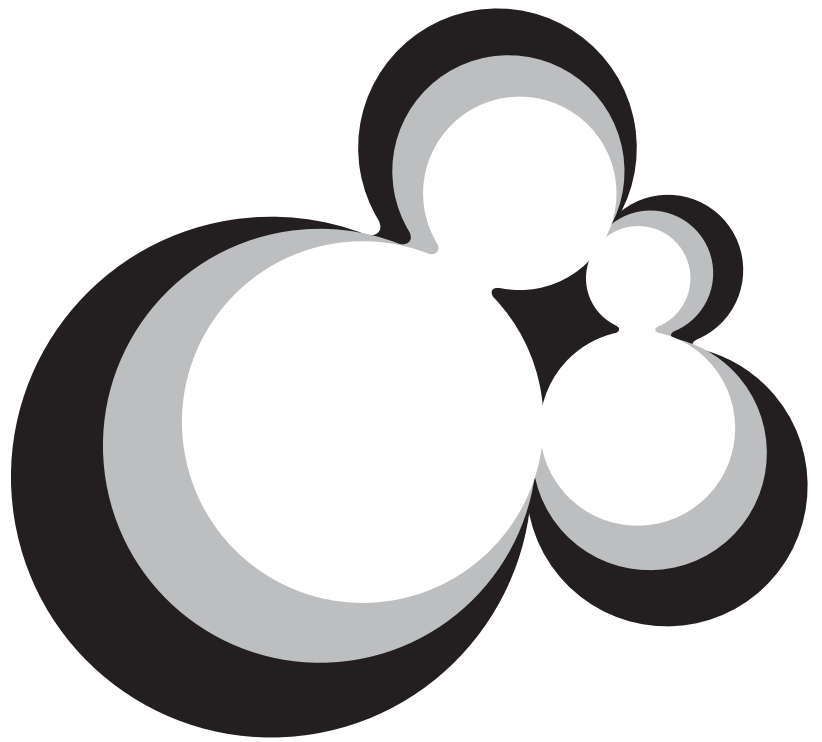


# a time to value

PROPOSAL FOR A NATIONAL PAID MATERNITY LEAVE SCHEME



*Human Rights and Equal  
Opportunity Commission*

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ISBN 0 642 26983 1

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# Foreword

HREOC's release of its interim paper, *Valuing Parenthood: Options for paid maternity leave* sparked an extraordinary community debate about the difficulties of combining work and family responsibilities in modern Australia. I have spent eight months listening to women talking about their struggles; the family that went without birthday presents for a year and the mother without an annual holiday for two years, so there would be enough money and leave saved up for her to have another baby, the young mother back at work with a two week old under the counter because her husband had lost his job and she wanted to breast feed, the countless number of women who explained why they did not have the leave entitlements saved up that would let them have that second child and how they could not stay home for more than two years for fear of losing their skills, adoptive mothers describing how their new children screamed all night for the first six months out of the overseas orphanage, making having a job impossible – and the very sad woman who put her hand on my arm as I left a room to tell me never to forget those who believed they had for ever to have children only to find they had left it too late. Their voices, among many, are in this paper. But they could be the voices of many other women. Who has borne children and been able to forget the exhaustion and struggles of those early months, to say nothing of a mother's passionate absorption with her infant and the difficulty so many of us would have in leaving that child to return to work.

Paid maternity leave was debated as part of this broader issue of work and life balance. In particular, discussion focused on the desirability of linking maternity payments with paid work, on how a national scheme should be funded and whether or not the payment should be available to mothers only or whether the other parent should also be eligible.

The national round of consultations I held with employers and employer groups, unions and women's and community groups in every State and Territory addressed these issues. In addition, HREOC received over two hundred and fifty submissions from these stakeholders as well as from government, academics, individuals, health professionals, legal organisations and other interested parties.

The consultations ranged widely and canvassed issues such as the cost of bearing children, the importance of the mother to child development, the status of motherhood and the many other challenges women face in combining paid work with motherhood other than the need for paid leave after the birth of a child. For many women particularly, paid maternity leave was identified as an equity measure that recognised their right to work while meeting their parenting responsibilities. Significantly, the issue of family size and Australia's declining fertility rate was also a common feature of the discussions.

The issue was widely recognised as a concern for women. It is also about children and how we perceive them – are they a personal choice or luxury, or are they to be considered as a public good and a social responsibility.

The Government, of course, has always provided support for families – it is, after all, a primary responsibility of Government to assist in protecting families and reproducing society. Yet we all know that the form Government assistance takes can and does affect behaviour, reflecting Government and, it is to be hoped, social, priorities. Family structures have changed so rapidly in Australia over the past decade that Government social policy is, in some ways, no longer reflecting Australia's social realities. The introduction of a national paid maternity leave scheme would have both symbolic importance in reflecting this shift and be of practical benefit to those women and their families for whom paid work is important.

While support for a national scheme of paid maternity leave was strong, it was not universal. However the difficulties facing young families today was a constant theme of the consultations. Although previous generations were frequently tempted to observe that they managed without paid maternity leave, there was a clear acknowledgement that work and life pressures had changed Australian families, that men's and women's expectations were now different and that support for families needed to respond to these new realities.

The rapidity of social and economic change for Australian families has occurred in a global environment and appears to be irreversible. Extended education and training periods, high home mortgages relative to income and general cost of living pressures, in combination with significant job uncertainty for young workers and a nationally high divorce rate, appear to have contributed significantly to the rise in two income families and delayed family formation. The consultations repeatedly demonstrated that the burden of increasing economic pressure has been most keenly felt by low income families, who are the least likely to be able to access paid maternity leave and other family flexible working conditions.

Under these changing social circumstances a national paid maternity leave scheme answers an emerging and important unmet need; the need for newborn babies to be with their parent instead of being separated through financial necessity. Naturally it is for Governments to decide national priorities but I consider there is a strong case for government funding of this special time for mothers. We received many submissions from mothers' and child welfare groups, breastfeeding associations and health professionals arguing the benefits of mothers being at home full time for the baby as well as the mother during these early months. Many believed a period of fourteen weeks to be the minimum but none suggested a shorter period was desirable. Under current arrangements, it is the children of poorer working women who are the least likely to enjoy access to the paid maternity leave that would facilitate this time out of the paid workforce and poorer working women who are the least likely to recover from the birth at a time and pace best for them.

Paid maternity leave also recognises the disadvantage experienced by women in paid work when they bear children. Not only are they likely to suffer workplace discrimination because they are pregnant or a mother, they frequently find it difficult to combine their new family responsibilities with their obligations to their paid work. Certainly, their lifetime earnings are likely to suffer, and their retirement incomes would be less than if they had not had a child. This was frequently highlighted by women during the consultations. They considered that a work related entitlement such as paid maternity leave legitimised the combination of work and family chosen by many mothers today.

The introduction of a national scheme of paid maternity leave such as I am suggesting would not be a panacea. On its own, it will not address all of the concerns people raised, particularly in assisting women manage their work and family responsibilities. However, as part of a suite of measures, it points to a sea-change in the way we approach these issues. It is a necessary but not sufficient condition to ensuring that our working lives are based upon a realistic recognition that all workforce participants have obligations and priorities outside of paid work.

Although much of the consultation period was concerned with examining the need for paid maternity leave, submissions and consultations have also devoted considerable attention to the detail of such a scheme, were the Government to choose to implement one.

This is not the first time in Australia's history that the issue of paid maternity leave has been on the national agenda. There have been several previous occasions when attempts to introduce a universal scheme have fallen short. In 1999, HREOC recommended in *Pregnant and productive: It's a right not a privilege to work while pregnant*, that the federal Government undertake economic modeling and analysis of possible paid maternity leave options. I considered that this work needed to be done as a matter of priority if we are to address this issue in a fully informed manner. In addition, since my recommendations are based on an analysis that essentially could have been conducted by the Government and needs to be acceptable to Government, the model I am proposing is a basic minimum standard, that is, a starting point.

The scheme favoured overwhelmingly by those who supported the introduction of paid maternity leave is government funded. There was widespread agreement that a direct impost on employers would be untenable, given employer resistance and the tight profit margins of many businesses.

My final recommendations to Government concerning the nature of the scheme fairly reflect the consultations. In summary, a scheme of 14 weeks paid maternity leave is recommended, to be paid up to the rate of the Federal Minimum Wage to those women who are able to demonstrate that they have been in paid work for forty of the past fifty-two weeks before taking maternity leave. This includes self-employed women, including those in small business, women who have worked for more than one employer in that time and casual workers. The eligibility criteria are slightly more generous than the existing criteria for unpaid leave, reflecting that it is a government payment and the high turnover of jobs in the labour market for younger workers. I am confident that these criteria balance the right of women in paid work to income replacement during maternity against accepted principles of fair and transparent public administration.

The absence of a publicly available and comprehensive costing for a national scheme has hampered debate since community support for such a scheme will clearly be conditional on the cost of this compared with other public policy proposals. Both the Minister for Finance and Administration and the Australian Democrats have released costings for similar schemes of around \$400 million a year. Although the Government has declined to provide details of the Department of Finance and Administration's costings to HREOC, the Democrats' estimated cost contained some offsets and the scheme's characteristics broadly conformed to those being proposed in this paper. The Commission considers that women who receive paid maternity leave should not also be eligible for the Maternity Allowance and Family Tax Benefits during that period of leave or the first 12 months of the Baby Bonus.

In the absence of any available modeling or cost estimates, HREOC commissioned the widely respected economic modeling agency NATSEM to provide it with this detail. As you will see from their report, at the Appendix, they have estimated the net cost of such a scheme, once offsets are taken into account, to be \$213 million, or less - \$207 million – if the paid maternity leave already available to some women is taken into account. I consider this to be an extremely modest cost and believe it would be broadly acceptable to Australian tax payers. It is, for example, the same as the combined cost of the existing Maternity Allowance and Maternity Immunisation Allowance and less than half the cost of the fully implemented Baby Bonus.

The demonstrated need for a national scheme of paid maternity leave and the benefits it would bring Australian families and the nation make a strong case for a national scheme. Ironically, the low wages earned by most women in paid work has meant that the cost of providing such a benefit is low, perhaps lower than most had believed, and further adds to the case for the introduction of paid maternity leave without delay. The wide spread debate has helped engender a broader understanding of current Australian social pressures, but particularly an understanding of the proposal and support for it. Although not an especially revolutionary or morally challenging proposal, paid maternity leave has been exposed to extreme and prolonged public scrutiny. That the issue has continued to be supported despite this demonstrates that for Australian women and their families, it is about time.

I urge the Government to act now and introduce a national scheme of paid maternity leave.

**Pru Goward**  
**Sex Discrimination Commissioner**  
**Human Rights and Equal Opportunity Commission.**  
28 November 2002

# Summary of HREOC's preferred model for a national paid maternity leave scheme

<b>Funding</b>	The national paid maternity leave scheme is to be funded by the federal Government. (Recommendation 1)
<b>Coverage</b>	<p>Paid maternity leave is to be provided to women at the time of the birth of a child. The exceptions to this, where payment can be made to a woman's partner, will include: where the mother has died; where the mother is not medically able to care for the child (based on a doctor's opinion); or where the child has been adopted. (Recommendation 2)</p> <p>Paid maternity leave is to be available only to women in paid work. (Recommendation 3)</p> <p>Paid maternity leave is to be available to the primary carer of an adopted child irrespective of the age of the child. (Recommendation 4)</p>
<b>Eligibility</b>	In order to be eligible for paid maternity leave a woman must have been in paid work (including casual employment, contract work and self-employment) for 40 weeks of the past 52 weeks with any number of employers and/or in any number of positions. Access to this payment will not be means tested. (Recommendation 5)
<b>Duration</b>	<p>The national scheme of paid maternity leave will provide for up to 14 weeks of paid leave to be taken immediately prior to and/or following the birth of a child. (Recommendation 6)</p> <p>The paid leave must be taken as a continuous block. (Recommendation 6)</p> <p>A woman may elect to take less than the full 14 weeks of paid maternity leave, but will only receive payment in the weeks taken as maternity leave. (Recommendation 6)</p>
<b>Payment level</b>	<p>Government funded paid maternity leave is to be paid at the rate of the Federal Minimum Wage, or the woman's previous weekly earnings from all jobs, whichever is the lesser amount. (Recommendation 7)</p> <p>Previous weekly earnings are to be calculated as the greater of either:</p> <ul style="list-style-type: none"><li>• a woman's weekly earnings from all jobs immediately prior to taking leave; or</li><li>• an average of her weekly earnings from all jobs during the time in employment over the previous 12 months. (Recommendation 7)</li></ul>

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**Payment mechanism**

Paid maternity leave is to be paid as a fortnightly payment during the period of leave, administered by the federal Government and available through dual payment mechanisms. (Recommendation 8)

Specifically, an individual may elect to receive payment as either:

- a fortnightly direct payment from Government to the individual; or
- a payment from the employer to the individual with the employer reimbursed by Government (subject to the employer agreeing to offer this option). (Recommendation 8)

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**Role of employers**

Employers should be encouraged to continue existing provisions for paid maternity leave and women, including public servants, will not be excluded from any government funded national scheme on the basis of receiving employer provided paid maternity leave. (Recommendation 9)

Employer top ups to a government funded paid maternity leave are to be provided for and encouraged. Such top ups should be negotiated through standard bargaining mechanisms. (Recommendation 10)

Employers may agree to take on the administration of paid maternity leave payments on behalf of the Government and may be required to play a role in validating entitlement to government funded paid maternity leave entitlements. (Recommendation 11)

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**Interaction with the industrial relations system**

Current industrial arrangements in relation to maternity leave will continue. (Recommendation 12)

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**Payment level**

A woman who receives paid maternity leave will not be eligible for the Maternity Allowance, the first 14 weeks of Family Tax Benefit Part A and Family Tax Benefit Part B, and the first 12 months of payment of the Baby Bonus. The maternity leave payment will be taxable. (Recommendation 13)

Individuals will have the option of taking other available social security payments where this would result in higher payments. (Recommendation 13)



# List of recommendations

## Chapter 13 Funding

### **Recommendation 1:**

That a national paid maternity leave scheme be immediately implemented and funded by the federal Government.

## Chapter 14 Coverage

### **Recommendation 2:**

That a national scheme of paid leave at the time of birth of a child be provided for women. The exceptions to this, where payment can be made to a woman's partner, should include where the mother has died, where the mother is not medically able to care for the child (based on a doctor's opinion), or where the child has been adopted.

### **Recommendation 3:**

That a government funded national scheme of paid maternity leave be available for women in paid work.

### **Recommendation 4:**

That paid maternity leave be available to the primary carer of an adopted child irrespective of the age of the child.

## Chapter 15 Eligibility

### **Recommendation 5:**

That in order to be eligible for paid maternity leave a woman must have been in paid work (including casual employment, contract work and self-employment) for 40 weeks of the past 52 weeks with any number of employers and/or in any number of positions. Access to this payment should not be means tested.

## Chapter 16 Duration

### **Recommendation 6:**

That a national scheme of paid maternity leave provide for up to 14 weeks of paid leave to be taken immediately prior to and/or following the birth of a child.

The paid leave must be taken as a continuous block.

A woman may elect to take less than the full 14 weeks of paid maternity leave, but will only receive payment in the weeks taken as maternity leave.

## Chapter 17 Payment level

### **Recommendation 7:**

That government funded paid maternity leave be paid at the rate of the Federal Minimum Wage, or the woman's previous weekly earnings from all jobs, whichever is the lesser amount.

Previous weekly earnings are to be calculated as the greater of either a woman's weekly earnings from all jobs immediately prior to taking leave or an average of her weekly earnings from all jobs during the time in employment over the previous twelve months.

## Chapter 18 Payment mechanism

### **Recommendation 8:**

That paid maternity leave be paid as a fortnightly payment during the period of leave, administered by the federal Government and available through dual payment mechanisms.

Specifically, an individual may elect to receive payment as either:

- a fortnightly direct payment from Government to the individual; or
- a payment from the employer to the individual with the employer reimbursed by Government (subject to the employer agreeing to offer this option).

## Chapter 19 Role of employers

### **Recommendation 9:**

That employers be encouraged to continue existing provisions for paid maternity leave and women, including public servants, should not be excluded from any government funded national scheme on the basis of receiving employer provided paid maternity leave.

### **Recommendation 10:**

That employer top ups to government funded paid maternity leave be provided for and encouraged. Such top ups should be negotiated through standard bargaining mechanisms.

### **Recommendation 11:**

That employers may agree to take on the administration of paid maternity leave payments on behalf of the Government and may be required to play a role in validating entitlement to government funded paid maternity leave entitlements.

## Chapter 20 Interaction with the industrial relations system

### **Recommendation 12:**

That current industrial arrangements in relation to maternity leave continue.

## Chapter 21 Interaction with existing Government payments

### **Recommendation 13:**

That a woman who receives paid maternity leave will not be eligible for the Maternity Allowance, the first 14 weeks of Family Tax Benefit Part A and Family Tax Benefit Part B, and the first 12 months of payment of the Baby Bonus. The maternity leave payment will be taxable.

Individuals will have the option of taking other available social security payments where this would result in higher payments.

## Chapter 22 Data collection and review of the scheme

### **Recommendation 14:**

That the Government review existing data collections to ensure that adequate information is collected on:

- the number of women in paid work during their pregnancy and immediately prior to the birth of a child;
- the number of women who are eligible for unpaid maternity leave, employer provided paid maternity leave and government funded paid maternity leave;
- the take-up rates of paid and unpaid maternity leave;
- the pattern of women's return to work following the birth of a child;
- factors affecting women's decisions to have children; and
- issues relating to combining work and family responsibilities.

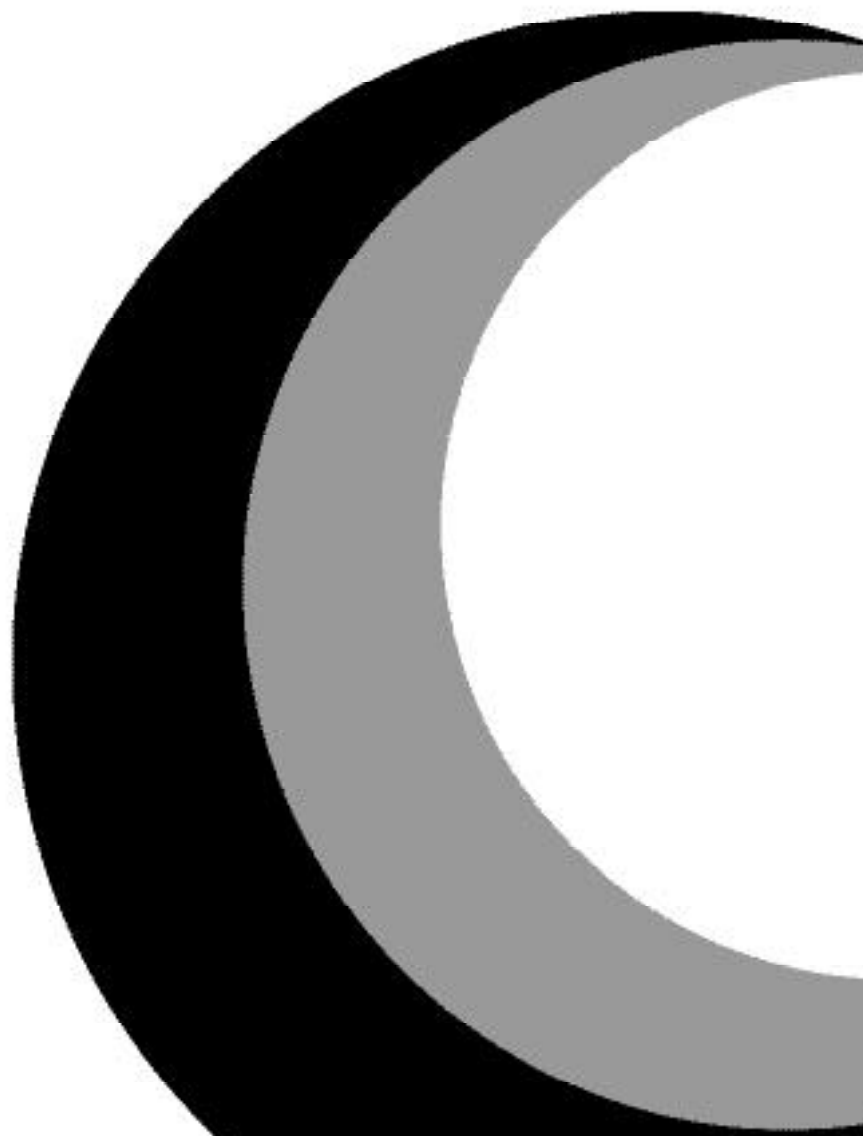
The establishment of these additional data collections should not delay the introduction of a national scheme of paid maternity leave.

### **Recommendation 15:**

That the effectiveness, adequacy and coverage of a national scheme of paid maternity leave should be reviewed three years after the scheme's implementation.

Depending on the outcome of that review, it may be necessary to reconsider the eligibility criteria and/or payment levels. The Government may also wish to revisit some of the more contested aspects of the scheme as part of the review, including whether existing payments to women who are not in paid work are adequate and whether the payment should continue to be for mothers or whether it should be paid to the primary carer.

**PART A**  
Background



# 1. Introduction

## 1.1 Background

In August 2001, the Human Rights and Equal Opportunity Commission (HREOC) began a comprehensive examination of the need or otherwise for a national paid maternity leave scheme in Australia.

HREOC is an independent statutory authority established under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). It has a variety of functions and powers to promote and protect the human rights of all people in Australia.

HREOC administers the *Sex Discrimination Act 1984* (Cth) (the Sex Discrimination Act). The Sex Discrimination Act provides a framework for the investigation and conciliation of complaints of unlawful acts of discrimination on the grounds of sex, marital status, pregnancy, potential pregnancy and sexual harassment. It also makes dismissal on the ground of family responsibilities unlawful. A number of other functions necessary to deal with systemic issues of discrimination are granted under the Sex Discrimination Act.

One of the objects of the Sex Discrimination Act is to give effect to certain provisions of the United Nations' *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW)<sup>1</sup> which says at Article 11(2):

[i]n 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 paid maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

Australia has a reservation to Article 11(2)(b), which means that it has not agreed to take the measures required by this paragraph of the Article.

Another object of the Sex Discrimination Act is to promote the principle of equality between men and women. HREOC is concerned that Australia's reservation to this Article, and the lack of comprehensive paid maternity leave, disadvantages women by reason of their reproductive role. HREOC considered that work on this topic was not only justified but necessary.

Paid maternity leave was identified as an issue of concern and importance in HREOC's 1999 National Pregnancy and Work Inquiry. The Report of the Inquiry, *Pregnant and Productive*, recommended that the federal Government provide funding for economic modelling and analysis to assess possible paid maternity leave options.<sup>2</sup> Any economic modelling of the viability and consequences of paid maternity leave that the Government may have done has not been publicly released or made available to HREOC. The Minister for Finance released costings of a range of paid maternity leave schemes on 12 September 2002.<sup>3</sup> The detail of these costings has not been made available to HREOC or the public.

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<sup>1</sup> *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.

<sup>2</sup> Recommendation 46, Human Rights and Equal Opportunity Commission *Pregnant and Productive: It's a right not a privilege to work while pregnant* HREOC Sydney 1999, pxxvii.

<sup>3</sup> Minister for Finance and Administration "Population Ageing – Adapt to the Reality, Don't Defy it" *Media Release* 12 September 2002.

## 1.2 Methodology

On 18 April 2002, HREOC released an interim paper, *Valuing Parenthood: Options for paid maternity leave*.<sup>4</sup> This paper was intended to generate public discussion on the issue of paid maternity leave. The paper reviewed the domestic and international context, outlined possible objectives for a paid maternity leave scheme and identified a number of possible options for a paid maternity leave scheme. The interim paper also provided a comprehensive overview of current information on existing maternity and parental leave arrangements. The information in that paper remains relevant in considering the discussions, conclusions and recommendations in this paper.

Written submissions were invited in response to the interim paper and 257 submissions were received. Submissions came from individuals, employers, employer groups, unions, community and women's groups, health professionals and organisations, academics and State and Territory Governments. A list of the submissions is at page 267.

The Sex Discrimination Commissioner and her policy staff also conducted targeted consultations in metropolitan and regional areas of Australia with employers, employer groups, unions, community and women's groups and interested individuals. A full list of consultations is at page 273.

HREOC received substantial information on the experience of individuals, organisations, and industries in relation to paid maternity leave. While the full extent of this information is not included in this paper, it significantly contributed to and informed HREOC's work on these issues. HREOC wishes to thank all of those who contributed to this paper.

## 1.3 The community debate

### 1.3.1 Introduction

The response to HREOC's interim paper has been overwhelming. The public has embraced the opportunity to contribute to the policy debate on paid maternity leave. They have engaged with the detail of paid maternity leave in a way that is rarely seen in policy debates. The Government and the community have taken the debate further – to the extent that Australia is now in the midst of a national debate on the options for restructuring the workforce into a more family friendly environment. The other striking thing about this debate has been the willingness of so many women and families to share their experiences of coping with the arrival of a new child.

What has emerged from the debate is a clear recognition of the fact that women and babies do need support, particularly financial support, at the time of the birth of a child and that there is a role for Government in providing this support. For many of the individuals and organisations who spoke to HREOC there was a relative willingness to accept a minimum paid maternity leave scheme of 14 weeks to ensure that the scheme was affordable for Government. However, for many people, the ideal support for mothers and babies was much greater than this. There has also been widespread concern that small business generally does not have the capacity to fund paid maternity leave.

Another significant feature of the process has been the willingness of major stakeholder groups to engage with the debate. In conducting the consultations, HREOC partnered with unions, employer organisations, large employers and women's organisations. While there has not been agreement on every point, the stakeholders have provided significant submissions and approached the issue with good will. HREOC appreciates this engagement and the quality of assistance provided.

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<sup>4</sup> Human Rights and Equal Opportunity Commission *Valuing Parenthood: Options for paid maternity leave, interim paper 2002* HREOC, Sydney 2002.

The most contentious issues in the consultations were:

- whether the payment should be limited to women in the paid workforce or made available to all women;
- whether the payment should be available to mothers only, or made to the primary carer; and
- the role of employers in funding paid maternity leave.

### 1.3.2 Submissions

Seventy-three per cent of submissions received supported the introduction of a national system of paid maternity leave. In contrast, 16 per cent opposed the introduction of such a scheme while a further 11 per cent were undecided or neutral. These figures do not, however, indicate the complexity of submissions in which support or opposition was sometimes conditional on other factors.

Of those opposed to paid maternity leave, 60 per cent were submissions from individuals and 29 per cent were submissions from employers and employer groups. The remaining 12 per cent consisted of Government, community groups and an academic. The main ground for opposition was concern that employers may be forced to pay for maternity leave, and the economic and employment effects that may flow from this.

Those submissions clearly in favour of paid maternity leave represented a much broader range of groups and were more evenly spread between different types of groups. Of these submissions, 38 per cent were received from individuals, 14 per cent were from women's groups, 12 per cent were from unions and nine per cent were from employers and employer groups. In addition, submissions in favour of paid maternity leave were also received from academics, community groups, health professionals and organisations, legal groups and Government.

### 1.3.3 Consultations

Between May and July 2002, the Sex Discrimination Commissioner conducted 27 consultations with employers, employer groups, women and community groups and unions. The consultations were held nationwide in all capital cities and some regional areas. A number of organisations partnered HREOC in conducting the consultations. While the majority of consultations were group discussions, forums were also held as were two round table discussions. One round table brought together a range of academics in work and family issues, demographics and population studies. The other brought together representatives from unions, employer groups, women's groups and community groups.

A range of views was expressed throughout the consultation process concerning the objectives, structure and funding of a national scheme of paid maternity leave.

See page 273 for a full list of the consultations.

### 1.3.4 Public opinion

A high level of public debate about paid maternity leave has been generated since HREOC began its research last year. The media response has been varied and a number of public opinion polls have been conducted to gauge public support for the issue. The results of these polls suggest there is public support for paid maternity leave.

In September 2001 Newspan<sup>5</sup> showed 76 per cent of people surveyed supported paid maternity leave. Fifty-five per cent strongly supported it and 21 per cent were partly in favour. Support was slightly stronger among women and substantially higher among younger people.

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<sup>5</sup> Mike Steketee "Tax should pay mums' leave: Poll" *The Australian* 5 September 2001, p1.

A Sun Herald Taverner poll<sup>6</sup> conducted in May 2002 also showed overwhelming support for paid maternity leave, with 75 per cent of those surveyed agreeing that mothers should be paid while on maternity leave, and 23 per cent disagreeing.

An online poll conducted by motherInc<sup>7</sup> showed that 77 per cent of the 1000 women who responded to the poll believed that paid maternity leave was essential. Twenty per cent agreed that the absence of paid leave had been a major factor in their decision not to have more children. Eighty-four per cent of respondents believed that fathers should also be given the option of paternity leave, paid or unpaid.

Public opinion was also sought concerning how maternity leave should be funded and the rate of payment. The polls concluded that there was support for paid maternity leave to be funded through a combination of sources. For example, the September 2001 Newspoll<sup>8</sup> found that 60 per cent of those surveyed believed that the cost of the paid leave should be shared by employers and Government, 17 per cent said the cost should be borne by Government alone and 12 per cent said employers should pay for maternity leave. Altogether, 77 per cent believed the Government has some role in funding paid maternity leave.

The Sun Herald Taverner poll<sup>9</sup> showed 66 per cent of those surveyed were in favour of maternity leave funded by a combination of Government, business and employees, 17 per cent thought the Government alone should fund it, while only eight per cent were in favour of an employer funded scheme. Payment for three months was the preferred option for 24 per cent of respondents, while 23 per cent supported a six month payment and 17 per cent supported one year paid maternity leave. Only eight per cent supported two months paid leave and three per cent supported payment for one month. Varied responses were also given concerning the rate of payment. Twenty-three per cent stated the payment should be at half the basic salary, 22 per cent believed it should be two thirds the basic salary. The minimum wage and full basic salary each received 20 per cent support from respondents. The majority response, 69 per cent, was that payment should only be made to working mothers, while 26 per cent supported the payment being made to all women.

Fifty-two per cent of women responding to the motherInc poll<sup>10</sup> believed that it is the responsibility of the Government to fund paid maternity leave. Seventy-five per cent of the remaining respondents believed the payment should be split between employers and the Government.

Westpoll phone surveyed 400 Western Australian voters in May 2002<sup>11</sup> on the issue of who should pay for paid maternity leave. When asked whether employers should fund paid maternity leave, 38 per cent were in favour, while 56 per cent opposed an employer funded scheme of paid maternity leave. When asked about a government funded scheme, 47 per cent stated that they supported paid maternity leave funded through the taxation system, while 48 per cent were opposed. Support for both proposals was much higher: 56 per cent and 60 per cent respectively among people under 35.

In addition to polls measuring public opinion, a number of polls targeted at specific groups were conducted. The Finance Sector Union of Australia, for example, conducted a survey of its members.<sup>12</sup> Eighty-eight per cent of the 182 members who responded to the survey agreed or strongly agreed with the statement: “[i]t is important that everyone has access to some form of paid maternity leave when they have a baby.”<sup>13</sup>

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<sup>6</sup> Sun Herald Taverner Poll “Paid leave: What you think” *Sydney Morning Herald* 5 May 2002, p4.

<sup>7</sup> motherInc, Submission 196, p2.

<sup>8</sup> Mike Steketee “Tax should pay mums’ leave: Poll” *The Australian* 5 September 2001, p1.

<sup>9</sup> Sun Herald Taverner Poll “Paid leave: What you think” *Sydney Morning Herald* 5 May 2002, p4.

<sup>10</sup> motherInc, Submission 196, p2.

<sup>11</sup> Anne Burns “Baby leave bill for all: Poll” *West Australian* 15 May 2002, p4.

<sup>12</sup> Finance Sector Union, Submission 161, pp5-9, Appendix 2.

<sup>13</sup> Finance Sector Union, Submission 161, p6.



The New South Wales State Chamber of Commerce and NRMA Insurance conducted a survey of local business in regional New South Wales in May 2002.<sup>14</sup> Seventy-seven per cent of the 781 businesses that responded did not support “a mandatory scheme of paid maternity leave”.<sup>15</sup> It is not clear whether this opposition was based on the concern that employers may be forced to pay for such a scheme, or was a general objection to paid maternity leave. Seventy-seven per cent of respondents also answered yes to the question: “[w]ould you be less inclined to employ a woman if your business was forced to pay maternity leave?”.<sup>16</sup>

The Australian Institute of Company Directors conducted a survey of members attending its May 2002 Conference on the Gold Coast.<sup>17</sup> Sixty-one per cent of women and 38 per cent of men that answered the survey answered yes to the question: “[d]o you feel paid maternity leave should be a standard condition of employment?”.<sup>18</sup> Forty-three per cent of respondents considered that both business and Government should pay for maternity leave. In addition, the survey found that “[b]ig business appears willing to support and pay for paid maternity leave, while recognising that small business needs government support”.<sup>19</sup>

## 1.4 About this paper

This paper is divided into four parts and an appendix.

This part, Part A, included an introduction to the paper and an overview of the process that was followed in preparing the paper.

Part B provides an overview of the present circumstances of Australian families and the increasing financial and time pressures on mothers and families. It also reviews existing maternity leave and financial supports for mothers at the time of birth of a child.

Part C sets out the objectives and benefits of a national paid maternity leave scheme.

Part D outlines community views regarding the possible structure of a paid maternity leave scheme and details HREOC’s preferred model for a national paid maternity leave scheme.

The Appendix is a consultancy report prepared by the National Centre for Social and Economic Modelling (NATSEM) of the cost of HREOC’s preferred model for a national paid maternity leave scheme.

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<sup>14</sup> New South Wales State Chamber of Commerce, Submission 231, pp9-10.

<sup>15</sup> New South Wales State Chamber of Commerce, Submission 231, p9.

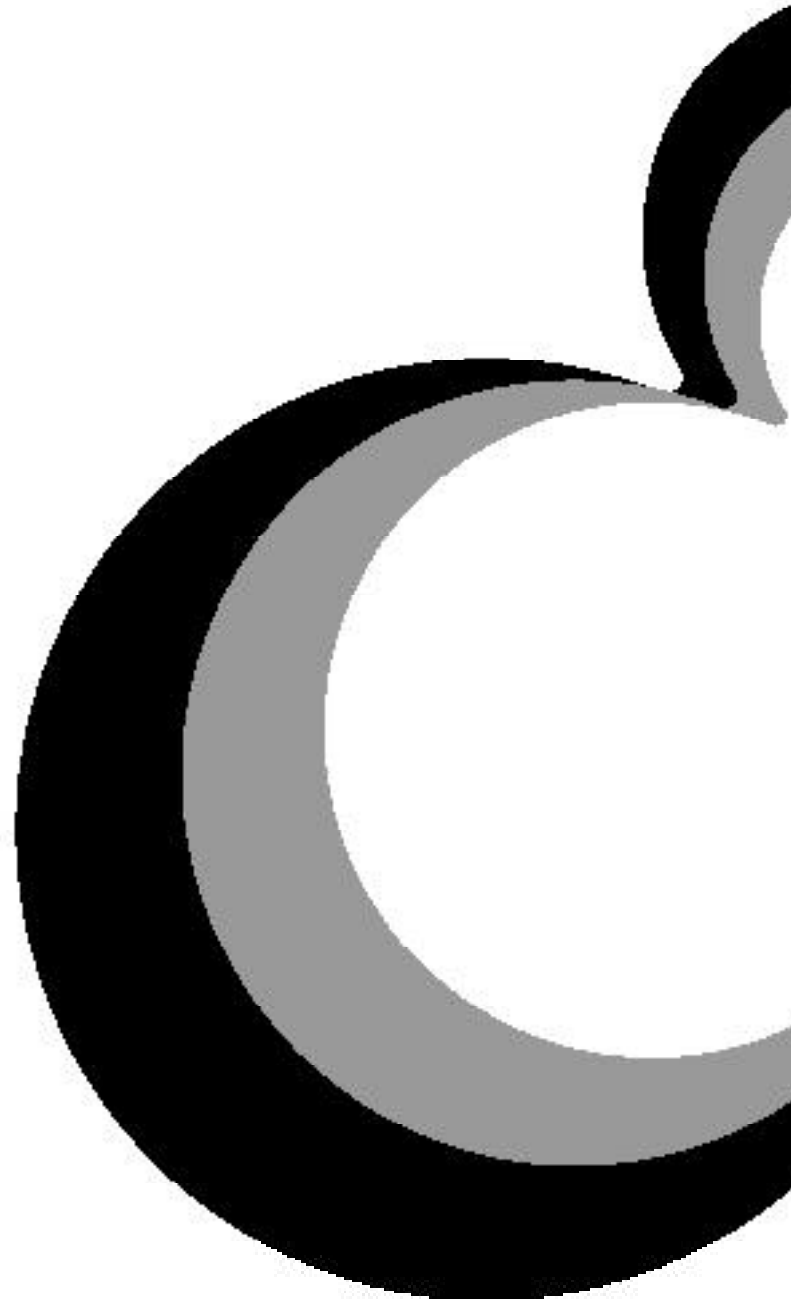
<sup>16</sup> New South Wales State Chamber of Commerce, Submission 231, p9.

<sup>17</sup> Australian Institute of Company Directors, Submission 53, pp1-2.

<sup>18</sup> Australian Institute of Company Directors, Submission 53, p2.

<sup>19</sup> Australian Institute of Company Directors, Submission 53, p2.

**PART B**  
The Imperative



## 2. A changing Australia:

### The need for a national scheme of paid maternity leave in 2002

#### 2.1 Introduction

The purpose of this Chapter is to provide an overview of Australian society and the socio-economic context in which the introduction of a national paid maternity leave scheme for Australia might be considered. The Chapter outlines the key changes that have driven the increased pressure for paid maternity leave. More specifically, it examines the economic and social changes which have led to a significant proportion of mothers with babies less than six months of age returning to the workforce, many out of financial necessity, despite strong health and welfare arguments for their remaining at home with their children during at least part of this period.<sup>20</sup> In these circumstances, a national scheme of paid maternity leave becomes a priority in family policy.

Chapter 3 considers in detail the existing arrangements to assist families. Part C sets out the objectives of a paid maternity leave scheme. These are the objectives identified in consultations and submissions as those that a national scheme should address and be able to meet.

#### 2.2 History

The pursuit of paid maternity leave is not unique to Australia. Internationally, the need for paid maternity leave and other measures that provide maternity protection for women in paid work has a long history of recognition. The International Labour Organization first enacted the *Maternity Protection Convention* in 1919.<sup>21</sup> This Convention was revised in 1952<sup>22</sup> and again in 2000.<sup>23</sup>

The issue of paid maternity leave is also not new in Australia. Australia has been concerned with supporting women at the time of childbirth since the time of federation. For example, a Maternity Allowance was introduced on 10 October 1912, abolished on 1 November 1978 and re-introduced in a different form on 1 February 1996.<sup>24</sup>

Similarly, the existence of working mothers is not a new phenomenon. Historically, certain groups of women in Australia have always worked and combined child-rearing in order to meet their families' financial commitments.

Australia has considered and come close to introducing paid maternity leave in the past. Australia reported to the Committee on the Elimination of Discrimination against Women during the International Year of the Family, 1994, that:

... paid maternity leave would become one of the major issues for public debate. The Government was now taking steps to introduce parental leave.<sup>25</sup>

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<sup>20</sup> Studies show that 39 per cent of women return to work after a maternity break of less than six months and eight per cent return after a break of less than six weeks: ABS 6254.0 *Career Experience November 1998*, p23.

<sup>21</sup> *Maternity Protection Convention 1919* (No. 3).

<sup>22</sup> *Maternity Protection Convention (Revised) 1952* (No. 103).

<sup>23</sup> *Maternity Protection Convention 2000* (No. 183).

<sup>24</sup> Department of Family and Community Services *A Short Genealogy of Income Support Payments* Research FaCS Sheet Number 11 March 2002, p1.

<sup>25</sup> UN Doc. A/49/38, para 379.

In the event, the then Government instead introduced the Maternity Allowance in 1996, payable to all mothers at the time of the birth of their child. That payment is still made and is now equivalent to less than two weeks of the minimum wage.

However, the consultations undertaken and submissions received in 2002 show a strong level of support for paid maternity leave. HREOC considers that changing social and economic circumstances mean that, now more than ever before, there is a pressing need to introduce paid maternity leave.

## 2.3 The purpose of paid maternity leave

The case for a national paid maternity leave scheme rests on the importance of replacing family income around childbirth and recognising and partly compensating the financial disadvantage experienced by women in the workforce when they bear children. Recognition of the health and wellbeing needs of mothers and babies is also a significant issue.

While the need to address financial disadvantage and provide income replacement is no less important today, the case for a national scheme of paid maternity leave has now been engendered with an acuteness arising from the large number of women returning to paid work for financial reasons very soon after the birth of a child.<sup>26</sup> A national scheme would enable mothers of newborns to recover fully from the birth and be full time carers for the first few months of a child's life. This is to the benefit of both mother and child. These would be intrinsically desirable goals for individuals and the society.

The design of any policy initiative can, and may be intended to, affect behaviour or to deliver certain outcomes. For example, a recent measure (Family Tax Benefit Part B) was specifically designed to assist women to stay home for lengthy periods (in excess of twelve months) after the birth of a child. Family Tax Benefit Part B provides only modest family income replacement (up to \$2 836.05 per annum<sup>27</sup>) and although it may be very welcome for families, the number of women choosing to remain at home after the birth of a child in response to this measure is also likely to be modest. What is more, the length of time women receiving the payment are able to afford to be out of paid work is likely to be limited. The steady increase in workforce participation rates for women with children under five years of age may indicate that its effect is marginal.

Another possible form of government assistance which would assist parents to be full time carers, although for a shorter period of time, is a payment that provides a significant proportion of income replacement for a limited period. The more closely the size of the benefit approaches the parent's total net earnings, the greater the number of parents likely to take the benefit and remain at home for its duration. That benefit is commonly called paid maternity leave, reflecting the limited nature of the period of support, an attachment to the labour force and the need for family income replacement rather than family income supplementation. It presupposes that mothers will eventually return to work although the measure is not necessarily tied to this.

## 2.4 Economic and social change in a generation

### 2.4.1 Introduction

Economic and social change during the 1980s and 1990s has been extensive. The participation of women in the labour market has risen dramatically, the education and training required of young workers today has also increased significantly. Changes in the nature of work open to women and declining job certainty have social and economic flow-on effects for families and family formation. Australia's rising cost of home ownership and the changing social expectations of women have also had an impact on the modern socio-economic structure of Australia.

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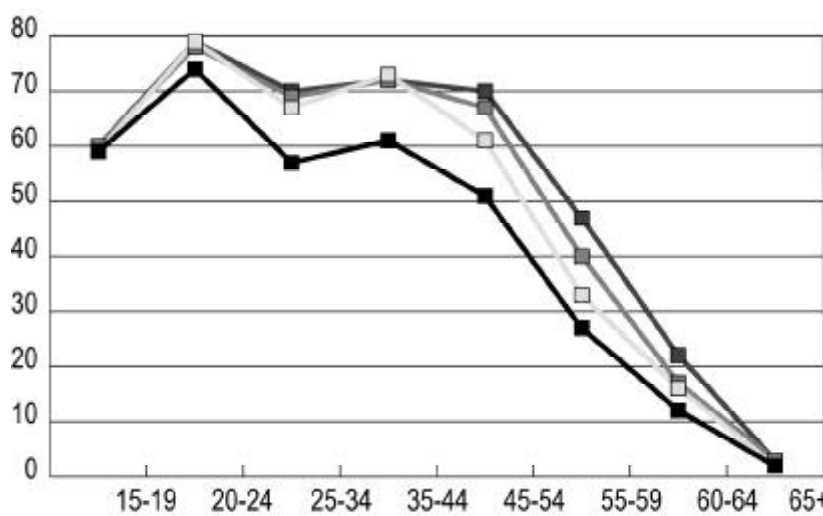
<sup>26</sup> See note 1.

<sup>27</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p4. This is the rate that applies where the youngest child is under 5 years of age.

## 2.4.2 Women's labour force participation rates

Women now make up almost half of the Australian work force. Over the course of the past twenty years, women have joined the workforce in increasing numbers. Significantly, the onset of motherhood, once a turning point in a woman's working life, is increasingly being accommodated within the constraints of paid employment. The graph below demonstrates that where once the prime childbearing years were associated with a rapid decline in labour market participation, today the decline is much smaller and for a shorter period of time. Frequently, but not always, family responsibilities are accommodated with part time and casual work. The employment rate for all women of workforce age (15-64) increased from 47 per cent in 1980 to 61 per cent in 2000.<sup>28</sup> For women in the main childbearing years (25-34), the employment rate increased from 50 per cent in 1980 to 66 per cent in 2000.<sup>29</sup>

Graph 2.1: Female labour force participation by age group, Australia, 1985-2000



Source: ABS *Labour Force – Participation Rate – Australia* (Cat no 6291.40.001), May figures.

The growth in two income families with dependants has been the largest contributor to rising family living standards since the 1970s. In 2000, 63 per cent of couple families with dependants had two incomes.<sup>30</sup>

The contribution of women's personal income to total income for couples with children increased from 25 per cent of total income in 1982 to 30 per cent in 1999-2000.<sup>31</sup>

## 2.4.3 Education and training opportunities

Not only are more women employed in paid work across all ages, greater access to education and training has meant the nature of the work they do has also changed. Employment opportunities of women have also expanded, partly because of their uptake of education and training. Women with a degree have a full time employment-population ratio that is about two times larger than women who left school at 15 years of age and subsequently have not obtained a qualification.<sup>32</sup>

<sup>28</sup> ABS 4102.0 *Australian Social Trends 2001*, p134.

<sup>29</sup> ABS 4102.0 *Australian Social Trends 2001*, p135. Bob Gregory found that full time female workers, in the key age group of 25-34, increased by 60 per cent between 1976 and 2000: R G Gregory *Can this be the Promised Land? Work and welfare for the modern woman* National Institute Public Lecture Parliament House Canberra 5 June 2002, figure 5.

<sup>30</sup> ABS 4102.0 *Australian Social Trends 2001* p135.

<sup>31</sup> ABS 4102.0 *Australian Social Trends 2001* p156.

<sup>32</sup> R G Gregory *Can this be the Promised Land? Work and welfare for the modern woman* National Institute Public Lecture Parliament House Canberra, 5 June 2002, p8.

The rise in the number of women and girls in education and training has occurred at a time when the percentage of men and boys in education and training has also risen, although the increase for women and girls has been more startling, especially in vocational training. The rapid expansion in labour-saving technology and the increasing demand for skilled labour that has accompanied technological change, in conjunction with greater emphasis on Australia's international competitiveness, have contributed to this trend.

