave;
- the length of time available for paid maternity leave is generally longer than that provided for paid paternity leave;
- there is significant variation by industry in the availability of paid maternity leave, with lower coverage in many of the industries in which women and lower skilled employees are concentrated;
- higher skilled, professional employees are more likely to have access to paid maternity leave than are those in less-skilled and lower paid work; and
- casuals and part time employees have significantly less access to paid maternity leave than full time employees.

It is not possible from the available data to determine which industrial instrument is most commonly used to provide paid maternity leave. Of the top 100 federal awards, only six include provision for paid maternity leave. Similarly, only a very limited number of federal Certified Agreements (seven per cent) include a formal provision for paid parental leave, indicating that enterprise bargaining has not significantly increased women's access to paid maternity leave. The proportion of currently operating AWAs that include provision for paid maternity leave is negligible (0.7 per cent). Data are not available on the number of company policies that provide paid parental leave.

A significant limitation with the majority of available data is that most data only record whether workplaces or agreements provide some form of paid maternity leave. They do not provide information on the number of women who are actually eligible for paid maternity leave. Eligibility criteria, such as the need for 12 months service, mean that many women will not be eligible for paid maternity leave, even though they may work in organisations that provide for such leave. Employees who fall outside of these formal conditions, such as contract workers, will not have access to paid maternity leave. Similarly, casual employees' limited access to leave entitlements mean that they will generally not have access to paid maternity leave, even where they work in organisations that offer this type of leave. This is highlighted by SEAS data which found that only 0.4 per cent of casual employees had access to paid maternity leave.³³⁷ This means that the figures outlined in this section of the paper are likely to overstate significantly the availability of paid maternity leave.

Further, the available data do not record the number of women who take maternity leave. Even though paid maternity leave may be available, this does not mean that women actually use this leave. The take up rate of paid maternity leave is a crucial factor in determining the effectiveness of workplace provision of paid maternity leave. A range of factors, such as workplace culture or concern to avoid disrupting career prospects, may mean that women are unwilling to take up paid maternity leave.

³³⁷ ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

A.4 Government payments to parents

A.4.1 Introduction

The Federal Government provides a range of income support payments to families to assist with the costs of raising children, including newborns. The stated aim of these payments is to recognise the needs and choices of both single and dual income families.³³⁸

Government payments to parents through allowances and tax benefits are a means of supporting parents generally in child care, rather than directly assisting women to take leave from work at the time of child birth. However, government payments to parents are part of the framework of support for maternity in general and have been included for that reason.

A.4.2 Maternity Allowance

The purpose of Maternity Allowance is to help families with the extra costs associated with the birth of a new baby. It is paid for all babies (including stillborn babies and babies who die shortly after birth).

Claimants must be eligible for Family Tax Benefit Part A within 13 weeks of the child being born or, for adopted children, within 13 weeks of the child being entrusted into their care where the child was under 26 weeks at date of placement.

Maternity Allowance is paid as a non taxable lump sum of \$798.72. Multiple births attract payment for each baby.³³⁹

In the financial year 2000-01, 210 120 families received Maternity Allowance in respect of 214 355 children.³⁴⁰

A.4.3 Maternity Immunisation Allowance

Maternity Immunisation Allowance is paid for children after the child reaches 18 months old and either has been fully immunised, or is exempt from the immunisation requirement. A valid exemption can be for medical reasons or a parent's/carer's conscientious objection to immunisation.

Claimants must have been paid Maternity Allowance for the child or be eligible for Family Tax Benefit Part A when the child meets the immunisation or exemption requirements. It is paid as a non taxable lump sum of \$208.³⁴¹

³³⁸ This section is drawn from the Centrelink publications *Centrelink Information: A Guide to Payment and Services 2001-2002*: www.centrelink.gov.au/internet/internet.nsf/about_us/centrelink_info.htm; *Centrelink A Guide to Commonwealth Government Payments 20 March – 30 June 2002*: www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm and the Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001.

³³⁹ *Centrelink A Guide to Commonwealth Government Payments 20 March – 30 June 2002*: www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm, 4.

³⁴⁰ Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, 43.

³⁴¹ *Centrelink A Guide to Commonwealth Government Payments 20 March – 30 June 2002*: www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm, 5.

In the financial year 2000-01, 203 939 families received Maternity Immunisation Allowance in relation to 207 547 children.³⁴²

The Government spent \$218 million on Maternity Allowance and Maternity Immunisation Allowance in 2000-01.³⁴³

A.4.4 Family Tax Benefit Part A (FTB(A))

The purpose of FTB(A) is to help families with the costs of raising children. It is paid to families with children up to 21 years and young people between 21 and 24 who are studying full time (and not receiving Youth Allowance or a similar payment).

FTB(A) is based on combined family income. There is no assets test for FTB(A). Payments are made either fortnightly through the social security system, or through the tax system as a lump sum payment at the end of the financial year, with the added option to reduce the amounts withheld from wages paid to either parent. FTB(A) recipients may also qualify for Rent Assistance.

The maximum rate of FTB(A) for each child aged under 13 years is \$122.92 per fortnight or \$3 204.70 per year and is paid to families with an income up to \$29 857 a year. The payment is then reduced on the basis of earnings. FTB(A) will stop for a family with one child aged 0-17 years when their income reaches \$80 665.³⁴⁴

As at 30 June 2001, 1 799 706 families (with 3 482 290 children) received FTB(A). Of these families, 35 per cent received the maximum rate of payment.³⁴⁵

A.4.5 Family Tax Benefit Part B (FTB(B))

The purpose of FTB(B) is to provide extra assistance to single income families, including sole parents, especially families with a child aged under five years. FTB(B) is paid to families with children up to 16 years and children between 16 and 18 years who are studying full time.

The primary earner in a partnered relationship and sole parents are not subject to an income test. However, the secondary earner in a two parent family is income tested. There is no assets test for FTB(B). Payments are made either fortnightly through the social security system, or through the tax system as a lump sum payment at the end of the financial year, with the added option to reduce the amounts withheld from wages paid to either parent.

The maximum rate of FTB(B) for a child under five years is \$105.56 per fortnight or \$2 752.10 per year and is paid where the second income earner earns up to \$1 679 per year. The

³⁴² Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, 33.

³⁴³ Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, 42.

³⁴⁴ Centrelink *A Guide to Commonwealth Government Payments 20 March – 30 June 2002*: www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm, 2.

³⁴⁵ Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, 43.

payment is then reduced on the basis of the secondary earner's income, cutting out at earnings of \$10 853 per year if the youngest child is aged under five years.³⁴⁶

As at 30 June 2001, 1 181 040 families (with 2 276 133 children) received FTB(B). Of these families, 72 per cent received the maximum rate of payment.³⁴⁷

Government spending in 2000-01 on Family Tax Benefit Part A and Part B was \$10.076 billion delivered via the social security system³⁴⁸ and \$11 million delivered via the tax system.³⁴⁹

A.4.6 Parenting Payment (PP)

The purpose of Parenting Payment is to assist people with children, particularly low income families, by providing an independent income. Parenting Payment is paid to one parent who is the primary carer of a dependent child (child must be aged under 16). The two main streams are Parenting Payment (single), and Parenting Payment (partnered).

Parenting Payment is taxable and is subject to an income and assets test. Parenting Payment is paid fortnightly in arrears through the social security system.