The Year 12 retention rate for girls increased from 65.2 per cent in 1989 to 78.5 per cent in 1999.<sup>33</sup> This increase in secondary schooling numbers preceded a large increase in students attending universities and other forms of higher education. In the ten years from 1989, the number of people of workforce age attending an educational institution rose by 28 per cent.<sup>34</sup>

Young people are also increasingly in higher education at older ages. Overall, around one in three people aged 20-24 is still engaged in training.<sup>35</sup> This is an increase of 39.2 per cent of those in this age group. They may also be engaged in paid work, usually part time.<sup>36</sup>

There has also been a dramatic increase in the participation of women in higher education. In 1989 women made up 49 per cent of higher education students aged 20-24 and 47 per cent of those 25-44.<sup>37</sup> A decade later these proportions had increased to 52 and 55 per cent respectively.<sup>38</sup>

The significant investment of a woman's time and money in her education, in addition to substantial Government investment and the expectation of a return on that investment, underpins much of the change in social expectations about women's work choices.

## 2.4.4 Changes in the nature of work

### Changes in the type of work

As in many other countries, the levels and patterns of women's participation in paid work in Australia have undergone substantial changes over the last 50 years. A much wider range of occupations have opened up to women as a result of the introduction of anti-discrimination laws, changes in social attitudes to the roles and rights of women in the paid workforce, the removal from awards of conditions that discriminated against women and equal opportunity policies. Changes in the labour market, in particular the growth of the service industry, improvements in communication technologies and increased mechanisation and computerisation, have also resulted in changes in the kinds of paid work undertaken by women.<sup>39</sup> In the late 1980s and early 1990s, when these labour market changes were most significant, there was an increase in the numbers of women across most occupations. The most significant change was the number of women in professional and para-professional occupations. By August 1992, 42.4 per cent of women were professionals and 46.7 per cent of women were para-professionals.<sup>40</sup>

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<sup>33</sup> ABS 4102.0 *Australian Social Trends 2000*, p82. Between 1985 and 1995 the retention of all students to Year 12 Secondary schooling rose from 46 per cent to 72 per cent: ABS 4102.0 *Australian Social Trends 1996*, p72. For girls, the Year 12 retention rate increased dramatically and is now higher than the retention rate of boys, 79.1 per cent and 68.1 per cent respectively: ABS 102.0 *Australian Social Trends 2002*, p96.

<sup>34</sup> ABS 4102.0 *Australian Social Trends 2000*, p93.

<sup>35</sup> ABS 4102.0 *Australian Social Trends 2002*, p96.

<sup>36</sup> Even amongst 25 to 34 year olds, there was a 63.5 per cent increase in attendance at post compulsory education institutions between 1989 and 1999: ABS 4102.0 *Australian Social Trends 2000*, p94.

<sup>37</sup> ABS 4102.0 *Australian Social Trends 2000*, p94.

<sup>38</sup> ABS 4102.0 *Australian Social Trends 2000*, p94. Similarly, in vocational education and training, in 1989 women made up 37 per cent of participants aged 15-19 and 38 per cent of those aged 20-24, but a decade later 38 per cent of 15-19 year olds and 47 per cent of those aged 20-24: ABS 4102.0 *Australian Social Trends 2000*, p95. The number of women undertaking apprenticeships and training has more than quadrupled between 1995 and 2001, increasing from 24 500 to 114 400: Commonwealth Office of the Status of Women *Women 2002* Commonwealth of Australia Canberra 2002, p6.

<sup>39</sup> New South Wales Department for Women *New South Wales Government Action Plan for Women 2000-2002* Sydney 2001, p53.

<sup>40</sup> ABS 6203.0 *Labour Force* August 1992 as cited in ABS 6205.2 *Women and Work* 1992, p15.

Despite these changes, Australia continues to have one of the most highly gender segregated labour forces in the industrialised world.<sup>41</sup> Women continue to be concentrated in occupations traditionally dominated by women, for example 91 per cent of the 187 300 nurses and 73 per cent of the 301 100 school teachers in Australia today are female.<sup>42</sup>

## Increased uncertainty

Families face rising living costs and continue to expect that they can provide improved living conditions for their children, yet family income today is less certain than it has been for past generations. This reflects, in part, an increasing preference by employers to hire workers on a casual or temporary contract basis. Casual work, defined by the Australian Bureau of Statistics as employment without leave entitlements, increased by 69 per cent overall between 1988 and 1998. For men, the incidence of casual work increased by 115 per cent, and for women, 43 per cent.<sup>43</sup> As at August 2001 workers without leave entitlements comprised 27 per cent of all full time and part time employees.<sup>44</sup>

Some of this increased casualisation reflects the high participation rates of young men and women in post-secondary education and their desire for part time, not full time work.

Overall, the number of permanent full and part time employees has dropped from 79.8 per cent of all employed persons to 62.2 per cent in the space of thirty years (1971-2000).<sup>45</sup> The Australian Bureau of Statistics estimates that only 54.6 per cent of female employees and 55.3 per cent of male employees are now permanent.<sup>46</sup> For full time permanent work this change has been most marked; the percentage has declined from an estimated 76.4 per cent to 53.4 per cent of employed persons.<sup>47</sup> This drop results not only from an increase in the number of casual employees, but also from those self employed and in restricted tenure jobs.

In addition to the decline in permanency, a significant proportion of the workforce is in a job for a relatively short period. Only between 10 per cent and 26 per cent of employees in non-permanent forms of work have tenure of more than two years, compared with 64 per cent of permanent employees.<sup>48</sup> Overall, in 1998 a total of 42 per cent of the Australian workforce had been working for an employer for less than two years.<sup>49</sup>

Job security in Australia is rapidly declining. In 1989/90 when we first asked the "is your job secure" question, the vast majority of Australian workers reported having secure jobs: a total of 73% felt very secure or fairly secure in their jobs. In the next few years this dropped to 63% and by 1996/97 it had fallen further to 56%.<sup>50</sup>

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<sup>41</sup> ABS 4102.0 *Australian Social Trends 1998*, p114 and House of Representatives Standing Committee on Legal and Constitutional Affairs *Half Way to Equal* Parliament of Commonwealth of Australia Canberra 1992, p31.

<sup>42</sup> ABS 6203.0 *Labour Force* August 2002, p48.

<sup>43</sup> ABS 6203.0 *Labour Force* July 1999, p4. Despite the difference in the rates of increase of casually employed males and females, females continued to represent a greater proportion of casual employees over this period. In August 1998, for example, 54 per cent of casual employees were female.

<sup>44</sup> Note this survey is based on employee access to entitlements in their main job: ABS 6310.0 *Employee Earnings, Benefits and Trade Union Membership* August 2001, p33.

<sup>45</sup> Mark Wooden "The changing labour market and its impact on work and employment relations" in Ron Callus and Russell Lansbury *Working Futures: The changing nature of work and employment relations in Australia* Federation Press Sydney 2002, p57.

<sup>46</sup> ABS 6361.0 *Employment Arrangements and Superannuation* April to June 2000, p17,18.

<sup>47</sup> Mark Wooden "The changing labour market and its impact on work and employment relations" in Ron Callus and Russell Lansbury *Working Futures: The changing nature of work and employment relations in Australia* Federation Press Sydney 2002, p57.

<sup>48</sup> ABS 4102.0 *Australian Social Trends 2000*, p116.

<sup>49</sup> ABS 6359.0 *Forms of Employment* August 1998, p10.

<sup>50</sup> J Kelley, M Evans and P Dawkins "Job security in the 1990s: How much is job security worth to employees?" (1998)1(1) *Australian Social Monitor* 1 at 2.

In 2000, almost one in four of those aged 25-34 had changed employer within the previous 12 months, compared with 10 per cent of 35-44 year olds and even fewer in older age groups.<sup>51</sup> Female employees of child bearing age also have shorter periods of continuous employment, with 45.9 per cent of those aged 20-24 and 27.9 per cent of those aged 25-34 having worked in the same job for less than one year.<sup>52</sup>

Historically, high levels of unemployment have been associated with lower rates of family formation and low levels of unemployment with higher rates. While the improving macro-economic conditions of the past 12 years might suggest we should now be witnessing higher rates of family formation, anecdotal and statistical evidence that individual levels of employment uncertainty have risen as the result of changed industrial conditions, mitigate against this.<sup>53</sup>

The deregulation of the labour market and the rise of enterprise bargaining has arguably contributed to Australia's record of economic growth since the 1990s. However, this deregulation appears to have contributed to a higher level of employment uncertainty and has also had unintended social consequences which are outlined below at 2.5.

## 2.4.5 Home ownership

With greater family purchasing power there is likely to be some upward pressure on demand for family formation goods such as houses and cars. But it is also true that rising populations in urban areas and the Australian tradition of low urban density have also contributed to the rising cost of housing and the perception of the need for the second car. In real terms, construction costs have been a secondary source of rising housing prices. The major contributor to rising house prices has been the cost of land, reflecting an increase in demand for housing per se rather than of luxurious or more expensive houses. BIS Shrapnel data shows a 677 per cent increase in the cost of land in Sydney over the period 1980-2002 but only an increase of 241 per cent in construction costs.<sup>54</sup> Much of this increase is in rising unit costs of materials and labour.

Accompanying these spectacular increases in land prices has been a concomitant decrease in housing affordability for single income earners. Whereas in 1976 the average weekly mortgage repayment was 6.5 per cent of Average Weekly Earnings, it is now 52 per cent.<sup>55</sup> For many families, two incomes are now essential to support the purchase of a home.

The Home Loan Affordability Indicator has decreased from 57.4 in March 1980 to 40.5 in December 2001 – representing a 29 per cent decrease in the affordability of housing in Australia in the last 20 years.<sup>56</sup> In cities such as Sydney the increase has been much more marked. The average loan size for first home buyers in Australia has increased from \$73 300 in 1992 to \$124 800 in 2002. This is a 70 per cent increase in a decade.<sup>57</sup>

Housing affordability is also closely related to interest rates. Housing affordability is defined as the monthly mortgage repayments for a 25 year loan on 75 per cent of the median house price as a percentage of average total full time earnings. There is no doubt that the high interest rates of the 1980s gave impetus to two income families. The decline in interest rates in the late 1990s appears to have assisted in driving up housing prices, given the greater capacity of two income households to commit to larger mortgages.<sup>58</sup>

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<sup>51</sup> ABS 4102.0 *Australian Social Trends 2001*, p130.

<sup>52</sup> ABS 6361.0 *Employment Arrangements and Superannuation* April to June 2000, p18.

<sup>53</sup> J Kelley, M Evans and P Dawkins "Job Security in the 1990s: How much is job security worth to employees?" 1998(1) *Australian Social Monitor* 1 at 2.

<sup>54</sup> Figures provided by BIS Shrapnel, using data from BIS Shrapnel *Building in Australia 1991-2005* Sydney 1991 and the Real Estate Institute of New South Wales.

<sup>55</sup> Zana Bytheway "In support of flexible work practices" *Jobwatching: The Official Publication of Job Watch Inc.*, Newsletter October 2002, p1.

<sup>56</sup> Real Estate Institute of Australia and AMP Banking *Home Loan Affordability Indicator 2002*.

<sup>57</sup> ABS 4102.0 *Australian Social Trends 2002*, p96.

<sup>58</sup> Conversation with Robert Mellor, Director, BIS Shrapnel, October 2002.



The story of housing affordability suggests that the two income family has become necessary for owning a home. The risk now is that were interest rates to rise again, families, already reliant on two incomes, would be further obliged to extract the maximum income from both parents or bear mortgages worth more than the value of the asset.

Access to housing finance is more difficult and expensive for those without permanent work, suggesting that for younger age groups, home ownership, with its implications for family formation, is likely to be problematic.

It is not surprising that among couples under the age of 35, without children, home ownership fell eight per cent in the five years from 1994 to 1999, from 60 per cent to 52 per cent.<sup>59</sup> Home purchase is generally associated with the beginnings of family formation.

## 2.4.6 Social and cultural change

### Introduction

Other factors have contributed to the rise in the numbers of mothers in paid work. Economic, technological and demographic change has been accompanied by cultural and social shifts.

### Social expectations

Foremost among these is the expectation that women should be able to be in paid work and to have children. The modern women's rights movement and the increasing recognition of individual human rights by democratic Governments have enhanced the trend for women to choose to be in paid work.

Since the passing of the Sex Discrimination Act in 1984, Australia, like many other countries, has positively promoted the rights of women, in particular their right to be in paid work. The removal of the bar on married women working in the public service in 1966, the ruling of the then Commonwealth Conciliation and Arbitration Commission in 1969 that women should have equal pay and the development of more gender-inclusive education programmes have all played a part in increasing the access of women to paid work.<sup>60</sup>

The availability of reliable contraception since the 1960s has facilitated this by enabling women to manage their work and family formation roles.

The increased likelihood of family breakdown may have encouraged more women to value self-reliance through remaining attached to the workforce during their childbearing years. The reform of Australia's divorce law was marked by the introduction of the *Family Law Act 1975* (Cth). Since then, Australia's divorce rate has risen dramatically. In 1997 there were approximately 12 divorces per 1 000 married couples each year.<sup>61</sup> Based on 1999 rates, almost one in two marriages will end in divorce.<sup>62</sup>

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<sup>59</sup> ABS 4102.0 *Australian Social Trends 2001*, p177.

<sup>60</sup> ABS 4102.0 *Australian Social Trends 1998*, p118.

<sup>61</sup> Department of Family and Community Services *Australian Families: Circumstances and trends*, Research FaCS Sheet Number 6 September 2000, p3.

<sup>62</sup> ABS 4102.0 *Australian Social Trends 2001*, p57.

Today 19.6 per cent of children are living with only one parent, usually their mother.<sup>63</sup> The expectation that, in these circumstances, a mother will be her family's primary earner may be an additional factor that could incline more young women to pursuing long term work force participation. Although less than half (46 per cent) of sole parents in Australia are in paid work,<sup>64</sup> the majority relying on child support and welfare payments, this percentage is expected to rise under recent Government policy changes.<sup>65</sup>

One of the most significant features of the change in women's expectations over the course of a generation has been the shift from a family centred to a work and family centred approach to life planning, as Catherine Hakim's preference theory demonstrates.<sup>66</sup> However, this shift has not and could not be absolute. In practice there is a wide combination of choices available to and taken up by women. Some women have, for example, decided to become full time parents despite their extensive education and training while others become full time workers as well as mothers, despite the low skilled and low paid nature of their work. In positing three groups of women: work centred, home centred and adaptive women, Hakim's theory is itself a simplification of the myriad of combinations available. The theory also assumes all women have the same capacity to choose whereas for many, their combination of work and family responsibilities will be a matter of necessity. Some choices will simply not be available. Despite this, the theory's policy implications are clear enough. Policies aimed at affecting the decisions women make, including the decision to have children and the numbers of children to have, will be of limited use if based on the assumption that all women will respond in the same way to a policy instrument such as a government benefit.

## 2.4.7 Work and family

There is also growing recognition of the need to change the structures of work to recognise both women's and men's family responsibilities.<sup>67</sup>

Concern was expressed in every forum in HREOC's consultations that work and life balance was becoming increasingly precarious for Australian families. In addition to this general concern, there was, in particular, recognition that the role of men in their families necessitated more support. This point was raised in several consultations, including a consultation with women's groups and community members in Perth.

Men want to have contact with their children, bond with kids ... They want to take a greater role in parenting.<sup>68</sup>

Support for the greater involvement of men with their young families came not only from women in the community but also from men, especially those in union consultations. For example, in a consultation with union representatives in Adelaide one participant stated that "... having both parents at home [following childbirth] obviously supports the family, but in reality men are not taking the leave".<sup>69</sup>

Concern was also expressed about the long hours the fathers of young children worked in an attempt to compensate the family for the mother's loss of income during this stage. Long working hours and its effect on families recently prompted the Australian Council of Trade Unions to run a test case on reasonable working hours in the Australian Industrial Relations Commission.<sup>70</sup>

Women supported the greater involvement of men in parenting because of the greater capacity this provided for women to pursue their own work and family choices but also because they considered this was best for children and their fathers.

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<sup>63</sup> Refers to children under 15 years: ABS 4102.0 *Australian Social Trends 2002*, p30. Eighty-six per cent of sole parent families with dependants had a female parent in June 2000: ABS 6224.0 *Labour Force Status and Other Characteristics of Families* June 2000, p7.

<sup>64</sup> ABS 4102.0 *Australian Social Trends 2002*, p30.

<sup>65</sup> See the *Australians Working Together* package, detailed at <http://www.together.gov.au/>.

<sup>66</sup> Catherine Hakim, *Work-Lifestyle Choices in the Twenty-first Century: Preference theory* Oxford University Press Oxford 2000.

<sup>67</sup> See 11.3 – 11.4 for further discussion.

<sup>68</sup> Women's groups and community consultation, Perth, 20 June 2002.

<sup>69</sup> Union consultation, Adelaide, 1 July 2002. This issue was also raised at union consultation, Perth, 21 June 2002.

<sup>70</sup> See 11.4.3 for further discussion.

## 2.5 The consequences of change for work and family

### 2.5.1 Introduction

It is difficult to attribute cause and effect between the various changes discussed above, but together they have clearly contributed to significant changes in family formation and working patterns for women. The main changes are outlined below.

### 2.5.2 The need for two income families

The combination of rising job uncertainty with declining housing affordability and a rising cost of living has contributed to the increase in the number of two income families. Spreading the risk of losing total family income between a couple is effectively achieved by their both working, while rising living costs also put pressure on families to have a second income earner, especially in families whose primary source of income is a low or medium income earner. Rural families, for example, have long been familiar with the need to minimise the risk of income exposure. In rural households, 80 per cent of off-farm income is earned by women.<sup>71</sup> In addition, couples in two income households are likely to be more attractive to mortgage providers, as the risk of income reduction is lessened.

The number of two income families had risen from 50.2 per cent of all couple families with dependent children in 1987 to 56.3 per cent by 1997.<sup>72</sup> By 2000, this proportion had risen to 63 per cent of couple families with dependent children.<sup>73</sup>

### 2.5.3 Older parenting ages

The rising numbers of young people, in particular of young women, in non-compulsory education well into their twenties, suggests that young people today will be inclined to commit to relationships and child rearing later than previous generations. The desire of young women and young men to receive a return on the investment they have made in their education and training is likely to further defer this commitment. Young women's increased expectation of workforce attachment and their growing career expectations often also compete with a focus on family formation. In addition, growing job uncertainty is associated with the deferral of partnering by both affecting the capacity of young people to acquire a home and the understandable desire of young people for certainty before committing to support another.

The median age at which women in Australia bear their first child is now 30 years; it is a figure which has risen relentlessly over the course of the past generation.<sup>74</sup> The proportion of women aged 25-29 who had not had a child increased from 40 per cent in 1986 to 53 per cent in 1996.<sup>75</sup> The parenting age for men is slightly higher.

A fast growing group of new mothers is those aged 35 and over. Women aged 35 years and over giving birth to their first child, as a percentage of women aged 35 and over giving birth, was 23.7 per cent in 1999, up from 12.7 per cent in 1991.<sup>76</sup>

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<sup>71</sup> Rural Industries Research and Development Corporation and the Department of Primary Industries and Energy *Missed Opportunities: Harnessing the potential of Australian women in Agriculture* Volume 1, Department of Primary Industries and Energy Canberra, 1998, p18.

<sup>72</sup> Department of Family and Community Services *Australian Children: Circumstances and trends* Research FaCS Sheet Number 7, September 2000, p3.

<sup>73</sup> ABS 4102.0 *Australian Social Trends 2001*, p135.

<sup>74</sup> ABS 3301.0 *Births Australia 2001*, p6.

<sup>75</sup> ABS 4102.0 *Australian Social Trends 2002*, p56.

<sup>76</sup> ABS 4102.0 *Australian Social Trends 2002*, p31.

The number of births to women aged 30 years and over increased from one in four births in 1979 to almost one in every two births in 1999.<sup>77</sup> Peak fertility was among 24 year old women in 1964 and among 29 year old women in 1994.<sup>78</sup>

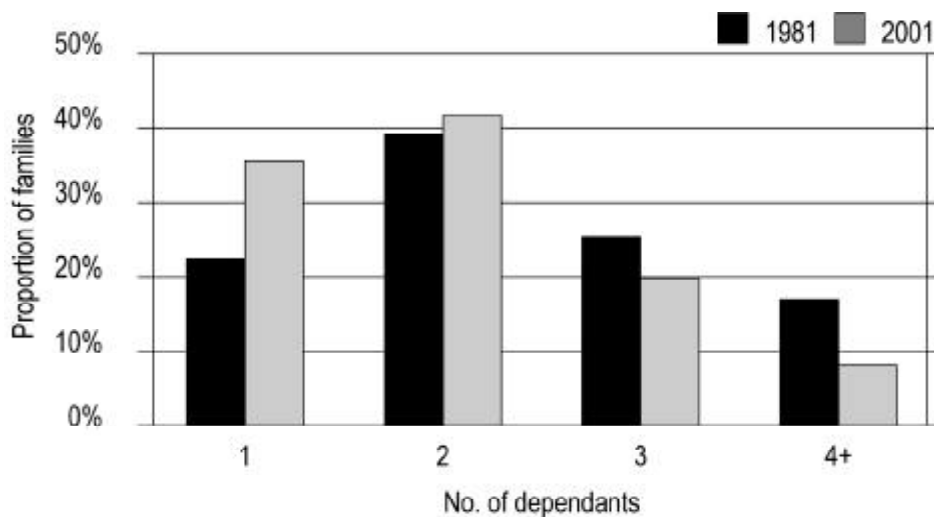
For over 35 year old mothers, overall fertility is likely to be lower than that of younger women.

The ability to conceive declines markedly from age 35 years onwards. The proportion of assisted conception pregnancies to women aged 35 years and over in Australia and New Zealand increased from 29 per cent of all assisted conception pregnancies in 1990 to 41 per cent in 1997.<sup>79</sup>

## 2.5.4 Family size continues to drop

For women aged 30 and over, the mean number of children ever born declined from 2.5 children per woman in 1986 to 2.3 in 1996.<sup>80</sup> There is a decline in this age group of the proportion of women having larger families, with the number of women with four or more children down from 22 per cent in 1986 to 18 per cent in 1996.<sup>81</sup> The proportion of single child families among all families with dependants has risen from 22 per cent to 34 per cent in the 20 years from 1981 to 2001.<sup>82</sup> It has been this reduction in family size, rather than an increase in childlessness, which has contributed to declining fertility rates thus far. In future, significant increases in childlessness will also contribute to falling fertility. Based on estimates for 2000, 24 per cent of women currently in their reproductive years will remain childless.<sup>83</sup>

Graph 2.2: Families and dependent children



Philip Gammage noted that:

[t]his is the era of “the only, lonely child”, increasingly born to a mother of about 29 years of age, a mother often necessarily in mid career. There are no support structures available from an extended family. It does not exist. The past traditions and securities have gone, probably for ever. Instead of regretting that loss, and sometimes bowing to the cultural and sexual hegemony of the wishful male (especially, it might seem, elderly, middle-class parliamentary ones) we should, I think, be asserting the need for new models.<sup>84</sup>

<sup>77</sup> ABS 4102.0 *Australian Social Trends 2001*, p56.

<sup>78</sup> ABS 4102.0 *Australian Social Trends 1996*, p40.

<sup>79</sup> ABS 4102.0 *Australian Social Trends 2001*, pp57-58.

<sup>80</sup> ABS 3301.0 *Births 2000*, p27.

<sup>81</sup> ABS 3301.0 *Births 2000*, p27.

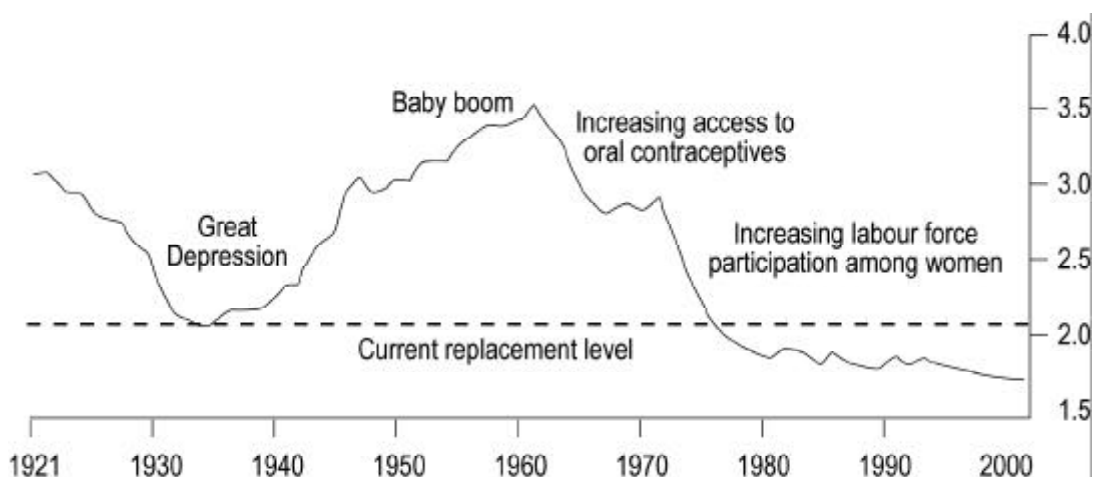
<sup>82</sup> ABS *Census 2001*, unpublished data.

<sup>83</sup> ABS 4102.0 *Australian Social Trends 2002*, p37.

<sup>84</sup> Philip Gammage, Submission 91, p2.

Overall, Australia's fertility rate has trended down over the last part of the twentieth century. The Total Fertility Rate was 3.1 during the early 1920s, 2.1 in the 1930s (the Great Depression), 3.4 in 1962 (the Baby Boom), 2.9 in the early 1970s, 1.90 in 1980, 1.91 in 1990, 1.75 in 2000 and 1.73 in 2001.<sup>85</sup>

Graph 2.3: Total Fertility Rate



Source: ABS 4102.0 *Australian Social Trends 2002*, p13.

Arguably, insufficient support for working families (in the form of paid maternity leave, child care subsidy, lack of access to retraining facilities after time out of the workforce and lack of access to flexible working arrangements) exacerbates the trend to smaller families at older ages.<sup>86</sup> This downward trend in fertility is also, in part, the result of increased age at the time of first birth.

### 2.5.5 Women returning to work within a year of the birth of a child

Financial pressures and the need for many women to maintain workforce attachment are likely to contribute to the significant number of women with young infants returning to work. This figure is likely to be interest rate sensitive for some women, particularly where the major debt is the household mortgage. The Finance Sector Union, in a survey of its members, reported that nearly half of the 182 respondents indicated that they might have to return to work earlier than they would like because of their financial situation.<sup>87</sup> This was also reflected in a number of the consultations. In a consultation held with women's groups and community members in Brisbane, for example, it was stated that:

[f]inancially you cannot afford not to go back. They say you have the choice to stay at home or go back to work but there really is no choice at the moment. It is a clear financial decision.<sup>88</sup>

More limited tenure has also meant that not all women in the workforce are eligible for the 12 month period of unpaid maternity leave available in Australia. Women are not eligible for unpaid maternity leave unless they have been with a single employer for at least 12 months. Twenty-eight per cent of women workers aged 25-34 have worked in their main job for less than 12 months; for younger women this figure is higher.<sup>89</sup>

<sup>85</sup> ABS 3301.0 *Births 2001*, pp44-45.

<sup>86</sup> Peter MacDonald "Gender equity, social institutions and the future of birth" (2000)17 *Journal of Population Research*, 1-16.

<sup>87</sup> Finance Sector Union, Submission 161, p5.

<sup>88</sup> Women's groups and community consultation, Brisbane, 24 May 2002. This issue was also raised at women's groups and community consultation, Perth, 20 June 2002 and union consultation, Tasmania, 27 June 2002.

<sup>89</sup> ABS 6361.0 *Employment Arrangements and Superannuation* April to June 2000, p18: 45.9 per cent of women with jobs aged 20-24 had worked in the same job for less than one year.

This may mean some women take other forms of leave, generally short, in order to retain their position. The declining number of permanent employees, especially in younger age groups, suggests eligibility will continue to be problematic for women while it is based on industrial requirements.

Other women return to work earlier than they might choose because of the shortage of formal childcare and the need to accept a place once offered or return to the end of the waiting list.<sup>90</sup> The decision to return to work is also likely to be affected by personal preferences.

Census figures confirm that 36 per cent of women were in the labour force within a year of the birth of a baby in 2001.<sup>91</sup> This is a substantial increase from 1981, when 26 per cent of women with a child under one were in the labour force.<sup>92</sup> As shown in Table 2.1, a significant number of women with dependent children are in the labour force. There has been a dramatic increase in the labour force participation rate for women in couples with dependent children over the past twenty years. For example, the proportion of women in couples in the labour force whose youngest child is aged under one more than doubled between 1976 and 1996. The change in labour force participation for sole parents is not as clear, with the 1996 labour force participation rate for women whose youngest child is under one being greater than it was in 1976, but less than in 1986.

Table 2.1: **Labour force participation rate of women with dependent children**

	<b>Age of youngest child</b>	<b>1976 (%)</b>	<b>1986 (%)</b>	<b>1996 (%)</b>
<b>Couples</b>	0	16.6	28.7	35.5
	1-2	25.5	42.1	52.3
	4-5	39.9	53.7	62.1
<b>Sole parents</b>	0	14.9	27.6	18.4
	1-2	22.4	40.5	34.1
	4-5	33.5	51.4	48.5

Source: ABS 4102.0 *Australian Social Trends 2002*, p13.

A 1998 Australian Bureau of Statistics survey found that 69 per cent of female employees with children under the age of six years who took a break from the workforce (using paid and/or unpaid leave) or ceased working at the time of the birth of their youngest child returned to work within a year of the birth of this child.<sup>93</sup> This survey does not include women not employed at the time of the survey and women who did not return to work within six years of the birth. It does confirm that for women with ongoing attachment to the workforce, returning to work within a year is common.

## 2.6 Conclusion

Women in Australia today are working in increasing numbers, undertaking more study, delaying childbirth and having fewer children. Women with children increasingly are also in paid work, often soon after the birth of a child, to reduce the risk of there being no income earner due to unexpected unemployment, and to assist in meeting the family's cost of living. They also work because they have invested considerable time and investment in developing workforce skills and because there is a greater expectation and need among women for financial independence. Many women also derive considerable enjoyment and a sense of identity from work.

<sup>90</sup> See also 11.6.

<sup>91</sup> ABS *Census 2001*, unpublished data.

<sup>92</sup> ABS *Census 1981*, unpublished data.

<sup>93</sup> ABS 6254.0 *Career Experience* November 1998, p23.

Many families are facing increasing time and financial pressures in a less certain environment. The economic, social and cultural changes that Australia has experienced within the space of a generation mean that now, more than ever before, there is a need to support families and parents combining work and childrearing. The majority of parents with dependent children are now in paid work.<sup>94</sup> Measures that support families therefore need to reflect this change. A national paid maternity leave scheme becomes, in these circumstances, an essential part of such support. HREOC urges the federal Government to act now to support families, women, and babies through the introduction of paid maternity leave.

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<sup>94</sup> Sixty-three per cent of couple families with children were two income families in 2000: ABS 4102.0 *Australian Social Trends 2001*, p135. Similarly, the majority of sole parents with dependent children were in employment. Fifty-one per cent of sole parents with dependent children were employed in 2000: ABS 4102.0 *Australian Social Trends 2001*, p136.





# 3. Adequacy of existing arrangements

## 3.1 Introduction

An important consideration in assessing the need for a national paid maternity leave scheme is the adequacy of existing government and business provisions designed to support women and families at the time of childbirth.

The interim paper, *Valuing Parenthood: Options for paid maternity leave*,<sup>95</sup> considered the existing provisions to support women and families at the time of childbirth. The interim paper extensively reviewed available data on unpaid and paid maternity leave, and government assistance. The findings of that paper were that while Australia's **unpaid** maternity leave arrangements are comparable with those of other countries, including Australia's trading partners, they still fail to provide adequate support for families around childbirth as they do not provide financial support for mothers wishing to absent themselves from work for some time immediately following the birth of the baby.<sup>96</sup> Existing **paid** maternity leave arrangements are limited, haphazard and fall significantly below what could be considered a national system.<sup>97</sup> Similarly, while the Government provides a range of family assistance and income support payments to assist families, none of these meet the key objectives of paid maternity leave.<sup>98</sup> These findings, and particularly the gap in provisions to support women at the time of childbirth, were one of the key starting points for HREOC's examination of the need or otherwise for a national paid maternity leave scheme.

This Chapter provides a critical overview of current financial support and maternity leave arrangements in Australia, including the current system of unpaid maternity leave, paid maternity leave and government benefits to families. This information draws on the findings of the interim paper, together with comments received in submissions and consultations, in order to demonstrate the need for a national system of paid maternity leave.

## 3.2 Existing unpaid maternity leave arrangements

### 3.2.1 Introduction

Australia currently provides a reasonably comprehensive system of unpaid leave. Permanent full time and part time employees who have worked with their employer for at least 12 continuous months have a minimum entitlement to 52 weeks of unpaid parental leave following the birth or adoption of a child.<sup>99</sup>

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<sup>95</sup> Human Rights and Equal Opportunity Commission *Valuing Parenthood: Options for paid maternity leave, interim paper 2002* HREOC Sydney 2002.

<sup>96</sup> Human Rights and Equal Opportunity Commission *Valuing Parenthood: Options for paid maternity leave, interim paper 2002* HREOC Sydney 2002, pp17-18; 88-92.

<sup>97</sup> Human Rights and Equal Opportunity Commission *Valuing Parenthood: Options for paid maternity leave, interim paper 2002* HREOC Sydney 2002, pp18-23; 92-105.

<sup>98</sup> Human Rights and Equal Opportunity Commission *Valuing Parenthood: Options for paid maternity leave, interim paper 2002* HREOC Sydney 2002, pp24-26; 106-112. See Part C for a discussion of the objectives of paid maternity leave.

<sup>99</sup> The *Workplace Relations Act 1996* (Cth) limits adoption leave to the adoption of children under the age of five.

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.<sup>100</sup> State legislation generally mirrors the federal provision.<sup>101</sup>

In May 2001, an Australian Industrial Relations Commission decision granted access to unpaid parental leave to casual employees covered by a federal award and 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.<sup>102</sup>

This 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.<sup>103</sup>

### 3.2.2 Adequacy of current unpaid maternity leave arrangements

Australia's unpaid maternity leave arrangements reflect international practices. However, in consultations a perception emerged that Australia's unpaid maternity leave standards are the world's best. This is not the case.

Sweden provides a total of 18 months parental leave, of which 14 weeks is maternity leave. Twelve of the 18 months is paid at 80 per cent of the parent's prior earnings, three months paid at a flat rate, and the remaining three months unpaid leave.<sup>104</sup>

Austria provides a total of 27.7 months parental leave of which 16 weeks is maternity leave paid at 100 per cent of the mother's prior earnings, and the remaining two years is parental leave. Eighteen months of the parental leave is paid at the unemployment benefit rate with the remaining six months unpaid.<sup>105</sup>

Germany provides a total of 39.2 months of parental leave of which 14 weeks is maternity leave paid at a rate of 100 per cent of the mother's prior earnings, with the remaining three years classified as parental leave. Two years of this parental leave is paid at a flat rate, although it is income tested, with the remaining year unpaid.<sup>106</sup>

Finland and Norway both provide 36 months of parental leave, all of which is paid.<sup>107</sup>

Clearly, Australia's 12 months of unpaid maternity leave falls short of "world's best". However, the provision of this unpaid leave is still an important support for women in order to enable them to take a period of time out of paid work, without losing the right to return to their previous position.

Consultations and submissions suggested that a significant number of women are not able to make full use of their unpaid leave entitlement.

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<sup>100</sup> Schedule 14 clause 12 *Workplace Relations Act 1996* (Cth). Except for a one week overlap, parents cannot take leave simultaneously as it is designed for the primary care-giver.

<sup>101</sup> Section 54(1) *Industrial Relations Act 1996* (NSW); section 18(2) *Industrial Relations Act 1999* (Qld); schedule 5 clause 1 *Industrial and Employee Relations Act 1994* (SA); in Tasmania the provisions of the federal Act apply; schedule 1A *Workplace Relations Act 1996* (Cth) applies to Victorian workers; section 33 *Minimum Conditions of Employment Act 1993* (WA); section 5 *Parental Leave (Private Sector Employees) Act 1992* (ACT); in the Northern Territory the provisions of the federal Act will apply.

<sup>102</sup> *Re Parental Leave - Casual Employees Test Case* (2001) EOC 93-144, para 8.

<sup>103</sup> Section 53 *Industrial Relations Act 1996* (NSW); s16(a) *Industrial Relations Act 1999* (Qld).

<sup>104</sup> Sheila Kamerman "Parental leave policies: An essential ingredient in early childhood education and care policies" (2000) XIV (2) *Social Policy Report* 1 at 6, 11.

<sup>105</sup> Sheila Kamerman "Parental leave policies: An essential ingredient in early childhood education and care policies" (2000) XIV (2) *Social Policy Report* 1 at 5, 10-11.

<sup>106</sup> Sheila Kamerman "Parental leave policies: An essential ingredient in early childhood education and care policies" (2000) XIV (2) *Social Policy Report* 1 at 5, 11.

<sup>107</sup> Sheila Kamerman "Parental leave policies: An essential ingredient in early childhood education and care policies" (2000) XIV (2) *Social Policy Report* 1 at 5-6.

There is little information available on the duration of leave for those who do take unpaid maternity leave. The information that is available suggests that a significant proportion of women return to work prior to their child's first birthday. A 1998 Australian Bureau of Statistics survey found that 69 per cent of female employees with children under the age of six years who took a break from the workforce (using paid and/or unpaid leave) or ceased working at the time of the birth of their youngest child returned to work within a year of the birth of this child.<sup>108</sup> However, any leave taken was not necessarily unpaid maternity leave. A 1988 study by the Australian Institute of Family Studies found 65 per cent of women who were eligible for, and took, maternity leave<sup>109</sup> returned to work with the same employer within the 12 month statutory period.<sup>110</sup> In 1996, 34 per cent of all women whose youngest child was aged under one year were in the labour force.<sup>111</sup> In the case that women had only one child, and that child was aged under one year, the labour force participation rate in 1996 was 39 per cent.<sup>112</sup> A recent study of 400 pregnant women attending the Melbourne Royal Women's Hospital's pre-admission clinic found that the mean expected period of unpaid maternity leave was 41.6 weeks.<sup>113</sup>

One of the reasons that some women cannot access unpaid leave is the eligibility criteria for this leave, that require a woman to have worked for 12 continuous months with a single employer. The *Australian Living Standards Study* conducted in 1991-1992 found that three quarters of women in its full time employee sample were eligible for unpaid parental leave, while the number of eligible part time females was less than 40 per cent. 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 unpaid parental leave.<sup>114</sup>

Women who do not have sufficient service with one employer and casual employees not covered by a federal award or relevant State legislation will have no right to unpaid maternity leave and may be forced to resign in order to give birth to and care for their child. Women's workforce participation is characterised by their part time and casual employment, making eligibility for unpaid leave particularly difficult. The Australian Council of Trade Unions pointed out that:

[n]early one-quarter of women have worked less than 12 months in their main job, compared to only 20.6% of men.

...

Younger women are most likely to have held their job for less than 1 year – 46% of 20-24 year olds have short tenure, 28% of women aged 25-34, and 19% of those aged 34-44.<sup>115</sup>

In addition, it is clear that the lack of financial support during a period of unpaid parental leave, and the need to forego an income from paid work for this period mean that many families cannot afford for a woman to remain out of paid work for 12 months.

Australia's legislated right to unpaid maternity leave does not provide income replacement, which can limit women's ability to access the leave. Some women must return to work because they or their family are

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<sup>108</sup> ABS 6254.0 *Career Experience* November 1998, p23.

<sup>109</sup> 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, pp15-16.

<sup>110</sup> Australian Institute of Family Studies *Maternity Leave in Australia: Employee and employer experiences – Report of a survey* Commonwealth of Australia Melbourne 1988, p52.

<sup>111</sup> ABS *Census* 1996, unpublished data.

<sup>112</sup> ABS *Census* 1996, unpublished data.

<sup>113</sup> Wendy Weeks *Paid and Unpaid Maternity Leave of Women After the Birth of their Baby: Preliminary findings on the situation of 400 women attending the Royal Women's Hospital 2001-2002* Melbourne 2002 unpublished report, p13.

<sup>114</sup> Helen Glezer and Ilene Wolcott *Work and Family Life: Achieving integration* Australian Institute of Family Studies Melbourne 1995, pp37-38. Note that this study was conducted only one year after the *Parental Leave Test Case* Australian Industrial Relations Commission Print J3596 26 July 1990. The number of men eligible for parental leave would have increased in subsequent years. The test case, brought on by an application by the Australian Council of Trade Unions, saw the existing maternity leave clause in most awards replaced with an amended clause providing parental leave: 12 months unpaid leave to be shared by both parents including one week's paternity leave.

<sup>115</sup> Australian Council of Trade Unions, Submission 208, p19. These statistics are from ABS 6361.0 *Employment Arrangements and Superannuation* April – June 2000, p18. See also 2.4.4.

dependent on their income. At times this means that a woman returns to work before she or her child are ready. One woman, expecting a child, wrote that her individual circumstances effectively forced her back to full time work.

My position is exceptional as I am not only a shiftworker, but an unpartnered parent with little support in the form of child care. I have grave concerns for the future welfare of my child as I **have no choice** but to return to full time shift work to maintain a home for my child. Parenting payment and taking leave without pay is not an option as this government supporting parent payment falls short of my minimum mortgage payment. If I had the choice I would be taking at least 12 months leave to care for my child.<sup>116</sup>

Families in the lowest income brackets, including many single parent families, will be least likely to be able to access their full entitlement to unpaid leave.

## 3.3 Existing paid maternity leave arrangements

### 3.3.1 Introduction

In the absence of any legislated right to paid maternity leave, such leave may be provided for in awards, agreements or individual workplace policies.<sup>117</sup> This section of the paper reviews current paid maternity leave arrangements.

It should be noted that there are significant limitations with the available data on paid maternity leave. The majority of available data sets 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.<sup>118</sup> Employees who fall outside of these formal conditions, such as contract workers, will not have access to paid maternity leave at all. 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 the Survey of Employment Arrangements and Superannuation which found that only 0.4 per cent of casual employees had access to paid maternity leave.<sup>119</sup> Further, paid maternity leave may only be offered by an organisation on a discretionary basis. This means that the figures outlined in this Chapter are likely to significantly overstate the availability of paid maternity leave.

The available data do not record the number of women who take paid 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 use an employer provided paid maternity leave entitlement.

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<sup>116</sup> Verlaine Bell, Submission 19, p1.

<sup>117</sup> 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. Individual company policies are discretionary and non-binding policies offered by an employer within an individual company or organisation.

<sup>118</sup> See 2.4.4. and 3.2.2. above. Examples of conditions attached to paid maternity leave entitlements include: at ANZ women returning to work must work continuously for ten weeks before receiving the other half of the six weeks paid maternity leave payment; at BankWest in Western Australia, women receive six weeks' pay for maternity leave after they return to work, and must work a further six months to retain the payment. Cited in Centre for Applied Social Research, RMIT University, Submission 234, p3.

<sup>119</sup> ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

### 3.3.2 Adequacy of existing paid maternity leave arrangements

The most recent data on paid leave arrangements found that 38 per cent of female employees reported that they were entitled to some form of paid maternity leave.<sup>120</sup> Therefore, approximately 62 per cent of women in employment may not have access to any paid maternity leave.<sup>121</sup> When these women have children and by necessity take time away from the workplace, they receive no compensation for the income they lose.<sup>122</sup> Others may return to the workforce from financial necessity, leaving very young infants in care.

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.<sup>123</sup>

A nation-wide survey in 2000-2001 by the Equal Opportunity for Women in the Workplace Agency (EOWA) of firms with more than 100 employees found that 23 per cent of employers offered some form of paid maternity leave to employees.<sup>124</sup> The EOWA data suggest some increase in the provision of paid maternity leave amongst Australia's largest organisations, from 15 per cent of organisations in 1997<sup>125</sup> to 23 per cent in 2000-2001. However the number of firms with more than 100 employees offering paid maternity leave between 1998-1999 and 2000-2001 has remained stable at 23 per cent.<sup>126</sup>

All three of these measures suggest that the majority of women in paid work do not have access to paid maternity leave.

Available data suggest that paid maternity leave is predominantly available in the public sector and larger organisations.<sup>127</sup>

Paid maternity leave also appears to be an entitlement predominantly of highly skilled women in full time work rather than of women in more marginal employment, with lower skills, who are in part time or casual work. Fifty-one 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 report that they have access to paid maternity leave.<sup>128</sup>

A recent survey of 400 women attending the Royal Women's Hospital, Melbourne found a high correlation between employee education levels and access to paid maternity leave. Tertiary educated women made up less than 40 per cent of the sample, yet two thirds of those with access to some form of paid maternity leave had tertiary qualifications. No woman with primary level education had access to paid maternity leave.<sup>129</sup>

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<sup>120</sup> ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data. These data were collected via a self-reported interview process and may not necessarily indicate the actual proportion of women entitled to paid maternity leave.

<sup>121</sup> ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

<sup>122</sup> As noted at 3.4 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.

<sup>123</sup> Alison Morehead et al *Changes at Work: The 1995 Australian Workplace Industrial Relations Survey* Longman Melbourne 1997, p451.

<sup>124</sup> Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

<sup>125</sup> Commonwealth Department of Employment, Workplace Relations and Small Business *Work and Family State of Play 1998* Commonwealth of Australia Canberra 1998, p18.

<sup>126</sup> Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

<sup>127</sup> The Equal Opportunity for Women in the Workplace Agency 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): Equal Opportunity for Women in the Workplace Agency 2002 unpublished data. See also Human Rights and Equal Opportunity Commission *Valuing Parenthood: Options for paid maternity leave, interim paper 2002* HREOC Sydney 2002, p20.

<sup>128</sup> ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data. See also Human Rights and Equal Opportunity Commission *Valuing Parenthood: Options for paid maternity leave, interim paper 2002* HREOC Sydney 2002, p20-21. Also raised at union consultation, Melbourne, 9 July 2002.

<sup>129</sup> Wendy Weeks *Paid and Unpaid Maternity Leave of Women After the Birth of their Baby: Preliminary findings on the situation of 400 women attending the Royal Women's Hospital 2001-2002* Melbourne 2002 unpublished report, p15.

Data also indicate that there are significant variations between industries and occupations.<sup>130</sup>

An adjunct to the availability of paid maternity leave is knowledge of that entitlement. Of the female employees surveyed by the Australian Bureau of Statistics in 2000, 18.1 per cent did not know whether or not they were entitled to paid maternity leave.<sup>131</sup> More recent data indicate that 22 per cent of randomly selected female employees were unaware of their rights concerning access to paid and or unpaid maternity leave compared to 29 per cent of female employees covered by Australian Workplace Agreements (AWAs).<sup>132</sup> This suggests that female employees employed under AWAs are less likely to know their unpaid maternity leave entitlements than female employees generally. This is alarming given that AWAs are negotiated agreements between employers and individual employees. If such an employee is unaware of her unpaid maternity leave entitlements she is unlikely to successfully negotiate paid maternity leave with her employer.