The basic rate of payment is up to \$421.80 per fortnight for sole parents and up to \$332.80 per fortnight for partnered parents (up to \$399.00 per fortnight may be paid if partners are separated by illness, respite care or gaol). Parenting Payment recipients may also qualify for Pharmaceutical Allowance, Education Entry Payment and Employment Entry Payment.³⁵⁰

A sole parent with one child will receive the maximum rate of payment if their income is up to \$136.60 per fortnight, with payment stopping once their income has reached \$1 205.60 per fortnight.³⁵¹ In the case of partnered parents where the partner is not a pensioner, for maximum payment the eligible parent's income must be no more than \$62 per fortnight and the partner's income must be no more than \$561 per fortnight. A part payment may be available provided the eligible parent's income is less than \$589.71 per fortnight, the partner's income is less than \$1 036.43 per fortnight and the combined income of the couple is less than \$1 150.71. Where the partner is a pensioner, maximum payment is made where the couple's combined income is up to \$124 per fortnight and payment cuts out at a combined income of \$1 179.42.³⁵²

³⁴⁶ Centrelink *A Guide to Commonwealth Government Payments 20 March – 30 June 2002*:

www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm, 4.

³⁴⁷ Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, 43.

³⁴⁸ Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, 42.

³⁴⁹ Treasury *Tax Expenditure Statement 2001* Commonwealth of Australia Canberra 2001, 7. Note this figure is an estimate for spending in 2000-01 as opposed to the social security figure which is actual expenditure.

³⁵⁰ Centrelink *A Guide to Commonwealth Government Payments 20 March – 30 June 2002*:

www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm, 6.

³⁵¹ Centrelink *A Guide to Commonwealth Government Payments 20 March – 30 June 2002*:

www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm, 20.

³⁵² Centrelink *A Guide to Commonwealth Government Payments 20 March – 30 June 2002*:

www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm, 6.

As at 1 June 2001, 416 661 parents received Parenting Payment (single) and 205 379 parents received Parenting Payment (partnered).³⁵³

Government spending on Parenting Payment was \$5.325 billion in 2000-01.³⁵⁴

A.4.7 Child Care Benefit

Child Care Benefit helps with the cost of child care for long day care, family day care, in-home care, occasional care, outside school hours care, vacation care and registered care.

Child Care Benefit for approved care can be paid directly to child care services to reduce the fees charged, or as a lump sum to parents in October following the previous financial year. This payment is subject to an income test but is not subject to an assets test. Child Care Benefit for registered care is paid by direct credit and is not subject to an income or assets test.

The maximum rate of payment for child care in a Commonwealth funded approved child care service provider is \$129 a week for a non school child in 50 hours of care. The maximum rate is payable for family incomes under \$29 857 or for families on income support. For a family with one child in approved care, a minimum rate of \$21.70 a week is payable when income is over \$85 653.³⁵⁵

In the case of registered care, up to \$21.70 a week is payable for a non school child in 50 hours of care.³⁵⁶

The Government spent \$1.037 billion on Child Care Benefit in 2000-01.³⁵⁷

In the December 2000 quarter, 470 900 families (658 500 children) were using Commonwealth funded approved child care services. In that quarter, around 444 400 families had claimed Child Care Benefit as a fee reduction, while a further 26 500 families were potential lump sum claimants.³⁵⁸ During this period, around 12 per cent of families claimed minimum rates of Child Care Benefit and around 88 per cent of families claimed more than minimum rates of Child Care Benefit (for families who claimed fee relief for approved care only).³⁵⁹

³⁵³ Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, 149.

³⁵⁴ Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, 148.

³⁵⁵ Centrelink *A Guide to Commonwealth Government Payments 20 March – 30 June 2002*: www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm, 5.

³⁵⁶ Centrelink *A Guide to Commonwealth Government Payments 20 March – 30 June 2002*: www.centrelink.gov.au/internet/internet.nsf/publications/rate.htm, 5.

³⁵⁷ Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, 77.

³⁵⁸ Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, 82.

³⁵⁹ Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, 78.

A.4.8 The Baby Bonus

During the 2001 election campaign, the Coalition promised to introduce the Baby Bonus (also referred to as the First Child Tax Refund). The Taxation Law Amendment (Baby Bonus) Bill 2002 was introduced into the House of Representatives on 14 March 2002.

The proposal has the following key elements.

- Refundable tax offsets will be available for a family's first child born on or after 1 July 2001 or the first child born after 1 July 2001 to families who already have children.³⁶⁰
- A mother (or father) can claim back one-fifth of the tax paid on income in the year of, or the year prior to, the birth of the child, up to a maximum of \$2 500 per annum.³⁶¹
- Refundable tax offsets at this rate can be claimed back for up to five years, providing the mother (or father) does not return to the workforce in these years. If the mother (or father) does return to the workforce during these years, they will still receive the Baby Bonus, however it will be proportionately reduced according to the income they earn upon returning to work.³⁶²
- There is a minimum entitlement of \$500 for mothers (or fathers) whose taxable income is \$25 000 or less, including those who did not work at all in the year before the birth of their first child.³⁶³

In explaining the rationale for introduction of the Baby Bonus, the Treasurer stated in his Press Release No. 89 of 28 October 2001 that

... one of the hardest times for families, financially, comes on the birth of a first child. Typically, a family loses one of its two incomes for a period of time as the primary carer (usually the mother) gives up, or reduces, her paid employment to care for her child.³⁶⁴

The level of payment provided through the Baby Bonus does not replace the loss of income that occurs with the birth of a child. For a woman earning average weekly earnings of \$759.00 gross per week,³⁶⁵ her refundable tax offset during her 12 months unpaid maternity leave amounts to \$1 644.08³⁶⁶ or less than three weeks after-tax pay.³⁶⁷ To claim a similar amount in subsequent years she must remain out of the workforce and relinquish her right to return to work in her former position. As is set out in Section A.2.1.1, many women choose to return to the workforce after a period of maternity leave, and therefore will lose the right to claim the Baby Bonus. If a woman returns to work part time she will be able to claim some but not all of the Baby Bonus.

The proposed legislation ties the maximum refundable tax offset to a five year absence from the workforce. In addition the Baby Bonus is claimed at the end of each tax year, meaning up

³⁶⁰ Taxation Laws Amendment (Baby Bonus) Bill 2002 Explanatory Memorandum Para 1.3.

³⁶¹ Taxation Laws Amendment (Baby Bonus) Bill 2002 Explanatory Memorandum. Paras 3.3 to 3.5.

³⁶² Taxation Laws Amendment (Baby Bonus) Bill 2002 Explanatory Memorandum, Para 3.38.

³⁶³ Taxation Laws Amendment (Baby Bonus) Bill 2002 Explanatory Memorandum Para 3.8.

³⁶⁴ Quoted in Taxation Laws Amendment (Baby Bonus) Bill 2002 Explanatory Memorandum para 1.2.

³⁶⁵ ABS 6302.0 *Average Weekly Earnings* Australia November 2001, 5.

³⁶⁶ Taxation Laws Amendment (Baby Bonus) Bill 2002 Explanatory Memorandum Paras 3.27 to 3.32; Income Tax Rates for 2001-2002 obtained on the Australian Taxation Office's website at: www.ato.gov.au/content.asp?doc=/content/Individuals/12333.htm&page=2.

³⁶⁷ The comparison is made with after-tax pay since wages are subject to taxation but the Baby Bonus is not.

to a twelve month wait following the birth of a child to receive the benefit. It may also operate as an incentive for women to remain out of the labour force.

A.4.9 Total Cost to Government

Note that while the payments are all made to parents, the majority of this expenditure is not targeted at supporting parents with newborn children. These payments have a range of objectives, including direct support with the costs of children, income support and assistance with the costs of childcare. These payments also relate to children and young people of a wide range of ages, including up to 24 years of age for FTB(B) in some circumstances.

Table A.11: Cost of existing Government payments to parents

Payment type (family assistance)	Cost to Government 2000-01 (\$'000)
Maternity Allowance and Maternity Immunisation Allowance ³⁶⁸	217 899
Family Tax Benefit Part A and Part B ³⁶⁹	10 087 463
TOTAL	10 305 362

Payment type (income support)	Cost to Government 2000-01 (\$'000)
Parenting Payment ³⁷⁰	5 325 681

Payment type (child care payments)	Cost to Government 2000-01 (\$'000)
Child Care Benefit ³⁷¹	1 037 137

³⁶⁸ Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, 42.