The inequity of the current system in terms of which employees are eligible for benefits was highlighted in a number of submissions. The New South Wales Working Women's Centre submitted that:

[t]he current approach to paid maternity leave, based on enterprise bargaining, company discretion and legislative cover for some public servants, discriminates against those working women who are less skilled, less educated and with less bargaining power in the workplace.<sup>133</sup>

### 3.3.3 Adequacy of paid maternity leave provisions in awards and agreements

A review of 100 federal awards with the highest coverage of workers, undertaken by the then Commonwealth Department of Employment, Workplace Relations and Small Business found that only six federal awards included provision for paid parental leave.<sup>134</sup>

The Workplace Agreements Database found that for the two-year period from 1 January 2000 to 31 December 2001 seven per cent of federal certified agreements made in that period contained paid maternity leave provisions, a decrease of three per cent from the 1998-1999 period.<sup>135</sup> Over the same periods the percentage of federal certified agreements made which contained paid paternity leave provisions increased from two per cent to four per cent, while the percentage of certified agreements made which contained paid family leave provisions remained static at three per cent.<sup>136</sup>

Thirty-nine per cent of all female employees covered by federal certified agreements made in the 2000-2001 period potentially had access to an average of seven weeks' paid maternity leave.<sup>137</sup> This compares with 28

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<sup>130</sup> Equal Opportunity for Women in the Workplace Agency 2002 unpublished data; ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data. See also Wendy Weeks *Paid and Unpaid Maternity Leave of Women After the Birth of their Baby: Preliminary findings on the situation of 400 women attending the Royal Women's Hospital 2001-2002* Melbourne 2002 unpublished report, which found that half of the women surveyed with access to paid maternity leave were managers, professionals or associate professionals, p14.

<sup>131</sup> ABS 6361.0 *Survey of Employment Arrangements and Superannuation* Canberra, 2000, unpublished data cited in Commonwealth Department of Family and Community Services and Commonwealth Department of Employment and Workplace Relations *OECD Review of Family Friendly Policies: The reconciliation of work and family life – Australia's background report* Commonwealth of Australia Canberra 2002, p47.

<sup>132</sup> Office of the Employer Advocate *Employee Attitude Survey* 2002 unpublished data.

<sup>133</sup> New South Wales Working Women's Centre, Submission 225, p8.

<sup>134</sup> Research provided by the then Commonwealth Department of Employment, Workplace Relations and Small Business dated 7 November 2000.

<sup>135</sup> Commonwealth Department of Employment and Workplace Relations *Agreement Making in Australia under the Workplace Relations Act: 2000 and 2001* Commonwealth of Australia Canberra 2002, p81.

<sup>136</sup> Commonwealth Department of Employment and Workplace Relations *Agreement Making in Australia under the Workplace Relations Act: 2000 and 2001* Commonwealth of Australia Canberra 2002, p81.

<sup>137</sup> It should be borne in mind that as at May 2000, only 21.7 per cent of the Australian workforce had their pay set under the provisions of federally registered collective agreements. Commonwealth Department of Employment and Workplace Relations *Agreement Making in Australia under the Workplace Relations Act: 2000 and 2001* Commonwealth of Australia Canberra 2002, pp1,140.

per cent of all female employees covered by federal certified agreements made in the 1998-1999 period potentially having access to an average of four weeks' paid maternity leave.<sup>138</sup>

The disparity between the increase in the proportion of female employees covered by paid maternity leave in federal certified agreements and the decrease in the incidence of paid maternity leave provisions in federal certified agreements made in the periods 1998-1999 and 2000-2001 suggests that paid maternity leave provisions were included in a higher percentage of agreements covering very large workforces made in 2000-2001 than in 1998-1999.<sup>139</sup> While the number of employees covered by paid maternity leave provisions has increased, these figures still indicate that the spread of paid maternity leave entitlements through certified agreements may have stalled.

Based on analysis of the first AWA provided by each employer, the Office of the Employer Advocate found that between 1998 and 1999 17 per cent of employees have paid maternity leave in their AWAs.<sup>140</sup> In analysis conducted by the Australian Centre for Industrial Relations Research and Training, less than one per cent of a random sample of AWAs operating at the end of 2001 provided paid maternity leave.<sup>141</sup> The duration of the leave offered was either nine or 12 weeks.<sup>142</sup> 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. At the end of 2001 the number of current AWAs was estimated to be just under 130 000 agreements, representing 1.7 per cent of the wage and salary earner population in Australia.<sup>143</sup>

Information in relation to State registered awards or agreements is available but not comprehensive.<sup>144</sup>

An analysis of both federal and State enterprise agreements showed that 7.48 per cent of all federal agreements certified between 1997 and 2000 included a paid maternity leave provision. In contrast, only 3.1 per cent of State agreements listed in the Agreement Database and Monitor held by Australian Centre for Industrial Relations Research and Training between 1992 and 2000 contained a paid maternity leave provision.<sup>145</sup>

The available statistics show 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. As stated in a recent article on paid maternity leave, "... enterprise bargaining is only delivering paid maternity leave to a small proportion of Australian women".<sup>146</sup> The limited impact of enterprise bargaining on women's access to paid maternity leave was also supported by comments in submissions.

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<sup>138</sup> Commonwealth Department of Employment and Workplace Relations *Agreement Making in Australia under the Workplace Relations Act: 2000 and 2001* Commonwealth of Australia Canberra 2002, p141.

<sup>139</sup> Commonwealth Department of Employment and Workplace Relations *Agreement Making in Australia under the Workplace Relations Act: 2000 and 2001* Commonwealth of Australia Canberra 2002, p73.

<sup>140</sup> Commonwealth Department of Employment Workplace Relations and Small Business and the Office of the Employment Advocate *Agreement Making in Australia under the Workplace Relations Act: 1998 and 1999* Commonwealth of Australia Canberra 2000, p96.

<sup>141</sup> Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor: Report 32* University of Sydney March 2002, p8. According to the Office of Employment Advocate the difference between this figure and the percentage of AWAs with paid maternity leave may be explained by the different sampling methods used. The Office of Employment Advocate analysis also gives greater weight to larger employers. The Australian Centre for Industrial Relations Research and Training sample is also significantly smaller than the sample used by the Office of the Employment Advocate. Furthermore, in the random sampling done by the Australian Centre for Industrial Relations Research and Training, it is more likely that male AWAs would have been included, as over half of AWA employees are male. There would be no need for maternity leave in their AWAs.

<sup>142</sup> Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor: Report 32* University of Sydney March 2002, p8.

<sup>143</sup> Commonwealth Department of Employment and Workplace Relations *Agreement Making in Australia under the Workplace Relations Act: 2000 and 2001* Commonwealth of Australia Canberra 2002, p150.

<sup>144</sup> M Baird, D Brennan and L Cutcher "A pregnant pause: Paid maternity leave in Australia" (2002) 13 (1) *Labour and Industry* 1 at 7.

<sup>145</sup> M Baird, D Brennan and L Cutcher "A pregnant pause: Paid maternity leave in Australia" (2002) 13 (1) *Labour and Industry* 1 at 10. The Agreements Database and Monitor (ADAM) contains data on approximately one third of all agreements registered in the separate State jurisdictions between 1992 and 2000.

<sup>146</sup> M Baird, D Brennan and L Cutcher "A pregnant pause: Paid maternity leave in Australia" (2002) 13 (1) *Labour and Industry* 1 at 13-14.

The Work + Family Policy Research Group of the University of Sydney stated that their research on the spread of paid maternity leave through enterprise bargaining "... shows that progress has been minimal ..."<sup>147</sup> Their submission concluded that:

[t]his data provides evidence of the way in which employment and labour market-based mechanisms distribute social and economic outcomes inequitably, thus affecting the well-being of families and children. Those parents who can least afford the income loss of unpaid leave at the time when family costs and needs increase substantially on the birth of a child have least access to a period of paid leave.<sup>148</sup>

Many submissions were critical of the ability of enterprise bargaining to deliver a permanent entitlement to paid leave.

Enterprise bargaining has totally failed to provide adequate maternity leave conditions. Paid maternity leave is a basic human right and it is an outrage to be expected to have to ask for it and try and negotiate for it.<sup>149</sup>

Sectoral differences in the duration of paid maternity leave are also quite stark. In the industries that employ the most women, such as the accommodation, cafes and restaurants sector and the retail and wholesale trade sectors, only four per cent, two per cent and six per cent of agreements respectively provide paid maternity leave.<sup>150</sup> One union provided the following information to support its assertion that "... enterprise bargaining has failed women in manufacturing".<sup>151</sup>

Only 60 certified agreements out of approximately 1 500 agreements (0.25 per cent) that the AMWU [Australian Manufacturing Workers' Union] is a party to contain a provision for paid maternity leave ... the level of entitlement to paid maternity leave varies from between 3-6 weeks paid leave thus revealing inequities in the system as the level of entitlement depends on the bargaining strength of the workers.

...

In addition, bargaining factors such as the demographics of a workplace including the ratio of men to women, the comparative age group of the workforce, union representation at the workplace etc. can determine whether the paid maternity leave claim is successful or not.<sup>152</sup>

The lack of bargaining power of most women in the industrial relations setting was seen by many as a reason that enterprise bargaining would not deliver paid maternity leave. The Australian Services Union submitted that:

[w]omen workers disproportionately occupy the lower-paid, precarious and deregulated industries and jobs where they are more vulnerable to employment practices that do not allow the flexibility required to properly balance their work and family responsibilities.

...

[W]ithout legislative supports in place, including paid maternity leave, the gap will continue to widen between those workers with bargaining power and those without.<sup>153</sup>

One individual submitted that:

[e]nterprise agreements on their own are delivering very little to working women in Australia. Enterprise bargaining is delivering benefits to only a small proportion of Australian women. Even when available it is concentrated in certain industries such as the public sector. Other female dominated industries such as hospitality provide virtually no paid maternity leave.<sup>154</sup>

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<sup>147</sup> Work + Family Policy Research Group University of Sydney, Submission 251, p3.

<sup>148</sup> Work + Family Policy Research Group University of Sydney, Submission 251, p4.

<sup>149</sup> Karen Bijkersma, Submission 150, p2. Also raised at community and women's groups consultation, Melbourne, 31 May 2002.

<sup>150</sup> Commonwealth Department of Employment and Workplace Relations *Agreement Making in Australia under the Workplace Relations Act: 2000 and 2001* Commonwealth of Australia Canberra 2002, p238.

<sup>151</sup> Australian Manufacturing Workers' Union, Submission 237, p2.

<sup>152</sup> Australian Manufacturing Workers' Union, Submission 237, pp7-8.

<sup>153</sup> Australian Services Union MEU Private Sector Victorian Branch, Submission 154, p5.

<sup>154</sup> Kimberley Meyer, Submission 105, p1.



The Australian Nursing Federation was concerned that:

[a] continuation of the current piecemeal approach will result in, at best, incremental improvements for a minority of women who work in areas with the industrial capacity to achieve positive outcomes through bargaining.<sup>155</sup>

The National Pay Equity Coalition considered that enterprise bargaining would not deliver paid maternity leave to the majority of women.

Many women are in sectors of the economy where they are unlikely to be able to bargain adequate entitlements. Enterprise bargaining has delivered a very low incidence of agreements with paid maternity leave entitlements (DEWRSB [Department of Employment, Workplace Relations and Small Business], 2000). Entitlements that have been secured through industrial bargaining to date are well below international standards and are unlikely to be improved in the short-term. Those workplaces that have negotiated paid maternity leave are more likely to be located in industry sectors with higher earnings.<sup>156</sup>

Enterprise bargaining as a means of delivering paid maternity leave was also considered to further entrench the workplace disadvantage of particular groups of women.<sup>157</sup> This issue is taken up further at 7.4.

The enterprise bargaining approach to delivering paid maternity leave for women workers requires that workers covered by the agreement but unlikely to benefit directly from paid maternity leave also need to be persuaded of the efficacy of including a paid maternity leave entitlement in their agreements. One union considered that:

... [p]aid maternity leave is not going to flow to women workers through workplace level bargaining negotiations ... Our members have limited access to enterprise bargaining and when they do, they are more inclined to negotiate over more immediate priority issues – such as wages and job security. Parties tend not to negotiate about events which may or may not happen and agreements cannot be easily changed during their lifetime ... In collective bargaining agreements, women have to win support for paid maternity leave within their own workplaces and convince those who will not directly benefit such as older women or men or younger women of the value of the claim – as opposed to other claims which might benefit the whole.<sup>158</sup>

Australian Centre for Industrial Relations Research and Training Director Ron Callus has noted the disadvantages of using certified agreements to introduce paid maternity leave.

The problems of relying on agreements to deliver, what in most countries are regarded as basic workers rights, are apparent. The result is some workers have access to paid leave while others remain disadvantaged. Economy-wide minimum provisions and rights really require a macro approach, through legislation or a test case that will ensure that there is some fairness in women's ability to access paid maternity [leave] as a right not simply as a "bonus" granted at the discretion of some organisations.<sup>159</sup>

The Australian Chamber of Commerce and Industry has acknowledged that "[i]t is ... clear that most workplaces are not currently choosing to include paid maternity leave in their agreements".<sup>160</sup> However, ACCI contends that the number of workplace agreements that include paid maternity leave has increased over time, that the available data may ... "underestimate the incidence of paid leave by agreement in Australian workplaces"<sup>161</sup> and that paid maternity leave may not be a bargaining priority for some employees.<sup>162</sup>

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<sup>155</sup> Australian Nursing Federation, Submission 123, p5.

<sup>156</sup> National Pay Equity Coalition, Submission 224, p34.

<sup>157</sup> See also Ethnic Communities' Council of Victoria, Submission 242, p5; Women's Economic Think Tank, Submission 256, p1; Finance Sector Union, Submission 161, p4; Women's Electoral Lobby, Submission 248, p6; Union Research Centre on Organisation and Technology, Submission 254, p12.

<sup>158</sup> Australian Liquor, Hospitality and Miscellaneous Workers Union, Submission 153, p3.

<sup>159</sup> Australian Centre for Industrial Relations Research and Training "Little agreement on paid maternity leave" *Media Release* 15 April 2002.

<sup>160</sup> Australian Chamber of Commerce and Industry, Submission 197, p14.

<sup>161</sup> Australian Chamber of Commerce and Industry, Submission 197, p14.

<sup>162</sup> Australian Chamber of Commerce and Industry, Submission 197, p30.

Without evidence, it cannot be assumed that there are widespread demands for paid leave though bargaining which are not being addressed by employers. There are also other approaches available in agreement making to deal with work and family issues, other than a simple focus on “paid maternity leave” or maternity issues – such as working hours flexibility, and training and re-training.<sup>163</sup>

Some commentators have suggested that enterprise bargaining is a more appropriate means of achieving paid maternity leave in contemporary Australian society where work and family imperatives vary greatly and flexibility is highly valued.<sup>164</sup> For example, the National Farmers’ Federation considered that “[t]he provision of paid maternity leave should be a decision taken by the individual employer when considering all issues affecting the business”<sup>165</sup> and concluded that:

... paid maternity leave, as a workplace entitlement, should only be implemented by agreement at an individual workplace through existing agreement-making mechanisms.<sup>166</sup>

However a national scheme of paid maternity leave offered at a minimum level, does not prohibit employers and employees from negotiating additional arrangements to suit individual situations. A legislated right to paid maternity leave does however provide basic support for all women in paid work that cannot be removed by bargaining.

HREOC concludes that current provisions for paid maternity leave in awards and agreements are inadequate. The evidence indicates that agreement and award making will not bring Australian women in employment a secure paid maternity leave benefit. In addition, HREOC believes that the industrial processes for negotiating benefits have inherent problems when it comes to securing paid maternity leave. For example, negotiating an entitlement to paid maternity leave as part of a workplace agreement generally requires employees to trade off other benefits, including wages, to secure the new entitlement. This means that female employees are in effect paying for their own maternity leave entitlement by relinquishing other benefits. Paid maternity leave is a basic right for women in paid employment and should be secured as a right rather than negotiated as a tradeable benefit.

### 3.3.4 Adequacy of paid maternity leave provisions through 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. However, research has found that there is a great deal of variation in access to paid parental leave entitlements via company policies not only between workplaces but also within workplaces.<sup>167</sup> One study found that, not surprisingly, employers were more likely to provide access to paid parental leave policies to employees who are highly skilled or in whom they have invested training or other resources.<sup>168</sup>

Company policies are not public documents. There is, therefore, no direct way of ascertaining their content and how they are implemented. As they are discretionary, they can be changed at any time, can be applied to different employees differently and do not necessarily involve any consultation or involvement of employees.

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<sup>163</sup> Australian Chamber of Commerce and Industry, Submission 197, p14.

<sup>164</sup> See, for example, Australian Chamber of Commerce and Industry, Submission 197, pp ii,8,40, 41.

<sup>165</sup> National Farmers’ Federation, Submission 160, p12.

<sup>166</sup> National Farmers’ Federation, Submission 160, p15.

<sup>167</sup> M Gray and J Tudball *Family-Friendly Work Practices: Differences within and between workplaces* Research Report No 7 Australian Institute of Family Studies Melbourne 2002 cited in M Baird, D Brennan and L Cutcher “A pregnant pause: Paid maternity leave in Australia” (2002) 13 (1) *Labour and Industry* 1 at 4.

<sup>168</sup> M Gray and J Tudball *Family-Friendly Work Practices: Differences within and between workplaces* Research Report No 7 Australian Institute of Family Studies Melbourne 2002 cited in M Baird, D Brennan and L Cutcher “A pregnant pause: Paid maternity leave in Australia” (2002) 13 (1) *Labour and Industry* 1 at 4.

However, Australian evidence suggests that the best organisational predictors of company provided paid maternity leave are organisational size and structured management practices,<sup>169</sup> while the best labour market predictors are education and occupational status.<sup>170</sup>

The uneven distribution of company provided paid maternity leave both between and within companies indicates that such a mechanism for providing paid maternity leave does not deliver equity and generally does little for women employed in the non-core business of the organisation, for example in supportive, administrative roles.<sup>171</sup>

Moreover, the conditions attached to paid maternity leave provided by company policy are often onerous. For example, the Victorian Women Lawyers noted that:

[t]here is a significant disparity in the maternity leave policies within law firms. The majority of law firms do not offer any paid leave ... when law firms have policies providing for paid maternity leave, there are often quite onerous conditions attached to the entitlement. For example, the woman must have worked for the law firm for a certain period of time, the amount of payment will depend on the woman's length of service with the firm ...<sup>172</sup>

### 3.3.5 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.

Analysis by the former Commonwealth Department of Employment Workplace Relations and Small Business of federal agreements certified from January 1997 to June 2001 found that the average duration of paid maternity leave over this period was approximately six weeks, with the average in 2001 reaching almost eight weeks.<sup>173</sup> 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).<sup>174</sup>

Research on the availability of paid maternity leave in certified agreements has found that the amount of paid leave varies significantly from two days to 18 weeks. The most frequent duration of paid maternity leave at the federal level was two weeks and six weeks at the State level. The 14 weeks paid leave recommended by the International Labour Organization is available in very few agreements.<sup>175</sup>

Currently operating AWAs provide paid maternity leave of either nine weeks or 12 weeks.<sup>176</sup> 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.<sup>177</sup>

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<sup>169</sup> A Morehead et al *Changes at Work: The 1995 Australian Industrial Relations Workplace Industrial Relations Survey* Longman Melbourne 1997 cited in M Baird, D Brennan and L Cutcher "A pregnant pause: Paid maternity leave in Australia" (2002) 13 (1) *Labour and Industry* 1 at 14.

<sup>170</sup> G Whitehouse and D Zetland "Family friendly policies: Distribution and implementation in Australian workplaces" *Work and Family Seminar Papers* Women's Equity Bureau Sydney 1999 cited in M Baird, D Brennan and L Cutcher "A pregnant pause: Paid maternity leave in Australia" (2002) 13 (1) *Labour and Industry* 1 at 14.

<sup>171</sup> M Baird, D Brennan and L Cutcher "A pregnant pause: Paid maternity leave in Australia" (2002) 13 (1) *Labour and Industry* 1 at 15.

<sup>172</sup> Victorian Women Lawyers, Submission 137, p1.

<sup>173</sup> Commonwealth Department of Employment and Workplace Relations *Workplace Agreements Database* 3 April 2002 unpublished data.

<sup>174</sup> Commonwealth Department of Employment and Workplace Relations *Workplace Agreements Database* 3 April 2002 unpublished data.

<sup>175</sup> M Baird, D Brennan and L Cutcher "A pregnant pause: Paid maternity leave in Australia" (2002) 13 (1) *Labour and Industry* 1 at 8.

<sup>176</sup> Australian Centre for Industrial Relations Research and Training *Agreements Database and Monitor: Report 32* University of Sydney March 2002, p8.

<sup>177</sup> Commonwealth 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 fairness for all employees at 7.4.

For 2000-2001, Equal Opportunity for Women in the Workplace Agency 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,<sup>178</sup> while another 33 per cent of these organisations provided nine to 12 weeks of paid maternity leave.<sup>179</sup>

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.<sup>180</sup>

In the public sector, the length of paid leave varies considerably from four weeks in South Australia to a maximum of 14 weeks in the Northern Territory.<sup>181</sup> Eligible federal public servants are entitled to 12 weeks.

Comprehensive statistics on the duration of paid maternity leave provided for in State industrial relations instruments or in individual company policies are not available.

### 3.3.6 Conclusion

It is clear from the available data that the majority of women do not have access to employer provided paid maternity leave. The most recent data suggest that over 60 per cent of female employees do not have access to paid maternity leave.<sup>182</sup>

While paid maternity leave is provided through some awards, agreements and company policies, none of these measures has delivered paid maternity leave for the majority of women. Even where paid maternity leave is provided, it often falls well short of the international standard of 14 weeks of paid leave. In addition, the rate of increase of paid maternity leave provisions mean that it is unlikely that the proportion of women in paid work receiving employer funded paid maternity leave will significantly increase in the foreseeable future.

It is also clear that those women in more vulnerable employment and less able to bargain for improved work standards are the most likely not to receive paid maternity leave under the current system. Women who work in smaller organisations, in particular those with small profit margins, or who are in part time or casual work, or who have lower skills, are far less likely to have access to employer funded paid maternity leave.

HREOC is strongly of the view that a continuation of the current system of market and enterprise bargaining for paid maternity leave will leave a significant proportion of women vulnerable at the time of childbirth. In contrast, a national scheme of paid maternity leave would ensure more evenly spread access to paid maternity leave and assist in ensuring that women are able to have a period of time to recover from childbirth and be with their child without financial pressure to return to paid work.

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<sup>178</sup> Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

<sup>179</sup> Equal Opportunity for Women in the Workplace Agency 2002 unpublished data.

<sup>180</sup> Commonwealth Department of Employment and Workplace Relations *Workplace Agreements Database* dated 3 April 2002 unpublished data.

<sup>181</sup> "The Western Australian Government is still in the process of introducing six weeks paid parental leave for its own employees. This is available to either parent. Currently, only 58 per cent of the State's public sector employees have access to paid parental leave. The remaining 42 per cent only have access to unpaid leave. However, the Government has made a commitment to provide the full six weeks paid parental leave to all employees within the next two years, or as soon as funding is available": Western Australian Government, Submission 245, p2. Tasmania introduced 12 weeks paid maternity leave in March 2001 via the Tasmanian State Service Wages Agreement 2001. The entitlement has flowed on to other public sector occupations. The Northern Territory announced on 21 October 2002 that it would extend existing provisions of 12 weeks paid maternity leave for public sector workers to 14 weeks as part of settlement in current enterprise bargaining negotiations. See The Chief Minister of the Northern Territory "NT Government sets national benchmark on maternity leave" *Media Release* 21 October 2002.

<sup>182</sup> ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

## 3.4 Government payments to parents

### 3.4.1 Current government assistance

#### Introduction

The federal Government provides a range of income support payments to families to assist with the costs of raising children, including newborns.<sup>183</sup>

Government expenditure in 2000-2001 on Maternity Allowance and Maternity Immunisation Allowance was \$218 million.<sup>184</sup> These payments both constitute a payment to families to support young children. Government expenditure in 2000-2001 on Family Tax Benefit Part A and Family Tax Benefit Part B was \$10.076 billion.<sup>185</sup> While Family Tax Benefit provides financial assistance to families with young children, assistance also extends to much older children. The Baby Bonus has only been available since July 2001. Government spending on the Baby Bonus is projected to reach \$510 million in 2005-06.<sup>186</sup>

In light of the significant government spending on family assistance payments it is important to consider the extent to which these payments already meet the objectives of paid maternity leave.

HREOC considers that the key features of paid maternity leave are that it is a payment made immediately prior to and following the birth of a child that provides the opportunity for the woman to recuperate, provides time for the mother and child to bond without the financial pressure leading to an early return to paid work, and compensates the family for a loss of income from paid work necessitated by the birth of a child.<sup>187</sup> In addition, the number of women who are able to access the payment is important when considering whether any existing payment approximates a national scheme of paid maternity leave. Existing government payments are reviewed against these objectives in order to establish the extent to which the Government can be considered to be currently delivering appropriate support to women at the time of childbirth.

#### Maternity Allowance

The purpose of Maternity Allowance is to help families with the extra costs associated with the birth of a new baby. Maternity Allowance is paid as a non taxable lump sum of \$811.44 per baby, and is paid close to the time of birth.<sup>188</sup> This amount is equivalent to just over one week of Average Weekly Earnings,<sup>189</sup> less than two weeks of the Federal Minimum Wage<sup>190</sup> or four weeks of unemployment benefits.<sup>191</sup> In order to receive Maternity Allowance, the claimant must qualify for Family Tax Benefit Part A within 13 weeks of the child being born. This means, for a family with one child, that family income must be below \$83 184 a year.<sup>192</sup>

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<sup>183</sup> 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](http://www.centrelink.gov.au/internet/internet.nsf/about_us/centrelink_info.htm); *Centrelink A Guide to Commonwealth Government Payments 20 September - 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm); Commonwealth Department of Family and Community Services *Annual Report 2001-02* Commonwealth of Australia Canberra 2002; Commonwealth Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001.

<sup>184</sup> Commonwealth Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, p42. Government spending on Maternity Allowance and Maternity Immunisation Allowance was \$217 million in 2001-02: Commonwealth Department of Family and Community Services *Annual Report 2001-02* Commonwealth of Australia Canberra 2002, vol 2 p23.

<sup>185</sup> In 2000-2001 spending on Family Tax Benefit Part A and Family Tax Benefit Part B constituted \$10.076 billion delivered via the social security system: Commonwealth Department of Family and Community Services *Annual Report 2000-01* Commonwealth of Australia Canberra 2001, p42; and \$11 million delivered via the tax system: *Treasury Tax Expenditure Statement 2001* Commonwealth of Australia Canberra 2001, p7. Note that the amount delivered via the tax system is an estimate for spending in 2000-2001 as opposed to the social security figure which is actual expenditure. Government expenditure on Family Tax Benefit Part A and Family Tax Benefit Part B increased in 2001-2002 to \$10.928 billion: Commonwealth Department of Family and Community Services *Annual Report 2001-02* Commonwealth of Australia Canberra 2002, vol 2 p23. This more recent figure was not used in this comparison as the amount delivered via the tax system for 2001-2002 was, at the time of publication of this report, yet to be released.

<sup>186</sup> Taxation Law Amendment (Baby Bonus) Bill 2002 Explanatory Memorandum, p3 (general outline and financial impact).

<sup>187</sup> See discussion of the objectives of paid maternity leave at Part C.

<sup>188</sup> *Centrelink A Guide to Commonwealth Government Payments 20 September - 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p4.

Maternity Allowance falls short of paid maternity leave in terms of the level of payment that is made, and the fact that the payment is means tested. It is also only paid after the birth of the child.

## 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. 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.<sup>193</sup>

The Maternity Immunisation Allowance falls short of paid maternity leave in terms of the level of the payment, the timing of the payment and the fact that the payment is means tested.

## Family Tax Benefit Part A

The purpose of Family Tax Benefit Part 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). Family Tax Benefit Part A is means tested on the basis of family income, but does not have an assets test. Families with one child who have an income below \$30 806 a year will receive the full rate of payment. The payment is then reduced on the basis of earnings, and cuts out for a family with one child when the family income reaches \$83 184 a financial year.

The maximum rate of Family Tax Benefit Part A for a family with a newborn baby is \$126.70 per fortnight.<sup>194</sup> This amount is equivalent to nine per cent of the Average Weekly Earnings,<sup>195</sup> 15 per cent of the Federal Minimum Wage<sup>196</sup> or 31 per cent of the weekly rate of unemployment benefits.<sup>197</sup>

Family Tax Benefit Part A falls short of paid maternity leave in terms of the level of payment that is made, and the fact that the payment is means tested. It is also only paid after the birth of the child. Its benefit to the family in the first year depends therefore on when in the tax year the baby is born.

## Family Tax Benefit Part B

The purpose of Family Tax Benefit Part B is to provide extra assistance to single income families, including sole parents, especially families with a child aged under five years. Family Tax Benefit Part B is paid to families with children up to 16 years and children between 16 and 18 years who are studying full time.

Family Tax Benefit Part B is not income tested on the basis of family income. There are no limits on the income that the primary income earner can earn. The payment is income tested on the basis of the second income earner, who must earn below \$11 206 per year to be eligible for payment.<sup>198</sup> There is no assets test

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<sup>189</sup> Based on Average Weekly Earnings (all employees total earnings) of \$689.00. ABS 6302.0 *Average Weekly Earnings* May 2002, p4.

<sup>190</sup> Based on the Federal Minimum Wage of \$431 per week.

<sup>191</sup> Based on the "single aged 21 or over with children" rate of Newstart Allowance of \$405.40 per fortnight: Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p11.

<sup>192</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p3.

<sup>193</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p5.

<sup>194</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p2.

<sup>195</sup> Based on Average Weekly Earnings (all employees total earnings) of \$689.00. ABS 6302.0 *Average Weekly Earnings* May 2002, p4.

<sup>196</sup> Based on the Federal Minimum Wage of \$431 per week.

<sup>197</sup> Based on the single with children rate of Newstart Allowance of \$405.40 per fortnight: Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p11.

<sup>198</sup> If the youngest child is between five and 18 years the second income earner must earn below \$8 347 to be eligible for payment: Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p4.

for Family Tax Benefit Part B. The maximum rate of Family Tax Benefit Part B for a family with a newborn baby is \$108.78 per fortnight.<sup>199</sup> This amount is equivalent to eight per cent of Average Weekly Earnings,<sup>200</sup> 13 per cent of the Federal Minimum Wage<sup>201</sup> or 27 per cent of the rate of unemployment benefits.<sup>202</sup>

Family Tax Benefit Part B falls short of paid maternity leave in terms of the level of payment that is made, and the fact that the payment is means tested. In addition, the targeting of this payment at single income families effectively means that women cannot return to paid work and receive this payment. It is also only paid following the birth of a child.

## Baby Bonus

The purpose of the Baby Bonus is to recognise "... the loss of income that generally follows the arrival of a family's first child".<sup>203</sup>

The Baby Bonus provides a tax refund in each of the first five years following the birth of a family's first child. Payment is made at the end of each financial year. The maximum payment available each year is \$2 500.<sup>204</sup> The rate of payment is linked to the level of the woman's earnings before the birth of the baby. The highest level of payment is available if a woman does not return to work. The amount a woman receives reduces if she returns to work following the birth of a child. For example, she will receive half her possible payment if she earns half the amount she earned prior to the birth. She will receive no payment if she earns equal to or greater than her earnings prior to the birth. A minimum payment of \$500 is available for mothers whose taxable income is \$25 000 per annum or less.<sup>205</sup>

The Baby Bonus falls short of paid maternity leave in terms of the payment level, and the timing of the payment which is spread over five years and is only made at the end of each financial year. In addition, the Baby Bonus is only made for a family's first child. This means that a family will not receive the Baby Bonus for a second or subsequent child.

## Parenting Payment

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 the primary carer of a dependent child aged under 16 years.

Parenting Payment is subject to an income and assets test. It is paid fortnightly at a rate of up to \$429.40 per fortnight for sole parents and \$338.10 per fortnight for partnered parents.<sup>206</sup>

Women who are on unpaid maternity leave following the birth of a child may receive Parenting Payment, provided that they meet the income and assets test.

HREOC considers that the level of payment of Parenting Payment means that it falls short of paid maternity leave. It is subject to an income and assets test, which restricts the number of women who can access this payment. In addition, it is only available following the birth of a child.

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<sup>199</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p4.

<sup>200</sup> Based on Average Weekly Earnings (all employees total earnings) of \$689.00. ABS 6302.0 *Average Weekly Earnings* May 2002, p4.

<sup>201</sup> Based on the Federal Minimum Wage of \$431 per week.

<sup>202</sup> Based on the single with children rate of Newstart Allowance of \$405.40 per fortnight: Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p11.

<sup>203</sup> Taxation Laws Amendment (Baby Bonus) Bill 2002 Explanatory Memorandum, para 1.2.

<sup>204</sup> Taxation Laws Amendment (Baby Bonus) Bill 2002 Explanatory Memorandum, para 1.4.

<sup>205</sup> Taxation Laws Amendment (Baby Bonus) Bill 2002 Explanatory Memorandum, para 1.4.

<sup>206</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002*: [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p6.

## Child Care Benefit

Child Care Benefits are a government rebate of up to \$2.66 per hour for approved or registered child care.<sup>207</sup> A minimum rate applies for families over a certain income threshold.<sup>208</sup> All families have access to 20 hours of child care benefit each week, while families using child care for work, study or training purposes may claim a rebate for up to 50 hours a week.<sup>209</sup>

Child Care Benefit is a payment made specifically in relation to purchased child care. The benefit can only be claimed for hours of child care that are actually purchased. This is a very different purpose to paid maternity leave and does not relate to income replacement.

## Cumulative effect of government payments

While no single government payment equates to paid maternity leave, it is possible that the cumulative effect of these payments is equivalent to paid maternity leave.

As noted above, HREOC considers that payments should be made at the time of the birth if they are to be considered equivalent to paid maternity leave. As such, the key payments which, together, may be equivalent to paid maternity leave are the Maternity Allowance, Family Tax Benefit Part A, Family Tax Benefit Part B and Parenting Payment.

The maximum amount of cumulative government payments would apply to a woman who was a sole parent and who was not in paid work. A woman in this situation would receive maximum Family Tax Benefit Part A (\$126.70 per fortnight),<sup>210</sup> maximum Family Tax Benefit Part B (\$108.78 per fortnight),<sup>211</sup> the Maternity Allowance (\$811.44 lump sum payment)<sup>212</sup> and the full rate of Parenting Payment Single (\$429.40 per fortnight).<sup>213</sup> This means she would receive \$5 465.60 in the first 14 weeks of her baby's life. This is equivalent to \$390.40 per week for fourteen weeks. This rate is close to a weekly payment at the rate of the Federal Minimum Wage (\$431 per week). However, the woman must be single and have no earnings from paid work in the financial year of the baby's birth to receive this level of payment. She would also need to meet the Parenting Payment assets test.

Any woman who has earnings from paid work within the financial year of the baby's birth (whether as a result of being in paid work prior to the birth of the child or returning to work after the birth), who has a partner who is in paid work, or who has assets greater than allowed under the assets test will receive less than this amount.

For example, a woman who earned more than \$11 206 (\$431 per fortnight) in the financial year that her baby was born, and whose family income was greater than \$38 276 per annum may only receive the base rate of Family Tax Benefit Part A (\$40.74 per fortnight)<sup>214</sup> and the Maternity Allowance (\$811.44 lump sum payment).<sup>215</sup> This means she would receive \$1 381.80 in the first 14 weeks of her baby's life. This is equivalent to \$78.33 per week for fourteen weeks because of the retrospective nature of means testing. This rate would apply despite the possibility of a very significant drop in the family's income during the first 14 weeks following childbirth. In these circumstances it is foreseeable that a family may have had to accumulate significant savings prior to the birth of the child, or face the alternative that the woman will be under financial pressure to return to work as soon as possible. HREOC is of the view that a payment of \$100 per week would not be a sufficient payment to ensure that women can have a guaranteed period of time out of the workforce.

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<sup>207</sup> For a non-school child: Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002*. [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p5.

<sup>208</sup> The minimum rate is \$0.447 per hour for families with incomes over \$88 344 (one child); \$95 808 (two children) and \$10 8847 (three children, plus \$18 168 for each child after the third): Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002*. [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p5.

<sup>209</sup> Family Assistance Office *Payment Choices for Child Care Benefit* [www.familyassist.gov.au/Internet/FAO/FAO1.nsf/Payments/CCBPC.html](http://www.familyassist.gov.au/Internet/FAO/FAO1.nsf/Payments/CCBPC.html) 3 July 2002, p2.

<sup>210</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p2.



## Conclusion

The Government provides a range of family assistance and income support payments to support the different circumstances of women and families with children.

The Government has not claimed that any of these payments are equivalent to or meet the objectives of paid maternity leave. However, there are clearly overlapping aims between some of these payments and paid maternity leave. In particular, the Government has claimed that one of the purposes of the Baby Bonus is to replace the income a family loses when a woman takes time out from paid work to care for a baby. This is similar to the income replacement objective of paid maternity leave. Similarly, the Maternity Allowance overlaps with the purposes of paid maternity leave to some extent in that it is designed to support families with the additional expenses incurred at the time of arrival of a baby.

The most important fact in relation to existing government payments is that currently none of these payments enable a woman to take a period of time out of paid work immediately prior to and following the birth of a child. Under the current system of government payments, some women are faced with the options of saving over an extended period for a baby, returning to work before they or their baby are physically ready or not having a child because they cannot afford to forego their income from paid work.

### 3.4.2 Community views on government payments to parents

Many submissions considered that existing government payments to families were financially inadequate and restricted in coverage. The income thresholds for the means testing applied to some government payments were felt to be set inappropriately, while other government payments were not means tested at all.<sup>216</sup> The Australian Council of Trade Unions, for example, considered that:

[e]xisting government support for families of newborn children is both inadequate and inequitable.

The Maternity and Immunization Allowances of \$798.72 and \$208.00, means tested, are inadequate to compensate families for the costs associated with childbirth.

The Family Tax Part B (\$2752.00) was justified as support for families who choose to care for their children at home, rather than in child care ... However the Family Tax Benefit Part B does not perform this role, in that it:

- is payable to parents of children up to 18 years of age
- discourages dual income earning and the sharing of care responsibilities, and penalises return to part time employment
- is not means tested, and thus is paid to some high-income families.

How many families with the mother in employment would be eligible for Family Tax Benefit Part B in the child's first year, given the likelihood of some maternal income in the period before the child's birth.

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<sup>211</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p4.

<sup>212</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p4.

<sup>213</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p6.

<sup>214</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p2.

<sup>215</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p4.

<sup>216</sup> For further discussion on means testing see 15.6.

The new Baby Bonus is regressive and acts as a disincentive to employment. Payment is made at the end of the financial year, not at the time of the birth. This means it is not an immediate source of income replacement at the time of birth. Payment has outstanding debt taken from it. Payment in the first year reduced proportionally to the timing of the birth over a whole year.<sup>217</sup>

The Shop, Distributive and Allied Employees' Association asserted that:

... current government support payments to families are grossly inadequate. They are inadequate in respect of the levels of payment, they do not deliver adequate levels of support to many for whom they were designed, and in some cases, they are fundamentally inequitable in their design. None of them approximate paid maternity leave.<sup>218</sup>

The New South Wales EEO Practitioners' Association wrote that:

[c]urrent payments to assist women at the time of child-birth are financially inadequate in terms of the level of payment and coverage. In particular we note that the majority of existing supports are income tested and not accessible by many women at higher levels of income.<sup>219</sup>

The Women's Economic Think Tank considered that there was an imbalance in family assistance payments available to single and dual income families.

One underpinning concern driving support for paid maternity leave ... is to redress in part the message given by the present imbalance in funding policies that clearly provide more support to single income families as a category.<sup>220</sup>

Some submissions distinguished the scope and purpose of existing payments from those of a proposed paid maternity leave scheme, noting paid maternity leave's short term focus on providing adequate financial support for women for the period surrounding childbirth. Coles Myer wrote that:

[i]t is acknowledged that the federal government currently provides a wide range of support for families. However, the payments currently available appear to be targeted more broadly than a paid maternity leave scheme would be. In addition the payments are means tested restricting availability to certain socio-economic groups.

...

A paid maternity leave scheme would ideally be structured in such a way as to provide financial support at the time of the birth of a child and the payment would be sufficient to provide a sense of financial security to the mother for a reasonable period of time following the birth to reduce the financial imperative to return to work prematurely.<sup>221</sup>

The Australian Retailers Association considered that existing government payments "... do not address the situation of short term financial assistance to a two income couple during that initial period following the birth of a child".<sup>222</sup>

Many submissions, including submissions from employers, employer groups, unions and women's groups, argued that the existing government payments available to families did not equate with, or even approximate, paid maternity leave. The Australian Industry Group commented that "[a] range of family payments are currently available to eligible persons, but none are genuine paid maternity leave schemes".<sup>223</sup> Similarly, the Australian Retailers Association noted that their organisation:

... does not consider that government support for families with newborn children may be considered to approximate paid maternity leave.

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<sup>217</sup> Australian Council of Trade Unions, Submission 208, pp31-32.

<sup>218</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p11.

<sup>219</sup> New South Wales EEO Practitioners' Association, Submission 77, p3.

<sup>220</sup> Women's Economic Think Tank, Submission 256, p1.

<sup>221</sup> Coles Myer Ltd, Submission 107, p.4

<sup>222</sup> Australian Retailers Association, Submission 165, p10.

<sup>223</sup> Australian Industry Group, Submission 121, p14.

Payments currently available appear to be targeted more broadly than a paid maternity leave scheme would be. In addition the payments are means tested, restricting availability.<sup>224</sup>

Coles Myer submitted that it "... does not consider that government support for families with newborn children may be considered to approximate paid maternity leave".<sup>225</sup>

The Victorian Independent Education Union noted limits in the ability of existing government payments to meet the objectives of paid maternity leave, particularly focussing on the Maternity Allowance.

Current government support provided to families with newborn children cannot be considered to approximate paid maternity leave. The means tested Maternity Allowance ... is designed to offset costs associated with the birth and care of a newborn baby. It does not assist a mother to take time off work or provide financial security during the period after birth while she recovers physically and psychologically, establishes feeding and care for the infant. The Maternity Allowance does not protect the mother's employment (thereby ensuring she has a position to return to), nor does it protect or preserve other workplace entitlements (long service leave, sick leave and the like).<sup>226</sup>

A number of submissions raised a concern that existing government support for adoptive families often does not acknowledge the additional costs, including government imposed costs, associated with adoption, as opposed to biological births.<sup>227</sup> Government support also does not take account of the particular costs of inter-country adoption, nor does it acknowledge some of the realities of adopting an older child. For example, eligibility for the Baby Bonus requires that the child is under five years of age.<sup>228</sup> Seventeen per cent of intercountry adoptees in 2000-2001 were five years of age or older.<sup>229</sup> Eligibility for Maternity Allowance requires that the child is under 26 weeks of age at the time of placement with the family.<sup>230</sup> This issue is considered further in the discussion of the proposal for a national scheme of paid maternity leave at 14.5.

### 3.4.3 The Baby Bonus

Many submissions were particularly critical of the Government's recently introduced Baby Bonus. For example, the Australian Education Union were concerned about the timing of payment of the Baby Bonus.

[T]he maximum of \$2 500 available [via the Baby Bonus] is refunded from tax already paid at the end of the financial year. The economic pressure experienced by women occurs when the birth is imminent or has occurred not at the end of the financial year.<sup>231</sup>

BPW Australia considered that:

... the baby bonus [is] poorly targeted and unhelpful in supporting families to combine work and family formation. Like other tax-break schemes it unfairly offers more benefits to women on higher salaries, but still not enough to make a difference. As such it is expensive, ineffective and poorly directed and rather than encouraging women to have children, discourages those that do have babies from returning to work even part-time.<sup>232</sup>

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<sup>224</sup> Australian Retailers Association, Submission 165, p10.

<sup>225</sup> Coles Myer Ltd, Submission 107, p4.

<sup>226</sup> Victorian Independent Education Union, Submission 163, p2.

<sup>227</sup> See 14.5.2, 14.5.3 and 14.5.4 for the costs associated with adoption. Also raised at adoptive parents consultation, Sydney, 19 June 2002. See for example International Adoptive Parents Association, Submission 145, p2; Susanna Lobez, Submission 47, p2; Tasmanian Branch of the Australian Society for Intercountry Aid for Children, Submission 209, p2; Confidential, Submission 170, p1.

<sup>228</sup> See Australian Taxation Office *Are You Eligible for the Baby Bonus?* [www.ato.gov.au/content.asp?doc=/content/forms/22339.htm&page=2#P51\\_3545](http://www.ato.gov.au/content.asp?doc=/content/forms/22339.htm&page=2#P51_3545).

<sup>229</sup> Australian Institute of Health and Welfare *Adoptions Australia 2000-01* AIHW Canberra 2002, p4.

<sup>230</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* [www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm](http://www.centrelink.gov.au/internet/internet.nsf/publications/co029.htm), p4.

<sup>231</sup> Australian Education Union, Submission 122, p26.

<sup>232</sup> BPW Australia, Submission 148, p7. The BPW Australia analysis here is based on comments made by Peter MacDonald.

A submission by a union argued that the Baby Bonus acted as an incentive for women to leave the workforce and become reliant on the welfare system.

[T]he current Baby Bonus is an expensive and inequitable system that discourages women from returning to work. The current Baby Bonus scheme provides an incentive for leaving the workforce through the means of maximising tax benefits based on the period out of work. Long term detachment from the workforce results in a greater reliance on the welfare system (Gregory 2002), a stifling of career progression, negative effects on retirement incomes and shifting women from contributing to the taxation system to be reliant on the welfare system.<sup>233</sup>

The Women's Economic Think Tank considered that another weakness of the Baby Bonus is that it is not available for the birth of a second child:

... unless the first child was born before the introduction of the payment ... the mother is more likely at this stage to be working part time, and is likely to be earning less. So no baby bonus or a reduced one makes the choice to add a child a more difficult one financially.<sup>234</sup>

This issue is considered further in the discussion of the proposal for a national paid maternity leave scheme, at 21.3.2.

### 3.4.4 Calls for a review of government assistance

Several submissions called upon the federal Government to review its current system of family payments while considering the introduction of a paid maternity leave scheme. The Australian Education Union considered that "... the existing family payment system needs a thorough review".<sup>235</sup> The National Farmers' Federation proposed that:

... the Federal Government should review existing social assistance measures to determine whether there should be amendments to existing measures or the introduction of new measures that may enhance the pursuit of the objectives in respect to family and population policies. This approach would be more efficient and equitable than pursuing the paid maternity leave model.<sup>236</sup>

The Australian Council of Trade Unions called for "... a review of the maternity allowance, baby bonus and Family Tax Benefit payments, at least as they relate to the first year of a child's life" to be conducted in conjunction with the introduction of paid maternity leave.<sup>237</sup>

The Australian Chamber of Commerce and Industry argued:

... that the Commonwealth should examine and consider restructuring existing government funded maternity, parenting and family payments made via the Australian social welfare system.<sup>238</sup>

That submission also stated that:

[the Australian Chamber of Commerce and Industry] would participate in a review of existing Commonwealth social welfare funding for maternity, parenting and families with a view to examining whether such payments should be restructured into a national government funded maternity benefits scheme.<sup>239</sup>

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<sup>233</sup> Community and Public Sector Union – State Public Services Federation Group, Submission 230, p4.

<sup>234</sup> Women's Economic Think Tank, Submission 256, p2.

<sup>235</sup> Australian Education Union, Submission 122, p26.

<sup>236</sup> National Farmers' Federation, Submission 160, p15.

<sup>237</sup> Australian Council of Trade Unions, Submission 208, p4.

<sup>238</sup> Australian Chamber of Commerce and Industry, Submission 197, p53. See also Motor Trade Association of South Australia Inc., Submission 142, p2.

<sup>239</sup> Australian Chamber of Commerce and Industry, Submission 197, piii.

The Australian Catholic Commission for Employment Relations argued that:

[i]ndependent analysis and reappraisal of the effectiveness of current and proposed family assistance payments and rebates needs to be undertaken before there can be a final determination about the introduction of any form of new assistance to families, either by way of paid maternity or parental leave or universal family assistance.<sup>240</sup>

Some submissions called for a more comprehensive review, including the interaction of tax, government payments and working arrangements for families.

We call on the federal government to initiate a national inquiry into current and future arrangements, addressing the interrelationships of tax, social security, employment conditions, superannuation, childcare and health care funding throughout the life-cycle, especially as these intersections are experienced by the worst-off women. A useful model is the Green Paper process recently completed by the UK Government, although the Australian inquiry needs to be even broader in view of the ad hoc and piecemeal nature of existing provisions and their manifest inadequacy for the needs of women and families in Australia today and in the future.<sup>241</sup>

HREOC has not considered government payments beyond the scope of their equivalence to and interaction with a national paid maternity leave scheme. Given the concerns that women expressed to HREOC about their ability to combine work and family there may be merit in the Government undertaking a broader review of family assistance payments.

Regardless of the Government's decision on the possible review of family assistance, it is clear from the consultations that paid maternity leave is a crucial element of any package of support. Any review of family assistance should not delay the introduction of paid maternity leave.

### 3.5 Conclusion

Unpaid maternity leave arrangements exclude women who have not worked for their current employer for more than a year, as well as certain groups of casuals. In addition, since unpaid leave does not provide income replacement, women may be forced to return to work before they or their babies are ready.

Paid maternity leave arrangements are limited and uneven in availability and duration. Women who most need financial support are the least likely to have any entitlement. Where paid maternity leave arrangements do exist, they may have been traded off against another workplace benefit as part of a negotiated agreement. Large numbers of women have no entitlement at all to paid maternity leave.

All of the evidence indicates that enterprise bargaining is not delivering paid maternity leave to the vast majority of women in paid employment. HREOC considers that the industrial track is an inherently inadequate means for women to secure paid maternity leave in order to be with their child. In addition, such leave is a basic need and should be guaranteed rather than negotiated.

HREOC has concluded that government assistance to families with young children is inadequate as an alternative to a legislated paid maternity leave scheme. Current government assistance does not provide women in paid employment with the financial support to guarantee an adequate break from employment around childbirth.

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<sup>240</sup> Australian Catholic Commission for Employment Relations, Submission 194, p3. See also Motor Trade Association of South Australia Inc., Submission 142, p2.

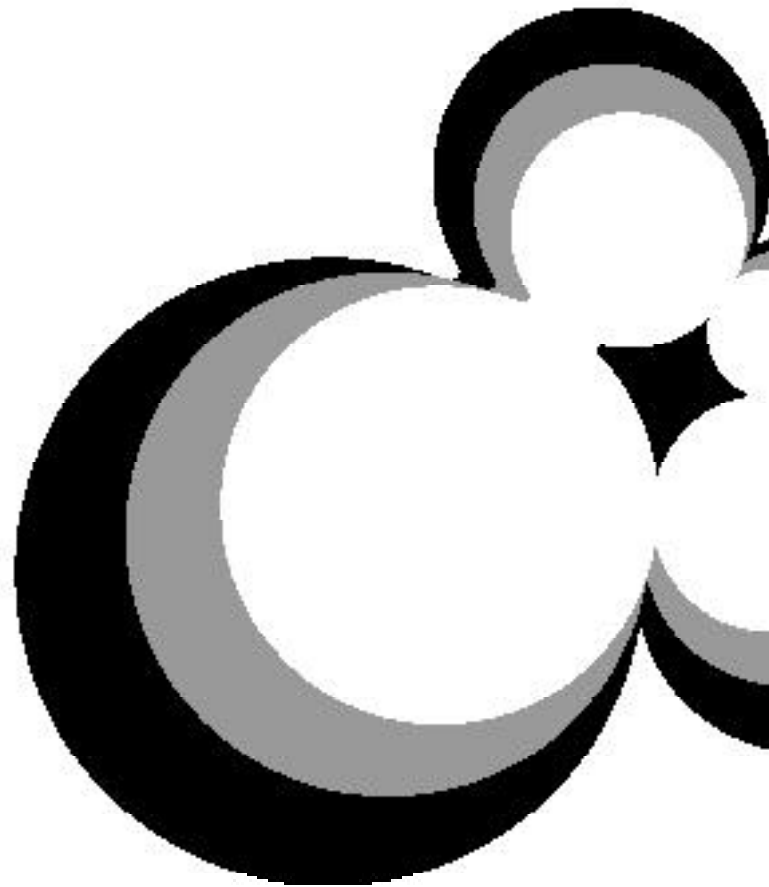
<sup>241</sup> National Pay Equity Coalition, Submission 224, p10.

HREOC recognises the need for government assistance to support the different circumstances of women, including those in paid 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. Paid maternity leave is only one of a suite of measures that should be available to give women real choice in how they care for their children and how they combine work and family.

HREOC considers that the existing government and business provisions to support women and families at the time of childbirth do not equate to a national paid maternity leave scheme. HREOC calls on the Government to introduce a national system of paid maternity leave as a priority.



**PART C**  
The Benefits





## 4. Overview

The interim paper, *Valuing Parenthood: Options for paid maternity leave* set out an extensive range of objectives that paid maternity leave could meet.<sup>242</sup> Many of these objectives were dependent on the structure of the scheme that was implemented.

As part of the consultation process for this paper, HREOC asked the community which objectives they considered were most important in an Australian context, and the extent to which they considered that paid maternity leave could deliver these objectives. This Part of the paper sets out the views presented in consultations and submissions in response to these questions, and states HREOC's conclusions.

HREOC considers that the introduction of a national scheme of paid maternity leave in Australia should be a priority. As set out in Part B, families are coming under increasing time and financial pressure. Now, more than ever before, families and parents need support to combine work and child rearing. A national paid maternity leave scheme is an essential part of such support.

HREOC considers that paid maternity leave is a basic entitlement that women in paid work should be able to access. HREOC is of the view that the principle reasons that paid maternity leave should be a basic entitlement are the significant benefits it has in terms of:

- ensuring the health and wellbeing of mothers and babies immediately prior to and following birth;
- addressing the workplace disadvantage that women experience as a result of maternity; and
- contributing to ensuring that women are able to participate on equal terms with men in all aspects of the community.

These are the reasons that paid maternity leave has been enshrined in international conventions, namely CEDAW and the International Labour Organization's *Maternity Protection Convention 2000* (Maternity Protection Convention).

In addition to these primary reasons, there is also a broad range of additional benefits that will flow from the introduction of paid maternity leave. They include:

- enhancing the wellbeing of fathers;
- assisting families with the costs of children;
- assisting women to maintain their labour force attachment;
- assisting women to increase their lifetime earnings and retirement incomes;
- helping women to be able to better combine work and family;
- providing social recognition of the role of motherhood;
- valuing children;
- assisting to change expectations of work and family responsibilities in workplaces;
- assisting employers with staff retention and reducing staff turnover costs;
- assisting to maintain a competitive and skilled labour force; and
- contributing towards maintaining and improving Australia's fertility rate.

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<sup>242</sup> Human Rights and Equal Opportunity Commission *Valuing Parenthood: Options for paid maternity leave, interim paper 2002* HREOC Sydney 2002, Part C.

Clearly, paid maternity leave cannot achieve such a range of outcomes on its own. However, these were the issues that the community considered needed to be addressed. Submissions and consultations emphasised that paid maternity leave could make a significant contribution to achieving many of these outcomes. It was considered that, for some objectives, particularly that of promoting the health and wellbeing of mothers and their children, the introduction of a national scheme of paid maternity leave would deliver significant benefits in its own right.

The final Chapter in this Part sets out the range of outstanding issues which the community considered should be addressed in addition to paid maternity leave to help families better combine raising children with paid work.

# 5. Health and wellbeing of mothers, babies and their families

## 5.1 Introduction

The health and wellbeing of new mothers and babies is the most fundamental argument for paid maternity leave. While income support measures may be designed to achieve a variety of outcomes, the need to ensure that women can afford to spend the first weeks of a child's life recovering from the birth and nurturing the baby requires a measure designed to provide this. The 14 weeks leave recommended by the International Labour Organization and the 16 weeks leave recommended by the World Health Organization are premised on this argument.<sup>243</sup>

The need to safeguard health squarely supports the provision of paid maternity leave to mothers only, rather than paid parental leave which is available to either parent. However, this Chapter also examines the importance of paid maternity leave to all family members, most particularly infants but also fathers.

This Chapter discusses:

- the physical and mental health benefits of a period of paid leave for women;
- the benefits, both in terms of health and economics, of breastfeeding for mother and child;
- the health and wellbeing effects for infants of paid maternity leave; and
- the positive impact a period of paid leave has on family relationships during a period of intense lifestyle change.

Health and wellbeing was an aspect of the paid maternity leave debate that received less discussion in HREOC's interim paper *Valuing Parenthood: Options for paid maternity leave*. Consequently, this Chapter not only provides a discussion of issues raised in submissions and consultations, it also canvasses the substantial literature on this topic. During the consultation process, HREOC wrote to academic and medical experts in this field seeking information specifically on the health implications of maternity leave. This Chapter reports on information provided during that correspondence.

## 5.2 Health and wellbeing of mothers

### 5.2.1 Introduction

There are a number of related reasons why women need a specific period out of the workforce free from financial concerns following the birth of a child. Submissions canvassed many of these issues.

Paid maternity leave would provide appropriate support for women and families with new babies. The time before and after childbirth is critical for the physical and psychological wellbeing of the mother and child. Paid maternity leave would help to alleviate extra stresses that would result from the loss of income from the mother stopping work. It would also ensure that mothers had time to recover rather than being forced back into the workforce prematurely.<sup>244</sup>

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<sup>243</sup> Health aspects of maternity leave and maternity protection are discussed in a statement by the World Health Organization 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](http://www.who.int/reproductive-health/publications/French_FPP_93_3/Health_aspects_of_maternity_leave.en.html) ; *Maternity Protection Convention* 2000 (No. 183) and *Maternity Protection Recommendation* 2000 (No. 191).

<sup>244</sup> Australian Capital Territory Ministerial Advisory Council on Women, Submission 120, p6.

[Paid maternity leave means that w]omen can take time off without financial worry – ensuring that the first months of a baby's life is stress-free (in the context that the mother has one less thing to worry about) and that women can relax into being a mum rather than worrying how the bills will be paid.<sup>245</sup>

In addition, individual mothers told HREOC about the physical and emotional impact of financial stress following childbirth.

The stress of not knowing how one is going to make ends meet even for a few weeks after birth is horrific and I've lived it twice. To just be able to have those first few weeks paid would at least give us something whilst we bond with our babies.<sup>246</sup>

It was horrible [returning to work with a seven week old baby]. It was something that I knew I had to do so I was aware of it and I just tried my best. I didn't cut hours. I went back to my contracted hours which then was 54 hours per fortnight. I think I should have cut my hours but financially I just wasn't able to because every last dollar of my pay is relied on.<sup>247</sup>

This section outlines some of these issues.

## 5.2.2 Physical health

It is generally agreed that the physical and emotional demands of childbirth require a period of recovery and adaptation. A number of studies examining the health status of women after childbirth have found that many women experience a range of health problems over a number of months following delivery. These health problems are often simply the common effects of pregnancy, childbirth and lactation, but they indicate, at the very least, a need for rest and recovery. A population based survey of Victorian women conducted in 1993-1994 found that 94 per cent or 1 254 of the 1 336 women surveyed experienced one or more health problem over the first six months following childbirth. The most common health problems experienced over this six month period were tiredness (69 per cent) and backache (43.5 per cent).<sup>248</sup>

This prevalence of health problems in new mothers up to six months post delivery is confirmed by a more recent population based study conducted in the Australian Capital Territory in 1997.<sup>249</sup> Exhaustion or extreme tiredness was experienced by 60 per cent of the 1 193 women who completed the survey eight weeks after delivery. This percentage reduced to 49 per cent of women 24 weeks after delivery. Backache was experienced by 53 per cent of new mothers eight weeks after birth, reducing to 45 per cent of new mothers 24 weeks after birth.<sup>250</sup> The authors contended that while declining in prevalence, these health problems are still common after six months, perhaps reflecting the exigencies of parenting as well as the physical impact of pregnancy and childbirth itself.<sup>251</sup> Other health problems that were showing resolution between eight weeks and 24 weeks after birth included bowel problems, lack of sleep due to the baby crying, hemorrhoids, perineal pain, excessive or prolonged bleeding, urinary incontinence, mastitis, and other urinary problems. Only six per cent of new mothers reported an absence of health problems in the first eight weeks, 17 per cent in the second eight weeks, and 19 per cent between 17 and 24 weeks postpartum.<sup>252</sup>

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<sup>245</sup> Catherine Matson, Submission 12, p1.

<sup>246</sup> Julie Lynch, Submission 213, p1.

<sup>247</sup> HREOC Interview 24, September 2002.

<sup>248</sup> S Brown and J Lumley "Maternal health after childbirth: Results of an Australian population based survey" (1998) 105 *British Journal of Obstetrics and Gynaecology* 156 at 156, 157.

<sup>249</sup> J Thompson et al "Prevalence and persistence of health problems after childbirth: Associations with parity and method of birth" (2002) 29 *Birth* 83.

<sup>250</sup> J Thompson et al "Prevalence and persistence of health problems after childbirth: Associations with parity and method of birth" (2002) 29 *Birth* 83.

<sup>251</sup> J Thompson et al "Prevalence and persistence of health problems after childbirth: Associations with parity and method of birth" (2002) 29 *Birth* 83 at 92.

<sup>252</sup> J Thompson et al "Prevalence and persistence of health problems after childbirth: Associations with parity and method of birth" (2002) 29 *Birth* 83 at 85.

A US study of 654 women who gave birth between October 1991 and February 1992 found that at seven months post delivery potentially infectious symptoms such as colds and flu were experienced by many: 25 per cent had one symptom; 18 per cent had two symptoms; and 37 per cent of women had three or more symptoms. Non infectious symptoms of ill health, such as stiff joints, neck or back pain were also experienced by many of the women interviewed.<sup>253</sup> Another US study which interviewed 96 women found that 63 per cent had recovered physically, mentally and emotionally six months after childbirth. However, 25 per cent of the women reported that they still had not recovered physically, 12 per cent stated that their mental recovery was incomplete, and 17 per cent considered that their emotional recovery was not yet complete. A further seven per cent of the women reported that they had not fully recovered in any of the three areas.<sup>254</sup>

Many of these health problems on their own would not prevent a woman from returning to work, but most would require a period of adjustment or rest, if not full recovery. Providing a period of paid leave for new mothers:

... means that the financial strain after childbirth does not force women back into the workforce prematurely, a situation which causes unnecessary stress and anxiety for both mother and child.<sup>255</sup>

It is well documented, the effects on the body, despite [childbirth] being 'natural'. [Fourteen weeks] is barely enough to physically recover. It just covers the transition period. You need to keep [new mothers] out of physical labour in order for them to get better.<sup>256</sup>

### 5.2.3 Physical effects of early return to work

Providing women with an income while they are absent from the workforce due to childbirth would allow many women, who now return to work shortly after delivery because of financial constraints,<sup>257</sup> adequate time to physically recover. Evidence of an early return to work necessitated by economic circumstances was provided by a number of submissions.

With the birth of Ethan this June, I had a caesarean again and it is very different. We live upstairs so physically it's hard. I haven't had time to relax, and take it easy. Coping on your own as a couple with a new baby, getting to know the baby, then the financial pressures, and then going back to work [two weeks after the birth] – it is very hard. I'm tired, irritable. And I can't see my baby! I wanted to bring him in and keep him under my desk! I can't get myself organised and into a routine.<sup>258</sup>

The length of time required for complete maternal recovery varies with the individual woman and her child. However, the traditionally held view of a six week maternal recovery time has been called into question as too short.

The classic postnatal period or puerperium is the first 6 weeks after delivery however it is well known that several body systems notably the urinary tract do not recover their full non pregnant status until 3 months post delivery. This coupled with the need to successfully establish and maintain breast feeding ... with all its attendant benefits for neonatal health of the child and quicker restitution of the maternal birth canal and uterine involution (i.e. return to a normal non pregnant size) would advocate at least a 14 week period of postnatal leave prior to the return to the work force.<sup>259</sup>

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<sup>253</sup> P McGovern et al "Time off work and the postpartum health of employed women" (1997) 35(5) *Medical Care* 507 at 519.

<sup>254</sup> L Tulman and J Fawcett "Recovery from childbirth: Looking back six months after delivery" (1991) 12(3) *Health Care for Women International* 341 at 344.

<sup>255</sup> Job Watch Inc., Submission 191, pp10-11.

<sup>256</sup> Meeting with Women's Economic Policy Analysis Unit, Curtin University, Perth, 20 June 2002.

<sup>257</sup> Unpublished data from a population based cohort study conducted in the Australian Capital Territory in 1997 show that 30 per cent of the 1 193 women surveyed had been in paid employment at some time in the first six months after childbirth, and that among the women who returned to work within six months of having their babies, 77 per cent cited financial pressure as one of the main reasons for returning to work. Cited in Jane Thompson, Submission 135, p1.

<sup>258</sup> Lyn Collins and Barbara Pocock, Submission 232, p5.

<sup>259</sup> Warwick Giles, Submission 97, p1.

The findings of a number of studies undertaken in the US support the need for an extended period of postpartum recovery beyond the traditional six weeks. One study concluded that:

... the conventional view of a six week postpartum recovery may not fit all women, particularly employed women who lack the flexibility to adapt their job demands or schedules to accommodate needs for rest and recuperation throughout the postpartum year.<sup>260</sup>

That study also found that the duration of maternity leave, measured as the time off work, has a complex and significant effect on maternal health. The effect of time off work was U-shaped, with initially less time off work associated with better health,<sup>261</sup> but this relationship reversed itself at later stages of the postpartum period, revealing more time off work to be associated with better health outcomes. Generic measures of health were used, these being mental health, vitality and role function. The positive effect of time off work on maternal health was observed to begin at 12 weeks postpartum for vitality (based on an assessment of energy and lack of fatigue), at 15 weeks postpartum for mental health (based on an assessment of depression and anxiety), and at 20 weeks postpartum for role function (based on an assessment of the combined effect of physical and emotional health problems, or fatigue on an individual's daily activities).<sup>262</sup>

## 5.2.4 Fatigue

Fatigue is a major health concern for many new mothers. This was borne out during the consultations.

You are chronically fatigued after the birth of a child.<sup>263</sup>

Even if you don't breastfeed you are still tired.<sup>264</sup>

The bearing of children is work, hard work, involving loss of sleep, immense fatigue, the necessity to maintain an equilibrium, continue the family support role and cope with whatever occurs.<sup>265</sup>

An Australian study into the functional status of women after childbirth found that fatigue is a common concern during the first six months postpartum.<sup>266</sup> In reviewing the literature, the author states that the percentage of women negatively affected by fatigue varies from 26 per cent to 96 per cent depending on the survey period and the temperament of the baby.<sup>267</sup> Another study found that a lack of physical energy and repeated baby night time awakenings were linked with lower levels of functional status during the first six months after birth.<sup>268</sup> This study and others on functional status after childbirth are discussed below at 5.2.5.

Sleep deprivation is also experienced by the parents of adopted children. Most, if not all, adopted children suffer from sleeping problems, either as a result of the trauma they have suffered in institutions or as a result of the adoption process. Sometimes these problems can be quite severe. Most adopted children suffer from sleeping problems which deprive adoptive parents of normal sleeping patterns, at least for the first few months as the adopted child adapts to his or her new family environment.<sup>269</sup>

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<sup>260</sup> P McGovern et al "Time off work and the postpartum health of employed women" (1997) 35(5) *Medical Care* 507 at 519; See also DW Gjerdingen et al "Changes in women's physical health during the first postpartum year" (1993) 2(3) *Archive of Family Medicine* 277 at 277.

<sup>261</sup> P McGovern et al "Time off work and the postpartum health of employed women" (1997) 35(5) *Medical Care* 507 at 518.

<sup>262</sup> P McGovern et al "Time off work and the postpartum health of employed women" (1997) 35(5) *Medical Care* 507 at 518. See also Paediatrics and Child Health Division of the Royal Australasian College of Physicians, Submission 229, p3.

<sup>263</sup> Union consultation, Hobart, 27 June 2002.

<sup>264</sup> Union consultation, Hobart, 27 June 2002.

<sup>265</sup> Australian Federation of University Women (South Australia) Inc., Submission 179, p2. Also raised at union consultation, Melbourne, 9 July 2002.

<sup>266</sup> CA McVeigh "An Australian study of functional status after childbirth" (1997) 13(4) *Midwifery* 172.

<sup>267</sup> CA McVeigh "An Australian study of functional status after childbirth" (1997) 13(4) *Midwifery* 172 at 173-174.

<sup>268</sup> L Tulman and J Fawcett "Functional status during pregnancy and the postpartum: A framework for research" (1990) 22(3) *IMAGE Journal of Nursing Scholarship* 191.

<sup>269</sup> Adoptive parents consultation, Sydney, 19 June 2002.

## 5.2.5 Functionality

An Australian study defined functional status after childbirth as the:

... assumption of the desired or required infant care responsibilities, and the resumption of self-care, household, social/community, and occupational activities at the pre-delivery level.<sup>270</sup>

This study surveyed 132 women at six weeks postpartum of whom 66 (50 per cent) were employed outside the home prior to giving birth. Sixty per cent of the 66 women received unpaid maternity leave, 53 per cent of the 66 saw themselves as professional women, and 75 per cent of the 66 intended to return to work.<sup>271</sup>

Significantly, none of the respondents had achieved full functional status by six weeks postpartum. For household activities only 17 per cent (23 of the 132) stated that they had resumed their activities around the home; for social/community activities only eight per cent (10 of the 132) reported that they had fully resumed such activity; and for self care, none of the women had fully resumed the levels of pre-birth activity. For baby care 47 per cent (62 of the 132) had fully engaged in their desired level of baby care and for those mothers who had resumed employment (17 of the 132), only 18 per cent (three of the 17) felt that they were functioning at as high a level as they had prior to having their baby.<sup>272</sup>

## 5.2.6 Method of birth

In 1999, caesarean sections accounted for 21.9 per cent of all confinements in Australia.<sup>273</sup> Caesarean rates were generally higher as maternal age increased. Women aged less than 20 years had a caesarean rate of 12.3 per cent while mothers aged 40 years and over had a caesarean rate of 37.6 per cent.<sup>274</sup> There is also a higher correlation of caesarean births with private health insurance status. For example, mothers aged 35 to 39 years who had private health insurance status in hospital and who were having their first baby had a caesarean rate of 44.3 per cent compared with 34.0 per cent for those who had public health insurance status.<sup>275</sup> The caesarean rate continues to show an overall upwards trend in recent decades.<sup>276</sup>

The median maternal age in Australia has increased gradually from 27.9 years in 1991<sup>277</sup> to 30 years in 2001.<sup>278</sup> The combination of delayed pregnancy and increased private health insurance coverage suggests that the upwards trend in the rate of caesarean sections will not abate.

Mothers who deliver their children by caesarean section usually require a longer recovery period than women who give birth naturally. For example, women who have undergone caesarean sections are strongly advised by the medical profession not to drive a vehicle<sup>279</sup> nor lift for six weeks after delivery.

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<sup>270</sup> CA McVeigh "An Australian study of functional status after childbirth" (1997) 13(4) *Midwifery* 172 at 173. See also L Tulman et al "Changes in functional status after childbirth" (1990) 39(2) *Nursing Research* 70.

<sup>271</sup> CA McVeigh "An Australian study of functional status after childbirth" (1997) 13(4) *Midwifery* 172 at 176.

<sup>272</sup> CA McVeigh "An Australian study of functional status after childbirth" (1997) 13(4) *Midwifery* 172 at 176.

<sup>273</sup> N Nassar and EA Sullivan *Australia's Mothers and Babies 1999* Australian Institute of Health and Welfare National Perinatal Statistics Unit Sydney 2001, p17.

<sup>274</sup> N Nassar and EA Sullivan *Australia's Mothers and Babies 1999* Australian Institute of Health and Welfare National Perinatal Statistics Unit Sydney 2001, p62.

<sup>275</sup> N Nassar and EA Sullivan *Australia's Mothers and Babies 1999* Australian Institute of Health and Welfare National Perinatal Statistics Unit Sydney 2001, pp18-19.

<sup>276</sup> N Nassar and EA Sullivan *Australia's Mothers and Babies 1999* Australian Institute of Health and Welfare National Perinatal Statistics Unit Sydney 2001, p17.

<sup>277</sup> N Nassar and EA Sullivan *Australia's Mothers and Babies 1999* Australian Institute of Health and Welfare National Perinatal Statistics Unit Sydney 2001, p6.

<sup>278</sup> ABS 3301.0 *Births Australia* 2001, p6.

<sup>279</sup> Karen Simmer, Submission 72, p2.

## 5.2.7 Mental health

Paid maternity leave may assist in addressing some of the risk factors for postnatal depression.<sup>280</sup> Postnatal depression, sometimes expressed as “slow, tired, hopeless behaviour, eyes filled with unshed tears or constant crying, or by intense anxiety and frantic behaviour”<sup>281</sup> is experienced by a significant proportion of new mothers.<sup>282</sup> Depressive symptoms can last for some months after childbirth.<sup>283</sup> Between 40 per cent and 70 per cent of cases of postnatal depression have their onset in the first three months after birth.<sup>284</sup> Concern about the mental health of new mothers was expressed in public consultations and submissions.

Australia is experiencing a mental health crisis, increasing family and marriage breakdowns, and high incidences of postnatal depression. Financial stresses are almost always cited as contributing to, if not causing, these problems.<sup>285</sup>

The effects of maternal depression and poor maternal mental health on children range from a mother’s distorted view of her child’s health (which may exacerbate pre-existing anxiety and result in increased and unnecessary use of health services) to significant developmental and emotional problems for children.<sup>286</sup>

A recent Australian population based survey shows that, of the 1 336 women surveyed six to seven months after childbirth in 1993-1994, 16.9 per cent were depressed as indicated by scores on the Edinburgh Postnatal Depression Scale (EPDN).<sup>287</sup> Depression rates are observed to decline over the first 24 weeks of the child’s life.<sup>288</sup>

Paid maternity leave was cited in submissions and public consultations as one means of addressing postnatal depression.

First, [paid maternity leave] may reduce risk of maternal and child morbidity via the reduction of financial stress or hardship. Second, it means that mother’s work and family goals are not placed in opposition, reducing her risk for depression.<sup>289</sup>

Of course, paid maternity leave should not be viewed as a panacea for all the mental health issues surrounding motherhood.

Being paid ... won’t make most women less tired but will go a long way to relieving family financial pressures at a time which is one of the most stressful in a woman’s life.<sup>290</sup>

## 5.2.8 Breastfeeding

The health benefits of breastfeeding for women include a significant reduction in the risk of contracting osteoporosis, breast cancer, cervical cancer and ovarian cancer.<sup>291</sup> Other health benefits of breastfeeding for women include the encouragement of bonding between mother and baby and the reduction in bleeding after giving birth.<sup>292</sup>

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<sup>280</sup> Helen Wilkinson et al *Time Out: The costs and benefits of paid parental leave* Demos London 1997, p210.

<sup>281</sup> H Rosenberg “Motherwork, stress and depression: The costs of privatized social reproduction” in HJ Maroney and M Luxton (eds) *Feminism and Political Economy: Women’s work, women’s struggles* Methuen Toronto 1987, pp181-196 at 183.

<sup>282</sup> It is estimated that 10 to 15 per cent of mothers in the community may suffer from postnatal depression. See Paediatrics and Child Health Division of the Royal Australasian College of Physicians, Submission 229, p4; Tresillian Family Care Centres, Submission 166, p2.

<sup>283</sup> For an overview of the literature on the duration of postnatal depression see P Romito “Work and health in mothers of young children” (1994) 24(4) *International Journal of Health Services* 607 at 612-613.

<sup>284</sup> Tresillian Family Care Centres, Submission 166, p2 citing National Health and Medical Research Council *Postnatal Depression: A systematic review of published scientific literature to 1999* Commonwealth of Australia Canberra 2000, p1.

<sup>285</sup> Eleanor Wilson, Submission 133, p6. Also raised at women’s groups and community consultation, Adelaide, 14 June 2002, p9.

<sup>286</sup> National Community Child Health Council, Submission 167, p2.

<sup>287</sup> S Brown and J Lumley “Maternal health after childbirth: Results of an Australian population based survey” (1998) 105 *British Journal of Obstetrics and Gynaecology* 156 at 158.

<sup>288</sup> JF Thompson et al “Early discharge and postnatal depression: A prospective cohort study” (2000) 172 *The Medical Journal of Australia* 532.

<sup>289</sup> Lyndall Strazdins, Submission 241, p1.

<sup>290</sup> Michelle Falstein Coppola, Submission 38, p2.



Several submissions referred to the need for a period of leave in order to establish a breastfeeding routine.

A period of paid maternity leave allows mothers time to ... establish breastfeeding. There is considerable medical evidence to suggest that women benefit from a period of adjustment after the birth of the baby, which does not require them to return immediately to structured paid employment. A well-established breastfeeding routine does take some time to establish in most circumstances, and a daily routine that reduces the contact between mother and baby would make this difficult to establish.<sup>293</sup>

[T]he longer the paid leave, the better chance there is of establishing breastfeeding ... Financial pressures and an unsupportive employer can take away a mother's choice to breastfeed. Our experience in counseling mothers through our Breastfeeding Helpline indicates that some mothers either do not initiate breastfeeding or only do so for a matter of weeks if they are returning to the paid workforce in the early months after the birth.<sup>294</sup>

It became very difficult to establish and then to maintain breastfeeding when I had to return to work and in fact, became impossible. This is something I regret deeply but we had no other options.<sup>295</sup>

Establishing a breastfeeding routine requires time and effort on the part of the mother as highlighted in an interview with an individual.

I made the decision when I was pregnant that I wouldn't even try [to breastfeed] ... because the time wouldn't have allowed for it. I couldn't have gone to work ten days per fortnight and breastfed. It's not an option.<sup>296</sup>

The health benefits of breastfeeding for infants is discussed below at 5.3.1.

The World Health Organization recommends exclusive breastfeeding for up to six months of an infant's life.<sup>297</sup> Many submissions referred to this recommendation.

The importance of breastfeeding for women's health (as protection against breast cancer) as well as for child health has recently been recognized. It is Federal Government policy to encourage breastfeeding in accordance with World Health Organization standards. Australian public health targets propose that up to 80 per cent of children should be partially breast fed up to six months of age.<sup>298</sup>

Breastfeeding rates have leveled off in Australia over the last decade,<sup>299</sup> and mothers in lower socio-economic groups are significantly less likely to breastfeed beyond the first few weeks of their infants' lives.<sup>300</sup>

Around nine in ten women initiate breastfeeding, but by 12 weeks this has fallen to 60 per cent. By 6 months only approximately four in ten mothers are still breastfeeding.<sup>301</sup>

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<sup>291</sup> JP Smith, LJ Ingham and MD Dunstone *The Economic Value of Breastfeeding in Australia* National Centre for Epidemiology and Population Health Australian National University Canberra 1998, p21.

<sup>292</sup> F Al-Yaman, M Bryant and H Sargeant *Australia's Children: Their health and wellbeing 2002* Australian Institute of Health and Welfare Canberra 2002, p273.

<sup>293</sup> Public Service Association of South Australia Inc., Submission 198, p1.

<sup>294</sup> Australian Breastfeeding Association, Submission 222, p6.

<sup>295</sup> Confidential, Submission 67, p1.

<sup>296</sup> HREOC Interview 24, September 2002.

<sup>297</sup> World Health Organization *The Optimal Duration of Exclusive Breastfeeding: Report of an expert consultation* WHO Geneva 2001.

<sup>298</sup> Women's Electoral Lobby, Submission 248, p3. See also Beverley Walker, Submission 192, p1; National Pay Equity Coalition, Submission 224, p10; Queensland Council of Unions, Submission 239, p11; Anna Edgelow, Submission 78, p1; Australian Breastfeeding Association, Submission 222, p6.

<sup>299</sup> F Al-Yaman, M Bryant and H Sargeant *Australia's Children: Their health and wellbeing 2002* Australian Institute of Health and Welfare Canberra 2002, p275.

<sup>300</sup> Australian Breastfeeding Association, Submission 222, p8 citing S Donath and L H Amir "Rates of breastfeeding in Australia by state and socio-economic status: Evidence from the 1995 National Health Survey" (2000) 36 *Journal of Pediatric Child Health* 164.

<sup>301</sup> Australian Breastfeeding Association, Submission 222, p7.

Australian data show that during 1992-1995, 81.8 per cent of infants were breastfed following discharge from hospital. At 13 weeks of age, 57.1 per cent were exclusively breastfed, and 63 per cent exclusively or partially breastfed. At 25 weeks of age, 18.6 per cent were exclusively breastfed, and 46.2 per cent exclusively or partially breast fed.<sup>302</sup>

A recent study found that less than one in ten infants in the Australian Capital Territory are exclusively breastfed for the recommended six months, even though initiation rates of breastfeeding are high (92 percent).<sup>303</sup> The study concluded that this was due mainly to supplementation or weaning onto formula within the first three months, and the early introduction of solids. Other research suggests that the duration of breastfeeding is dependent upon the duration of maternity leave.<sup>304</sup>

A number of studies have estimated the costs of early weaning from breast milk. The attributable hospitalization costs of early weaning in the Australian Capital Territory are estimated to be around \$1-2 million per annum for five childhood illnesses<sup>305</sup> having known associations with early weaning from human milk.<sup>306</sup> The authors emphasised that these costs are minimum estimates of the true cost of early weaning as they exclude numerous other chronic or common illnesses, and out-of-hospital health care costs, such as costs of health care professionals and prescription costs.

Another study estimated the Australian public hospital costs of just three common infant illnesses statistically attributable to formula feeding (assuming a breastfeeding prevalence of 60 per cent at three months postpartum) to be around \$18 million.<sup>307</sup> Again, this estimate excludes private financial and economic costs associated with post-hospital consultations with general practitioners and pediatricians, pharmaceutical and nursing costs, household disruption and productivity losses, and long term morbidity costs for the infant. The other costs of infant illness such as days absent from work, days absent from school, or days of reduced activity are also significant. For example, mothers in the US in the paid workforce who formula feed their infants have higher absenteeism than breastfeeding mothers.<sup>308</sup>

Some submissions linked a period of paid maternity leave to the establishment of breastfeeding. For example the Women's Electoral Lobby noted that:

[p]roviding working women with a 14-week period of paid maternity leave is an important form of support for this policy [of supporting six months of breastfeeding]. Women unfairly bear the costs of this public health strategy unless maternity leave is paid and other workplace supports and facilities are supported.<sup>309</sup>

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<sup>302</sup> F Al-Yaman, M Bryant and H Sargeant *Australia's Children: Their health and wellbeing 2002* Australian Institute of Health and Welfare Canberra 2002, p274.

<sup>303</sup> J Smith, J Thompson and D Ellwood *Hospital system costs of artificial infant formula feeding: Estimates for the Australian Capital Territory* Canberra Hospital Canberra 2002 unpublished manuscript, p1.

<sup>304</sup> Vicki Clifton, Submission 59, p1 based on a report by Research Triangle Park USA.

<sup>305</sup> Gastrointestinal illness, respiratory illness, otitis media, eczema and necrotizing enterocolitis.

<sup>306</sup> J Smith, J Thompson and D Ellwood *Hospital System Costs of Artificial Infant Formula Feeding: Estimates for the Australian Capital Territory* Canberra Hospital Canberra 2002 unpublished manuscript, p1.

<sup>307</sup> D Drane "Breastfeeding and formula feeding: A preliminary economic analysis" (1997) 5(1) *Breastfeeding Review* 7 cited in JP Smith, LJ Ingham, and MD Dunstone *The Economic Value of Breastfeeding in Australia* National Centre for Epidemiology and Population Health Australian National University Canberra 1998, p20.

<sup>308</sup> R Cohen et al "Comparison of maternal absenteeism and infant illness rates among breastfeeding and formula feeding women in two corporations" (1995) 10(2) *American Journal of Health Promotion* 148; EG Jones and RJ Matheny "Relationship between infant feeding and exclusion rate from child care because of illness" (1993) 93 *Journal of the American Dietetic Association* 7 cited in JP Smith, LJ Ingham, and MD Dunstone *The Economic Value of Breastfeeding in Australia* National Centre for Epidemiology and Population Health Australian National University Canberra 1998, p21.

<sup>309</sup> Women's Electoral Lobby, Submission 248, p3.

## 5.3 Health and wellbeing of babies

### 5.3.1 Breastfeeding

There is ample evidence of the health benefits of breastfeeding for children. As was asserted in one consultation, "... studies show that babies that are breast fed thrive. They do better."<sup>310</sup>

There is some evidence to suggest that formula fed infants:

- are significantly more likely to be hospitalised than breastfed babies;
- suffer twice as much illness as breastfed babies even after controlling for socioeconomic status; and
- are 12-31 per cent more likely to suffer chronic illness when fed by formula for at least three months.<sup>311</sup>

Breastfeeding for at least four to six months may also reduce both the incidence and severity of some infectious diseases and other ailments.<sup>312</sup>

A major Canadian study has found that:

[i]n addition to the nutritional benefits for the baby, breastfeeding in the critical early period of brain development appears to have a positive, long-term impact on the organization of the brain's neural pathways.

...

The weight of the evidence indicates that breastfeeding provides both optimal nutrition and stimulation for newborn babies and young infants. Human breast milk contains the optimal balance of nutrients needed for brain and body growth. The act of breastfeeding provides frequent opportunities for skin-to-skin touch and smell stimulation.<sup>313</sup>

### 5.3.2 Bonding

Many submissions referred to the importance of maternal bonding or attachment for the child's emotional development.

This bonding is critical. I'm not saying if you go back [to work] after the child is 4 days old you won't bond, but there are issues about bonding at this age and how the child is in later life.<sup>314</sup>

[L]earning occurs within the context of relationships, emotional and cognitive outcomes are dependent on the attachments formed with the primary caregiver.<sup>315</sup>

Breastfeeding, apart from its nutritional benefits, provides the optimum opportunity for mothers and babies to bond. One submission referred to:

... the absolute primacy of attachment in the early days and weeks, when mimicry, symbiosis, breast-feeding, familiar heart-beat and voice, health and sanity of the mother – all have a vital part to play.<sup>316</sup>

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<sup>310</sup> Union consultation, Hobart, 27 June 2002.

<sup>311</sup> JP Smith, LJ Ingham, and MD Dunstone *The Economic Value of Breastfeeding in Australia* National Centre for Epidemiology and Population Health Australian National University Canberra 1998, p19. See also Australian Breastfeeding Association, Submission 222, p7.

<sup>312</sup> See, for example, Vicki Clifton, Submission 59, p1; Australian Breastfeeding Association, Submission 222, p7; JP Smith, LJ Ingham, and MD Dunstone *The Economic Value of Breastfeeding in Australia* National Centre for Epidemiology and Population Health Australian National University Canberra 1998, p19.

<sup>313</sup> M Norrie, McCain and JF Mustard *Early Years Study: Final report* Ontario Children's Secretariat Toronto 1999, pp41-42.

<sup>314</sup> Union consultation, Hobart, 27 June 2002.

<sup>315</sup> Paediatrics and Child Health Division of the Royal Australasian College of Physicians, Submission 229, p2 citing M Morrow-Tlucak, R H Maude, C B Emhart "Breastfeeding and cognitive development in the first two years of life" (1988) 26 *Social Science Medicine* 635.

<sup>316</sup> Philip Gammage, Submission 91, p1.

Just as consuming breast milk compared to formula milk has huge advantages to infants and their mothers, the physical intimacy between mother and child during breastfeeding has huge advantages over expressed milk being fed to the infant by another carer.<sup>317</sup>

A period of paid leave provides women with the necessary time to bond effectively with their children.

Parental leave increases the opportunity for ... attachment to occur. Secure attachment is the cornerstone for the development of all future relationships.<sup>318</sup>

## 5.4 Emotional wellbeing for the father

Several submissions echoed the comments made at a number of public consultations about the impact of a new baby on a family's financial and emotional resources. In particular, new fathers bear a greater proportion of the financial responsibility for the family, often by working longer hours to compensate for the loss of the woman's income.

In Australia, data on working hours also demonstrates that men are more likely to work particularly long hours when they have babies/young children – one of the reasons being the mother's loss of income. Families on low incomes are more likely to be sensitive to foregone income as a greater proportion of the household's disposable income will be required to meet the costs associated with child birth. Paid maternity leave would reduce the pressure on fathers to work long hours, another valuable social policy outcome.<sup>319</sup>

The Construction, Forestry, Mining and Energy Union (CFMEU), has recently embarked upon a campaign for paid maternity leave, on the basis that their (mostly male) members would not feel the need to work so much overtime whilst their children are small, if their partners were able to take leave from work with pay. This suggests that many of the partners of CFMEU members do take leave when they have a baby, but do not receive any leave payments. Consequently, their male partners must make up as much of their lost income as possible by working overtime, and are not as able to participate in family activities or share any of the child-care work. Paid maternity leave would therefore benefit fathers and families as a whole.<sup>320</sup>

Fathers are missing out because they feel that they have to earn extra money to make up for the mother staying at home.<sup>321</sup>

Working longer hours has a deleterious effect on the father's ability to adapt to fatherhood, to bond with his child, and to provide emotional support and household assistance for his partner at a particularly stressful time for all members of the family.

The farmer may often stay out on the block a lot longer. This means little interaction with his wife and children because he goes before sunrise and doesn't come home until after dark.<sup>322</sup>

Sharing in the care of a newborn provides fathers with confidence in their caring abilities.<sup>323</sup> Often fathers are required to do the bulk of the care of a newborn if there are birth complications.

Gregory whose partner had an emergency caesarean birth explained that having a great deal of early contact with the baby after the birth increased his confidence in caring for the baby and helped in establishing a bond between them.<sup>324</sup>

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<sup>317</sup> Eleanor Wilson, Submission 133, p7.

<sup>318</sup> Paediatrics and Child Health Division of the Royal Australasian College of Physicians, Submission 229, p2. See also Australian Capital Territory Ministerial Advisory Council on Women, Submission 120, p4.

<sup>319</sup> Women's Electoral Lobby, Submission 248, p5.

<sup>320</sup> Queensland Working Women's Service, Submission 219, p7.

<sup>321</sup> Women's groups and community consultation, Wagga Wagga, 17 July 2002.

<sup>322</sup> Women's groups and community consultation, Wagga Wagga, 17 July 2002.

<sup>323</sup> P Hopper and E Zigler "The medical and social science basis for a national infant care leave policy" (1988) 58(3) *American Journal of Orthopsychiatry* 324 at 332.

## 5.5 Conclusion

HREOC agrees that:

[m]aternity leave is to provide a measure of employment protection to female employees in employment who become pregnant, to safeguard the health of the mother in the period before and after confinement and to enable the female employee to be absent for child care.<sup>325</sup>

The health and wellbeing of mothers following childbirth is a key reason to introduce a secure paid maternity leave scheme. Women need a period of rest to recover from childbirth before they can resume usual activities. Many women experience health problems as a consequence of childbirth and even where these health problems are mild they still require a period of adjustment. Women who experience multiple health problems or depression may need a more substantial period of time away from work.

Women should not be forced to return to work because of financial reasons before they have this time to recover. The amount of time each woman needs to guarantee recovery from childbirth will depend on the individual. However, experts agree that an absolute minimum would be a period of between 12 to 16 weeks. It goes without saying that the health and wellbeing of the child is likely to be directly affected by that of their mother.

Paid maternity leave would guarantee new mothers a period of recovery without additional financial concerns. In addition, paid maternity leave would guarantee that women who breastfeed have a chance to establish a feeding routine and to bond with their babies at a crucial time for infant development, for the direct benefit of the child.

HREOC considers that paid maternity leave is crucial for the health and wellbeing of mothers and babies, and that it would indirectly benefit fathers by reducing financial stress on families and permitting additional parenting time.

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<sup>324</sup> M Barkley *Work and Home Commitments: Some issues for Australian parents* Paper presented at the Fourth Australian Family Research Conference Sydney 1993. See also P Hopper and E Zigler "The medical and social science basis for a national infant care leave policy" (1988) 58(3) *American Journal of Orthopsychiatry* 324 at 331-332.

<sup>325</sup> Maternity Leave Conditions and Entitlements under the State Service Wages Agreement 2001, cited in Tasmanian Government, Submission 244, Attachment A, pp1-2.



# 6. Economic security

## 6.1 Introduction

The onset of family responsibilities usually marks the beginning of reduced economic security for women since there is a shift either out of work entirely or into part time and casual work. While the family unit has historically masked disadvantage of this kind, the changing nature of families now means that economic disadvantage is borne more directly by individual members. In addition to this, the changing nature of retirement incomes compounds this disadvantage and insecurity for women in the latter years of their lives.

This Chapter explores the nature of economic insecurity and the contribution paid maternity leave could make to fostering women's economic security, both short term and over their lifetimes.

## 6.2 Financial support at the time of childbirth

A payment at the time of childbirth would provide women with economic security by ensuring that they have access to an adequate level of income. This is an issue for all women, whether they are in paid work or are caring full time for a child. The Shop, Distributive and Allied Employees' Association, for example, stated that the primary objective of a paid maternity leave scheme must be "the provision of a payment which is sufficient to ensure that the woman and her family are able to live with dignity during the period before and after the child is born".<sup>326</sup>

The Women's Action Alliance considered that providing families with financial support at the time of the birth of a child was one of the primary objectives of paid maternity leave. It considered that:

[a]n inclusive maternity payment would provide appropriate support for women and families with new babies in terms of timing because when a new child is brought into the family there is increased cost and workforce disruption.<sup>327</sup>

HREOC is strongly of the view that the Government should ensure that all women have adequate financial support at the time of childbirth. Chapter 3 reviews the adequacy of current government payments in relation to this goal.