³⁶⁹ Spending on FTB(A) and FTB(B) constitutes \$10.076 billion delivered via the social security system (Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, 42) and \$11 million delivered via the tax system (Treasury *Tax Expenditure Statement 2001* Commonwealth of Australia Canberra 2001, 7). Note that the amount delivered via the tax system is an estimate for spending in 2000-01 as opposed to the social security figure which is actual expenditure.

³⁷⁰ Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, 148. Note that parents are able to and do access the full range of income support payments. Parenting payment has been included here because it is a payment which is targeted specifically at parents in recognition of their particular circumstances.

³⁷¹ Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, 77.

Table A.12: Projected cost of Baby Bonus

2002-03 \$'000	2003-04 \$'000	2004-05 \$'000	2005-06 \$'000
85 000	250 000	390 000	510 000

Source : General Outline and Financial Impact discussion in Taxation Laws Amendment (Baby Bonus) Bill 2002 Explanatory Memorandum.

Appendix B: International comparison of maternity leave benefits

Maternity leave benefits, as of 1998³⁷²

<i>Country or area</i>	<i>Length of maternity leave in covered period</i>	<i>Percentage of wages paid</i>	<i>Provider of coverage</i>
Developed regions			
Australia*	1 year	0	--
Austria*	16 weeks	100	Social Security
Belarus	126 days	100	Social Security
Belgium*	15 weeks	82% for 30 days, 75% thereafter ^a	Social Security
Bulgaria	120-180 days	100	Social Security
Canada*#	17-18 weeks	55 for 15 weeks	Unemployment Insurance
Croatia	6 months+4 weeks	..	..
Czech Republic*	28 weeks	..	..
Denmark*	18 weeks ^b	100 ^a	Social Security
Estonia	18 weeks	..	..
Finland*	105 days	80	Social Security
France*#	16-26 weeks	100	Social Security
Germany*#	14 weeks	100	Social Security to ceiling; employer pays difference
Greece*	16 weeks	75	Social Security
Hungary*	24 weeks	100	Social Security
Iceland*	2 months	Flat rate	Social Security
Ireland*	14 weeks	70% or fixed rate ^a	Social Security
Italy*#	5 months	80	Social Security
Japan*#	14 weeks	60	Health insurance
Liechtenstein	8 weeks	80	Social Security
Luxembourg*	16 weeks	100	Social Security
Malta	13 weeks	100	Social Security
Netherlands*#	16 weeks	100	Social Security
New Zealand*#	14 weeks	0	--
Norway*	18 weeks	100, and 26 extra paid weeks by either parent	Social Security
Poland*	16-18 weeks	100	Social Security
Portugal*	98 days	100	Social Security
Romania	112 days	50-94	Social Security
Russian Federation	140 days	100	Social Security
Spain*	16 weeks	100	Social Security

³⁷² This table is a reproduction of the table at [www.un.org/Depts/unsd/ww2000/table 5c.htm](http://www.un.org/Depts/unsd/ww2000/table%205c.htm). Marking of countries as OECD countries and Australia's top 20 trading partners has been added.