## 6.3 Income replacement

Under current arrangements in Australia, the majority of women must forego income from paid work as a result of giving birth. Over 60 per cent of women in paid work at the time of birth of their child currently do not have access to paid maternity leave<sup>328</sup> and so must lose their income over the period when they leave work to give birth. This is an issue common to all women in employment who have, or are considering having, a child. Foregoing income is a particular issue for women in paid work. While ensuring women who are not in paid work are adequately supported at the time of childbirth is a significant concern, these women are not faced with the same reduction in income as a result of childbirth.

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<sup>326</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p11.

<sup>327</sup> Women's Action Alliance (Australia) Inc., Submission 146, p6. Also raised at women's groups and community consultation, Perth, 20 June 2002.

<sup>328</sup> ABS 6361.0 *Survey of Employment and Superannuation* April – June 2000 unpublished data. See also 3.3.2.

In contrast to the experience of women in paid work, income reduction is not generally a problem experienced by men when they become fathers. While men may choose to take leave at the time of birth of a child, and HREOC supports measures to encourage men's involvement in the family at childbirth,<sup>329</sup> there is not the same physical necessity to be absent from the workforce.

Paid maternity leave has the potential to replace some, if not all, of the income women lose when they leave the workforce on maternity leave. As one woman stated "regardless of how much you are earning there is still financial stress that comes when you lose one salary".<sup>330</sup>

Many submissions recognised the importance of a scheme of paid maternity leave as an income replacement mechanism.<sup>331</sup> Income replacement is different to income support (such as Parenting Payment) and income supplementation (such as the Family Tax Benefits). Paid maternity leave, as an income replacement scheme, would be time limited and linked to workforce participation. The South Australian Commissioner for Equal Opportunity emphasised that:

[i]t is important that women receive financial compensation for leave taken due to childbirth and that they are not disadvantaged financially for taking time off to have children.<sup>332</sup>

Other submissions also reflected this view. The Australian Federation of University Women - Victoria argued that:

[p]aid maternity leave allows a woman to take a period of time to concentrate on the needs of her newborn baby and to recuperate from the birth without financial concern.<sup>333</sup>

The problems caused by loss of income are exacerbated for women on lower incomes as under the current system of employer funded paid maternity leave these women are least likely to have access to paid maternity leave<sup>334</sup> and are also less likely to be able to make use of unpaid parental leave arrangements due to their financial circumstances. Several submissions raised this issue.

[A] national ... scheme would be of particular value to women on low incomes. These women, who make up a significant proportion of women workers, currently have less access to paid maternity leave than higher income earners, and without paid leave are more likely to have to return to work earlier than they would otherwise choose to.<sup>335</sup>

[F]or parents, in particular low income parents and the growing number of single parents who have financial commitments, there is often no choice. These parents are unable to capitalise on the opportunity associated with 12 months unpaid maternity leave.<sup>336</sup>

[T]he data, and our own experience, indicates 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. A substantial maternity payment would assist in addressing the disadvantage experienced by low income women.<sup>337</sup>

Lower income earners also cited the need for two incomes.

I am 27 years old, just married and paying off a first home. My husband and I would dearly love to have children but at this time in our life we could not afford for me to have any length of time off work, we need to keep up home loan payments and my salary is a large contributor. We figure it might be possible in about five years time. The only thing that worries me about that is that I will be in my mid-thirties by then.<sup>338</sup>

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<sup>329</sup> See 11.3.3 and 14.3.

<sup>330</sup> HREOC Interview 2, August 2002.

<sup>331</sup> See, for example, Australian Business Industrial, Submission 119, p2; Australian Chamber of Commerce and Industry, Submission 197, p19; Australian Education Union, Submission 122, p4; Queensland Nurses' Union, Submission 134, p6; Victorian Women Lawyers, Submission 137, p4; Melissa Austin, Submission 149, p1; Australian Services Union MEU Private Sector Victorian Branch, Submission 154, p1; Australian Retailers Association, Submission 165, p12; Women's Studies Research Unit, School of Social Work, University of Melbourne, Submission 48, p2; New South Wales EEO Practitioners' Association, Submission 77, pp1-2; Victorian Government, Submission 250, p8; Anti-Discrimination Board of New South Wales, Submission 214, p12; YWCA of Australia, Submission 228, p11. Also raised at women's groups and community consultation, Sydney, 30 April 2002.



A number of submissions from highly educated women also pointed out their need for government assistance around the birth of their children.

I am a skilled and highly qualified professional permanent resident in Australia, where I have been employed and have paid income tax to the government for the past 8 years ... My husband and I are now faced with a dilemma. For the sake of our daughter and ourselves we would like to consider having another child. The financial consequences however, prevent this from being an easy choice. My husband was made redundant from his workplace three months ago. My current income and our achieved financial assets make my husband ineligible for unemployment benefits (besides the fact that he is too proud to actually apply for unemployment benefits). With only my income to support our lifestyle (after our income was halved due to his unemployment), we are not in a position to contemplate a second child, as this would render us without any income for at least a period of 3-6 months.<sup>339</sup>

I am a 29 year old chemical engineer thinking about having a baby in about 12 months time. I would like to take around 4 months off, then go back to work part time, but as my husband is a postgrad student, we will be going from one income to a part time income if we have a child!! 8 or 12 weeks paid maternity leave would make a big difference during those initial months!<sup>340</sup>

Submissions also raised the concern that a short period of paid leave, such as 14 weeks, may be inadequate since most women take a longer period of leave following the birth of a child. For example, Australian Business Industrial reported on a survey of its members that "... the vast majority of women who had taken the leave had taken the majority of their 12 months statutory maximum amount of leave".<sup>341</sup> However, HREOC agrees with the point made in another submission that:

[t]he fact is that ... women take leave and other forms of time out of the paid workforce and any contribution of say 14 weeks payment is only a partial recompense for the costs incurred.<sup>342</sup>

HREOC strongly emphasises that any minimum period of paid leave would not affect the ability of eligible women to take advantage of the full period of currently mandated unpaid leave should they choose, and be in a position, to do so. The provision of a minimum period of paid leave should be interpreted as recognition of the legitimacy of a period of time out of the workforce, and not an exhortation to return before women are prepared to do so. Further, of course, the period of paid leave will assist many parents to manage a longer period of unpaid leave.

## 6.4 The costs of children

*The Cost of Children* report released by AMP and the National Centre for Social and Economic Modelling in October 2002, found that the total cost in today's dollars of raising two children from birth to age 20 is \$448 000, or \$322 a week. Parents on average spend around \$50 000 on education and childcare. These costs rise if parents choose to send their child to private schools.<sup>343</sup>

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<sup>332</sup> South Australian Equal Opportunity Commissioner, Submission 71, p2.

<sup>333</sup> Australian Federation of University Women – Victoria, Submission 101, p1; See also Job Watch Inc., Submission 191, p11.

<sup>334</sup> See 3.3 for further discussion of who currently has access to paid maternity leave.

<sup>335</sup> Victorian Government, Submission 250, pp1-2.

<sup>336</sup> National Community Child Health Council, Submission 167, p1.

<sup>337</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p14.

<sup>338</sup> Carrie Parsons, Submission 25, p1.

<sup>339</sup> Martje McKenzie, Submission 9, p1.

<sup>340</sup> Katherine Whincop, Submission 2, p1. Also raised at employers consultation, Hobart, 27 June 2002, where it was stated that, "[f]or working women there doesn't seem to be any incentive to have children. Especially those highly skilled women. They tend to lose out."

<sup>341</sup> Australian Business Industrial, Submission 119, p13.

<sup>342</sup> Women's Economic Think Tank, Submission 125, p4.

<sup>343</sup> AMP-NATSEM *The Cost of Children* Issue 3 October 2002 [www.amp.com.au/au/ampweb.nsf/content/E180+AMP+NATSEM+Reports](http://www.amp.com.au/au/ampweb.nsf/content/E180+AMP+NATSEM+Reports).

A number of submissions and consultations pointed out that part of the economic disadvantage faced by women and their partners in having children relates to the cost of raising them. The costs of having children, in particular the costs incurred around the time of childbirth was raised in a consultation with women's groups and community in Perth.

This child is an absolute pure luxury because we've made major sacrifices to do it and to be here now, sacrificed birthday parties for the children, birthday presents for the children, just everything. The financials I think are the key obstacle.<sup>344</sup>

The National Pay Equity Coalition stated that:

[m]ost families have very limited capacity to meet the additional costs of having children through savings – especially for second and other children.<sup>345</sup>

This cost is higher for parents adopting children. Submissions from adoptive parents pointed out that the system of adoption is largely user-pays, and that adoptive parents face a particular cost burden associated with building a family.<sup>346</sup> One set of adoptive parents wrote that “[m]any adoptive families go into considerable debt to adopt children.”<sup>347</sup>

The capacity of paid maternity leave to assist families with the cost of children was challenged in the submission from the Australian Chamber of Commerce and Industry, which argued that:

[f]inancial commitments to children are clearly decades long and extend in financial and time terms well beyond any options for additional maternal benefits.<sup>348</sup>

There is no doubt that the cost of raising children is more than offset for most parents by the rewards of parenthood. Nevertheless, while financial assistance is currently available to families, HREOC considers paid maternity leave to be a further measure of assistance, especially with costs incurred at the time of the birth, but with the additional feature of making full time parental care possible for a limited period of time.

## 6.5 Women's lifetime earnings

In addition to losing short term income, a woman's lifetime earning capacity is severely reduced as a result of leaving the workforce to bear and raise children.

A study undertaken by the Australian National University estimates that women with high levels of education (12 years) forego \$239 000 in lifetime earnings from having one child. A woman with average education (10 years) forgoes \$201 000 and a woman with a low level of education (less than 10 years) foregoes \$157 000.<sup>349</sup>

Some submissions argued that in providing direct compensation for a specified period, paid maternity leave goes some way to addressing the lifetime earning inequities women experience as a result of leaving the workforce to bear and raise children.<sup>350</sup>

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<sup>344</sup> Women's groups and community consultation, Perth, 20 June 2002.

<sup>345</sup> National Pay Equity Coalition, Submission 224, p11. Also raised at union consultation, Darwin, 7 June 2002.

<sup>346</sup> See, for example, International Adoptive Parents Association, Submission 145, p2; R and N Cornhill, Submission 131, p5; Australian African Children's Aid and Support Association Inc., Submission 22, p1; D Seitam, Submission 39, p1; L Hayes, Submission 43, p1; P and M Marshall, Submission 45, p3.

<sup>347</sup> R and N Cornhill, Submission 131, p5.

<sup>348</sup> Australian Chamber of Commerce and Industry, Submission 197, p33.

<sup>349</sup> Bruce Chapman et al *The Foregone Earnings from Child Rearing Revised* Discussion paper No 47 Centre for Economic Policy Research Australia National University Canberra 1999. See also National Pay Equity Coalition, Submission 224, p11; Labor Council of New South Wales, Submission 218, p3; Community and Public Service Union – State Public Services Federation Group, Submission 230, p3.

<sup>350</sup> See, for example, Union Research Centre on Organisation and Technology, Submission 254, p3; National Pay and Equity Coalition, Submission 224, pp10-15; YWCA of Australia, Submission 228, p4.

HREOC acknowledges that paid maternity leave in its own right will have limited impact on the reduced lifetime earnings of women as a result of their ongoing commitment to family responsibilities.<sup>351</sup> However, by assisting women to maintain their labour force attachment and making it easier for women to combine work and family, paid maternity leave will contribute to raising women's earnings across their lifetime. As stated by the National Pay Equity Coalition, "[l]onger duration of employment is associated with better pay, higher level jobs and greater retirement income".<sup>352</sup>

## 6.6 Superannuation and retirement incomes for women

Currently Australian women workers have substantially poorer retirement incomes than men. This is in part the result of their more limited time in the workforce, pay inequities and systemic discrimination in access to job opportunities for women, mostly as a result of their child bearing responsibilities. This was raised in a consultation held with union representatives in Perth.

Motherhood impoverishes women but fatherhood doesn't impoverish men ... Men do not have to choose. Fatherhood doesn't reflect on their superannuation.<sup>353</sup>

The National Pay Equity Coalition referred to research that estimates:

[m]en's retirement incomes are 50% higher than women on the same income because of women's time out of paid work. A woman on the median income for women who works from the age of twenty to the age of sixty with a five year break in her late twenties would retire on 1.5 times the age pension, while a man working from twenty to sixty would retire on three times the age pension.<sup>354</sup>

Superannuation accumulations are maximised for individuals when they remain in the workforce for long, ongoing periods of time at high wages. This is not the life experience of women, as noted in the Ethnic Communities' Council of Victoria submission.

Women are disadvantaged in saving for their retirement if they need to give up work to have children. Women are more likely than men to have little or no superannuation, and repeated entry and exits from the workforce for childbirth and childrearing result in lower superannuation contributions as well as the loss of seniority and the recurrent need to establish wages and other entitlements.<sup>355</sup>

The increasing rate of divorce means that women's superannuation savings have and will continue to take on increased significance for women's economic security.<sup>356</sup> As stated in the YWCA of Victoria submission, "... it is not very radical to suggest that young women cannot plan on being financially dependent on another person in their older age".<sup>357</sup>

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<sup>351</sup> International studies do indicate that paid maternity leave contributes to women's long term economic security. For example, empirical evidence from the United States indicates that women covered by a formal maternity leave policy, and who return to their original employer have higher pay: J Waldfogel "Working mothers then and now: A cross-cohort analysis of the effects of maternity leave on women's pay" in F Blau and R Ehrenberg (eds) *Gender and Family Issues in the Workplace* Russell Sage Foundation New York 1997. A European study shows that rights to a short period (fourteen weeks) of paid parental leave raises the employment rates of young women with little impact on hourly earnings: Christopher J Ruhm "The economic consequences of parental leave mandates: Lessons from Europe" (1998) 113 *The Quarterly Journal of Economics* 285.

<sup>352</sup> National Pay Equity Coalition, Submission 224, p12.

<sup>353</sup> Union consultation, Perth, 21 June 2002.

<sup>354</sup> National Pay Equity Coalition, Submission 224, p12 cites S Donath *Women and Superannuation* Seventh Interdisciplinary Women's Studies Conference Adelaide 1997; Community and Public Service Union – State Public Services Federation Group, Submission 230, p4 : "... long term detachment from the workforce results in ... negative effects on retirement incomes and shifting women from contributing to the taxation system to being reliant on the welfare system".

<sup>355</sup> Ethnic Communities' Council of Victoria, Submission 242, p4; see also YWCA of Australia, Submission 228, p4.

<sup>356</sup> Superannuation was also identified as a critical issue at the union consultation, Brisbane, 24 April 2002.

<sup>357</sup> YWCA of Victoria, Submission 127, p15.

The problem of low retirement incomes for women is exacerbated by their greater longevity compared with men. This, combined with their tendency to retire early, results in women spending twice as many years in retirement as men.<sup>358</sup> HREOC considers low retirement income to be one of the most pressing aspects of systemic discrimination against women.

The provision of paid maternity leave will not solve this problem. Addressing women's retirement income is a significant issue that will require major government attention and action in coming years. However, paid maternity leave can contribute to improving women's superannuation savings in an indirect manner by assisting women to maintain their labour force attachment and making it easier for women to combine work and family. As stated in the submission by the Women's Economic Policy Analysis Unit:

... policies that support women in paid employment will have a positive effect on superannuation accumulations ... paid maternity leave, by definition, *will* increase income over the lifecycle and superannuation accumulations.<sup>359</sup>

Some submissions suggested that a national scheme of paid maternity leave should include a provision for superannuation payments to continue during the period of paid leave.<sup>360</sup>

The Women's Economic Policy Analysis Unit of Curtin University considered women's retirement incomes in its submission. It referred to a study which modeled the impact of paid maternity leave on women's lifetime earnings and superannuation accumulations.<sup>361</sup> With continued superannuation payments during a period of 12 weeks paid leave in a variety of scenarios, the authors estimated an effect of between one per cent and four per cent on superannuation accumulations at age 60.

The Women's Economic Think Tank<sup>362</sup> and the Women's Electoral Lobby<sup>363</sup> proposed that these superannuation costs should be met by the Government. Others, including the Women's Economic Policy Analysis Unit<sup>364</sup> and one individual<sup>365</sup> suggested that Government meet the cost of the maternity leave payments and that employers provide superannuation payments for this period.

The Work + Family Policy Research Group, University of Sydney submitted that:

[a] key rationale for paid maternity leave is the maintenance and protection of women's lifetime income and superannuation contributions are a significant component of this. We recommend continuation of this contribution throughout maternity leave, but further investigations need to be carried out about the mechanisms for this and the respective obligations of employers, employees and government.<sup>366</sup>

HREOC has not included a compulsory superannuation contribution in its proposed model for paid maternity leave, although it is noted that employers and employees may negotiate such a top up to the government scheme through enterprise bargaining.<sup>367</sup> The Government may wish to further consider the treatment of superannuation in the context of national provision of paid maternity leave.

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<sup>358</sup> Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p10.

<sup>359</sup> Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p11 (emphasis in original).

<sup>360</sup> See, for example, Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p18; Community Public Sector Union – State Public Services Federation Group, Submission 230, p10; Chris Van Der Wijngaart, Submission 35, p1.

<sup>361</sup> The study was conducted by S Austen, T Jefferson and A Preston in 2001 for the Women's Policy Office, Western Australia Government. It can be found at *Women and Retirement Income: Issues and inequities* [www.cbs.curtin.edu/research/wepau.WEPAUBookII.pdf](http://www.cbs.curtin.edu/research/wepau.WEPAUBookII.pdf).

<sup>362</sup> Women's Economic Think Tank, Submission 125, p6.

<sup>363</sup> Women's Electoral Lobby, Submission 248, p21.

<sup>364</sup> Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p18.

<sup>365</sup> Chris Van Der Wijngaart, Submission 35, p1.

<sup>366</sup> Work + Family Policy Research Group University of Sydney, Submission 251, p12.

<sup>367</sup> See 19.4.

## 6.7 Labour force attachment

There is some debate in Australia about the benefits of women retaining their workforce attachment after establishing their families, although there is little debate about the macro-economic benefits of women returning to the workforce, bringing their skills and experience with them.

Many women in Australia leave the workforce either permanently or for several years following the birth of a child. Others return to work, either full time or part time, in the first year of their child's life.<sup>368</sup> The decisions that women and their families make are affected by a number of factors, including:

- personal preferences;
- social mores;
- financial issues, including family finances and the availability of government assistance that support particular family arrangements; and
- structural factors such as levels of discrimination, the availability of childcare and sufficient employment, particularly part time work or suitable hours.

There are advantages to women in maintaining some workforce attachment - a reality recognised by the majority of those women who are in paid work by the time their youngest child reaches school age. Sixty- six per cent of female parents are in the labour force when their youngest child is between 6 -13 years of age.<sup>369</sup> As the Work + Family Policy Research Group of Sydney University noted:

... maintaining women's attachment to the workforce is an important factor in reducing their welfare dependency and the consequential poverty experienced by many Australian children.<sup>370</sup>

The Victorian Government noted that:

[i]t is widely recognised that there are economic benefits from having women return to work following maternity leave and that paid maternity leave may assist in their attachment to the labour force.<sup>371</sup>

There is debate about the degree to which paid maternity leave can promote women's workforce attachment.

There is some evidence that maternity leave paid by an organisation can increase loyalty of the worker to the organisation and dramatically increase return to work rates of women who take maternity leave.<sup>372</sup> Some submissions argued that if the employer provides paid maternity leave, employees are more inclined to return to work for their original employer after the birth of a child.<sup>373</sup> For example, the Australian Nursing Federation noted that:

[i]t is regularly reported by companies that the introduction of paid maternity leave has increased the proportion of women who return to work after maternity leave.<sup>374</sup>

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<sup>368</sup> See 2.5.5 and Table 2.1.

<sup>369</sup> ABS *Census* 2001, customised tables for George Megalogenis, *The Australian* newspaper.

<sup>370</sup> Work + Family Policy Research Group University of Sydney, Submission 251, p8.

<sup>371</sup> Victorian Government, Submission 250, pp7-8.

<sup>372</sup> See, for example, Queensland Nurses' Union, Submission 134, p6; Melissa Austin, Submission 149, p3; Association of Independent Schools of Victoria, Submission 108, p3. See also the experience of Westpac Banking Corporation, AMP, Hewlett Packard and SC Johnson set out below.

<sup>373</sup> See, for example, Susan Tucker, Submission 187, p1; Angelo Zanatta, Submission 180, p1; Australian Federation of University Women (South Australia) Inc., Submission 179, p2; Australian Nursing Federation, Submission 123, pp7-8; Job Watch Inc., Submission 191, p1; Melissa Austin, Submission 149, p3; National Pay Equity Coalition, Submission 224, p9; Labor Council of New South Wales, Submission 218, p5; Queensland Nurses' Union, Submission 134, p6.

<sup>374</sup> Australian Nursing Federation, Submission 123 p7.

Anecdotal evidence supports the labour force attachment effect of employer funded paid maternity leave as the following case studies indicate.

- 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.<sup>375</sup>
- 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.<sup>376</sup>
- Hewlett Packard reported a greater than 90 per cent return rate from paid maternity leave.<sup>377</sup>
- SC Johnson recorded 100 per cent return rates since introducing paid maternity leave.<sup>378</sup>

The Australian Industry Group noted that “[f]rom an employer perspective, there is much to gain from encouraging continued workforce participation by mothers”.<sup>379</sup>

These workforce attachment effects are likely to be reduced when maternity leave is funded by Government. However, a number of submissions considered that even a government funded model of paid maternity leave is likely to encourage and assist women to maintain their workforce attachment.<sup>380</sup> For example, the Work + Family Policy Research Group stated that:

[p]aid maternity leave would go some way to ensuring women have the option of taking time off work to give birth and recover without necessarily withdrawing from the workforce.<sup>381</sup>

The National Pay Equity Coalition suggested that paid maternity leave:

... provides a bridge to continuing participation in paid work and ongoing economic self-sufficiency rather than requiring an ongoing downgrading of standard of living and/or entering into income support arrangements.<sup>382</sup>

Paid maternity leave is likely to encourage workforce attachment as much by the legitimacy it gives working mothers as by the financial incentive it offers. An individual submitor argued that “[p]aid maternity leave is the first missing link that aids women to continue their careers whilst also choosing to have a family”.<sup>383</sup>

Women’s Economic Think Tank noted that:

[t]he legitimization of maternity leave by such payments will reinforce the work and parenting connection and thereby it will be more likely that employment connections will be maintained.<sup>384</sup>

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<sup>375</sup> Commonwealth Department of Employment, Workplace Relations and Small Business *ACCI National Work and Family Award Winners and Finalist: Business benefits of paid maternity leave* Commonwealth of Australia Canberra 2001, p2.

<sup>376</sup> George Trumbell “Creating a culture that’s good for a business” in Ed Davis and Valerie Pratt (eds) *Making the Link: Affirmative action and industrial relations No 8* Labour Management Studies Foundation Sydney 1997, 31-33 at 32.

<sup>377</sup> Commonwealth Department of Employment, Workplace Relations and Small Business *ACCI National Work and Family Award Winners and Finalist: Business benefits of paid maternity leave* Commonwealth of Australia Canberra 2001, p2.

<sup>378</sup> Commonwealth Department of Employment, Workplace Relations and Small Business *ACCI National Work and Family Award Winners and Finalist: Business benefits of paid maternity leave* Commonwealth of Australia Canberra 2001, p2.

<sup>379</sup> Australian Industry Group, Submission 121, p16.

<sup>380</sup> See, for example, YWCA of Victoria, Submission 127, p11; Anti-Discrimination Board of New South Wales, Submission 214, p12; New South Wales Working Women’s Centre, Submission 225, p10; Aboriginal and Torres Strait Islander Commission, Submission 116F, p1; Queensland Nurses’ Union, Submission 134, p6; Victorian Women Lawyers, Submission 137, p5; Karen Bijkersma, Submission 150, p1; Australian Services Union MEU Private Sector Victorian Branch, Submission 153, p2; Women’s Studies Research Unit, School of Social Work, University of Melbourne, Submission 48, p3.

<sup>381</sup> Work + Family Policy Research Group University of Sydney, Submission 251, p8.

<sup>382</sup> National Pay Equity Coalition, Submission 224, p25.

<sup>383</sup> Melissa Austin, Submission 149, p3.

<sup>384</sup> Women’s Economic Think Tank, Submission 125, p8; see also National Tertiary Education Union, Submission 169, p6.

A national scheme would help to address the concern expressed by some women that in male dominated workplaces where paid maternity leave is available as the result of enterprise bargaining or award entitlements, female workers are still reluctant to take it for fear of creating workplace resentment.

According to the YWCA of Australia, the payment must be extended to casual, part time and contract workers if it is to enhance the workforce attachment of young women who are disproportionately represented in industries where casual and part time work is highly prevalent.<sup>385</sup>

While the range of factors leading women back into the workforce after childbirth should be recognised, particularly the financial limitations facing many families, women's workforce attachment should not be viewed merely as a constrained decision made by women against their better judgements.

As noted at 18.4.1, the provision of paid maternity leave would not involve any requirement for return to work at the end of the period of paid, or further unpaid, leave. In discussing workforce retention, the consideration is not to impose any obligation or pressure on women and their families to participate in the paid workforce, but to ensure that structural disincentives to work are reduced.

Some submissions, however, fundamentally questioned the desirability of women returning to work with dependent children. The Women's Action Alliance, for example, declared that "[n]o such incentive is required. In fact, probably the last thing we need is further incentives for mothers to be in paid work".<sup>386</sup> Another noted:

I do not support the paid maternity scheme. Better, for greater encouragement to mothers at home, to continue to stay at home during the few early years of infancy and childhood. I have survived and benefited from family values as we have chosen to be a single income earner for the last 20 years while my wife cared for our 5 children, and continues to do so. We could use more encouragement for more of this to happen.<sup>387</sup>

A number of commentators consider that the needs of children require that one parent, usually the mother, remain at home for many years to provide full time care. Others refer to research, including opinion polls, which suggest that women prefer to remain at home with young children. Despite a range of socio-economic factors which have driven the increasing participation rate of mothers in paid work over the past twenty years, clearly there is still community disagreement about the desirability of this trend.

While the conclusions about women's preferences may be debatable, it is true, as Catherine Hakim's analysis has made clear, that women are drawing from an array of options for their work and family arrangements.<sup>388</sup> Social equity is maximised by facilitating a broad range of choices, thus the need for Governments to support a number of different work and family arrangements.

## 6.8 Conclusion

Paid maternity leave will directly contribute to increasing women's economic security by providing a guaranteed source of income at the time of birth of a child. In particular, paid maternity leave will provide income replacement for those women in employment who are currently required to forego their regular income as a result of taking time out of the workforce to give birth. Paid maternity leave will also help families with the additional costs faced at the time of birth of a child.

Paid maternity leave will assist some women to maintain their labour force attachment and make it easier for women to combine work and family. This will have longer term benefits for women by improving their lifetime earnings and increasing their superannuation savings.

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<sup>385</sup> YWCA of Australia, Submission 228, pp13-14.

<sup>386</sup> Women's Action Alliance (Australia) Inc., Submission 146, p5. See also Maryse Usher, Submission 65, p1.

<sup>387</sup> Gerry Watts, Submission 66, p1.

<sup>388</sup> Catherine Hakim *Work-Lifestyle Choices in the Twenty-first Century: Preference theory* Oxford University Press Oxford 2000.





# 7. Addressing workplace disadvantage

## 7.1 Introduction

Australian workplaces are structured around historical arrangements intended to maximise workplace efficiency but which are frequently at odds with the private lives and responsibilities of Australian men and women. This particularly applies to work and family responsibilities. One of the consequences for women of the incongruencies in workplace and family arrangements is discrimination and workforce disadvantage.

This Chapter explores the nature of workplace disadvantage experienced by women as a result of maternity. It also considers paid maternity leave as a work related entitlement and how a national scheme of paid maternity leave ensures fairness of this entitlement across the workforce.

## 7.2 Sex discrimination in employment

Women continue to experience employment discrimination based on their sex, pregnancy or family responsibilities. For example, women are often dismissed, demoted or harassed when they become pregnant.<sup>389</sup> When women experience sex discrimination there are legal provisions in place to provide a remedy. Australia currently has legislation that makes employment discrimination on the basis of sex and pregnancy unlawful. At the federal level, the relevant legislation is the Sex Discrimination Act.<sup>390</sup> The Sex Discrimination Act also prevents dismissal of employees on the basis of their family responsibilities. Industrial and workplace relations legislation gives pregnant employees protection against dismissal, and guarantees non-casual employees a right to return to their employment after a period of unpaid maternity leave.<sup>391</sup>

Despite these protections, women continue to experience discrimination and unfavourable treatment at work when they become pregnant, give birth and return to work. In the 2001-2002 year, pregnancy and family responsibilities discrimination complaints to HREOC made up 32 per cent of all complaints under the Sex Discrimination Act.<sup>392</sup> In addition, many complaints of sex discrimination concern issues relating to family responsibilities.

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<sup>389</sup> See Human Rights and Equal Opportunity Commission *Pregnant and Productive: It's a right not a privilege to work while pregnant* HREOC Sydney 1999.

<sup>390</sup> The relevant sections are section 5, which defines sex discrimination, and section 7 which concerns discrimination on the basis of pregnancy. See section 7A for discrimination on the ground of family responsibilities. Family responsibilities discrimination is only unlawful under the Sex Discrimination Act where it involves dismissal. Section 14 makes these grounds of discrimination unlawful in the area of employment. The interim paper pointed out that an employer's failure to provide paid maternity leave could arguably be indirect sex discrimination under the Sex Discrimination Act. There have been no cases under the Sex Discrimination Act or comparable legislation where a woman established that a failure to provide paid maternity leave was unlawful sex discrimination. However, such an outcome remains a possibility. For further discussion, see Human Rights and Equal Opportunity Commission *Valuing Parenthood: Options for paid maternity leave, interim paper 2002* HREOC 2002, p40.

<sup>391</sup> See, for example, Schedule 14 clause 12 *Workplace Relations Act 1996* (Cth). This Act only applies to full time and part time employees. Some casual employees may have these rights under federal awards or State legislation.

<sup>392</sup> Human Rights and Equal Opportunity Commission *Annual Report 2001 – 2002* HREOC Sydney 2002, p73. This is a significant increase from the previous year's complaints, in which pregnancy and family responsibilities discrimination made up 18 per cent of all complaints to HREOC under the Sex Discrimination Act: Human Rights and Equal Opportunity Commission *Annual Report 2000 – 2001* HREOC Sydney 2001, p73. Note that, in addition, many complaints of family responsibilities are brought as indirect sex discrimination complaints under the Sex Discrimination Act.

Other complaints and advisory bodies reported to HREOC that discrimination against employed women because of childbirth or child-rearing responsibilities remains a serious problem. The Anti-Discrimination Board of New South Wales wrote that women in their child bearing years face "... serious and significant sex discrimination and harassment in employment".<sup>393</sup>

This discrimination commonly takes the form of lower remuneration for women, demotion, failure to be appointed or promoted, dismissal actual or constructive, due to potential pregnancy, pregnancy and post pregnancy return to work issues. Women continue to face discrimination the grounds of their carer's and family responsibilities for many years after the birth of a child.<sup>394</sup>

The New South Wales Working Women's Centre also expressed concern about the level of discrimination against women because of maternity, stating that their research indicates women in paid work are:

... continuing to experience difficulties during pregnancy, whilst on maternity leave and during the return to work, as attested by the 17% of calls to the Centre in the past year ... This is despite existing provisions for statutory unpaid maternity leave in conjunction with remedies against discrimination on the grounds of pregnancy, sex and family responsibilities, as well as unfair dismissal ...<sup>395</sup>

Similarly, the Queensland Working Women's Service wrote that their Service:

... frequently receives complaints from women who have been dismissed from their employment due to their pregnancy. Often women are unable to prove that this is the case but have a strong sense that things changed for them at work when it became known that they were pregnant. Currently some workers are excluded from the right to claim for unfair dismissal in these circumstances. We consider that paid maternity leave will assist in redressing some of the disadvantage that women face due to their childbearing role.<sup>396</sup>

These submissions support HREOC's concern that the incidence of discrimination against pregnant women and women with family responsibilities remains unacceptably high.

Anti-discrimination legislation is crucial in protecting women's interests at work, but it is aimed at providing a remedy for individuals who have suffered disadvantage through specific acts or practices in their workplaces. By itself, anti-discrimination legislation cannot eliminate discrimination that is generalised, diffuse and systemic. The Work + Family Policy Research Group at Sydney University submitted that current anti-discrimination legislation is insufficient to overcome gender inequities.

Australia's system of social justice has recognised since the 1970s that specific measures are necessary to overcome the inequities experienced by women in the workforce. Yet, despite anti-discrimination legislation and pay equity initiatives, it is quite well established that Australian women still experience significant disadvantage in the workplace. While there is a range of reasons for this, key to overcoming the continuing inequity is attending to the economic disruption caused by taking leave without pay to bear and care for children.<sup>397</sup>

Some submissions considered that paid maternity leave would complement existing anti-discrimination laws in addressing sex discrimination in employment. The New South Wales Public Service Association wrote that:

... a scheme of paid maternity leave for women workers is consistent with national objectives of anti-discrimination and support for workers with family responsibilities as articulated in federal legislation.<sup>398</sup>

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<sup>393</sup> Anti-Discrimination Board of New South Wales, Submission 214, p10.

<sup>394</sup> Anti-Discrimination Board of New South Wales, Submission 214, p10.

<sup>395</sup> New South Wales Working Women's Centre, Submission 225, p9. See also YWCA of Australia, Submission 228, p6: "The YWCA urges the government to recognise the barriers that prevent women from full participation in the workforce, including direct and indirect workplace discrimination."

<sup>396</sup> Queensland Working Women's Service, Submission 219, p5.

<sup>397</sup> Work + Family Policy Research Group University of Sydney, Submission 251, p6.

<sup>398</sup> New South Wales Public Service Association, Submission 110, p3.

The Independent Education Union pointed out the social significance of anti-discrimination legislation, which "... represents the nation's community standards ..." That submission argued that paid maternity leave would have a similar "... ethical and social justice significance ..."<sup>399</sup>

However, the submission from the Australian Chamber of Commerce and Industry questioned the relevance of discrimination to the paid maternity leave issue, saying that figures demonstrating a high incidence of pregnancy discrimination "... do nothing to justify a new entitlement, nor do they show that the current system is not working – arguably precisely the opposite".<sup>400</sup> That submission stated that:

[a]ny unequal treatment of women in the workplace based on their role in bearing and caring for children can and should be addressed using anti-discrimination options at the state and federal level.<sup>401</sup>

In HREOC's view, the ongoing discrimination against women in paid work is an indication that additional action is required to address sex discrimination in employment and to promote changes to attitudes and behaviour. Policies such as paid maternity leave can make a positive contribution to addressing this goal.

### 7.3 Women's workplace disadvantage

The historical development of modern society has seen remuneration restricted to tasks performed in the public domain. As such, the bearing and raising of children, as a function designated to the private domain, receives no remuneration. These functions are primarily performed by women, who as a result find themselves with less economic security than their male counterparts. Joan Williams has pointed out that structures which support male patterns of work disadvantage women.

[M]arket work continues to be structured in ways that perpetuate the economic vulnerability of caregivers. Their vulnerability stems from our definition of the ideal worker as someone who works at least forty hours a week year round. This ideal-worker norm, framed around the traditional life patterns of men, excludes most mothers of childbearing age.<sup>402</sup>

This is not to suggest that women cannot be in paid work and remunerated accordingly. As noted by the Union Research Centre on Organisation and Technology, "[w]omen can be mothers and workers just as men can be fathers and workers. Yet the implications of such situations for women and men are vastly different".<sup>403</sup> Although the male breadwinner model of family structure is no longer the situation in most families, "... the arrangements for work in many industries are still based on these working relationships".<sup>404</sup> The majority of women therefore earn less, have lower retirement incomes and are more likely to be welfare dependent than men.<sup>405</sup>

As argued in the submission from Marty Grace:

... because of the historical development of our institutions, practices are built on a gendered division of labour, and the fiction of separate public and private spheres ... We want to change the rules to enable us to be both the workers and the parents we want to be.<sup>406</sup>

It is not only women who are disadvantaged by working within this gendered structure. It is important to bear in mind that the gender roles within which we all work disadvantage men as well as women.

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<sup>399</sup> Independent Education Union of Australia, Submission 204, p5.

<sup>400</sup> Australian Chamber of Commerce and Industry, Submission 197, p28.

<sup>401</sup> Australian Chamber of Commerce and Industry, Submission 197, p28.

<sup>402</sup> Joan Williams *Unbending Gender: Why work and family conflict and what to do about it* Oxford University Press New York 2000, p2.

<sup>403</sup> Union Research Centre on Organisation and Technology, Submission 254, p2.

<sup>404</sup> Union Research Centre on Organisation and Technology, Submission 254, p4 citing I Wolcott and H Glezer *Work and Family Lives: Achieving integration* Australian Institute of Family Studies Melbourne 1995, p14.

<sup>405</sup> See 6.6.

<sup>406</sup> Marty Grace, Submission 151, pp1-2.

The commonplace observation is that women are hurt by the hard choices they face. Once the focus shifts away from women's choices to the gender system that sets the frame within which those choices occur, we can see that domesticity's peculiar structuring of market work and family work hurts not only women but also men, children, politics and our emotional life.<sup>407</sup>

Many submissions pointed out that women's inequality is not only caused by individual acts of sex discrimination, but general, entrenched and ongoing workplace disadvantage. While many women choose unpaid work in the home, this choice should not mean that they are treated unfairly when they enter the paid workforce or that their home-based work should be undervalued.

One of the key reasons given in submissions for women's unequal status in relation to men is their disproportionate participation in unpaid and underpaid work. For example, Karen Simmer, from the Neonatology Clinical Care Unit of the University of Western Australia, noted that women's responsibility for childbirth and rearing prevents them from reaching positions of seniority in employment.

Girls in schools do well, often better than boys. However, in most professions and businesses, few women have progressed to the higher levels. One of the main and clearly obvious reasons for this is women take time off to have children and never return to the workforce in the same capacity or with the same opportunities as those without children or a man with children. This is an indisputable fact and overwhelmingly obvious to any working mother. For the sake of our daughters, we need to campaign vigorously to help them have the options and choices to continue work after they have children, if they so choose to do so.<sup>408</sup>

The Queensland Working Women's Service linked women's key role in child care to women's wages, promotions and workforce participation.

There are many reasons why gender inequality persists but we can link much of this to the social, economic and biological effect of childbirth and child rearing. Women still bear much of the responsibilities of family and child caring. When we examine women's wages, promotions and workforce participation we find that in child-bearing years women's employment suffers. The birth of a child imposes immediate financial pressures on women and their families and often results in their dislocation from work and impedes their future work experience. In order to advance equity, security and human dignity women workers need to be able to resolve the problems associated with childbearing and workforce participation.<sup>409</sup>

The Australian Council of Trade Unions wrote: "[p]ut simply, men can become parents without disrupting their work, women cannot".<sup>410</sup> Some of the general disadvantage or systemic discrimination that women face was summed up in a submission from the YWCA of Victoria.

Women experience discrimination in relation to employment in many ways, including the concentration of women in particular sectors or industries which are relatively low paying, the continuing comparative lack of women in senior management, the concentration of women working in the informal sector and as casual employees, and difficulties for women in securing employment that is flexible and responsive to their roles as parents and carers.<sup>411</sup>

A few submissions questioned whether systemic discrimination is a continuing problem for women today. One submission, from the National Women's Council of South Australia, noted that:

[L]atest surveys of women identify that the majority of professional women no longer believe that concepts like "glass ceilings" are hampering their progress but rather they are mostly disadvantaged by their own insecurities and personal constraints. It is too easy to rely on this old

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<sup>407</sup> Joan Williams *Unbending Gender: Why work and family conflict and what to do about it* Oxford University Press New York 2000, p3.

<sup>408</sup> Karen Simmer, Submission 72, p3.

<sup>409</sup> Community and Public Sector Union – State Public Services Federation Group, Submission 230, p2.

<sup>410</sup> Australian Council of Trade Unions, Submission 208, p6. Also raised at union consultation, Brisbane, 24 April 2002.

<sup>411</sup> YWCA of Victoria, Submission 127, p5.

(and tired) observation [about systemic discrimination] as an excuse and women themselves are realising that.<sup>412</sup>

Another argued that since women are responsible for making choices that have an adverse impact on their lives, "[t]he systemic discrimination is within the female culture rather than the workforce".<sup>413</sup>

However, almost all submissions recognised, either implicitly or explicitly, that women do suffer workplace disadvantage and discrimination as a result of their responsibilities for bearing and caring for children. These submissions, discussed below, all suggested that women's continued disadvantage is an issue that needs further attention and remedy.

The National Tertiary Education Union viewed paid maternity leave as a means of combating workplace disadvantage.

Women in work face unique disadvantage, including employment discrimination, lack of access to career progression and low wages compared with their male counterparts. This disadvantage is often exacerbated greatly if a woman chooses to have a child. Paid maternity leave for working women is one way to combat this kind of overall disadvantage for women ...<sup>414</sup>

One union submitted that the positive benefits of introducing paid maternity leave include "[c]losing the gender pay inequity gap ..." and "... address[ing] systemic discrimination and disadvantage suffered by women when they seek to balance child-bearing and paid work".<sup>415</sup> As one individual wrote, "[w]omen need to be encouraged to be mothers and take their place in the workforce without being disadvantaged".<sup>416</sup>

Workplace disadvantage distorts or changes the choices people will make. Often the cost of this is borne by the community, and not just the individual. HREOC believes that paid maternity leave is one small element in the endeavour to restructure our working arrangements to better accommodate the needs of mothers and their families and in particular new born babies. It also provides compensation for the disadvantage women suffer under current arrangements for family formation.<sup>417</sup>

## 7.4 Fairness for all employees

A number of submissions were concerned that some women in the workforce currently have access to paid maternity leave while the majority do not. This is an important issue for HREOC, raising basic principles of fairness and the need for all women to be able to recover from birth and establish a relationship with their new babies. The uneven provision of paid maternity leave is akin to providing paid sick leave to only some workers and not to others.

The objective of ensuring that women have a financially secure period of time out of the workforce in order to recover from childbirth should be met for all women in paid work. The issue of equity applies not just to each woman's right to recover from the birth of her child without returning to work prematurely for financial reasons, but also to the right of each child to have access to their mother in the weeks immediately following child birth without financial pressure forcing their separation.

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<sup>412</sup> National Women's Council of South Australia, Submission 128B, p1.

<sup>413</sup> H Colley, Submission 143, p1.

<sup>414</sup> National Tertiary Education Union, Submission 169, p3.

<sup>415</sup> Australian Services Union MEU Private Sector Victorian Branch, Submission 154, p2.

<sup>416</sup> Primary school teacher quoted in Australian Education Union, Submission 122, p12. Also raised at employers consultation, Hobart, 27 June 2002.

<sup>417</sup> See also the discussion of paid maternity leave as an equality issue: Chapter 8.

As set out at 3.3 the existing arrangements for paid maternity leave in Australia are inadequate. Over 60 per cent of female employees do not have access to paid maternity leave.<sup>418</sup> Further, 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.

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.

Highly skilled women in full time work have greater access to paid maternity leave than women in more marginal employment, with lower skills, who are in part time or casual work. Fifty-one 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 reported that they had access to paid maternity leave.<sup>419</sup>

Sixty-five per cent of managers and administrators and 54 per cent of professionals had access to paid maternity leave. In contrast only 18 per cent of elementary clerical, sales and service workers and 21 per cent of labourers and related workers had access to paid maternity leave.<sup>420</sup>

HREOC is of the strong view that the market and enterprise bargaining have failed to provide fair access for all employees to paid maternity leave and do not reflect the social benefits of children, and raising children. A maternity leave payment "based on the luck of the draw is likely to further entrench the divisions between the "haves and have nots".<sup>421</sup> As one woman commented to HREOC:

If people are left to negotiate their own conditions of employment sometimes you do well and sometimes you don't. There are some professions which traditionally do very poorly, such as teachers, nurses and childcare workers, anything that is female dominated.<sup>422</sup>

As noted in the submission by Lyn Collins and Barbara Pocock:

[h]aving a *paid* maternity break depends on which workplace you happen to be in at the time of the birth, on the random generosity of your employer, or on the assertiveness of your union.<sup>423</sup>

Another woman noted her resentment at the different treatment of women in different sectors.

I watch the news and I see the stories about the women who work in a bank and get all this paid maternity leave and I think: what makes you so bloody special? What makes you giving birth to a baby any more special than me. What makes your baby worth more than mine?<sup>424</sup>

Several submissions argued that paid maternity leave was particularly important as a protection for the most vulnerable groups of women workers, who were affected by multiple forms of discrimination or disadvantage. These included women on low incomes, from Aboriginal and Torres Strait Islander or non-English speaking backgrounds and in insecure employment.<sup>425</sup> BPW New South Wales asserted that the provision of a paid maternity leave scheme would "... be a necessity over the coming years as we see more women being forced to make the choice of a career over family just to survive".<sup>426</sup> This point was also raised in consultations with HREOC, where it was argued that paid maternity leave would increase the status of the most disadvantaged workers.

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<sup>418</sup> ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

<sup>419</sup> ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

<sup>420</sup> ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

<sup>421</sup> South Australian Equal Opportunity Commissioner, Submission 71, p3.

<sup>422</sup> HREOC Interview 3, August 2002.

<sup>423</sup> Lyn Collins and Barbara Pocock, Submission 232, p7 (emphasis in original).

<sup>424</sup> HREOC Interview 24, September 2002.

<sup>425</sup> See, for example, New South Wales Working Women's Centre, Submission 225, p8. Also raised at women's groups and community consultation, Melbourne, 31 May 2002.

<sup>426</sup> BPW New South Wales, Submission 118, p2.

[I]f you are the person who pulls the entrails out of the chicken on the processing line you don't have choice, but if you get recognition through paid maternity leave you have a status that you never had before and you can engage in a way with your community in a very different way because you are recognised. It's very easy to have women in professional work talk about choice but the majority of women in Australia work part time/casual and they don't have that. This provides a dignity, a status, a recognition of the work done.<sup>427</sup>

The submission of Immigrant Women's Speakout pointed out that some groups of employed immigrant and refugee women are much more likely than Australian-born employed women to have children. It argues that these patterns are significant in considering paid maternity leave.<sup>428</sup> The Ethnic Communities' Council of Victoria drew together issues of the relative disadvantage of women from non-English speaking backgrounds and their greater levels of casual or intermittent employment to emphasise the need for a scheme of paid maternity leave to ensure equitable coverage for all workers.<sup>429</sup>

The issues and difficulties faced by Indigenous women need to be specifically addressed in relation to a paid maternity leave scheme as noted in the submission from the New South Wales Working Women's Centre.

[F]rom the Centre's own work with women from Aboriginal and Torres Strait Islander backgrounds, we can report a concentration in certain industries (community services and health in particular – with a higher level of project-based fixed-term employment) in the lower-skilled and lower-paid occupations.<sup>430</sup>

Disruptions to women's paid work can be the cause of workplace vulnerability as women are more likely than men to be casual or part time workers, with fewer entitlements. A significant number of submissions were concerned about the lack of paid maternity leave currently available to women in part time and casual work or contract based employment who together constitute almost half the workforce. Existing paid maternity leave provisions are usually restricted to women in permanent full time work. A national scheme of paid maternity leave can offset this disadvantage.

Despite the fact that there has been a rise in the participation rates for women in the workforce they remain the primary care givers of children. That is one of the reasons that women in South Australia are over represented in part time and casual work and do not have equal access to minimum leave entitlements. If women are to improve their participation in the workforce in permanent and higher paying occupations it will be important that a total package of family support is available. Paid maternity leave is one part of such a package.<sup>431</sup>

A union argued that "[o]ur members are predominantly low income workers, and few have access to benefits such as paid maternity leave for reasons of poor job security and high casual employment".<sup>432</sup>

The Hawke Institute submitted that:

[I]ncreasingly women make up a considerable proportion of part time, casual and contract workforce. Unless the entitlement is extended to all workers, both full and part time, the policy would risk exacerbating the horizontal segregation which is already a worrying feature of the Australian workforce, especially in relation to gender based disadvantage.<sup>433</sup>

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<sup>427</sup> Union consultation, Hobart, 27 June 2002. Other submissions also stressed the increased status for women as a reason for introducing paid maternity leave. See National Pay Equity Coalition, Submission 224, p9: "The provision of PML will provide a stronger legitimization of women's continued participation in paid work after childbirth. This support will contribute to reduced pregnancy and maternity discrimination (as will increased rates of return of women to their jobs)."

<sup>428</sup> Immigrant Women's Speakout Association New South Wales Inc., Submission 158, p3.

<sup>429</sup> Ethnic Communities' Council of Victoria, Submission 242, pp4-5.

<sup>430</sup> New South Wales Working Women's Centre, Submission 225, p13: This submission also cites J C Altman and B Hunter *The Geographic Distribution of Unemployment-Related Benefits and CDEP Scheme Employment* CAEPR Discussion Paper No. 112 Centre for Aboriginal Economic Policy Research Australian National University Canberra 1996 and New South Wales Working Women's Centre *Report of the Indigenous Women's Project 1999*.

<sup>431</sup> South Australian Equal Opportunity Commissioner, Submission 71, p2.

<sup>432</sup> Australian Liquor, Hospitality and Miscellaneous Workers Union, Submission 153, p2.

<sup>433</sup> Hawke Institute, Submission 174, p4.

Concern was also expressed about the need for self employed women to have access to paid maternity leave. The National Pay Equity Coalition noted that:

[b]usinesses carried out by self-employed people are almost by definition small and generate low incomes. The people who run them have limited capacity to save for the costs and foregone income of maternity. It may be that for some businesses the need to take time off without income and without a capacity to engage someone else to replace the work of the self-employed person would cause the demise of the business.<sup>434</sup>

The International President of the Federation of BPW, also highlighted the need for self employed women to have access to paid maternity leave.

Women who own their own business are no less entitled to the benefit than those in the employed workforce and as business owners, incur expenses in keeping their business running whilst they are caring for the baby.<sup>435</sup>

HREOC agrees that any national scheme of paid maternity leave should ensure that all women in paid work should, so far as practicable, have equivalent access.

## 7.5 Balancing work and family responsibilities

Increased workforce participation of women has not been accompanied by men significantly increasing their responsibilities in caring for and raising children.<sup>436</sup> The result is that women retain the major responsibility for caring for children as well as participating in the paid workforce.

Many of those consulted expressed a desire to see men more able to share in family responsibilities. There was almost unanimous agreement that this would be beneficial for children, women and men.

As observed by the women's organisation Mothers of In(ter)vention, "... men need to lift their game in the home, but their workplaces need to allow time to be there enough to do so".<sup>437</sup>

In addition to the concern that men be able to contribute more to family life, several submissions observed how difficult the management of work and family balance is for women and that frequently women are discouraged from attempting it.

The Shop, Distributive and Allied Employees' Association surveyed its members nationally and found that, of those mothers who did not return to work following the birth of a child, 25 per cent said that they wanted to stay home and 19 per cent went to a different employer. The others appear to have been deterred from returning because of structural biases and disincentives including 22 per cent who said that suitable hours could not be arranged, and others who believed that achieving a work-life balance was too difficult, that satisfactory childcare was not available, and that the economic benefits of work were not "worth the hassle".<sup>438</sup>

In those submissions concerned with achieving a better work and family balance, paid maternity leave was considered to be only part of the solution. Employers and employer organisations noted that employers already provide a complex array of family assistance to their employees.

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<sup>434</sup> National Pay Equity Coalition, Submission 224, p17.

<sup>435</sup> BPW International, Submission 82, p1; See also BPW Australia, Submission 148, p6.

<sup>436</sup> See 2.4.7.

<sup>437</sup> Mothers of In(ter)vention, Submission 104, p2. Also raised at women's groups and community consultation, Melbourne, 31 May 2002; employers consultation, Canberra, 17 June 2002. See 5.4 and 11.3 for further discussion.

<sup>438</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p5.



Australian Business Industrial noted that "... for employers, the obligations to their employees with family responsibilities do not cease with the provision of paid maternity leave".<sup>439</sup> This submission asserted that "[m]aternity leave can only be considered as one of a suite of measures to enable a work-family balance".<sup>440</sup>

Even so, many submissions and consultations considered paid maternity leave to be an essential part of these work and family policy suites. The Illawarra Forum and the Illawarra Women's Health Centre, for example, asserted that paid maternity leave "... would provide one part of a whole series of entitlements that ultimately lead to family friendly employment structures".<sup>441</sup>

In a consultation held with employer groups in Melbourne, it was stated that:

[p]aid maternity leave is a very important issue as it addresses the work/family issue ... more effectively. It is a structural change.<sup>442</sup>

As BPW Australia noted, a scheme of paid maternity leave "... needs to be part of a long-term plan for supporting Australians to balance their work and family commitments".<sup>443</sup>

## 7.6 Conclusion

Women experience sex discrimination and workplace disadvantage as a result of maternity. While not a total solution, paid maternity leave can contribute to overcoming these barriers. HREOC considers that access to a financially secure period out of the workforce in order to recover from child birth should be a basic right for women. The current ad hoc arrangements for paid maternity leave are unfair and further disadvantage the most vulnerable women in the workforce. A national scheme of paid maternity leave will extend access to paid leave across the workforce. Paid maternity leave will also make it easier for women to combine work and family responsibilities.

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<sup>439</sup> Australian Business Industrial, Submission 119, p5.

<sup>440</sup> Australian Business Industrial, Submission 119, p5. This submission reported on a survey of members of the organisation which revealed a wide array of family friendly policies provided, p14.

<sup>441</sup> Illawarra Forum Inc. and Illawarra Women's Health Centre, Submission 162, p4. Also raised in employers consultation, Canberra, 17 June 2002.

<sup>442</sup> Employers consultation, Melbourne, 30 May 2002.

<sup>443</sup> BPW Australia, Submission 148, p12; See also Australian Council of Trade Unions, Submission 208, p13; see also Anti-Discrimination Board of New South Wales, Submission 214, p13; New South Wales Working Women's Centre, Submission 225, p10; Victorian Government, Submission 250, p1; Women's Council, Liberal Party of Australia (South Australia), Submission 100, p2; see also Equal Opportunity for Women in the Workplace Agency, Submission 217, p2; Australian Federation of University Women – Victoria, Submission 101, p2.



# 8. Equality

## 8.1 Introduction

A significant number of submissions raised the issues of equality, equity and discrimination. The majority of these submissions expressed concern about women's equality and advocated paid maternity leave as a means of achieving equality between men and women.

CEDAW, to which Australia is a party, is based on the principle of equality of men and women. This involves "... the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries".<sup>444</sup>

Equality in this context is more than simply ensuring women's economic security or eliminating discrimination against women in employment due to their child bearing role. Achieving equality involves "... the maximum participation of women on equal terms with men in all fields".<sup>445</sup>

## 8.2 Paid maternity leave as an equality issue

Paid maternity leave is one measure that supports women moving between work in the home and the world of paid employment. In international conventions, paid maternity leave is proposed as a means of addressing workplace discrimination and promoting equality between men and women.<sup>446</sup> The International Labour Organization states that a principle objective of paid maternity leave is "... to further promote equality of all women in the workforce".<sup>447</sup>

Many submissions placed gender equality or non-discrimination principles as one of the primary objectives of any paid maternity leave scheme. For example, one submission stated that "[n]o civilised country, which regards equality between the sexes as important, could neglect to address paid maternity leave".<sup>448</sup> The Centre for Applied Social Research suggested that "[e]xplicitly naming gender equality as an objective of the proposed paid maternity leave scheme may also help address the 'motherhood' discrimination that exists in the workforce".<sup>449</sup>

As the Queensland Working Women's Service wrote:

[t]he primary objectives of a paid maternity leave scheme should be to further facilitate equity for women, through recognition of their needs and choices around the issue of child bearing.<sup>450</sup>

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<sup>444</sup> Preamble *Convention on the Elimination of All Forms of Discrimination Against Women* GA Res 180 (XXXIV 1970), 19 ILM 33 (1980).

<sup>445</sup> Preamble *Convention on the Elimination of All Forms of Discrimination Against Women* GA Res 180 (XXXIV 1970), 19 ILM 33 (1980).

<sup>446</sup> See article 11(2) *Convention on the Elimination of All Forms of Discrimination Against Women* GA Res 180 (XXXIV 1970), 19 ILM 33 (1980) and the *Maternity Protection Convention 2000* (No 183). See also YWCA of Victoria, Submission 127, 4-5; Centre for Applied Social Research RMIT University, Submission 234, p7.

<sup>447</sup> *Maternity Protection Convention 2000* (No 183).

<sup>448</sup> Philip Gammage, Submission 91, p3.

<sup>449</sup> Centre for Applied Social Research RMIT University, Submission 234, p8 citing S Charlesworth "Working Mums: The construction of women workers in the banking industry" (1999) 4 (2) *Journal of Interdisciplinary Gender Studies* 12.

<sup>450</sup> Queensland Working Women's Service, Submission 219, p5.

The Work/Life Association submitted that one of the main objectives of a paid maternity leave scheme was:

... social equity for women, including addressing systemic discrimination, fairness (especially with respect to current inequities in relation to access to paid maternity leave, currently available to about a quarter of working women); supporting women's choices, **ensuring that women are not disadvantaged in their employment through their intrinsic role in child bearing**, and developing socially responsive Australian workplaces ...<sup>451</sup>

The National Women's Council of South Australia wrote that they supported the different objectives raised in the paper, and specifically endorsed the "[e]limination of discrimination in society"<sup>452</sup> as an objective of paid maternity leave.

Another submission argued that the objective of paid maternity leave should be to support a "... balance in the workforce of men and women".<sup>453</sup>

Consultations also identified discrimination or inequality as reasons to introduce paid maternity leave.

[Paid maternity leave] is about removing the inequity [women] suffer when they are out of the workforce – their careers suffer when they take maternity leave, they always face discrimination when they return.<sup>454</sup>

Many submissions that proposed equality or anti-discrimination as primary objectives of a paid maternity leave scheme did so on the basis that a paid maternity leave scheme would assist in addressing women's workplace disadvantage.<sup>455</sup> Coles Myer considered that paid maternity leave would contribute to workplace equity.

An additional benefit of a paid maternity leave scheme would be to reduce the extent of financial disadvantage experienced by women as a result of the necessity to take time out of the workforce in order to have children, thereby contributing to greater workplace equity.<sup>456</sup>

Another submission argued that paid maternity leave would advance equality by easing the transition into and out of paid work, given that:

... many women want to be mothers and have jobs. Paid maternity leave is an important part of the support that is essential if women are to truly have equal opportunity at work ... Equality in the workplace will be advanced if women have the chance to take time off, and return to work in good shape, without compromising their career, if that is what they want.<sup>457</sup>

The YWCA of Victoria referred to the fact that it is inequitable to require women to cobble together other forms of leave in order to take time off to have a baby, or to forego income altogether.<sup>458</sup>

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<sup>451</sup> Work/Life Association, Submission 171, p9 (emphasis in original).

<sup>452</sup> National Women's Council of South Australia, Submission 68, p1 (emphasis in original). See also the Hawke Institute, Submission 174, p2 and Australian Services Union South Australia and Northern Territory, Submission 189, p4.

<sup>453</sup> Aboriginal and Torres Strait Islander Commission, Submission 116A, p1.

<sup>454</sup> Women's groups and community consultation, Darwin, 5 June 2002.

<sup>455</sup> See, for example, Adoptive Families Association of the Australian Capital Territory Inc., Submission 115, p2; Aboriginal and Torres Strait Islander Commission, Submission 116A, p1, 116C, p1, 116H, p1; Australian Nursing Federation, Submission 123, p6; Queensland Nurses' Union, Submission 134, p6; National Women's Council of South Australia, Submission 68, p1; Flight Attendants' Association of Australia, Submission 139, p1; Melissa Austin, Submission 149, p2; Australian Services Union MEU Private Sector Victorian Branch, Submission 154, p2; Immigrant Women's Speakout Association of New South Wales Inc., Submission 158, p8; EMILY's List, Submission 159, p2; Illawarra Forum Inc. and Illawarra Women's Health Centre, Submission 162, p2; Victorian Independent Education Union, Submission 163, p3; Women's Studies Research Unit, School of Social Work, University of Melbourne, Submission 48, p2; Women's Health in the North, Submission 60, p2; Union of Australian Women, Submission 89, p1; National Tertiary Education Union, Submission 169, p3; Work/Life Association, Submission 171, p9.

<sup>456</sup> Coles Myer Ltd, Submission 107, p7.

<sup>457</sup> Lyn Collins and Barbara Pocock, Submission 232, p3.

<sup>458</sup> YWCA of Victoria, Submission 127, p12. Also raised at union consultation, Canberra, 16 July 2002, where it was stated that: "[s]ome of our employers are offering women to take long service leave before the time of birth. Although this helps them and extends the period of time they have off, it is not what long service leave is for. It's meant to be a time to recharge batteries".

Submissions acknowledged that paid maternity leave alone could not bring about gender equality, with statements that paid maternity leave “[w]ill go some way towards addressing systemic discrimination on the basis of gender”.<sup>459</sup>

Paid maternity leave was also identified in submissions as a benefit that would assist in creating greater equality between disadvantaged and more privileged women, as well as between men and women.

The emphasis on paid maternity leave as a workplace entitlement and on removing as many barriers as possible to access [a] paid maternity leave scheme is consistent with a principle of promoting gender equality not just between men and women but also between different groups of women.<sup>460</sup>

### 8.3 Arguments against equality objectives for paid maternity leave

Some submissions questioned whether a scheme of paid maternity leave would address the issue of women’s equality or disadvantage at all.

One submission made the point that “[i]t is unrealistic to expect that the area of employment should be magically exempt from any disadvantageous effect”.<sup>461</sup> The Women’s Action Alliance considered that paid maternity leave would not contribute to workplace equity.

Certainly paid workplace opportunities for women are constrained by their having children, or at least they are delayed. But young women seem to be under the impression that if they take more than a few months out of paid work to care for their families they will destroy their career prospects. This is not borne out by observing the lives of many, many women who have borne several children and later climbed to career heights. (One female member of the federal parliament has eight children and several of them have four or five.)<sup>462</sup>

A number of submissions also warned that a system that required employers to directly fund paid maternity leave for their own employees would create discrimination, as employers would deliberately choose men over women workers to avoid payments. HREOC agrees that this issue is a significant concern, and it is one of the grounds on which HREOC has recommended government funding of a national scheme of paid maternity leave.<sup>463</sup>

Of course, there is no doubt that a scheme of paid maternity leave would not by itself address the range of workplace disadvantages faced by women as a result of their caring responsibilities. It would be facile to argue that it would. As one submission emphasised, “[f]ourteen weeks of paid maternity leave will not bring gender equity to this country”.<sup>464</sup> However, many submissions strongly argued that paid maternity leave is an essential element of a social restructure that would better recognise and value the contribution of women to reproducing the next generation.<sup>465</sup>

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<sup>459</sup> Women’s Studies Research Unit, School of Social Work, University of Melbourne, Submission 48, p2.

<sup>460</sup> Centre for Applied Social Research RMIT University, Submission 234, p8.

<sup>461</sup> H Colley, Submission 142, p4.

<sup>462</sup> Women’s Action Alliance (Australia) Inc., Submission 146, p6.

<sup>463</sup> See 13.4.2 for further discussion.

<sup>464</sup> Marty Grace, Submission 151, p4.

<sup>465</sup> See, for example, National Women’s Council of South Australia, Submission 68, p6; Centre for Applied Social Research RMIT University, Submission 234, p11.

## 8.4 Conclusion

Women's ongoing workplace disadvantage and the employment discrimination they experience are directly linked to their primary role in childbirth and child-rearing. HREOC considers that a commitment to equality requires positive steps to create structural changes that would remedy entrenched discrimination.

In addition, paid maternity leave would meet the objective of ensuring equality for women by providing structural recognition of women's roles as employees and mothers and by offsetting the disadvantage that stems from women's caring responsibilities. This would be a positive step towards delivering equality between men and women, and increasing women's ability to participate in all aspects of community life.

# 9. Social benefits

## 9.1 Introduction

Fundamentally, encouraging and providing assistance for parents to raise their children benefits society. Paid maternity leave is a mechanism which addresses this social need. To the extent that paid maternity leave directly assists people to combine work and family responsibilities, it may also have flow-on benefits for the fertility rate, community life and social cohesion.

A number of submissions supported the introduction of a government funded paid maternity leave scheme on the basis of the benefits of such a scheme for society. This Chapter describes the social benefits of paid maternity leave as identified in submissions and consultations.

## 9.2 Valuing motherhood and children

A national scheme of paid maternity leave can be seen as recognition by society and the Government of the importance and value of the motherhood and children. Society not only benefits immediately from a next generation, its continuance depends upon there being future citizens and economic producers. This point was acknowledged in consultations.

Some of us like the idea of children as the future but it is actually vital for all kinds of reasons – economic future for country and standard of living are just a few aspects of it. Children are the future.<sup>466</sup>

The United Nations Children's Fund (UNICEF) considers that "... the healthy development of children is crucial to the future well-being of any society".<sup>467</sup>

The Convention on the Rights of the Child (CROC) recognises the importance of children to society and emphasises the social responsibility for their wellbeing. Australia is amongst the 191 nations 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.<sup>468</sup>

The social significance of maternity is also included in the Preamble to CEDAW as a foundation of women's rights. The Convention refers to:

... the great contribution of women to the welfare of the family and to the development of society, so far not fully recognised, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole ...<sup>469</sup>

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<sup>466</sup> Women's groups and community consultation, Adelaide, 14 June 2002.

<sup>467</sup> UNICEF *Why Make a Special Case for Children?* [www.unicef.org/crc/specialcase.htm](http://www.unicef.org/crc/specialcase.htm).

<sup>468</sup> Articles 5 and 18 *Convention on the Rights of the Child* GA Res 44/25 (1989).

<sup>469</sup> Preamble *Convention on the Elimination of All Forms of Discrimination Against Women* GA Res 180 (XXXIV 1970), 19 ILM 33 (1980).

The importance of motherhood and children was supported in submissions. One individual noted that "... a society without children has devastating long term consequences for us all".<sup>470</sup> The New South Wales Working Women's Centre also submitted that:

... children should be understood as a social asset as well an individual choice. In order to achieve a socially sustainable business community, Australia must recognise the economic and social importance of women's role as the bearers of children as well as active members of the labour market.<sup>471</sup>

An individual drew attention to the community wide benefit of children, and that this meant all in society should share in the costs of supporting children.

People who do not want to fund paid maternity leave because they do not intend to have children should be aware that they are depending on others to provide the next generation of workers and taxpayers to support them beyond their working years.<sup>472</sup>

Many submissions highlighted the importance of women continuing to reproduce society and argued that this role is currently undervalued in society. This view was held particularly strongly by unions and women's organisations.<sup>473</sup> For example, the Women's Action Alliance considered that:

[w]omen taking time out [of the workforce] to care for their young children are not applauded in any quarter. This career change is not seen as "work" and remains invisible to the public eye and in Government documents.<sup>474</sup>

The Equal Opportunity Commission Victoria also considered that "... whilst children and the role of parenting may be highly valued in society at an emotional level, we have stalled when it comes to recognising this financially".<sup>475</sup>

Another individual considered that paid maternity leave was an investment by the community in families.

[Paid maternity leave] will just make the whole experience less traumatic. If society as a whole is comfortable with that then society as a whole needs to work out a way to finance it. I don't think in the long run it's as expensive as things like people getting divorced. I think it would be a really good thing. It's an investment in families in helping them through a great time of expense.<sup>476</sup>

HREOC agrees with those submissions that argued that a maternity leave payment acknowledges the social and economic benefits that society gains through women bearing children.<sup>477</sup> A government funded paid maternity leave scheme would, as Immigrant Women's Speakout pointed out, be "... the mark of a society that cares for mothers and children".<sup>478</sup>

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<sup>470</sup> Rosemary Freney, Submission 80, p1; See also, for example, Shop, Distributive and Allied Employees' Association, Submission 173, p12.

<sup>471</sup> New South Wales Working Women's Centre, Submission 225 p10; See also Australian Federation of University Women Inc., Submission 202, p1.

<sup>472</sup> Karen Bijkersma, Submission 150, p2.

<sup>473</sup> See, for example, Association of Independent Schools of Victoria, Submission 108, p4; Australian Services Union MEU Private Sector Victorian Branch, Submission 154, p1; Isobel Gawler, Submission 235, p1; Kate Purcell and Tim O'Reilly, Submission 20, p1; Mothers of In(ter)vention, Submission 104, p3-4; Queensland Council of Unions, Submission 239, p8; Women's Policy Research Unit, School of Social Work, University of Melbourne, Submission 48, p3; YWCA of Australia, Submission 228, p15. Also raised at women's groups and community consultation, Hobart, 25 June 2002.

<sup>474</sup> Women's Action Alliance (Australia) Inc., Submission 146, p3.

<sup>475</sup> Equal Opportunity Commission Victoria, Submission 240, p2.

<sup>476</sup> HREOC Interview 17, 12 September 2002.

<sup>477</sup> See, for example, Marty Grace, Submission 151, p2; Rosemary Freney, Submission 80, p1; Work + Family Research Group University of Sydney, Submission 251, p6; Karen Bijkersma, Submission 150, p1; South Australian Equal Opportunity Commissioner, Submission 71, p2; Women's Action Alliance (Australia) Inc., Submission 146, p5. Also raised at women's groups and community consultation, Canberra, 8 July 2002.

<sup>478</sup> Immigrant Women's Speakout Association New South Wales Inc., Submission 158, p12. See also discussion at 11.3.2 and 14.4.3.



## 9.3 Valuing the dual role of women in society

Today women are an invaluable part of the Australian labour force. If available to women in the workforce, paid maternity leave provides the social recognition that many women perform a dual role, as employees and mothers. That this dual role is currently undervalued was highlighted in a number of the submissions. For example, the Women's Economic Think Tank commented that:

... the lack of any specific payments for the many women who take time off their paid jobs to have children, exacerbates the perception that such decisions are not recognised as legitimate and valued ... this adds to the belief that combining roles is not supported.<sup>479</sup>

Many submissions considered that paid maternity leave can provide this recognition. A group of academics submitted that:

[p]aid maternity leave would be the only payment [made by government to benefit Australian families] which recognises the dual responsibilities of baby and infant care and employment attachment.<sup>480</sup>

The Australian Industry Group considered that paid maternity leave would "... demonstrate that the dual roles of working women as mothers and employees is recognised and valued".<sup>481</sup>

Not only did submissions regard paid maternity leave as social recognition of this dual role, a number of submissions considered that paid maternity leave would assist women practically to combine work and family responsibilities. For further discussion of the ability of paid maternity leave to facilitate combining work and family responsibilities see 7.5.

HREOC considers that the absence of a nationally mandated system of paid maternity leave suggests that the decision to have a child in Australia is predicated upon choosing between having a child and having a paying job. The introduction of paid maternity leave would recognise that society benefits from women's workforce participation and also from their role as bearers of children.

## 9.4 Cultural change in the workplace

Offering paid maternity leave as a workplace entitlement may encourage a change in workplace culture. Workforce structures and cultures need to change to accommodate the different lives of women. This would promote equality and remove systemic discrimination, to the benefit of women, their families and society. For example, the Australian Capital Territory Ministerial Advisory Council on Women suggested that we need:

... a cultural shift that recognizes that attention to the psychological and social needs of children is essential to the health of society, that young children cannot be squeezed into the spare moments available at the end of the day, and that children can benefit greatly from active involvement with their parent/s and other significant adults. We need to acknowledge the social and economic costs that may result for children whose caring needs are not met, while continuing to recognize the benefits to society of women in the workforce. Therefore, we need to structure work arrangements, which encourage and enable all parents to devote appropriate time and attention to children when they need it.<sup>482</sup>

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<sup>479</sup> Women's Economic Think Tank, Submission 125, p3. Also raised at women's groups and community consultation, Perth, 20 June 2002.

<sup>480</sup> Work + Family Research Group University of Sydney, Submission 251, p7.

<sup>481</sup> Australian Industry Group, Submission 121, p13. See also Women's Economic Think Tank, Submission 125, p8; Australian Education Union, Submission 122, p12; Immigrant Women's Speakout Association New South Wales Inc., Submission 158, p12.

<sup>482</sup> Australian Capital Territory Ministerial Advisory Council on Women, Submission 120, p4. Also raised at women's groups and community consultation, Brisbane, 24 May 2002.

There is some anecdotal evidence that resentment exists among male employees who do not have access to paid maternity leave.<sup>483</sup> In particular, some women working in male dominated industries stated that they avoid taking paid maternity leave entitlements because of this resentment.

In recognising that women perform a dual role in the paid workforce and as the bearers and primary carers of children, paid maternity leave is an important step in changing workplace culture. This was acknowledged in a number of submissions, for example, the submission from the CSIRO Staff Association pointed out that:

[i]n an industry where time off work had been deemed to show lack of commitment to science, women on paid maternity leave came to be accepted as still serious about their work.<sup>484</sup>

At a consultation with women's groups and community in Brisbane, the point was made that "[p]aid maternity leave legitimises the right of women to move in and out of the workforce. It keeps their careers on track."<sup>485</sup>

The experience of workplaces that have introduced paid maternity leave supported this. For example, the New South Wales EEO Practitioners' Association cited AMP as expressing the view that:

... introducing 6 weeks paid parental leave for men and women simultaneously has had a significant impact on our culture over time. It signalled serious support (prepared to pay for it) and said men as well as women want to create a balance.<sup>486</sup>

Very few submissions disagreed that paid maternity leave would lead to workplace change. Those that did however felt that paid maternity leave may actually create a culture which is detrimental to the development of family friendly workplaces. The Australian Family Association argued that "[a]n 'officially' recognised short absence from work may erroneously promote a perception that having a child represents no more than a brief interruption in a career".<sup>487</sup>

HREOC considers that a government funded paid maternity leave scheme would provide a strong signal to employers, workplaces and the community that supporting parents to balance work and family is an important issue that requires action. This may influence workplace cultures to strengthen the acceptance by employers that employees should be supported in balancing work and family. It may also mean that more women access existing family supports and maternity leave entitlements.

## 9.5 Fertility

### 9.5.1 Introduction

The ability of paid maternity leave to affect fertility rates has become a focus of the public debate that followed the launch of the interim paper. HREOC is concerned about the fertility rate to the extent that it reflects the difficulties women and their partners face in managing family responsibilities under current social and employment structures.

### 9.5.2 Current trends in fertility

Like much of the developed world, Australia's declining Total Fertility Rate of 1.73 births per woman in 2002<sup>488</sup> has a range of implications for Australian society. It is projected that fertility rates in advanced industrialised countries, including Australia, will continue falling.<sup>489</sup>

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<sup>483</sup> See, for example, union consultation, Adelaide, 1 July 2002; women's groups and community consultation, Perth, 20 June 2002.

<sup>484</sup> CSIRO Staff Association, Submission 226, p6.

<sup>485</sup> Women's groups and community consultation, Brisbane, 24 May 2002.

<sup>486</sup> New South Wales EEO Practitioners' Association, Submission 77, p7. See also CSIRO Staff Association, Submission 226, p5; YWCA of Australia, Submission 228, p11.

<sup>487</sup> Australian Family Association, Submission 114, p3.

<sup>488</sup> ABS 3301.0 *Births Australia* 2001, p6.

Current estimates are that 24 per cent of Australian women now in their childbearing years will not have a baby.<sup>490</sup> Based on data from the Australian Bureau of Statistics,<sup>491</sup> the National Pay Equity Coalition extrapolated that by the year 2016 "couples without children will outnumber couples with children",<sup>492</sup> and that the average age of first time mothers will be 31.2 years by 2008.<sup>493</sup>

Submissions acknowledged that in Australia, as in other industrialised countries, current fertility rates continue to decline as women give birth to fewer children and at later stages in life.<sup>494</sup> As the South Australia Liberal Women's Council noted, "... children are increasingly seen as a non-option by young Australian women".<sup>495</sup>

HREOC's interim paper argued that the declining birth rate is in part a result of the financial, professional and social disadvantage encountered by families.<sup>496</sup> This was a view strongly reflected in the submissions. One submission outlined factors it considered had led to the decline in the fertility rate.

[A]lthough some of this drop is due to a rise in physical fertility problems, much of it is due to irreconcilable economic and social pressures on young women to earn an income in preference to having children or because women who have deferred having a child until they are financially secure then find that it is too late physically.<sup>497</sup>

The Ethnic Communities' Council of Victoria considered that "[t]he declining birthrate reflects both the economic difficulties confronting women in their childbearing years and the lack of support in our social structures for childbearing and childrearing."<sup>498</sup>

Personal anecdotes in submissions supported this view, highlighting that the decision to have a child is a difficult one for many women to make. One individual explained that "I would really like to have a child, but it is really tricky to finance ... I have been saving money and holidays for ages ... it remains a mystery to me how people can afford to have a second child".<sup>499</sup>

The interim paper also identified delayed family formation as a consequence of extended periods of education and training, which often last until young people are well into their twenties.<sup>500</sup> Again, this was reflected in some of the submissions received.<sup>501</sup>

### 9.5.3 The effects of declining fertility

Submissions from unions, employers and individuals argued that today's declining fertility rate is of national concern, and one that needs urgently to be addressed.<sup>502</sup>

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<sup>489</sup> Francis G Castles "The world turned upside down: Below replacement fertility, changing preferences and family friendly public policy in 21 OECD countries" *unpublished paper* 2002 (forthcoming (2003) 13 *Journal of European Social Policy*), p67.

<sup>490</sup> ABS 3301.0 *Births Australia* 2000, p6.

<sup>491</sup> ABS 4102.0 *Australian Social Trends* 2002, pp37-40.

<sup>492</sup> National Pay Equity Coalition, Submission 224, p6.

<sup>493</sup> National Pay Equity Coalition, Submission 224, p6.

<sup>494</sup> For a further discussion of current trends in fertility see Human Rights and Equal Opportunity Commission *Valuing Parenthood: Options for paid maternity leave, interim paper 2002* HREOC Sydney 2002, p61.

<sup>495</sup> Women's Council, Liberal Party of Australia (South Australia), Submission 100, p2.

<sup>496</sup> See Human Rights and Equal Opportunity Commission *Valuing Parenthood: Options for paid maternity leave, interim paper 2002* HREOC Sydney 2002, p61.

<sup>497</sup> Sandra Wills, Submission 29, p1.

<sup>498</sup> Ethnic Communities' Council of Victoria, Submission 242, p3.

<sup>499</sup> Confidential, Submission 181, p1. See also C Harvey, Submission 238, p1; 6.3.

<sup>500</sup> See Human Rights and Equal Opportunity Commission *Valuing Parenthood: Options for paid maternity leave, interim paper 2002* HREOC Sydney 2002, p61. See also 2.4.3.

<sup>501</sup> See, for example, CSIRO Staff Association, Submission 226, p8; Law Institute of Victoria, Submission 215, p2.

<sup>502</sup> See, for example, Aboriginal and Torres Strait Islander Commission, Submission 116E, p1; Australian Council of Trade Unions, Submission 208, p12; Coles Myer Ltd, Submission 107, p9; Paul Russell, Submission 184 p1; Recruitment and Consulting Services Association, Submission 220, p2; R and N Cornhill, Submission 131, p5; Queensland Nurses' Union, Submission 134, p2.

The implications of declining fertility for Australia's long term national sustainability were identified in a number of submissions. One concern was the serious social and economic problems caused when this declining rate is combined with a rapidly ageing population.<sup>503</sup> As one individual noted, "[we are n]ot even replacing ourselves ... Australia will have a problem in some 20 years funding the retirement of all the baby boomers if the population does not grow".<sup>504</sup>

A related concern was the resulting decline in the growth in Australia's labour force.<sup>505</sup> The Australian Industry Group argued that:

... labour supply growth is expected to continue to decrease in Australia and ... this will act to constrain economic growth outcomes shaving another 0.25% or more off annual GDP [Gross Domestic Product] growth rates by the end of the decade.<sup>506</sup>

A number of submissions also expressed concern that a declining fertility rate would have a negative impact on industry<sup>507</sup> and lead to a reduced base of young people to pay taxes and support the social welfare system.<sup>508</sup> The Victorian Government submission, for example, argued that "... the declining birth rate and the aging of our population ... will over time lead to increased pressure on government services and therefore the tax base."<sup>509</sup>

#### 9.5.4 Paid maternity leave and the fertility rate

The level of fertility in any community exists within and reflects a social and economic context. It is affected by a range of factors. Just as no single policy measure could be expected to control economic growth, so too, no single policy measure will increase Australia's fertility rate to replacement level.

That is not to say, however, that the actions of Governments cannot and do not affect the family formation decisions of their citizens.<sup>510</sup> In this context, paid maternity leave can be expected to make a contribution to Australia's fertility by making it easier for families who have decided to have a child to do so. By providing financial assistance and support to families, paid maternity leave goes some way to addressing financial restrictions that discourage family formation. This was argued in a number of submissions, in particular from individuals. For example, Victorian Women Lawyers suggested that "... financial assistance can mean the potential parents who want to have a child are then able to act on that decision as the financial barrier to having a child is reduced".<sup>511</sup> Similarly, Coles Myer argued that paid maternity leave:

... may enable women to elect to commence a family earlier than they are currently doing as they will not have to save up to compensate for the loss of income to the extent of the value of the payment.<sup>512</sup>

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<sup>503</sup> See, for example, South Australian Equal Opportunity Commissioner, Submission 71, p2.

<sup>504</sup> Guy Witcomb, Submission 5, p1.

<sup>505</sup> See, for example, Coles Myer Ltd, Submission 107, p9.

<sup>506</sup> Australian Industry Group, Submission 121, p12 citing the Australian Industry Group *How Fast Can Australia Grow? Mark II* Australian Industry Group Discussion Paper December 2000, p8.

<sup>507</sup> See, for example, Motor Trade Association of South Australia Inc., Submission 142, p2; Victorian Automobile Chamber of Commerce, letter accompanying Submission 112, p1.

<sup>508</sup> Festival of Light, Submission 102, p1.

<sup>509</sup> Victorian Government, Submission 250, p1.

<sup>510</sup> See, for example, Peter McDonald "Work-family policies are the right approach to the prevention of low fertility" (2001) 9 (3) *People and Place* 17-27 at 24-26, which argues that family policy can make a difference to family formation and fertility.

<sup>511</sup> Victorian Women Lawyers, Submission 137, p6.

<sup>512</sup> Coles Myer Ltd, Submission 107, p9. See also Eleanor Wilson, Submission 133 p3; Law Institute of Victoria, Submission 215 p2; Public Service Association of South Australia Inc., Submission 198, p1.

The Women's Electoral Lobby suggested that paid maternity leave would "... assist women already planning to have children to have a first child earlier, increasing the possibility of having a second child".<sup>513</sup> This was affirmed by an individual who wrote that:

[e]ven when a woman manages to have children and return to the workforce, the lack of paid maternity leave is a huge disincentive to have another child. Like me, she has probably delayed having the first child until well into her thirties and will need several years to recover financially from the experience before considering another, at which point her fertility, her own health and the baby's health would be at considerable risk. Without paid maternity leave having one child is extremely difficult ... having more than one is well nigh impossible!<sup>514</sup>

The CSIRO Staff Association observed that:

[d]ecisions about when to start a family and how many children a woman will have are very personal and not usually made by CSIRO employees primarily on the basis of availability or length of paid maternity leave. However, the availability of paid maternity leave has influenced these choices and made it easier to proceed with a family when the decision is made.<sup>515</sup>

A recent study assessing family friendly public policy in 21 OECD countries concluded there were so many factors affecting fertility that any linkages between fertility change and any one of these factors were likely to be weak.<sup>516</sup> The author, Francis Castles, identified a number of factors that appear to affect fertility. These include women's changing work and family preferences, changes to women's education levels, broader social and cultural changes and the different family friendly public policy schemes introduced across countries, of which paid maternity leave may be only one.<sup>517</sup> While Castles did not conclude that paid maternity leave had an effect on fertility rates, it was always present in those countries which had, at some point, successfully arrested declining fertility rates.

As decisions about family formation are complex and affected by a number of factors, a period of paid maternity leave alone will not repair Australia's falling fertility rate.<sup>518</sup> Paid maternity leave would need to be part of a suite of family friendly workplace policies if it is to assist families to combine work and family and remove some of the barriers to the decision to have a child.<sup>519</sup> This was acknowledged in a number of submissions. The Council for Equal Opportunity in Employment, for example, argued that:

... introducing [paid maternity leave] along with a range of other programs promoting work/family/ life flexibilities would provide a platform on which to build an increase in the birth rate over time.

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<sup>513</sup> Women's Electoral Lobby, Submission 248, p17.

<sup>514</sup> Karen Bijkersma, Submission 150, p1. See also, for example, Susan Tucker, Submission 187, p1; Australian Federation of University Women (South Australia) Inc., Submission 179, p2; Belinda Fischer, Submission 246, p1; BPW Adelaide East, Submission 178B, p1: "[paid maternity leave] will encourage population growth within a statistically well educated and/or high work value population which traditionally has a lower birth rate than a socially more dependant population"; C Harvey, Submission 238, p1; Confidential, Submission 181, p1; Graham Evans, Submission 15, p1; Jill Johnson, Submission 62, p1; John Patterson, Submission 21, p1; Martje McKenzie, Submission 9, p1; National Pay Equity Coalition, Submission 224, p9: "[p]aid maternity leave is likely to improve the prospects of some women and families being able to have a second child"; National Women's Council of South Australia, Submission 68, p1; New South Wales Public Service Association, Submission 110, p4.

<sup>515</sup> CSIRO Staff Association, Submission 226, p8. See also Melissa Austin, Submission 149, p9.

<sup>516</sup> Francis G Castles "The world turned upside down: Below replacement fertility, changing preferences and family friendly public policy in 21 OECD countries" *unpublished paper 2002* (forthcoming (2003) 13 *Journal of European Social Policy*), p25.

<sup>517</sup> Francis G Castles "The world turned upside down: Below replacement fertility, changing preferences and family friendly public policy in 21 OECD countries" *unpublished paper 2002* (forthcoming (2003) 13 *Journal of European Social Policy*), pp32-33.

<sup>518</sup> See, for example, Victorian Women Lawyers, Submission 137, p6; Council of Small Business Organisations of Australia Ltd, Submission 117, p1; Motor Traders' Association of New South Wales, Submission 141, p5; Motor Trade Association of South Australia Inc., Submission 142, p1; Melissa Austin, Submission 149, p9. This issue was also raised at the employers consultation, Melbourne, 30 May 2002.

<sup>519</sup> See 11.2 for further discussion on the need for a suite of measures.

Such programs were seen as strategically important in providing incentives for workers with family responsibilities, both for children and aging family members, to remain actively engaged in employment and contributing to the economy.<sup>520</sup>

While the majority of submissions acknowledged the declining fertility rate as a national concern, and some that paid maternity leave may assist in reversing this trend, a number of other submissions argued that the provision of paid maternity leave was unlikely to reverse Australia's declining fertility rate.

I am not confident that paid maternity leave will address the reduced fertility ... [HREOC's] interim paper states that "the lowest fertility levels are recorded amongst women with higher attachment to the labour force, higher income and greater educational attainment". I would assert that these are the women who don't need paid maternity leave because they either can afford to fund themselves or have chosen not to have children.<sup>521</sup>

A number of submissions discussed the need to look beyond paid maternity leave and family friendly policies to the broader range of government policies and options available if the declining fertility rate is to be addressed.<sup>522</sup>

## 9.6 Conclusion

This paper has argued that paid maternity leave contributes to the health and wellbeing of mothers and babies, and addresses in part the disadvantage and inequality that women experience in the workplace as a result of their role in childbirth.

In addition to these benefits that relate directly to individual women, HREOC also considers that a national paid maternity leave scheme would provide a range of social benefits to the community. Paid maternity leave would acknowledge the benefit to the community of maternity and children. It would also recognise the dual role that many women take on as the bearers and carers of children as well as being active participants in the labour force.

While HREOC considers that addressing the declining fertility rate is not a primary objective of a paid maternity leave scheme, the issue of fertility rates is an important element in this discussion. It indicates that even those Australian women and their partners who would like to have children are having difficulty in successfully integrating their need for economic security and career development with their desire for a family.

While much of the decline in fertility may be the result of factors beyond the influence of Governments, clearly there is still a role for Government to support families wanting children, and to remove barriers to this decision where possible. In particular, the declining fertility rate suggests that public policy to date has insufficiently recognised and supported the choices young women and their families wish to make. Australia's falling fertility rate signals that a range of measures need to be introduced to allow women to combine work and family as they decide. Paid maternity leave is one such measure.

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<sup>520</sup> Council for Equal Opportunity in Employment Ltd, Submission 252, p2. See, for example, Susan Tucker, Submission 187, p2; Australian Council of Trade Unions, Submission 208, p12; Australian Institute of Family Studies, Submission 113, pp3-4; Australian Nursing Federation, Submission 123, p12; Coles Myer Ltd, Submission 107, p6; Confidential, Submission 14, p2; National Pay Equity Coalition, Submission 224, p9; Paul Russell, Submission 184, p1; Penny Stewart, Submission 31, p1; Printing Industries Association, Submission 172, p8; South Australian Equal Opportunity Commissioner, Submission 71, p2; Women's Council, Liberal Party of Australia (South Australia), Submission 100, p2.

<sup>521</sup> National Women's Council of South Australia, Submission 128B, p2. See also Victorian Automobile Chamber of Commerce, Submission 112, p7; Motor Traders' Association of New South Wales, Submission 141, p2; Susan Tucker, Submission 187, p7; Confidential, Submission 168, p3; Australian Business Industrial, Submission 119, p6.

<sup>522</sup> For example, the Australian Mines and Metals Association suggested that immigration policy should be included in any consideration of means addressing the ageing of the population: Australian Mines and Metals Association, Submission 130, p2. The International Adoptive Parents Association considered that "... adoption should be encouraged as a way of forming families": International Adoptive Parents Association, Submission 145, p2.

# 10. Benefits to employers and the economy

## 10.1 Introduction

To the extent that paid maternity leave would enable women who decided to do so to maintain their labour force attachment,<sup>523</sup> economic benefits would flow to employers and society as a whole. These benefits include the retention of a skilled and experienced workforce and the maintenance of an acceptable dependency ratio to support an ageing population. This Chapter considers the benefits of paid maternity leave to individual employers, specific industries and the broader economy.

## 10.2 Benefits to individual employers

Providing paid maternity leave is one of the means adopted by best practice employers to accommodate employees' work and family responsibilities. Individual employers provide paid maternity leave because of the benefits they gain in doing so. For some employers, there is a strong business case argument for providing paid maternity leave.<sup>524</sup> This includes being recognised as an employer of choice, and being more able to attract and retain skilled staff in a competitive labour market.<sup>525</sup>

If a female employee leaves the workplace permanently after giving birth, she takes with her valuable knowledge, skills and experience. This loss is considerable in a country where women make up almost half of the labour force.<sup>526</sup> In addition, since the age at which women in Australia most commonly give birth today is between 30-34 years,<sup>527</sup> many women are leaving workplaces with at least ten years experience and expertise.

By increasing the labour force attachment of women with children, paid maternity leave benefits employers by reducing staff turnover costs. These costs include the direct costs of recruitment and retraining new staff as well as loss of productivity.<sup>528</sup>

As the Public Service Association of South Australia noted:

[i]n most situations, there are advantages for both employers and workers to form and maintain a continuing long term attachment, in order to defend their investments in firm specific training. There is invariably some specific skill acquisition associated with a job, even if the training appears general. In these cases, measures which encourage ongoing employment relationships will be consistent with the financial objectives of the firm ...<sup>529</sup>

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<sup>523</sup> See 6.7 for further discussion.

<sup>524</sup> The business case argument outlining why individual employers should provide paid maternity leave is not included in this paper as an employer funded scheme of paid maternity leave is not a recommended proposal. For a full discussion on the business case for paid maternity leave however, see Human Rights and Equal Opportunity Commission *Valuing Parenthood: Options for paid maternity leave, interim paper 2002* HREOC Sydney 2002, pp56-57.

<sup>525</sup> Kerry Brown and Rachel Wynd "Australian employers' motivations for providing paid maternity leave" in Di Kelly (ed) *Crossing Borders: Employment, work markets and social justice across time, discipline and place* Papers from the Association of Industrial Relations Academics of Australia and New Zealand Conference 2001 AIRAANZ Wollongong 2001 volume 1, pp357-363 at p362.

<sup>526</sup> Women make up 44 per cent of the overall labour force according to ABS 6203.0 *Labour Force Australia* August 2001, 26. See also the discussion in New South Wales Labor Council, Submission 218, p5.

<sup>527</sup> ABS 3301.0 *Births Australia* 2000, 16. The median age for first births for women is now 30 years: ABS *Births Australia* 2001, p6.

<sup>528</sup> See, for example, Karen Bijkersma, Submission 150, p1.

<sup>529</sup> Public Service Association of South Australia Inc., Submission 198, p2.

A number of submissions attempted to estimate the cost of losing an employee. For example, the Victorian Women Lawyers asserted that on 1998 estimates "[the] cost of replacing a fourth year lawyer ranged from \$61,400 for a small firm, \$71,600 for a medium firm to \$145,000 for a large firm".<sup>530</sup>

A number of submissions also argued that the cost of these losses was greater than the cost of providing paid maternity leave. The National Pay Equity Coalition pointed out that "[t]he cost of losing an employee can be around a year's salary while paid maternity leave of 14 weeks costs just over a quarter of a year's pay (26.9%)".<sup>531</sup>

Some submissions considered that reducing financial pressure on women to remain in employment as close to the birth as possible and to return to work before they had physically recovered from giving birth would also have benefits for business. At the consultation held with employers in Adelaide, concern was expressed that "[e]conomically, often families can't afford not to have the woman working right up to the birth and this is a health risk".<sup>532</sup> Some of the employers present believed that there was a strong occupational health and safety argument for offering paid maternity leave.<sup>533</sup> As one employer put it "[p]aid maternity leave would help, because women can leave [the workplace] when they need to".<sup>534</sup>

The Australian Manufacturing Workers' Union Vehicle Division confirmed these health concerns for some women from an employee's perspective.