Sweden*	14 weeks	450 days paid parental leave: 360 days at 75% and 90 days at flat rate	Social Security
Switzerland*	8 weeks	100	Employer
Ukraine	126 days	100	Social Security
United Kingdom*#	14-18 weeks	90 for 6 weeks, flat rate after	Social Security
United States*#	12 weeks ^c	0	--
Africa			
Algeria	14 weeks	100	Social Security
Angola	90 days	100	Employer
Benin	14 weeks	100	Social Security
Botswana	12 weeks	25	Employer
Burkina Faso	14 weeks	100	Social Security/Employer
Burundi	12 weeks	50	Employer
Cameroon	14 weeks	100	Social Security
Central African Rep.	14 weeks	50	Social Security
Chad	14 weeks	50	Social Security
Comoros	14 weeks	100	Employer
Congo	15 weeks	100	50% Employer/ 50% Social Security
Côte d'Ivoire	14 weeks	100	Social Security
Dem. Rep. of the Congo	14 weeks	67	Employer
Djibouti	14 weeks	50 (100% for public employees)	Employer/ Social Security.
Egypt	50 days	100	Social Security/ Employer
Equatorial Guinea	12 weeks	75	Social Security
Eritrea	60 days	..	..
Ethiopia	90 days	100	Employer
Gabon	14 weeks	100	Social Security
Gambia	12 weeks	100	Employer
Ghana	12 weeks	50	Employer
Guinea	14 weeks	100	50% Employer/ 50% Social Security
Guinea-Bissau	60 days	100	Employer/ Social Security.
Kenya	2 months	100	Employer
Lesotho	12 weeks	0	--
Libyan Arab Jamahiriya	50 days	50	Employer
Madagascar	14 weeks	100 ^a	50% Employer/

			50% Social Security
Mali	14 weeks	100	Social Security
Mauritania	14 weeks	100	Social Security
Mauritius	12 weeks	100	Employer
Morocco	12 weeks	100	Social Security
Mozambique	60 days	100	Employer
Namibia	12 weeks	as prescribed	Social Security
Niger	14 weeks	50	Social Security
Nigeria	12 weeks	50	Employer
Rwanda	12 weeks	67	Employer
Sao Tome and Principe	70 days	100 for 60 days	Social Security
Senegal	14 weeks	100	Social Security
Seychelles	14 weeks	flat rate for 10 weeks	Social Security
Somalia	14 weeks	50	Employer
South Africa	12 weeks	45	Unemployment Insurance
Sudan	8 weeks	100	Employer
Swaziland	12 weeks	0	--
Togo	14 weeks	100	50% Employer/ 50% Social Security
Tunisia	30 days	67	Social Security
Uganda	8 weeks	100 for one month	Employer
United Rep. of Tanzania	12 weeks	100	Employer
Zambia	12 weeks	100	Employer
Zimbabwe	90 days	60/75	Employer

Latin America and the Caribbean

Antigua and Barbuda	13 weeks	60	Social Security + possible employer supplement
Argentina	90 days	100	Social Security
Bahamas	8 weeks	100	40% Employer/ 60% Social Security
Barbados	12 weeks	100	Social Security
Belize	12 weeks	80	Social Security
Bolivia	60 days	100% of national minimum wage + 70% of wages above minimum wage	Social Security
Brazil	120 days	100	Social Security
Chile	18 weeks	100	Social Security
Colombia	12 weeks	100	Social Security
Costa Rica	4 months	100	50% Employer/ 50% Social Security
Cuba	18 weeks	100	Social Security

Dominica	12 weeks	60	Social Security/ Employer
Dominican Republic	12 weeks	100	50% Employer/ 50% Social Security.
Ecuador	12 weeks	100	25% Employer/ 75% Social Security
El Salvador	12 weeks	75	Social Security
Grenada	3 months	100 (2 months), 60% for 3rd month	Social Security/ Employer
Guatemala	12 weeks	100	33% Employer/ 67% Social Security
Guyana	13 weeks	70	Social Security
Haiti	12 weeks	100 for 6 weeks	Employer
Honduras	10 weeks	100 for 84 days	33% Employer/ 67% Social Security
Jamaica	12 weeks	100 for 8 weeks	Employer
Mexico*	12 weeks	100	Social Security
Nicaragua	12 weeks	60	Social Security
Panama	14 weeks	100	Social Security
Paraguay	12 weeks	50 for 9 weeks	Social Security
Peru	90 days	100	Social Security
Saint Lucia	13 weeks	65	Social Security
Trinidad and Tobago	13 weeks	60-100	Social Security/Employer
Uruguay	12 weeks	100	Social Security
Venezuela	18 weeks	100	Social Security
Asia			
Afghanistan	90 days	100	Employer
Azerbaijan	18 weeks	..	..
Bahrain	45 days	100	Employer
Bangladesh	12 weeks	100	Employer
Cambodia	90 days	50	Employer
China#	90 days	100	Employer
Cyprus	16 weeks	75	Social Security
India#	12 weeks	100	Employer/ Social Security
Indonesia#	3 months	100	Employer
Iran (Islamic Republic of)	90 days	66.7 for 16 weeks	Social Security
Iraq	62 days	100	Social Security
Israel	12 weeks	75 ^a	Social Security
Jordan	10 weeks	100	Employer
Kuwait	70 days	100	Employer