Production work is physically demanding and often dangerous. Anecdotal evidence suggests that the majority of mothers need to leave work earlier and return later in comparison to white collar workers. But, the lower wages of production workers also mean that most mothers in our industry are forced to return to work earlier than they would like. The six week paid maternity leave [current industry standard] is inadequate and undermines family/work balance and also the health of the worker. For these reasons the AMWU [Australian Manufacturing Workers' Union] Vehicle Division strongly advocates a minimum of 14 weeks paid maternity leave.<sup>535</sup>

The Australian Retailers' Association considered that:

... any scheme designed to ensure optimum health of mothers and their infants and to support families at this important time of their lives will have a benefit to employers by ensuring that women have had sufficient opportunity to recover from the birth and are better prepared for their return to work.<sup>536</sup>

A further benefit of paid maternity leave for employers was noted in the submission received from the Law Institute of Victoria. They suggested that increased sick leave may be used by employees who return to work too early after giving birth due to financial pressures.<sup>537</sup> A period of paid maternity leave would allow women time to recover from childbirth, without having to return to work due to these pressures. This potentially reduces this use of sick leave and the related cost for employers.

However, not all employers recognise the business case for paid maternity leave and for others, particularly small business and those on narrow profit margins, paid maternity leave may not be sufficiently affordable to justify the benefits. As a result, our current system of employer provided paid maternity leave means that many women in low paid jobs, or those employed in small businesses miss out on paid maternity leave.<sup>538</sup>

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<sup>530</sup> Victorian Women Lawyers, Submission 137, p6.

<sup>531</sup> National Pay Equity Coalition, Submission 224, p15.

<sup>532</sup> Employers consultation, Adelaide, 13 June 2002.

<sup>533</sup> See Chapter 5 for a general discussion of the health and wellbeing objectives of paid maternity leave.

<sup>534</sup> Employers consultation, Adelaide, 13 June 2002.

<sup>535</sup> Australian Manufacturing Workers' Union Vehicle Division Statement in Australian Manufacturing Workers' Union, Submission 237, pp18-19.

<sup>536</sup> Australian Retailers Association, Submission 165, p16.

<sup>537</sup> Law Institute of Victoria, Submission 215, p2.

<sup>538</sup> See Human Rights and Equal Opportunity Commission *Valuing Parenthood: Options for paid maternity leave, interim paper 2002* HREOC Sydney 2002, pp18-23. See also 3.3 on existing maternity leave arrangements.



A government funded scheme of paid maternity leave could go some way towards addressing these issues of workplace equity by extending paid maternity leave more evenly across the labour force.<sup>539</sup>

A number of submissions considered that a government funded paid maternity leave scheme, independent of any employer funded paid maternity leave, may continue to benefit employers.<sup>540</sup> In addition, a government funded national paid maternity leave scheme could be structured in such a way as to allow or encourage individual employers to provide a top up.<sup>541</sup> For example, employers may be able to provide a top up on a government funded scheme by extending the government payment to full income replacement levels. Alternatively they may extend the number of weeks for which it is paid, or provide other measures during the initial period of leave.<sup>542</sup> This would enable them to retain the benefits of being an employer of choice.

A government funded scheme of paid maternity leave may also benefit employers by enabling them to focus on other family friendly provisions. As noted in a majority of submissions, while paid maternity leave may provide an incentive for women to return to their employers, it remains a limited incentive if not implemented as part of a suite of family friendly measures.

### 10.3 Benefits to specific industries

A number of industry specific submissions highlighted the specific need for, and benefits of, paid maternity leave to their industry.

According to the Law Institute of Victoria for example, paid maternity leave will facilitate the retention within the legal profession of highly trained female lawyers.<sup>543</sup> Studies suggest that this is important for the legal profession as they fail to retain women beyond their fifth year of practice. This was reinforced in the Victorian Women Lawyer's recent report, *Flexible Partnership – Making it work in law firms*.

[The introduction of flexible work practices including paid maternity leave] resulted in almost irreplaceable knowledge, experience and client relationships being kept within the firm while simultaneously fostering a strong sense of loyalty and motivation among those staff members ... [This meant a reduction in] the cost to the firm of replacing the lawyer, the loss of investment ... and the cost to other practitioners in having to cover for their departed colleague.<sup>544</sup>

Female dominated industries suffering critical staff shortages also identified the provision of paid maternity leave as beneficial in assisting them to attract and retain female staff.

The Education Industry is suffering from a worldwide shortage of teachers. Retention and recruitment of teachers to the profession is becoming increasingly difficult in the present economic environment ... schemes such as paid maternity leave which enhance workers entitlements can only benefit an industry which is predominantly female.<sup>545</sup>

Paid maternity leave was also noted as useful in assisting with the attraction and retention of skilled nurses.<sup>546</sup>

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<sup>539</sup> See 7.4.

<sup>540</sup> See Chapter 7 for further discussion on how paid maternity leave can address the workplace disadvantage experienced by women.

<sup>541</sup> See 19.4.

<sup>542</sup> See 19.4.

<sup>543</sup> Law Institute of Victoria, Submission 215, p2.

<sup>544</sup> Cited in Victorian Women Lawyers, Submission 137, pp5-6.

<sup>545</sup> Australian Education Union, Submission 122, p29.

<sup>546</sup> See, for example, the Queensland Nurses' Union, Submission 134, p6; Australian Nursing Federation, Submission 123, p6. Also raised at union consultation, Darwin, 7 June 2002.

## 10.4 Economic benefits to the broader economy

### 10.4.1 Introduction

It was commonly argued in the submissions that paid maternity leave benefits individual employers and contributes to sustaining a dynamic, prosperous economy.<sup>547</sup> In fact, very few submissions argued that paid maternity leave would not contribute to Australia's economy.<sup>548</sup>

Submissions pointed out that benefits may flow from employers to the broader economy, and back again.

Society gains the benefit of a productive member of the workforce rather than just the employer for whom the woman works ... Benefits may flow to the immediate employers at the time that the carer of the child returns to work, but benefits also flow to future employers ...<sup>549</sup>

The National Pay Equity Coalition argued that paid maternity leave:

... will yield benefits to the overall economy. The overall greater use of the economic resources of the country – including women's labour – will produce greater economic activity relative to social and economic infrastructure. Households with two incomes produce more for the same investment in transport, housing, services etc. Higher household incomes drive increased consumption providing markets for more household and other services, including childcare. Higher household incomes produce increased capacity to pay tax.<sup>550</sup>

### 10.4.2 Maintaining a high quality and competitive labour force

Many of the benefits of paid maternity leave to the individual employer stem from the ability of such leave to assist women's labour force attachment. A number of submissions identified the shared economic benefits of the continued labour force participation of women following childbirth.<sup>551</sup> For example, the Australian Council of Trade Unions submitted that "[w]omen's employment and the retention of skills will contribute to economic growth, productivity and improved living standards".<sup>552</sup>

If Australia is to continue to develop and maintain an internationally competitive workforce, it must ensure that women are not discouraged from maintaining workforce attachment. This was recognised in a number of submissions. The Council for Equal Opportunity in Employment for example, pointed out that:

... the entire potential labour pool, including women and men with young children have skills and abilities which are needed by Australia in an increasingly competitive global market.<sup>553</sup>

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<sup>547</sup> See, for example, Association of Independent Schools of Victoria, Submission 108, p3; Centre for Applied Social Research, RMIT University, Submission 234, p8; New South Wales Public Service Association, Submission 110 p4; Victorian Government, Submission 250, p8; Australian Education Union, Submission 122, p4, p29.

<sup>548</sup> See, for example, National Women's Council of South Australia, Submission 128B, p2.

<sup>549</sup> Association of Independent Schools of Victoria, Submission 108, pp3-4. See also New South Wales Public Service Association, Submission 110, p4; Victorian Government, Submission 250, p8; Australian Education Union, Submission 122, p4; Australian Education Union, Submission 122, p29. Also raised at employers consultation, Perth, 20 June 2002.

<sup>550</sup> National Pay Equity Coalition, Submission 224, p9.

<sup>551</sup> See, for example, the Australian Federation of University Women (Inc.), Submission 202, p2. See also 6.7 for a discussion on the benefits of labour force attachment for women.

<sup>552</sup> Australian Council of Trade Unions, Submission 208, p8.

<sup>553</sup> Council for Equal Opportunity in Employment Ltd, Submission 252, p2; see also Aboriginal and Torres Strait Islander Commission, Submission 116E, p1.

The Victorian Government pointed out that women participate in the labour market for a variety of reasons, "... and the Australian economy, if it is to be internationally competitive, needs well educated, well trained, skilled and experienced women in the workforce. The commercial success of many companies is inextricably linked to the recruitment and retention of well trained women."<sup>554</sup>

Many submissions considered that paid maternity leave contributes to the maintenance of a high quality labour force. The Australian Nursing Federation submitted that:

[p]aid maternity leave will facilitate the opportunities for women to remain in the workforce and in so doing, will promote the retention of skills, experience and expertise within the workforce.<sup>555</sup>

At the consultation with union representatives in Perth, participants highlighted a trend for some highly skilled women to return to the workforce after childbirth into casual, low skilled work.<sup>556</sup> A number of submissions acknowledged the role of paid maternity leave in dealing with this issue.

[Paid maternity leave ensures] a skilled workforce as women can return to their jobs at the end of their maternity leave rather than having to take up casual work until they can find suitable permanent work ...<sup>557</sup>

### 10.4.3 Attracting skilled labour

Not only is it increasingly important for Australia to maintain its best possible labour force, but countries also compete to attract skilled workers. With high levels of education, training, work experience and mobility young men and women are an increasingly valuable commodity.

Failing to provide paid maternity leave affects Australia's ability to attract overseas employees and to retain its own young skilled population. Anecdotal evidence from the submissions supports this.

I arrived as a permanent resident visa holder in Australia eight years ago from the Netherlands, where I was educated and gained work experience in several European countries ... when people ask me why I have never become an Australian citizen, I have pointed out in the past that as a woman my social support, education and employability overseas would be at risk if I did. Even more vividly so now we are contemplating a second child my family and I would be better off if we moved back to Europe. I could continue to work, receive paid maternity leave entitlements and earn a higher wage. Like myself, other higher skilled employed permanent resident women will most likely take this option into account.<sup>558</sup>

### 10.4.4 Maximising the return on education and training

Australia's investment in women's skill formation is significant.<sup>559</sup> During 2000, \$4.16 billion was invested in public vocational education and training.<sup>560</sup> In 2000, women made up almost half (49.2 per cent) of the 1.75 million students in the public Vocational Education and Training sector<sup>561</sup> and 57.9 per cent of all bachelor degree commencements.<sup>562</sup>

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<sup>554</sup> Victorian Government, Submission 250, p7.

<sup>555</sup> Australian Nursing Federation, Submission 123, p6. Also raised at employers consultation, Canberra, 17 June 2002.

<sup>556</sup> Union consultation, Perth, 21 June 2002.

<sup>557</sup> Melissa Austin, Submission 149, p3.

<sup>558</sup> Martje McKenzie, Submission 9, p1.

<sup>559</sup> See 2.4.3 for further discussion on the trends in women's education.

<sup>560</sup> Australian Council of Trade Unions, Submission 208, p10 citing National Centre for Vocational Education Research *Australian Vocational Education and Training Statistics 2000: Women in VET 2000 at a glance* National Centre for Vocational Education Research Adelaide 2001.

<sup>561</sup> National Centre for Vocational Education Research *Australian Vocational Education and Training Statistics 2000: Women in VET 2000 at a glance* National Centre for Vocational Education Research Adelaide 2001, p2.

<sup>562</sup> ABS 4102.0 *Australian Social Trends 2001*, p92.

One woman told HREOC that she considered her six years of tertiary education was “ ... almost going to have been a bit of a waste ... ”<sup>563</sup> because of the difficulty of combining work and having children. She considered that she was faced with delaying childbirth for five to six years until her position in the workforce was more secure, or retraining in order to re-enter the workforce.

Maintaining female labour force attachment after the birth of a child ensures that the return on the community's investment in women's education and training is maximised. The role of paid maternity leave in assisting female labour force attachment and therefore returns on the community investment in the education and training of women was also recognised in a number of submissions.<sup>564</sup>

Taxpayers invest heavily in the education and training of educators and attrition of a highly skilled workforce such as this is a major problem.<sup>565</sup>

## 10.5 Conclusion

As noted earlier, HREOC considers that the principal reasons for introducing paid maternity leave relate to women's and babies health and wellbeing, addressing women's workplace disadvantage and ensuring women's equal participation in the community. These objectives provide clear and direct benefits to women, children and families as well as significant social benefits to the community.

To the extent that paid maternity leave helps women to be better able to combine paid work and family, and assists women to maintain their attachment to the labour force, paid maternity leave will also benefit employers and the economy. Employers will see a greater return on their investment in recruitment and training of staff and a reduction in staff turnover costs. The economy will benefit through the attraction and maintenance of a highly skilled and competitive workforce, and through maximising the community investment in education and training.

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<sup>563</sup> HREOC Interview 6, August 2002.

<sup>564</sup> See, for example, Australian Capital Territory Ministerial Advisory Council on Women, Submission 120, p7; Australian Council of Trade Unions, Submission 208, p10; New South Wales Public Service Association, Submission 110, p4; Patricia Todd and Judy Skene, Submission 176, p2.

<sup>565</sup> Australian Education Union, Submission 122, p4.

# 11. Outstanding issues

## 11.1 Introduction

The establishment of a national paid maternity leave scheme is one step towards meeting the objectives outlined in this paper. However, no single policy change will resolve the conflict between work and family responsibilities. While paid maternity leave will make a difference to the lives of individual women, many submissions made the point that paid maternity leave *on its own* is insufficient in addressing the issues that result in the disadvantage experienced by women as a group in Australia today.<sup>566</sup> In particular, feedback from submissions and consultations stressed the need for further legal and policy change on work and family issues, alongside a future paid maternity leave scheme.

Wherever appropriate, this paper has considered the work, family and other issues related to paid maternity leave. However, some of the issues raised in submissions and consultations are beyond the scope of this paper. This does not mean that issues such as access to childcare, education or flexible work are not important. In recognition of the need for further work on these issues, this Chapter outlines some of the major concerns raised in submissions that are not directly about paid maternity leave. It is important that paid maternity leave not be seen as a panacea for all work and family issues. HREOC recognises that further work is needed to meet all of the objectives outlined in this paper.

## 11.2 Paid maternity leave as one of a “suite of measures”

Consultations and submissions made it clear that paid maternity leave is viewed, even by its strongest proponents, as only one aspect of the complex issues surrounding work and family. Many submissions referred to paid maternity leave in the context of social issues ranging from the status of women in society to the role of the family. For example, some individuals and organisations viewed paid maternity leave as integral to the broader issue of supporting families as units of society.

Paid Maternity Leave is only one aspect of an extremely complex social issue, which requires careful consideration of the totality and interdependence of issues and measures that may be necessary to achieve these objectives. That is, the discussion should move beyond the parameters of Paid Maternity Leave and *employees* to a comprehensive examination of the current and future measures necessary for *families* to be supported.<sup>567</sup>

For others, the context for paid maternity leave is the range of experiences working women face as mothers.

[A] holistic approach is needed for working women in respect to pregnancy, maternity leave and return to work.<sup>568</sup>

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<sup>566</sup> This was particularly the case in relation to securing women's long term economic security, see Chapter 6, and delivering equality, see Chapter 8. However consensus was that a minimum period of paid maternity leave on its own would deliver significant benefits for the health and wellbeing of mothers and infants.

<sup>567</sup> Australian Catholic Commission for Employment Relations, Submission 194, p2 (emphasis in original).

<sup>568</sup> Finance Sector Union, Submission 161, p4. See also Marty Grace, Submission 151, p4: “[f]ourteen weeks of paid maternity leave will not bring gender equity to this country. Even with paid maternity leave, it will still be unreasonable to expect one person to look after a baby, wash, cook, clean and shop for a household seven days a week without breaks. We will still have all the problems with finding high quality affordable childcare and women's double shift of work at work and work at home when they return to employment.”

Paid maternity leave can also be seen as part of broader social issues such as workplace participation, education, childcare and population policy.

The whole maternity leave "argument" *cannot easily be divorced from the role of child-care and early education in general.*<sup>569</sup>

Employer groups, unions, parents and academics all urged HREOC to consider paid maternity leave in the context of these broader social issues.

For some, the insufficiency of paid maternity leave as a complete solution to a complex set of issues was a reason not to support it. The Victorian Automobile Chamber of Commerce submitted that they did not support a paid maternity leave scheme because:

... a range of initiatives may be necessary to assist women and families in all socio-economic groups when combining motherhood with workplace participation. Paid maternity leave, in our view, is a narrow response to a complex and urgent problem.<sup>570</sup>

However, most submissions raised the complex social context of paid maternity leave in order to support further complementary measures *in addition to* paid leave. Australian Business Industrial stated that:

[m]aternity leave can only be considered as one of a suite of measures to enable a work-family balance. Consideration needs to be given to other areas of the social security and taxation system framework in order to assist employers in continuing to help their employees in this way. [This is in] addition to the provision of a paid maternity benefit that is sufficient to enable working women to take time away from paid work to have children.<sup>571</sup>

The Women's Council of the Liberal Party of Australia (South Australia Division) wrote:

... we believe that the Government should include paid parental leave in a "mix" of policy options for families with young children to assist them to meet their work and family commitments.<sup>572</sup>

The BPW Australia's submission similarly argued for a long-term view and consideration of other policy changes.

PML [paid maternity leave] needs to be a part of a long-term plan for supporting Australians to balance their work and family commitments. Other aspects need to be considered simultaneously – affordable childcare, flexible work arrangements when mothers return to work and a tax system that treats the family as a unit and recognises the variety of forms that families take.<sup>573</sup>

HREOC agrees with the submissions emphasising both the complexity of issues surrounding paid maternity leave and stressing the need for further action complementing any future paid maternity leave scheme. Paid maternity leave is one of a suite of measures that need to be considered to give full meaning to the objectives outlined in this paper. There is no doubt that there is further work to do in this area, and some submissions and consultations point to valuable areas of future inquiry.

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<sup>569</sup> Philip Gammage, Submission 91, p2 (emphasis in original). See also, for example, Susan Tucker, Submission 187, p1: "I believe paid maternity leave is a small part, and the least cost[ly] option in a range of initiatives the Government could make if serious about retaining women in the Australian workforce and increasing the population of Australia" and National Women's Council of South Australia, Submission 68, p7: "[i]t needs to be recognised that a single policy is unlikely to adequately address all of these challenges and a host of initiatives, including affordable, accessible, high quality childcare, needs to be developed" (emphasis removed from original).

<sup>570</sup> Victorian Automobile Chamber of Commerce, letter accompanying Submission 112, p2.

<sup>571</sup> Australian Business Industrial, Submission 119, p5.

<sup>572</sup> Women's Council, Liberal Party of Australia (South Australia), Submission 100, p1.

<sup>573</sup> BPW Australia, Submission 148, p12.

The many suggestions for further work raised in submissions relate to:

- changing attitudes to men's and women's work;
- developing family friendly workplaces;
- childcare; and
- return to work issues.

## 11.3 “Men’s work” and “women’s work”

### 11.3.1 Introduction

Paid maternity leave relates to the social and personal balance of work and family responsibilities. Several submissions made the point that paid maternity leave on its own is insufficient if underlying stereotypes of “women’s work” and “men’s work” are not challenged.

Several submissions pointed out the need to change current ideas of gender roles and the limited and limiting understanding of what men and women do at work and in the family if broader work and family issues were to be solved.

### 11.3.2 Valuing motherhood and women’s unpaid work

The general low status of motherhood was singled out for criticism, for undermining the importance of families and children in Australian society and for contributing to Australia’s declining birth rate.<sup>574</sup>

[A]nother important issue is the value and status accorded to mothering, particularly full time mothering. Women taking time out to care for their young children are not applauded in any quarter. This career change is not seen as “work” and remains invisible to the public eye and in Government documents. If we value children and what is best for them, giving families financial assistance **and** reinstating mothering as a job worth doing must be the two pronged approach of any attempt to seriously address our declining birth rate.<sup>575</sup>

Similarly, one mother wrote that the low status of parenting and negative attitudes to children were reasons that men and women were choosing not to become parents.

The lack of respect for mothers and the lack of importance given to parenthood and the emphasis on parental acquisition are also driving forces in the choice to postpone or not have children. Many people view children as a nuisance, inconvenience, or “parasites”, both *in utero* and after birth.<sup>576</sup>

The failure to recognise adequately the amount of work that women do, without remuneration, in caring for children, was another point highlighted in submissions. This raises fundamental questions of how work is valued and whether the domestic work performed by women is a “natural” extension of their biological and social role as mothers which should be performed on the basis of affective ties rather than for financial reward.

Those submissions that challenged the traditional view that women’s domestic and caring work should be unpaid, suggested ways of compensating women for their labour. One women’s group argued for benefits to women at home that would formally recognise women’s labour.

[W]hile a revolution has occurred in the public realm in terms of women’s entrance and participation in the mainstream economy and labour market, a corresponding revolution has not taken place in the home. Our labour is unrecognised, unpaid and unvalued. We would like to see provision made to women who were not already in the workforce (increasingly women are still training and studying into their 30s) through a 26 week maternal endowment.<sup>577</sup>

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<sup>574</sup> See also 9.2 and 9.5.

<sup>575</sup> Women’s Action Alliance (Australia) Inc., Submission 146, p3 (emphasis in original).

<sup>576</sup> Eleanor Wilson, Submission 133, p5 (emphasis in original).

<sup>577</sup> Mothers of In(ter)vention, Submission 104, p2.

Another submission pointed out the fundamental reliance of the public world of paid work on the unpaid, “private” work carried out by women, and suggested a number of measures to remedy the imbalance.

The market still lives as a parasite on the unpaid work carried out in homes, predominantly by women. Distortion in what is treated as economic activity results in distortion of distribution of economic resources.

.....

We need to find ways to allocate a fair share of economic resources to people undertaking caring work. This could include a range of strategies including decent wages for childcare and personal care workers, drawing more caring work into the market as paid work, providing more services to people undertaking caring work to provide breaks, education, training and respite, and providing generous family allowances, not means-tested on income.<sup>578</sup>

One suggestion for valuing women’s unpaid labour was for some form of remuneration or “allowance” to be paid to women who accept primary responsibility for work in the home and who do not undertake paid employment. The Australian Family Association, the Festival of Light and the Endeavour Forum all raised the idea that women should be remunerated for their work in the home.<sup>579</sup>

HREOC agrees that paid maternity leave does not solve the fundamental issue of women’s disproportionate responsibility for unpaid work. As long as caring work remains unpaid, women are more vulnerable to poverty and social disadvantage. Without necessarily being in support of direct financial remuneration for caring work or other work performed in the home, HREOC supports further consideration of this issue. Ways of increasing the status of women who choose work other than in paid employment should also be explored.

See also 9.2 and 14.4.3.

### 11.3.3 Men’s work and paternity leave

A counterbalance to the undervaluing of women’s work as mothers and homemakers is the pressure placed on men to focus on paid work at the expense of their participation in family life. Submissions referred to the inadequate concept of a “father” as primarily a “worker” in the public sphere, a person who works long hours and does not have the time to care for children and the home.

Research has shown that:

[p]roblems with juggling work and family was a major issue for all the men in the study. All the men would have liked to have had more leave from work and they all would have liked to make some changes in their patterns of work. Various kinds of paid leave and restructured working hours provide an incentive for women and men to participate more equally at work and at home. The men in this study claimed that they would avail themselves of such provisions if they were available in Australia.<sup>580</sup>

The narrowness of men’s working lives was described as destructive to women as well as men.

We need to face up to the fact that fathers’ long hours of work are damaging mothers. Mothers suffer physically from overwork and lack of sleep. They suffer mentally and emotionally from lack of breaks, from isolation and excessive unshared responsibility for children and housework. Relationships suffer because women feel abused by the conditions of their work as mothers.<sup>581</sup>

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<sup>578</sup> Marty Grace, Submission 151, p5.

<sup>579</sup> Australian Family Association, Submission 92, p1; Festival of Light, Submission 102, p3; Endeavour Forum, Submission 144, p1.

<sup>580</sup> M Barkley *Work and Home Commitments: Some issues for Australian parents* Paper presented at the Fourth Australian Family Research Conference Sydney 1993.

<sup>581</sup> Marty Grace, Submission 151, p4.



Men's working patterns also impact on women because men often depend on the unpaid support of women at home. For women in paid employment, who often do not have access to such unpaid support, being a successful employee and a mother is simply too hard.

It is clear that women are limiting their families because the category of "worker" remains a male construct, and, as so many women have discovered, relies on the unpaid and unacknowledged labour of a "wife" to maintain the domestic realm.<sup>582</sup>

Men's restricted caring role within the family led some submissions to call for paid paternity leave as well as maternity leave.

We need to enable fathers as well as mothers to take time out from employment or limit working hours without economic or career penalty. If we want men to participate equally in caring work, we need paternity leave, to be taken simultaneously with maternity leave. Perhaps fathers could have six weeks' paid paternity leave for the express purpose of caring for mother and baby, followed by half-time leave for a further ten weeks. It may be necessary to provide guidance to encourage fathers to perform and gain skills in household work and childcare, since this expectation runs counter to the practices of some sections of the community.<sup>583</sup>

The importance to men of paid work, and sometimes financial necessity, means that they may be unprepared to take even quite short periods away from the workplace to be with their families unless they have paid entitlements.

In order to maintain the family's income, men are more likely to be prepared to take leave if they can do so on full pay and so it is more usual for them to use other forms of leave such as annual leave and long service leave.<sup>584</sup>

HREOC agrees that men's patterns of working, paternity leave and encouraging men to access leave provisions are all important areas of future study.

See also 4.3, 14.2.4 and the discussion of long hours at 11.4.3.

## 11.4 Developing family friendly workplaces

### 11.4.1 Introduction

Paid maternity leave invites a broader discussion of other workplace benefits or arrangements that support employees with families. Many submissions directly referred to the importance of family friendly workplaces and flexible employment arrangements as crucial accompaniments to a future paid maternity leave scheme. Without such additional measures, it was argued, paid maternity leave is only of short term benefit.

UMPA [University of Melbourne Postgraduate Association] would suggest that no matter which paid maternity scheme is implemented in Australia there are still gaps in the workplace and barriers that need to be overcome. Having paid maternity leave would assist women and parents in the first year of their child's life but it is also in the subsequent years that women require support systemically. There still needs to be a considerable culture change in workplaces – even at universities – before equity for parents would be achieved.<sup>585</sup>

More than a hundred submissions referred to the need for legal and policy change within workplaces to make work more flexible and family friendly.

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<sup>582</sup> Mothers of In(ter)vention, Submission 104, p2.

<sup>583</sup> Marty Grace, Submission 151, pp4-5.

<sup>584</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p6. See also Finance Sector Union, Submission 161, part 2, p2.

<sup>585</sup> University of Melbourne Postgraduate Association, Submission 76, p1.

The emphasis in this section is on the role of employers in assisting and supporting employees with families. However, this paper also considers, at 11.4.4, the need for comprehensive research into work and family issues to assist the development of future policies.

## 11.4.2 Flexible work arrangements

There is growing acknowledgement by all participants in the work and family debate that flexibility is a key characteristic of a workplace that attracts and retains male and female employees with family responsibilities. Submissions and consultations particularly emphasised the need for part time working arrangements and opportunities to job share, flexible hours and flexible leave arrangements.

Arrangements for telecommuting and other home based work, family friendly rostering arrangements, prenatal leave to attend medical appointments<sup>586</sup> and breastfeeding facilities were also raised as issues requiring further consideration. Return to work issues, including the right to return to work, extended maternity leave, expanded access to family leave and part time work are discussed at 11.5.

Suggestions for flexible work practices came from employers, unions, community groups and individuals. For example, the Australian Industry Group wrote that:

[a]lready, a range of measures have begun to emerge at individual workplaces, often as part of the enterprise bargaining process. These include flexible working time arrangements, permanent part-time arrangements, job-sharing, teleworking and employer assistance with child-care. This trend will likely to continue in the future and such measures would complement the introduction of a government funded paid maternity leave scheme.<sup>587</sup>

The Australian Nursing Federation stated that it:

... strongly endorses the view expressed in [HREOC's] Interim Paper that paid maternity leave should be seen as one of a range of measures required to address workplace equity and employment issues. A broader approach is needed to direct attention to other issues such as access to affordable high quality child care; family leave; flexibility for employees within the workplace; rostering arrangements that support an acceptable work/life balance; greater use of part-time and job share options and other family friendly provisions.<sup>588</sup>

The Union of Australian Women:

... strongly believes that, for a paid maternity leave scheme to be effective, it must be supported by improved access to affordable, quality child care, and genuinely flexible working hours and conditions that make provision for parental responsibilities.<sup>589</sup>

HREOC agrees that there is a great deal more work to do on developing flexible workplaces. As the Australian Industry Group stated, there have been many improvements in this area in recent years, and many workplaces have developed practical working arrangements and benefits that allow their employees to function effectively as paid workers and as parents. However, these benefits are not universal and some employees in particular industries and workplaces have no real access to flexible working arrangements. This is an important area for ongoing and definitive inquiry.

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<sup>586</sup> Australian Education Union, Submission 122, p3.

<sup>587</sup> Australian Industry Group, Submission 121, p25.

<sup>588</sup> Australian Nursing Federation, Submission 123, p12. Also raised at employers consultation, Sydney, 12 June 2002.

<sup>589</sup> Union of Australian Women, Submission 89, p2 (emphasis removed from original). See also EMILY's List, Submission 159, p3: "[f]lexible work options with a focus on quality part time work that would include the opportunity to move full and part time work, as well as access to training and opportunities for promotion, are also important. And for true equality for women, pay equity is certainly a must."

### 11.4.3 Family friendly working hours

Paid maternity leave, along with other family friendly measures, may not make a meaningful difference to families if other working conditions make it difficult to access such leave. For some organisations and individuals, the pressure to work long hours offsets the provision of benefits to employees with family responsibilities. The Financial Services Union wrote that:

... a recent study of the impact of work/family provisions in the finance sector found that the existence of such provisions is not enough. Employees in the sector are now working such excessive hours, that they are often unable to take advantage of these provisions ... The pre-natal period of work, pregnancy and return to work are all affected.<sup>590</sup>

Suggestions were put to HREOC that the federal Government should do more to encourage permanent part time work and job sharing for Australian employees, in order to encourage reasonable working hours.

[T]he government should stop promoting unrealistic worker hours, or at least promote job sharing.<sup>591</sup>

The Women's Council of the Liberal Party of Australia (South Australia Division) also wrote that:

[a]t present many Australian workers are forced to work longer hours than they would choose or that they are paid for and we are concerned about the loss of momentum to encourage permanent part time work for parents in the work force with young children.<sup>592</sup>

The Australian Council of Trade Unions recently ran a test case in the Australian Industrial Relations Commission, seeking to establish guidelines on excessive hours of work. In response to this claim, employer groups such as the Australian Chamber of Commerce and Industry argued that employees were not working excessive hours, that when long hours were worked they were adequately compensated and that negotiated workplace agreements are the best way of establishing appropriate working hours.<sup>593</sup>

The Full Bench rejected the Australian Council of Trade Unions' claim for a test case standard in the terms sought by it, but awarded a test case provision of a more limited kind.<sup>594</sup> The standard allows an employee to refuse to work overtime where it would result in the employee working unreasonable hours. One of the factors in determining unreasonableness is the employee's personal circumstances, including any family responsibilities. In setting the standard, the Australian Industrial Relations Commission recognised that long hours are not conducive to family life. The test case outcome was welcomed by both the federal Government and the Minister for Employment and Workplace Relations.<sup>595</sup>

Attention has also been given to the issue of reasonable hours as part of the broader social debate on balancing work and family responsibilities. A recent survey by a recruitment agency has found a quarter of Australian workers believe current working hours are undermining family life. The survey, which questioned employees in Australia, New Zealand, Malaysia and Singapore found that 25 per cent of Australian employees believed current working hours were undermining family life "a great deal" or to "some extent". It also found almost 40 per cent of those surveyed were working more than 40 hours per week.<sup>596</sup>

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<sup>590</sup> Finance Sector Union, Submission 161, p3 (footnotes omitted).

<sup>591</sup> D Purcell, Submission 90, p1.

<sup>592</sup> Women's Council, Liberal Party of Australia (South Australia), Submission 100, p2.

<sup>593</sup> For an outline of some of these points see Australian Chamber of Commerce and Industry "Overtime and Working Hours – The Facts" *Press Release* 23 September 2002.

<sup>594</sup> *Reasonable Hours Test Case* Australian Industrial Relations Commission Print 072002 23 July 2002.

<sup>595</sup> Minister Tony Abbott "Test Case Outcome Welcome" *Media release* 23 July 2002.

<sup>596</sup> For further details see [www.kellyservices.com.au](http://www.kellyservices.com.au).

The attention given to this issue is important and HREOC supports the work that has already been done, as well as encouraging future work on reasonable hours. Depending on trends in working hours in the years following the Reasonable Hours decision, further steps may be necessary, perhaps by more closely defining reasonable hours of work or mandating limits.

#### 11.4.4 Further research on work and family issues

It is only recently in Australia that there has been broad recognition of the need to address work and family issues. As such, there is need for further research on these issues in order to assess and draw conclusions about the impact of various family friendly policies. As noted in the submission from the Centre for Applied Social Research:

[r]esearch into work and family balance is burgeoning, but it remains hamstrung by problems of patchy, overly aggregated and sometimes inconsistent data. This not only makes for ill-informed public and political debates but also makes it difficult to measure the impact of policies such as the provision of paid maternity leave. We endorse the call from HREOC for further research in this area [HREOC interim paper]. We need for example to undertake the collection of data and research into the impact of both paid and unpaid maternity leave on choices to return to work, on what women do in the absence of paid maternity leave and also on the consequences for pay inequality over the life course.<sup>597</sup>

The Australian Retailers Association argued in its submission that the current lack of research in this area also makes it difficult to address the work and family related issues.

With the continuing increase of women's participation in the workforce [ABS 6203.0 *Labour Force* August 2001, p16] ARA believes that the need for research, going beyond the time of birth to include the first 5 years of the child's life, is imperative. Data is required to gain an understanding of what support the community as a whole should be providing, financial or otherwise, to assist in the development of a system that supports the raising of well educated and healthy children in our community for the future of our community, in a way that does not discriminate against or disadvantage those who do so and in a way that recognises the changed circumstances of families in society today.<sup>598</sup>

That the lack of statistical data affects the ability to debate work and family issues was argued by the Women's Action Alliance.

We agree with the observation in the preface [to HREOC's interim paper] that the "lack of current statistical information about maternity, family responsibilities and work arrangements" is hampering the debate and concur that "Future research in this area is vitally important"<sup>599</sup>

Clearly there are advantages in undertaking further research in the area, as noted by the Hawke Institute.

[T]here is the need for greater research in this area. Australia should be able to draw upon and learn from international best practice. Research that increases our understanding of the factors which influence reproductive rates and choices, and the nexus between family and paid work responsibilities is crucial for the development of effective and efficient policies.<sup>600</sup>

HREOC agrees that there is a need for further research in this area, but considers that it is beyond the scope of this paper to identify the exact elements of research and data collection that are required. HREOC urges the Government to review data collections and research in this area, in conjunction with relevant stakeholders, in order to identify gaps and areas for future work. However, this research should not hinder the introduction of a national scheme of paid maternity leave.

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<sup>597</sup> Centre for Applied Social Research, RMIT University, Submission 234, p11.

<sup>598</sup> Australian Retailers Association, Submission 165, p8. See also National Farmers' Federation, Submission 160, p15; Motor Trade Association of South Australia Inc., Submission 142, p2.

<sup>599</sup> Women's Action Alliance (Australia) Inc., Submission 146, p2.

<sup>600</sup> Hawke Institute, Submission 174, p6.

## 11.5 Return to work issues

### 11.5.1 Introduction

Return to work issues were also singled out for particular attention in submissions and consultations. These issues include the right to return to work full time or part time, extended maternity leave and expanded access to family leave.

### 11.5.2 Right to return to full time or part time work

Despite the fact that women with access to unpaid maternity leave have a right to return to work after that leave,<sup>601</sup> consultations and submissions made it clear that some women did not know of this right, did not insist upon it or were encouraged not to access it. For example, some women leave work rather than experience the “guilt” of inconveniencing their employer.

[W]omen feel that it will be an imposition on the employer to keep the job open, so rather than make a fuss they will go. They know that the small employer can't manage it, and they don't know that they can have a job held open – but there are those who think that's a bit unreasonable anyway.<sup>602</sup>

Even where women do return to work, they are not always reinstated in their former position, or they struggle to continue to work full time, sometimes resigning because they cannot access part time work.

All too often, the IEU [Independent Education Union] has had to protect its members in situations where they have been told to return to work full time after maternity leave or resign or that part-time work was incompatible with holding a promotions position.<sup>603</sup>

Under the *Workplace Relations Act 1996* (Cth), awards and agreements, a woman is entitled to return to the position she held prior to taking maternity leave or to a comparable available position if her original job has ceased to exist. The Sex Discrimination Act may also apply where a woman is disadvantaged when offered an alternative position on her return from leave.

Some awards and agreements also allow for women to work part time after maternity leave by agreement with the employer. If an employer refuses a reasonable request for part time work, a woman may be able to argue that a failure to provide her with such work is unlawful under the Sex Discrimination Act.<sup>604</sup> There has been some case law in this area that gives direction on when a woman's treatment on return to work will be unlawful<sup>605</sup> but this area of law needs further clarification.

Some submissions from employee representatives called for legislative clarification of a right to return to part time work.

Without a legislative, award or enterprise agreement providing rights for primary care givers to return to work on a part time or flexible hours basis, families are forced to combine full time work with parenting young children. This can lead to increased pressures on young families trying to juggle work and family commitment, as well as increased pressure to provide affordable and suitable child-care.

....

The ASU [Australian Services Union] MEU/Private Sector Victorian Branch submit that returning to work part time from parental leave should be a legislative right at the election of the parent.<sup>606</sup>

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<sup>601</sup> See Schedule 1A, section 14 *Workplace Relations Act 1996* (Cth).

<sup>602</sup> Union consultation, Sydney, 3 July 2002.

<sup>603</sup> Independent Education Union of Australia, Submission 204, p8.

<sup>604</sup> Depending on the circumstances, this may be direct or indirect sex discrimination in employment under the Sex Discrimination Act, or possible dismissal on the ground of family responsibilities if the woman has to leave the position as a result.

<sup>605</sup> See, for example, *Thomson v Orica Aust Pty Ltd* [2002] FCA 939 (30 July 2002); *Gibbs v Australian Wool Corporation* (1990) EOC 92-327; *Hickie v Hunt & Hunt* (1998) EOC 92-910.

<sup>606</sup> Australian Services Union MEU Private Sector Victorian Branch, Submission 154, p6.

HREOC supports consideration of legislative amendments to industrial and discrimination legislation to clarify when employees are entitled to return to part time work. For example, the United Kingdom has introduced legislation that requires employers to give reasonable consideration to a request for part time work by employees who are parents of young or disabled children. From April 2003, parents of children under six years of age or of disabled children aged under 18 years will have the right to apply for flexible work. Employers will have a statutory duty to consider a request for a change to an employee's working hours, a change to the times an employee is required to work or a request by an employee to work from home.<sup>607</sup>

There is also a convincing argument that further education is needed to inform employees and employers of women's right to return to work after a period of unpaid maternity leave.

### 11.5.3 Extended maternity leave and family leave

Some submissions called for a right to extended unpaid maternity leave beyond the current one year limit.

Whilst recognising the need for some predictability re return to work to meet employer needs, we also believe in supporting mothers who wish to spend longer periods of time out of the paid workforce to care for their children ...<sup>608</sup>

The Shop, Distributive and Allied Employees' Association recommends extended unpaid leave of up to three years.<sup>609</sup> Coles Supermarkets provides 18 months unpaid parental leave to employees who have had 12 months continuous service.<sup>610</sup> Other submissions suggested a right to access other leave, such as accrued long service leave in order to expand a period of paid maternity leave.<sup>611</sup>

Some submissions also suggested an expansion of access to family leave following return to work. For example, the Australian Education Union supported a right to access up to ten years leave for family responsibilities,<sup>612</sup> and another union recommended a right for women to have:

... greater access to periods of unpaid maternity leave and for either parent to be entitled to access unpaid family leave in blocks of time up to the time their child is 6 years of age.<sup>613</sup>

The Australian Council of Trade Unions has announced its intention to run a Work and Family Test Case in the Australian Industrial Relations Commission in 2003, seeking up to three years unpaid maternity leave and more family friendly working hours for all employees.<sup>614</sup>

HREOC considers that these suggestions may have some merit but that they need detailed examination in consultation with employers and other stakeholders. HREOC recommends further work in this area.

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<sup>607</sup> United Kingdom Department of Trade and Industry *New Employment Legislation: Flexible Working – the Right to Apply* [www.dti.gov.uk/er/individual/flexible-p1516.htm](http://www.dti.gov.uk/er/individual/flexible-p1516.htm).

<sup>608</sup> Work/Life Association, Submission 171, p10.

<sup>609</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p3.

<sup>610</sup> Coles Myer Ltd, Submission 107, p3. Note that Coles Supermarkets also provides 26 weeks unpaid parental leave to employees with 6 months continuous employment.

<sup>611</sup> See, for example, Australian Education Union, Submission 122, p3.

<sup>612</sup> Australian Education Union, Submission 122, p2.

<sup>613</sup> Independent Education Union of Australia, Submission 204, p8.

<sup>614</sup> Australian Council of Trade Unions *Maternity Leave: Test Case to build on maternity leave*, 18 October 2002 [www.actu.asn.au/public/campaigns/maternity/wftestcase.html](http://www.actu.asn.au/public/campaigns/maternity/wftestcase.html).

## 11.6 Childcare

### 11.6.1 Introduction

Childcare was one of the issues raised most often in submissions and consultations.<sup>615</sup> Submissions referred to adequate childcare as essential to supporting women's place in the paid workforce and ending employment discrimination. The Australian Retailers Association, which represents a female dominated industry stated that:

[c]onsideration should be given to the area of childcare and the restructuring of existing payment schemes in light of women's role as an integral part of today's workforce.<sup>616</sup>

EMILY's List stated that "... good quality, affordable child care – both pre school and school age care is a must to ensure an end to systemic discrimination in the workplace".<sup>617</sup>

Mothers of In(ter)vention demanded that the federal Government:

... reverse its cuts to community-based childcare, that it properly remunerate childcare workers, and that it introduce measures to build childcare into women's and men's workplaces. A range of diverse forms of childcare should be available to meet the very personal and varied requirements of families, in terms of religion and other factors.<sup>618</sup>

For the majority of stakeholders in the paid maternity leave debate, childcare was seen as a crucial area of concern to be considered *alongside* paid maternity leave. The Australian Industry Group wrote that:

[i]n addition to paid maternity leave, the Government should examine other support measures such as further child-care assistance. Child-care costs remain a major barrier to women returning to employment after having children. Areas that should be further examined include taxation arrangements as they relate to child-care costs incurred by employees, together with further incentives for employers to assist employees with child care costs.<sup>619</sup>

However, the Motor Traders' Association of New South Wales saw childcare as the crucial issue in the work and family debate, and argued that it should take precedence over paid maternity leave.

Women need wider options when balancing work and family commitments. Providing paid maternity leave does not increase their options. It would result in a small benefit for a short period of time without looking at issues which need long term solutions in terms of providing real benefits to women. The issue of child care is immensely important, especially for families that rely on a dual income. As government financial support for child care has reduced over the years, increasing levels of stress are placed upon parents to adequately look after their children.

....

Considering that there are women who choose not to stay at home after giving birth because they rely on paid work and/or they need or desire to maintain their careers, paid maternity leave would not be a desirable option for them, but subsidised child care would more likely be a beneficial option for these women.<sup>620</sup>

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<sup>615</sup> For example, 75 separate submissions raised the issue of childcare, almost all in support of increased access and affordability. It was raised as an issue in the majority of consultations. See, for example, Northern Territory Chamber of Commerce and Industry consultation, Darwin, 7 June 2002; union consultation, Perth, 21 June 2002.

<sup>616</sup> Australian Retailers Association, Submission 165, p2.

<sup>617</sup> EMILY's List, Submission 159, p3.

<sup>618</sup> Mothers of In(ter)vention, Submission 104, p2.

<sup>619</sup> Australian Industry Group, Submission 121, p26.

<sup>620</sup> Motor Traders' Association of New South Wales, Submission 141, p2. See also Motor Trade Association of South Australia Inc., Submission 142, p2 (emphasis in original): "we agree [with sister organisations] that childcare and retraining needs should also be examined by governments **before implementing any form of social welfare benefit**".

A few submissions, however, were opposed to additional childcare funding, asserting that most mothers do not want nor need more childcare<sup>621</sup> or preferring funds to be spent on alternative centres.

Instead of subsidising child care centres, I would like to see better (and much smaller) subsidies for mother-and-child-care centres; places where isolated mothers can meet during the day with their children. It is often loneliness, as well as economics, which drive mothers back to work.<sup>622</sup>

## 11.6.2 Cost and availability of childcare

Childcare costs were viewed by some as one of the reasons for the current trend towards delaying childbirth.

I wonder if there is research available which has asked women what actual factors prevented them from having children earlier, or more children. I would expect that many women would say that the cost of child care is a huge factor ...<sup>623</sup>

Not only was the cost of childcare raised as an issue, but also the lack of available childcare places. The Women's Council of the Liberal Party of Australia (South Australia Division) wrote that:

[w]hile we acknowledge the increase in places created by the Howard Government over the past 7 years, access to affordable and quality child care is still a problem for many families with young children. We support any efforts from the federal Government to continue the expansion of child care places in areas of unmet need.<sup>624</sup>

A few submissions and consultations also pointed out the special childcare needs of shift workers, single parents and women working in rural and remote areas.<sup>625</sup>

[T]he rostering and hours in call centres make it difficult to try to fit in childcare arrangements – [the roster] is regimented and often you can't make up time to fit in these arrangements.<sup>626</sup>

One shift worker and single parent wrote of the difficulties she had managing childcare in a way that was appropriate for her and her child.

Child care centres do not cater to shift workers. If I book for particular days this must be every week regardless of whether the child is in care, and if I miss days then I lose part of the rebate. So for dayshift I must book 50 hours of care per week, every week at a cost of approx \$200 per week. I also need to have afternoon up to 11.30pm and also overnight care for when I work P.M. shifts which involve up to 7 afternoon or nights. Even while I am at work between 3.00pm & 11.30pm or 11.00pm until 7.00am, I am still required to place my child into the day care.<sup>627</sup>

Given the enormous interest in, and concern over, childcare places and affordability, HREOC believes that this is an area that needs further examination as a matter of urgency.

## 11.6.3 Work based childcare

One solution to the perceived childcare problem was for the federal Government to assist employers in establishing work based childcare.

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<sup>621</sup> Cathy Sherry, Submission 205, p3.