Lao People's Democratic Rep	90 days	100	Social Security
Lebanon	40 days	100	Employer
Malaysia [#]	60 days	100	Employer
Mongolia	101 days	..	..
Myanmar	12 weeks	66.7	Social Security
Nepal	52 days	100	Employer
Pakistan	12 weeks	100	Employer
Philippines	60 days	100	Social Security
Qatar	40-60 days	100 for civil servants	Agency concerned
Republic of Korea ^{**}	60 days	100	Employer
Saudi Arabia [#]	10 weeks	50 or 100	Employer
Singapore [#]	8 weeks	100	Employer
Sri Lanka	12 weeks	100	Employer
Syrian Arab Republic	75 days	100	Employer
Thailand [#]	90 days	100 for 45 days then 50% for 15 days	Employer for 45 days, then Social Security.
Turkey [*]	12 weeks	66.7	Social Security
United Arab Emirates	45 days	100	Employer
Viet Nam [#]	4-6 months	100	Social Security
Yemen	60 days	100	Employer
Oceania			
Fiji	84 days	Flat rate	Employer
Papua New Guinea	6 weeks	0	--
Solomon Islands	12 weeks	25	Employer

Source: ILO, press release of 12 February 1998 (ILO/98/7).

^aUp to a ceiling.

^b10 more weeks may be taken up by either parent.

^cThe Family and Medical Leave Act (FMLA) of 1993 provided a total of 12 work weeks of unpaid leave during any 12-month period for the birth of a child and the care of the newborn. FMLA applies only to workers in companies with 50 or more workers.

^{*} OECD country

[#] One of Australia's top 20 trading partners as cited in Department of Foreign Affairs and Trade *Composition of Trade 2000-01* Commonwealth of Australia Canberra 2001, 50.

Technical notes:

The table presents data on maternity leave benefits currently available to women in countries surveyed by the ILO, including the length of time for which benefits are provided, the extent of compensation and the institution responsible for providing the coverage. The data presented were compiled by the ILO, based on information provided by countries as of 1998.

Questions

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Part A

- Q.1 Are you aware of any more specific information that would assist calculation of the number of women who are in the Australian workforce at the time they have a baby?
- Q.2 Are you aware of any more specific information that would assist calculation of the number of women who are in the Australian workforce who are eligible for unpaid maternity leave?
- Q.3 Is there an accurate way to estimate take up rates for unpaid or paid maternity leave under current provisions based on current information about women and work?
- Q.4 Is there an accurate way to estimate take up rates for unpaid or paid paternity leave under current provisions based on current information about men and work?
- Q.5 Is it more likely that women or men would take leave if they were eligible for payments? Please provide details.
- Q.6 Do you consider that government support for families with newborn children may be considered to approximate paid maternity leave?
- Q.7 Do you consider that government support for families with newborn children is appropriately targeted? If not what additional or alternative support do you consider is required?
- Q.8 Do you have any more information than provided in this paper on current arrangements that women and their families make to support themselves at the time of the birth of a new child?

Part B

- Q.9 If a paid maternity leave scheme were to be introduced in Australia what components would it need to include in order to meet relevant international agreements?

questions

Part C

- Q.10 Which objectives, whether discussed in this paper or not, do you consider should be the primary objectives of a paid maternity leave system? Why?
- Q.11 Do you consider that a paid maternity leave system would be able to meet any or all of these objectives? If so, to what extent?
- Q.12 Are there particular design elements for a paid maternity leave scheme that would be crucial for achieving particular objectives? If so, what are those elements?
- Q.13 Are you aware of any additional international or Australian evidence or studies that document the effectiveness of paid maternity leave in achieving any of these objectives?
- Q.14 Do you consider that a paid maternity leave scheme would assist to provide greater workplace equity?
- Q.15 Are there particular design elements for a paid maternity leave system that would be crucial for achieving workplace equity? If so, what are they?
- Q.16 Are you aware of any additional international or Australian evidence or studies that document the effectiveness of paid maternity leave in achieving workplace equity?
- Q.17 Do you consider that a paid maternity leave scheme would provide appropriate support for women and families with new babies?
- Q.18 Are there particular design elements for a paid maternity leave system that would be crucial for providing appropriate support for women and families? If so, what are they?
- Q.19 Are you aware of any additional international or Australian evidence or studies that document the effectiveness of paid maternity leave in supporting women and families?
- Q.20 Do you agree that a paid maternity leave scheme would provide commercial benefits for employers?
- Q.21 To what extent would paid maternity leave create workforce incentives for women to maintain labour force attachment?
- Q.22 Are there particular design elements for a paid maternity leave system that would ensure commercial benefits to employers? If so, what are they?
- Q.23 Are you aware of any additional international or Australian evidence or studies that document the commercial benefits to employers of paid maternity leave?
- Q.24 Do you agree that a paid maternity leave scheme would provide benefits to society?
- Q.25 Are there particular design elements for a paid maternity leave scheme that would be crucial for imparting social benefits? If so, what are they?
- Q.26 Are you aware of any additional international or Australian evidence or studies that document the social benefits of paid maternity leave?

Part D

- Q.27 Should a paid parental leave scheme provide payment to women or both men and women? Why?

- Q.28 Should a paid maternity leave scheme provide payments to adoptive parents? Q.29 If paid leave is made available to adoptive parents, should eligibility be limited to parents with adopted children of a particular age?
- Q.30 Do you consider that there are stronger reasons for a work related entitlement or a universal payment? Why?
- Q.31 Should eligibility for paid maternity leave be limited to women with a minimum length of employment? If so, what length of employment do you consider is appropriate? Would this need to be with a single employer?
- Q.32 Do you consider that the same eligibility requirements should apply for both unpaid and paid maternity leave?
- Q.33 For how many weeks should paid maternity leave be available?
- Q.34 Should the duration of paid maternity leave be extended in special circumstances, such as illness of the mother or child?
- Q.35 Do you consider that paid maternity leave should be paid as a fixed amount or a proportion of income? Why?
- Q.36 If paid maternity leave were to be a fixed amount what should that amount be? For example:
- unemployment benefits or parenting payment;
 - the federal minimum award wage;
 - average weekly earnings or a proportion of it;
 - women's average weekly earnings or a proportion of it; or
 - an individual's full pay or a proportion of it.
- Q.37 If paid maternity leave were to be a proportion of income, what proportion should it be and should there be a cap or maximum rate for payments?
- Q.38 How do you consider paid maternity leave should be funded? Why?
- Q.39 Do you consider that there is a stronger case for funding by government, employers or employees? If so, why? Would a form of combined funding work effectively? How?
- Q.40 If employers were to contribute to paid maternity leave, do you think this funding should be provided by individual employers or be spread across all employers?
- Q.41 If employers were to contribute to paid maternity leave, should there be any exemptions for certain types of employers (eg. those with less than 20 employees)?
- Q.42 Who should be responsible for funding paid maternity leave?
- Q.43 Do you support a particular option or model for a paid maternity leave scheme?
- Q.44 Do you have any information relevant to costing these models?

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