<sup>622</sup> Maryse Usher, Submission 65, p1. Australian Family Association, Submission 92, also expressed concern about support for childcare.

<sup>623</sup> Confidential, Submission 14, p2.

<sup>624</sup> Women's Council, Liberal Party of Australia (South Australia), Submission 100, p1.

<sup>625</sup> See, for example, Northern Territory Trades and Labor Council, Submission 84, p1; Verlaine Bell, Submission 19, pp1,2. See also employers consultation, Canberra, 17 June 2002.

<sup>626</sup> Union consultation, Sydney, 3 July 2002.

<sup>627</sup> Verlaine Bell, Submission 19, p1.



We also encourage the federal Government to consider financial incentives for employers to provide quality, workplace childcare where possible as a part of its policy “mix” to assist families with young children.<sup>628</sup>

One specific proposal is for tax deductibility for childcare services, either to employers for the costs of services provided in the workplace, or to employees for services accessed in the community. This was raised in many submissions as an important step to encourage employers to assist employees with childcare needs. For example, Victorian Women Lawyers referred to tax deductibility of childcare as a “key issue”.<sup>629</sup> Employer groups also supported consideration of tax deductibility. For example, Australian Business Industrial:

... recommends that the government review the Fringe Benefit Tax liability associated with employers providing financial assistance to employees for childcare. The status quo regarding this tax legislation stands as a barrier to many small and medium sized businesses from offering employees benefits for childcare, due to the FBT liability attached to such payments. Businesses that can afford to establish their own childcare facilities (predominantly larger enterprises) are not subject to the same regulation.<sup>630</sup>

Any future consideration of childcare should include a discussion of taxation issues.

## 11.7 Tax credits and income splitting

Some submissions made general recommendations for consideration of taxation issues surrounding parenthood.

[We would make a] strong recommendation for the federal Government to **examine tax options for making parenthood more affordable** in order to recognize the unique needs of children and their parents.<sup>631</sup>

However, the majority of submissions on taxation issues specifically supported income splitting<sup>632</sup> or tax credits.<sup>633</sup> Their general concern appeared to be the need to support two parent families where one parent chose to work as a full time carer and homemaker. In some submissions the stated policy objective was to support couples in traditional relationships.

Further tax law changes to allow income splitting for married couples with children would ease the unfair financial burden on families struggling to raise children on one income, with only one tax-free threshold.<sup>634</sup>

HREOC does not support any system that gives preference to one kind of family over another on the basis of marital status or sexuality. Even where income splitting is applied in a “neutral” manner, in isolation from other benefits it would have the effect of financially supporting two parent families over single parent families. This is of particular concern when single parent families remain the most economically disadvantaged of families.

Other submissions argued that income splitting, tax credits or similar schemes would have the effect of providing women with genuine choice. The Australian Family Association submitted that:

[t]he federal Government should explore a homemaker’s allowance, income splitting, family unit taxation, a child tax credit, or some such scheme, which will offer women real choice. It should be helping women, especially mothers, to exercise genuine choice, instead of funnelling women into a predetermined end.<sup>635</sup>

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<sup>628</sup> Women’s Council, Liberal Party of Australia (South Australia), Submission 100, p2.

<sup>629</sup> Victorian Women Lawyers, Submission 137, p6.

<sup>630</sup> Australian Business Industrial, Submission 119, p6 (emphasis removed from original).

<sup>631</sup> Printing Industries Association, Submission 172, p10 (emphasis in original).

<sup>632</sup> See, for example, Salt Shakers, Submission 109, p1; Patrick Healy, Submission 175, p1; Diane McGill, Submission 182, p1.

<sup>633</sup> See, for example, Paul Russell, Submission 184, p1; Agnes and Matt Furlong, Submission 188, p1.

<sup>634</sup> Festival of Light, Submission 102, p3.

<sup>635</sup> Australian Family Association, Submission 92, cover letter.

The Endeavour Forum asked:

[w]hy not allow all mothers genuine choice by a homemaker's allowance, income splitting, family unit taxation, a child tax credit, or some such scheme?<sup>636</sup>

Many women want to stay home full time to care for children, and it is the strong view of HREOC that such choices should be valued and supported. However, income splitting and tax credits may instead have the effect of providing an active disincentive for women to work, even where they would prefer to maintain some attachment to the labour force. For the reasons outlined at 6.7, women gain many benefits from their labour force attachment that would not be adequately compensated by variations in taxation arrangements. Income splitting and tax credits may also encourage men to focus more on paid employment, spend longer hours at work and be less available to their families.

HREOC does not believe that women need further incentives to care for children or to perform domestic work.<sup>637</sup> A system that simply supports women and men in their own work and family choices is most equitable, and most practical.

## 11.8 Research on fertility choices

If Australia is to incorporate increasing the birth rate as part of its population policy, there obviously needs to be a consideration of the factors affecting a woman's decision to have children.

A number of submissions and consultations expressed concern that there was a lack of research and data collection being undertaken exploring women's decisions to have children, and the input of this into population policy. For example, the Victorian Automobile Chamber of Commerce recommended that:

... further relevant research be completed that takes into account the changed society in which we live, with particular emphasis on the economic position of women, and the factors considered whilst choosing to have or not to have children. This research then needs to be supplemented with the exploration of the mechanisms to assist or encourage women to have children.<sup>638</sup>

Specific areas for research were identified in the submission from the Motor Traders' Association of New South Wales, which recommended the following.

- Further investigation of overseas experiences with paid maternity leave schemes and their impact on fertility levels.
- Exploration of the causes that contribute to the falling birth rate and addressing these causes, rather than attributing only one factor, the availability of maternity leave.
- Research into the factors that women consider when choosing to have or not to have children in order to determine whether a short-term economic benefit would encourage women to have children.<sup>639</sup>

The Australian Mines and Metals Association considered that data collection and research was needed on men and women's decisions to reproduce,<sup>640</sup> the impact of government spending on the fertility rate<sup>641</sup> and the means of meeting Australia's population policy objectives.<sup>642</sup>

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<sup>636</sup> Endeavour Forum, Submission 144, p1.

<sup>637</sup> For a contrary position, see Council of Small Business Organisations of Australia Ltd, Submission 117, p1: "[i]ncentives need to be established to encourage a parent to be a primary care giver. This could be by tax breaks, (income splitting) government paid allowances (eg paid maternity leave) out of social security which is not means tested."

<sup>638</sup> Victorian Automobile Chamber of Commerce, Submission 112, p4; Individual response provided through the National Women's Council of South Australia, Submission 128C, p1. Also raised at women's groups and community consultation, Brisbane, 24 May 2002.

<sup>639</sup> Motor Traders' Association of New South Wales, Submission 141, p4.

<sup>640</sup> Australian Mines and Metals Association, Submission 255, p16.

<sup>641</sup> Australian Mines and Metals Association, Submission 255, p14.

<sup>642</sup> Australian Mines and Metals Association, Submission 255, p17. See also Australian Business Industrial, Submission 119, p5.

The National Women's Council of South Australia commented that:

... there is a greater need for understanding of factors, which influence reproductive rates and choices, and the nexus between family and paid work responsibilities. If the government is concerned about fertility rates, and is in the process of developing family based policies, these developments must be undertaken along side support for research in this area.<sup>643</sup>

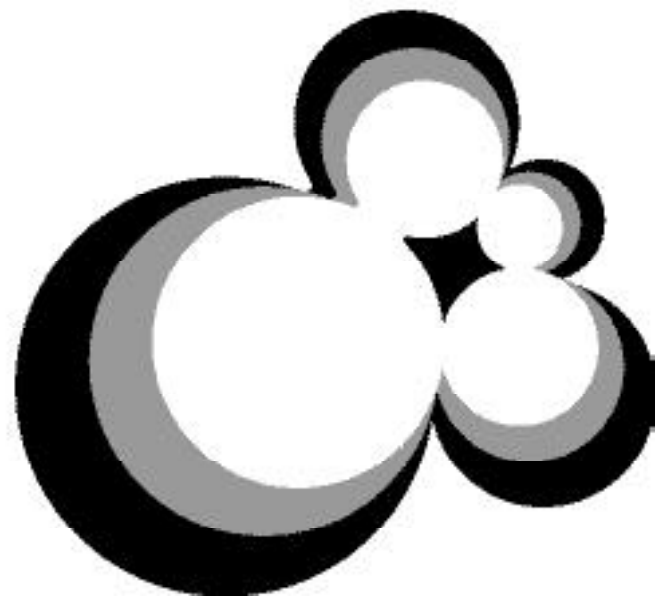
As stated at 9.5 and 9.6, HREOC considers that Australia's falling fertility rates are a symptom of the broader problem for parents, and in particular women, in trying to combine work and family. HREOC considers that research on fertility rates should be undertaken in the broader context of women's decisions about work and family.

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<sup>643</sup> National Women's Council of South Australia, Submission 68, pp6-7.



**PART D**  
The Proposal





# 12. Overview

## 12.1 Introduction

Part D of the paper focuses on how a paid maternity leave scheme would actually operate were it to be introduced in Australia. The emphasis, as in the rest of the paper, is on the feedback that HREOC has received through submissions and consultations. Each Chapter canvases the views that were expressed in relation to each component of a national paid maternity leave scheme.

International Labour Organization standards and international comparisons are also included as points of reference. Australia is not a signatory to the relevant Convention, the Maternity Protection Convention,<sup>644</sup> and is not therefore obliged to comply with its provisions. Nevertheless, it represents a useful benchmark for considering the adequacy of any proposed scheme.

## 12.2 Options for a national scheme

### 12.2.1 Introduction

The paid maternity leave model that HREOC proposes has wide community support, is consistent with international standards, and is similar to the systems used by comparable countries such as New Zealand and the United Kingdom.

The essential elements of this system are:

- that payment is made immediately prior to and following the birth of a child;
- that the level of payment is at an adequate level to be comparable to market earnings;
- that the duration of the paid leave is sufficient to promote women's and babies' health and wellbeing; and
- that the system recognises the disadvantage that women experience in the workforce as a result of maternity.

The central requirement of this model is to ensure that financial pressure does not mean that women are required to return to work in the early weeks following birth if they and their babies are not ready.

HREOC recommends a government funded fortnightly payment up to Federal Minimum Wage for 14 weeks. HREOC considers that this system is appropriate for the Australian context, and will assist in meeting the goals of addressing women's workplace disadvantage and assisting women's and babies' health and wellbeing.

As stated at 1.3.1, the most contentious issues in the consultations were:

- whether the payment should be limited to women in the paid workforce or available to all women;
- whether the payment should be available to mothers only, or whether the mother could opt to transfer the leave to her partner; and
- if there is a role for employers in funding paid maternity leave.

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<sup>644</sup> International Labour Organization *Maternity Protection Convention 2000* (No 183).

These issues are addressed in the following Chapters. They are largely variations within a particular model.

The Australian Council of Trade Unions recommended that the specifics of a model should be negotiated between employers, unions and the Government.

The ACTU [Australian Council of Trade Unions] submission ... calls for a process of negotiation between employers, government and unions to agree all the elements of the scheme. The ACTU [Australian Council of Trade Unions] sees such a process as best able to balance competing interests in a non-adversarial environment.<sup>645</sup>

HREOC agrees that, should the Government decide to introduce a national paid maternity leave scheme, there should be a process of negotiation regarding the fine detail of the operation of a paid maternity leave scheme. This Part of the paper includes significant detail on various structural and operational aspects of a national scheme. However, HREOC was not in a position to determine detailed administrative matters or to model the fine detail of the interaction between paid maternity leave and existing government payments. HREOC considers that there would be considerable goodwill among employer groups and unions to work with the Government to reach agreement on this finer detail.

## 12.2.2 The case for the status quo

Some submissions considered that the current arrangements for paid maternity leave should be continued and that there was no place for paid maternity leave that was either government funded or mandatorily employer funded. As the following extracts make clear, some groups were particularly opposed to compulsory employer funding of paid maternity leave.

The National Farmers' Federation opposed both government funding and mandatory employer funding of paid maternity leave.<sup>646</sup>

It is the NFF's [National Farmers' Federation's] position that paid maternity leave, as a workplace entitlement, should only be implemented by agreement at an individual workplace through existing agreement-making mechanisms.<sup>647</sup>

The Centre for Business and Industry supported continuation of the current system of paid maternity leave.

The current option allows employers that can afford to provide female employees with paid leave the option to do so. The current system does not encourage indirect discrimination and provides options to control costs and not enter into costly administrative structures.

Business is well aware of its social responsibility and responsibility to its employees. However, at the end of the day, decisions on family are issues for the family and are not issues for employers.<sup>648</sup>

The Local Government Association of Queensland considered that decisions about paid maternity leave should be left to the individual workplace.

The question of granting paid Maternity Leave is a matter for determination between an employer and the employee with enterprise bargaining as a process for establishing the principles to apply in those cases.<sup>649</sup>

As discussed at 3.3, HREOC considers that current arrangements for paid maternity leave are ad hoc, inequitable and disadvantage lower skilled and less well educated women, and women in casual or part time work. A continuation of the current system of enterprise based provision of paid maternity leave does not

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<sup>645</sup> Australian Council of Trade Unions, Submission 208, p2.

<sup>646</sup> National Farmers' Federation, Submission 160, p3.

<sup>647</sup> National Farmers' Federation, Submission 160, p15.

<sup>648</sup> The Centre for Business and Industry Pty Ltd, Submission 61, p8.



guarantee that women will be able to have a period of time away from the workforce and does not address the workplace disadvantage experienced by women on the basis of maternity. HREOC considers that the benefits of paid maternity leave set out in Part C merit the immediate introduction of a paid maternity leave scheme in Australia.

### 12.2.3 Alternative approaches to a government funded national paid maternity leave scheme

HREOC notes that a number of more radical proposals have also been made, both through submissions and in the wider community debate. Some of these proposals are outlined here to give a sense of the scope of the debate.

Bruce Chapman proposed a Higher Education Contribution Scheme (HECS) style loan scheme as a form of paid maternity leave.

It involves the government distributing financial assistance in the period of leave, but with parents repaying some part of this if and when future incomes exceed a certain level.<sup>650</sup>

Chapman promoted this model on the grounds that it could be structured to involve an input by all of those who benefit, namely the Government, the family and the employer. In addition this kind of scheme was seen as a means to smooth income across the family's lifetime. The family would be able to access additional funds at a period where they were facing increased expenses and had lower earnings. This would then be repaid at a later period when earnings were higher.

There was some opposition to this proposal as expressed by the National Pay Equity Coalition.

We regard this option as completely unacceptable. It continues the punitive and unfair arrangements that currently treat the costs of creating and nurturing the next generation as private costs rather than a social investment.

...

Forcing families to acquire substantial debt adds to the already substantial stress and financial burden they face. Whereas HECS affects mainly a minority of the population with reasonable prospects of good earnings later in life, so the costs are borne by the person who derives the benefits. A HECS-type scheme for PML [paid maternity leave] would continue to impose on individuals and families the cost of a life-event that benefits the whole community.<sup>651</sup>

Barry Maley from the Centre for Independent Studies has proposed:

... a non-means-tested universal child allowance or tax credit of \$4000 per annum per child, replacing all other allowances.<sup>652</sup>

The Women's Economic Think Tank has opposed this proposal.

The proposal ... from the Centre for Independent Studies for about \$4,000 per child per year is costed out at \$20B [billion], slightly more than the present mix of payments. However, it would require wiping out all family tax concessions and payments and child care subsidies. This would mean that low income families would lose and high income families gain from the shifts in payments and this would not be equitable.<sup>653</sup>

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<sup>649</sup> Local Government Association of Queensland Inc., Submission 156, p3.

<sup>650</sup> The Australia Institute "Maternity leave: Affordable HECS alternative, or top up" *News Release*, 23 September 2002.

<sup>651</sup> National Pay Equity Coalition, Submission 224, p31. See also Women's Electoral Lobby, Submission 248, p24.

<sup>652</sup> The Centre for Independent Studies "Tax breaks and stable marriages more important than maternity leave" *Media Release* 16 September 2002.

<sup>653</sup> Women's Economic Think Tank, Submission 256, p4.

The Underemployed People's Union of Western Australia proposed a model that would include making the positions of those on maternity leave available to unemployed people.

The Swedish model would transfer to Australia well: An unemployed person is given the person who takes maternity leave their job for a year. There are many educated and professional unemployed people particularly mature people on the dole who would welcome a year's work. This model guarantees the unemployed person work for a whole year.

...

The person on leave would then get the unemployment benefit for a year no matter what their job was. This way the tax payer, the employer and the government does not pay anything. In fact the Government saves because they would not have to service or provide case managers etc to the person on maternity leave or the person who takes the job for a year.<sup>654</sup>

An individual proposed replacing long service leave with an entitlement to paid maternity leave.

As an alternative to the many proposals for governments to fund maternity leave, may I suggest that consideration be given to the phasing out of paid long service leave and its replacement with paid maternity leave entitlements.

This would be achieved by mandating that all new employees would not have access to paid long service leave but instead would have access to paid maternity leave. Existing employees would continue to accrue long service leave.<sup>655</sup>

The New South Wales State Chamber of Commerce proposed that the Government offer incentives to firms to offer paid maternity leave.

The debate as it stands has concentrated on a mandatory scheme of leave. Government should in the first instance, examine ways to encourage business to voluntarily provide a paid entitlement. Companies should be given taxation relief as the basis for funding paid leave.<sup>656</sup>

HREOC has not attempted in this paper to address every proposal for paid maternity leave that has been put forward. Rather, the paper focuses on HREOC's preferred model. HREOC considers that the model outlined in the remainder of Part D would deliver on the objectives outlined in Part C, has wide community support and could be relatively easily implemented in the Australian context. There are a range of criticisms of other proposals that have been put forward including that they are less able to meet the identified objectives, that they will cost more, that they are likely to meet resistance from interested parties and that they may be difficult to administer.

## 12.3 Summary of the preferred scheme

Outlined below is a summary of HREOC's recommended national paid maternity leave scheme. The reasoning behind this structure, and other options raised in the public discussion, are outlined in Chapters 13-22.

The scheme that is proposed represents the minimum that is required to meet the objectives of paid maternity leave. HREOC is proposing a minimum scheme in order to establish a basic minimum entitlement for women. There was considerable public support for a more generous scheme and the extension of the scheme over time.

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<sup>654</sup> Underemployed People's Union of Western Australia, Submission 54, p1.

<sup>655</sup> Graham Evans, Submission 15, p1.

<sup>656</sup> New South Wales State Chamber of Commerce, Submission 231, p1.

## Summary of HREOC's preferred model for a national paid maternity leave scheme

<b>Funding</b>	The national paid maternity leave scheme is to be funded by the federal Government. (Recommendation 1)
<b>Coverage</b>	<p>Paid maternity leave is to be provided to women at the time of the birth of a child. The exceptions to this, where payment can be made to a woman's partner, will include: where the mother has died; where the mother is not medically able to care for the child (based on a doctor's opinion); or where the child has been adopted. (Recommendation 2)</p> <p>Paid maternity leave is to be available only to women in paid work. (Recommendation 3)</p> <p>Paid maternity leave is to be available to the primary carer of an adopted child irrespective of the age of the child. (Recommendation 4)</p>
<b>Eligibility</b>	In order to be eligible for paid maternity leave a woman must have been in paid work (including casual employment, contract work and self-employment) for 40 weeks of the past 52 weeks with any number of employers and/or in any number of positions. Access to this payment will not be means tested. (Recommendation 5)
<b>Duration</b>	<p>The national scheme of paid maternity leave will provide for up to 14 weeks of paid leave to be taken immediately prior to and/or following the birth of a child. (Recommendation 6)</p> <p>The paid leave must be taken as a continuous block. (Recommendation 6)</p> <p>A woman may elect to take less than the full 14 weeks of paid maternity leave, but will only receive payment in the weeks taken as maternity leave. (Recommendation 6)</p>
<b>Payment level</b>	<p>Government funded paid maternity leave is to be paid at the rate of the Federal Minimum Wage, or the woman's previous weekly earnings from all jobs, whichever is the lesser amount. (Recommendation 7)</p> <p>Previous weekly earnings are to be calculated as the greater of either:</p> <ul style="list-style-type: none"><li>• a woman's weekly earnings from all jobs immediately prior to taking leave; or</li><li>• an average of her weekly earnings from all jobs during the time in employment over the previous 12 months. (Recommendation 7)</li></ul>

<b>Payment mechanism</b>	<p>Paid maternity leave is to be paid as a fortnightly payment during the period of leave, administered by the federal Government and available through dual payment mechanisms. (Recommendation 8)</p> <p>Specifically, an individual may elect to receive payment as either:</p> <ul style="list-style-type: none"> <li>• a fortnightly direct payment from Government to the individual; or</li> <li>• a payment from the employer to the individual with the employer reimbursed by Government (subject to the employer agreeing to offer this option). (Recommendation 8)</li> </ul>
<b>Role of employers</b>	<p>Employers should be encouraged to continue existing provisions for paid maternity leave and women, including public servants, will not be excluded from any government funded national scheme on the basis of receiving employer provided paid maternity leave. (Recommendation 9)</p> <p>Employer top ups to a government funded paid maternity leave are to be provided for and encouraged. Such top ups should be negotiated through standard bargaining mechanisms. (Recommendation 10)</p> <p>Employers may agree to take on the administration of paid maternity leave payments on behalf of the Government and may be required to play a role in validating entitlement to government funded paid maternity leave entitlements. (Recommendation 11)</p>
<b>Interaction with the industrial relations system</b>	<p>Current industrial arrangements in relation to maternity leave will continue. (Recommendation 12)</p>
<b>Payment level</b>	<p>A woman who receives paid maternity leave will not be eligible for the Maternity Allowance, the first 14 weeks of Family Tax Benefit Part A and Family Tax Benefit Part B, and the first 12 months of payment of the Baby Bonus. The maternity leave payment will be taxable. (Recommendation 13)</p> <p>Individuals will have the option of taking other available social security payments where this would result in higher payments. (Recommendation 13)</p>

# 13. Funding

## 13.1 Introduction

The question of who should be responsible for funding a national paid maternity leave scheme was one of the more controversial issues in HREOC's consultations. This issue also received significant media coverage.

As discussed in HREOC's interim paper, there are a wide range of possible options for funding paid maternity leave.<sup>657</sup> Three options were the focus of discussion in the consultations and submissions – government funded, directly employer funded or jointly funded by the Government and employers. Each of these options is discussed in this Chapter.

Funding of a national scheme was central to various groups' support for or opposition to a scheme. The importance of funding also went further than this, being a central tenet on which submissions based their views on other structural elements of a paid maternity leave scheme. Funding is presented as the first element for discussion, as other decisions on aspects of the scheme flow from the choice of funding source.

## 13.2 International standards and practices

The International Labour Organization has recommended that Member Countries fund paid maternity leave through mechanisms that spread the cost across the community.

More specifically, Article 6(8) of the International Labour Organization Maternity Protection Convention recommends funding through social insurance or by Government. Direct employer funding is not recommended unless agreement on such an arrangement can be reached between Government, employers and employees at a national level. Direct employer funding is where employers fund paid maternity leave through a direct payment to their own female employees. In contrast, employers could fund paid maternity leave through payments to a central fund based on the number of men and women they employ. The rationale against direct employer funding is "to protect the situation of women in the labour market".<sup>658</sup>

Paragraph 4 of International Labour Organization Recommendation 191 recommends that, where social insurance or levies are used to fund paid maternity leave, contributions should be made in relation to all employees, and not just female employees.<sup>659</sup>

A variety of sources of funding are used to provide paid maternity leave in other countries.

For example, in the United Kingdom, Statutory Maternity Pay is funded through National Insurance. Employers make Statutory Maternity Pay payments directly to employees and then reduce their next year's National Insurance contributions by this amount.

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<sup>657</sup> Human Rights and Equal Opportunity Commission *Valuing Parenthood: Options for paid maternity leave, interim paper 2002* HREOC Sydney 2002, pp76-82.

<sup>658</sup> International Labour Organization *Maternity Protection Convention 2000* (No 183).

<sup>659</sup> International Labour Organization *Maternity Protection Recommendation 2000* (No 191).

Small employers can recover all of the payments they make under Statutory Maternity Pay plus an additional sum of 4.5 per cent as compensation for their share of National Insurance contributions paid on Statutory Maternity Pay. Larger employers recover 92 per cent of the Statutory Maternity Pay paid out.<sup>660</sup>

The New Zealand Paid Parental Leave scheme is fully government funded.<sup>661</sup> Funding of the scheme will be included as part of the 12 month review of the New Zealand scheme.

## 13.3 Government funding

### 13.3.1 Introduction

The majority of submissions in favour of paid maternity leave considered that there was a role for Government in funding such a scheme.<sup>662</sup> Many submissions that considered this issue proposed that a national paid maternity leave scheme should be fully government funded. As set out at 19.4, this would leave employers with the option to top up the government funded payment. In addition, as discussed at 13.5, other submissions considered that the Government should fund a minimum payment that would then be topped up through compulsory employer funding via an employer levy.

### 13.3.2 A social benefit

A significant proportion of submissions considered that paid maternity leave should be government funded to reflect the community benefits of such leave.<sup>663</sup> For example, the Australian Industry Group believed there was:

... a strong case for the introduction of a publicly funded paid maternity leave scheme in Australia. Significant benefits would flow to the Australian community if such a scheme was introduced.<sup>664</sup>

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<sup>660</sup> United Kingdom Department for Work and Pensions, Regulatory Impact Assessment *The Statutory Maternity Pay (Compensation of Employers) Amendment Regulations 2002*, [www.dwp.gov.uk/publications/2002/index.htm](http://www.dwp.gov.uk/publications/2002/index.htm).

<sup>661</sup> *Parental Leave and Employment Protection Act 1987* (NZ).

<sup>662</sup> See, for example, National Pay Equity Coalition, Submission 224, pp4, 26; Australian Federation of University Women – Victoria, Submission 101, p1; Australian Family Association (New South Wales), Submission103, p4; Coles Myer Ltd, Submission 107, p12; Association of Independent Schools of Victoria, Submission 108, p4; New South Wales Public Service Association, Submission 110, p5; National Tertiary Education Union, Submission 169, p7; Australian Hotels Association, Submission 199, p3; Work/Life Association, Submission 171, p9; Shop, Distributive and Allied Employees' Association, Submission 173, p18; Hawke Institute, Submission 174, p2; Patricia Todd and Judy Skene, Submission 176, p2; Australian Services Union South Australia and Northern Territory, Submission 189, p7; Catholic Women's League Australia Inc., Submission 195, p3; Australian Federation of University Women (Inc.), Submission 202, p2; Lisa Park, Submission 212, p1; Recruitment and Consulting Services Association, Submission 220, p4; Centre for Applied Social Research, RMIT University, Submission 234, p10; Isobel Gawler, Submission 235, p1; Ethnic Communities' Council of Victoria, Submission 242, p6; Hunter Business Chamber, Submission 243, p1; New South Wales Young Lawyers Employment and Industrial Law Committee, Submission 246, p2; Law Council of Australia, Submission 247, p1; Victorian Government, Submission 250, p11; Women's Electoral Lobby, Submission 248, p19; National Diversity Think Tank, Submission 221, p2; Queensland Working Women's Service, Submission 219, p12; Women's Economic Think Tank, Submission 125, p5; Australian Industry Group, Submission 121, pp17,22,26; Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, pp17,18; Carrie Parsons, Submission 25, p1; Rosemary Freney, Submission 80, p1; Lena Dimech, Submission 6, p1; Australian Retailers Association, Submission 165, pp2,3,27; EMILY's List, Submission 159, p3; BPW Australia, Submission 148, p2; Local Government Association of Queensland Inc., Submission 156, p3; Illawarra Forum Inc. and Illawarra Women's Health Centre, Submission 162, p2; Marty Grace, Submission 151, p3; YWCA of Australia, Submission 228, p19; Australian Women Lawyers, Submission 140, p2; Karen Bijkersma, Submission 150, p2; Women's Action Alliance (Australia) Inc., Submission 146, p8; Motor Traders' Association of New South Wales, Submission 141, p4; Australian Mines and Metals Association, Submission 130, p2; Joan Cross, Submission 138, p1; Victorian Women Lawyers, Submission 137, pp3,4; National Council of Women – Western Australia provided through the National Women's Council of South Australia, Submission 128D, p1; Eleanor Wilson, Submission 133, p7; BPW New South Wales, Submission 118, p1; Aboriginal and Torres Strait Islander Commission, Submission 116C, pp3-4; Work + Family Policy Research Group University of Sydney, Submission 251, p12; Catholic Women's League Australia Inc., Submission 195, p3; BPW International, Submission 82, p1; Union of Australian Women, Submission 89, p2; New South Wales EEO Practitioners' Association, Submission 77, p4.

<sup>663</sup> See, for example, Lena Dimech, Submission 6, p1; Australian Industry Group, Submission 121, p17; Isobel Gawler, Submission 235, p1; Coles Myer Ltd, Submission 107, p12; Centre for Applied Social Research, RMIT University, Submission 234, p10; Work + Family Policy Research Group University of Sydney, Submission 251, p12; National Diversity Think Tank, Submission 221, p3; YWCA of Australia, Submission 228, p19; National Pay Equity Coalition, Submission 224, p26; Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p17; Australian Industry Group, Submission 121, p26; Presbyterian Women's Association of Australia in New South Wales, Submission 126, p2.

The Presbyterian Women's Association of Australia in New South Wales considered that " ... the public should fund maternity payments through tax. The whole population will benefit from any population increase in the future - those who have no children as well as those who do."<sup>665</sup> Similarly, the New South Wales branch of the Australian Family Association proposed that a scheme should be government funded in recognition of " ... the benefit to the community of increasing the birthrate and the role that mothers play in development of children."<sup>666</sup>

One individual submission pointed out that:

... having children provides an essential service to the community and that parents make an invaluable contribution to the workforce.<sup>667</sup>

The Work + Family Policy Research Group, University of Sydney also emphasised the community benefits of paid maternity leave.

Paid maternity and parental leave benefit the whole community: children, parents, employers, business and government. Some of these benefits are short term, immediate and visible (such as the benefit to the employee of having a period of paid, job-protected leave) while others will take time to become apparent (such as a healthier population, satisfied employees, stable, well-functioning families, maintenance of skills and attachment to the labour force). Nevertheless, because the benefits are shared, we believe that the costs of paid maternity and parental leave should be borne as equitably as possible.<sup>668</sup>

The broader community benefits of paid maternity leave were seen by some submissions to differentiate paid maternity leave from other types of leave which are fully employer funded. The National Pay Equity Coalition considered that:

[o]n the basis that the benefits of the paid maternity leave are more broadly applied and used, it is appropriate for the contribution base to be broader than employers alone. Other forms of employment related leave are largely related to ongoing maintenance of the labour force and their benefits largely utilised and consumed within the employment relationship.<sup>669</sup>

Similarly, the Centre for Applied Social Research submitted that maternity leave:

... should be a government-funded entitlement rather than an employer-funded entitlement. Paid maternity leave is different to other employment related leave, such as sick leave, annual leave and long service leave as it provides a benefit not only to individual workers and workplaces in the continuing availability of that worker, but also to the wider community and economy.<sup>670</sup>

### 13.3.3 Ensuring access and spreading costs

Australian Business Industrial noted that a government funded national scheme of paid maternity leave would ensure that all women would be able to access such a payment.

Such a payment needs to be legislated on a national level and provided for through the social security system. This would ensure universality of payment to women, and prevent new industrial entitlements from being created that may have detrimental effects to female employment prospects.<sup>671</sup>

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<sup>664</sup> Australian Industry Group, Submission 121, p26.

<sup>665</sup> Presbyterian Women's Association of Australia in New South Wales, Submission 126, p2.

<sup>666</sup> Australian Family Association (New South Wales), Submission 103, p4.

<sup>667</sup> Karen Bijkersma, Submission 150, p2. See also Victorian Government, Submission 250, p11; Australian Retailers Association, Submission 165, p27; Ethnic Communities' Council of Victoria, Submission 242, p6; Australian Catholic Commission for Employment Relations, Submission 194, p2; New South Wales Working Women's Centre, Submission 225, p17; Rosemary Freney, Submission 80, p1; Marty Grace, Submission 151, p3.

<sup>668</sup> Work + Family Policy Research Group University of Sydney, Submission 251, p12.

<sup>669</sup> National Pay Equity Coalition, Submission 224, p26.

<sup>670</sup> Centre for Applied Social Research, RMIT University, Submission 234, p10.

<sup>671</sup> Australian Business Industrial, Submission 119, p16.

A government funded scheme would also spread the cost of paid maternity leave more evenly across the community and between businesses.<sup>672</sup> The need to share the cost of paid maternity leave more evenly was also given as a reason against direct employer funding.<sup>673</sup> For example, the Work/Life Association Australia. "... recommended that funding be obtained from general taxation revenue, where the cost is spread across all taxpayers ..."<sup>674</sup> An individual submission noted that:

[w]omen are very unevenly distributed across the workforce due to gender segregation, so [directly] employer funded maternity leave would place a greater burden on some groups of employers than others. This underlines the case for a centralised, government funded scheme.<sup>675</sup>

An individual submission also considered that government funding may increase employer acceptance of a national paid maternity leave scheme.

Government funded paid maternity leave is the only real option to paid maternity leave being accepted across the whole range of employment sectors, especially small, private enterprises.<sup>676</sup>

This is consistent with those submissions from employers and employer groups who were willing to give support for paid maternity leave on the condition that such a scheme was government funded.<sup>677</sup>

### 13.3.4 Source of government funding

While a significant number of submissions supported government funding there was some division over whether paid maternity leave should be funded through a reallocation of existing government payments to parents, or whether it should be provided in addition to existing programmes.

The Hunter Business Chamber submitted that it generally supported:

... the concept of paid maternity leave, but urges [HREOC] and the government to consider how existing federal systems might be varied and enhanced to provide for its introduction.<sup>678</sup>

The Australian Mines and Metals Association was concerned about the possibility of a new payment placing increased demands on the Government's budget.

The funding of the entitlement should not result in additional strains on the Government's fiscal position. Consideration should be given to the rationalisation of other benefits so that there is no indirect cost to employers as a consequence.<sup>679</sup>

Many submissions called for a review or streamlining of current payments in order to fund paid maternity leave. This issue is discussed at 3.4.4.

The Women's Economic Policy Analysis Unit proposed that taxes be specifically identified for the purpose of funding paid maternity leave through a special levy on all taxpayers, along the lines of the Medicare levy.<sup>680</sup> The New South Wales branch of the Australian Family Association proposed that taxes on superannuation funds be used to fund paid maternity leave.<sup>681</sup>

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<sup>672</sup> See, for example, BPW International, Submission 82, p1; Victorian Women Lawyers, Submission 137, p4; BPW New South Wales, Submission 118, p1.

<sup>673</sup> See 13.4.6 below.

<sup>674</sup> Work/Life Association, Submission 171, p9.

<sup>675</sup> Kimberley Meyer, Submission 105, p4.

<sup>676</sup> Susan Tucker, Submission 187, p1.

<sup>677</sup> See, for example, Australian Mines and Metals Association, Submission 130, p2; See also Australian Hotels Association, Submission 199, p3; Australian Retailers Association, Submission 165, p3; Australian Industry Group, Submission 121, p26.

<sup>678</sup> Hunter Business Chamber, Submission 243, p1.

<sup>679</sup> Australian Mines and Metals Association, Submission 255, p15.

<sup>680</sup> Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p18.

<sup>681</sup> Australian Family Association (New South Wales), Submission 103, p5.



A small number of submissions considered that Government should only fund paid maternity leave for employees in particular types of businesses, such as small business and non-profit organisations.

For example, an Australian Institute of Company Directors survey of delegates attending its May 2002 Conference on the Gold Coast found a difference in response depending on the size of business of the respondents. Its submission concluded that, while large employers were often well disposed towards, and often already provided paid maternity leave, "... small business needs government support".<sup>682</sup>

However, some submissions argued against government funding of a national paid maternity leave scheme.<sup>683</sup> For some employers their opposition to paid maternity leave meant they were unwilling to support the use of taxes paid by business ultimately being used to fund a national government scheme. For example the Kolan Shire Council considered that paid maternity leave:

... would place an unfair burden on employers, especially small business, whether it was funded directly by the government or a combination of sources for eventually the cost will be borne by the employer.<sup>684</sup>

The Centre for Business and Industry believed that the expense of paid maternity leave would require increased taxation.

The estimated \$300 million expected to be paid annually as paid maternity leave (this figure does not include the unknown amount for government to introduce the system and staff to administer) would by necessity be collected by increased taxation or through the introduction of a new levy. With business the largest contributor of tax, it would fall predominantly onto business to fund.<sup>685</sup>

One academic considered that paid maternity leave would negatively impact on all taxpayers.

A **mandated taxpayer-funded scheme** will hurt all taxpayers, male and female alike, and, as more women begin to enter the workforce and earn higher wages, the tax burden of this scheme would increasingly fall on female workers.<sup>686</sup>

Other submissions considered that government funding should not be provided for what was a personal choice to have a child. One individual submission asked the question:

... why then should the government (taxpayers) have to pay ... ? Women who choose not to take paid maternity leave (for whatever reason, by being self-employed, husband's income is sufficient etc) and couples who choose not to have children would end up contributing to other people's choices.<sup>687</sup>

HREOC notes that Governments have supported families throughout the history of Australia. As set out at 9.2, HREOC considers that it is appropriate that society support families given the benefit to the community of children and future generations.

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<sup>682</sup> Australian Institute of Company Directors, Submission 53, p2.

<sup>683</sup> See, for example, Council of Small Business Organisations of Australia Ltd, Submission 117, p1; Beryl Byrne, Submission 157, p1; Australian Chamber of Commerce and Industry, Submission 197, p6; Alex Robson, Submission 106, p1; The Centre for Business and Industry Pty Ltd, Submission 61, p6; Kolan Shire Council, Submission 81, p1; Salt Shakers, Submission 109, p5.

<sup>684</sup> Kolan Shire Council, Submission 81, p1.

<sup>685</sup> The Centre for Business and Industry Pty Ltd, Submission 61, p6.

<sup>686</sup> Alex Robson, Submission 106, p1 (emphasis in original).

<sup>687</sup> Catherine Matson, Submission 12, p2.

## 13.4 Direct employer funding

### 13.4.1 Introduction

The funding option most strongly opposed was direct employer funding. This option would require employers to meet the full cost of paid maternity leave for eligible women in their workplace. This option was strongly opposed by a wide cross-section of submissions, including submissions from unions, women's groups, employers and employer groups.

### 13.4.2 Employer funding would increase discrimination

A significant number of submissions considered that direct employer funding would increase discrimination against women of child bearing age in employment.<sup>688</sup> This was also given as a reason for supporting a government funded scheme.

Australian Business Industrial wrote that requiring employers to pay maternity leave would undermine equity objectives by "... further disadvantaging women in employment ... jeopardizing many women's jobs [and] [m]aking it more difficult for many women to find and maintain employment, as a likely increase in discrimination against women of child-bearing age will occur."<sup>689</sup> Coles Myer submitted that the company:

... is strongly opposed to the universal imposition of an employer funded paid maternity leave scheme ... [W]hilst Coles Myer Ltd., as a major employer of women, would behave as a responsible corporate citizen, Coles Myer Ltd. believes that an employer funded paid maternity leave scheme is highly likely to result in discrimination against women by less scrupulous employers.<sup>690</sup>

The Australian Institute of Company Directors submitted that:

[a]ny policy developments in the area of paid maternity leave must be careful not to set up a situation that encourages any segment of the economy to break the law by discriminating against those of child bearing age.<sup>691</sup>

An individual submission highlighted the concern from the perspective of young women.

There are many competent jobseekers out there and it will be very easy to offer employment to "a more suitable" male applicant or female over 40 years of age. Paid Maternity Leave will only cause mass discrimination against women of child bearing age.<sup>692</sup>

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<sup>688</sup> See, for example, Australian Industry Group, Submission 121, p3; Australian Capital Territory Ministerial Advisory Council on Women, Submission 120, p5; EMILY's List Australia, Submission 159, p3; Marty Grace, Submission 151, p3; Australian Business Industrial, Submission 119, p9; Australian Institute of Company Directors, Submission 53, p1; South Australian Equal Opportunity Commissioner, Submission 71, p3; New South Wales EEO Practitioners' Association, Submission 77, p4; Hawke Institute, Submission 174, p5; Australian Catholic Commission for Employment Relations, Submission 194, pp2-3; Women in the Department of Education and Children's Services Reference Committee, South Australia, Submission 201, p1; Council of Small Business Organisations of Australia Ltd, Submission 117, p1; BPW New South Wales, Submission 118, p1; Motor Traders' Association of New South Wales, Submission 141, p4; National Farmers' Federation, Submission 160, p13; BPW Australia, Submission 148, p11; Australian Retailers Association, Submission 165, p28; Australian Chamber of Commerce and Industry, Submission 197, p7; Lena Dimech, Submission 6, p1; Catherine Matson, Submission 12, p2; Carrie Parsons, Submission 25, p1; Christine Rau, Submission 36, p1; Alex Robson, Submission 106, p1; Victorian Government, Submission 250, p11; Queensland Working Women's Service, Submission 219, p7; Australian Liquor, Hospitality and Miscellaneous Workers Union, Submission 153, p2; Australian Family Association, Submission 114, p1; YWCA of Australia, Submission 228, p19; Work + Family Policy Research Group University of Sydney, Submission 251, p12; The Centre for Business and Industry Pty Ltd, Submission 61, pp2-3; Shop, Distributive and Allied Employees' Association, Submission 173, p27.

<sup>689</sup> Australian Business Industrial, Submission 119, p9.

<sup>690</sup> Coles Myer Ltd, Submission 107, p1.

<sup>691</sup> Australian Institute of Company Directors, Submission 53, p1. See also Australian Catholic Commission for Employment Relations, Submission 194, p2.

<sup>692</sup> Christine Rau, Submission 36, p1.

The Australian Chamber of Commerce and Industry considered that the cost of paid maternity leave may lead to some employers discriminating against women of childbearing age.

Even with the protection of anti-discrimination law, a significant disparity between the cost of male and female employment to employers will influence the decisions of some employers to engage women. Some employers will not engage employees perceived to offer the potential risk of multiple weeks of additional labour costs with no productive return.<sup>693</sup>

An academic supported this concern around the cost of paid maternity leave, claiming that “[a] **mandated employer-funded scheme** will act as a tax on the employment of females, and will tend to increase female unemployment ...”<sup>694</sup> Many of these comments came from employers and employer groups. The Commission was disappointed by the statements from these groups that employers would indulge in unlawful activity – deliberate discrimination against women – for financial gain. Sadly, there appeared to be some truth in this.

The New South Wales State Chamber of Commerce surveyed local businesses in regional New South Wales, receiving 781 responses. 77 per cent of respondents stated that they would be “less inclined to employ a woman if [their] business was forced to pay maternity leave”.<sup>695</sup>

One submission from an employer flatly asserted, contrary to federal, State and Territory anti-discrimination and industrial relations legislation, that “[i]f paid maternity leave becomes a reality, we will not be employing women”.<sup>696</sup>

However, the Australian Council of Trade Unions considered that the argument that employer funding will lead to discrimination in the employment of women may have been overstated.

The ACTU [Australian Council of Trade Unions] acknowledges that the International Labour Organization (ILO) discourages employer funded paid maternity leave schemes, highlighting the potential disincentive to employ women of childbearing age that attach to directly funded schemes. This argument may be over-stated. Occupational segregation of the Australian labour market and skill supply issues mean that alternative labour supply may not be readily available.<sup>697</sup>

### 13.4.3 Business cannot afford to pay

A number of submissions, and in particular submissions from employers and employer groups, were concerned at the cost that a directly employer funded paid maternity leave scheme would impose on business, with many considering that this was a cost that many businesses could not afford.<sup>698</sup>

The New South Wales State Chamber of Commerce was “... unequivocal that business, particularly small business can not afford to fund a mandatory paid maternity leave scheme”.<sup>699</sup> Similarly, the National Farmers’ Federation considered that:

[t]he impact of forced employer responsibility for paid maternity leave will result in an increase in costs that may well be unaffordable particularly if the employer is not benefiting from paid maternity leave.<sup>700</sup>

This double cost to business was also emphasised in an individual submission.

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<sup>693</sup> Australian Chamber of Commerce and Industry, Submission 197, p7.

<sup>694</sup> Alex Robson, Submission 106, p1 (emphasis in original).

<sup>695</sup> New South Wales State Chamber of Commerce, Submission 231, p9.

<sup>696</sup> Rita Bentley, Submission 73, p1.

<sup>697</sup> Australian Council of Trade Unions, Submission 208, p16.

<sup>698</sup> See, for example, The Centre for Business and Industry Pty Ltd, Submission 61, pp3-4; Victorian Automobile Chamber of Commerce, Submission 112, p16; Jacqui Christian, Submission 11, p1; Australian Chamber of Commerce and Industry, Submission 197, p6.

<sup>699</sup> New South Wales State Chamber of Commerce, Submission 231, p8.

<sup>700</sup> National Farmers’ Federation, Submission 160, p13.

Businesses cannot be expected to pay for an employee who is not there - and have to pay for a replacement as well - that is, double the money (or 1 2/3 etc) for half the output - not to mention the re-training costs. Small businesses in particular simply cannot afford this type of luxury.<sup>701</sup>

The Australia Industry Group was concerned about some businesses' capacity to pay.

Many businesses operate with very low profit margins and some are enduring losses. In such circumstances, there is no capacity to provide paid maternity leave benefits - despite the longer term benefits which might arise if they did.<sup>702</sup>

Some submissions considered that the additional cost of paid maternity leave would force some businesses to close. The Australian Chamber of Commerce and Industry considered that "[b]usiness viability, and the employment of Australian women would be threatened by any scheme which required direct employer funding".<sup>703</sup>

A view was also put forward that employer funded paid maternity leave could affect the international competitiveness of Australian business. The Centre for Business and Industry was concerned about the impact on international competitiveness.

[I]ncreases in employment costs add to the cost of the production which would normally be passed on to the cost of final product. International competition would, in some cases, not allow Australian firms to pass the increased price on, thus impacting firms viability and future investment and employment outlook.<sup>704</sup>

A submission by an individual also noted that the cost of paid maternity leave may be passed on to consumers through price increases.

If employers are going to be expected to pay, for *no work done* through maternity leave, as well as being unjust and unreasonable, it is going to lead to yet more price increases.<sup>705</sup>

#### 13.4.4 As a social benefit, employers should not pay

As outlined in Part C, many of the objectives of a paid maternity leave scheme are social benefits. It was considered by a number of submissions that it was not appropriate to make employers pay for a measure that would benefit the whole community.<sup>706</sup> The Victorian Government did not support employer funding of a national paid maternity leave scheme because such a scheme has benefits for the broader community.<sup>707</sup> This was also given as a reason in favour of government funding of paid maternity leave.<sup>708</sup> For example, the Festival of Light submitted that:

[i]t is unfair to expect any employer to fund a measure which is designed to protect the community as a whole and which could put the employer at a disadvantage.<sup>709</sup>

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<sup>701</sup> Catherine Matson, Submission 12, p2.

<sup>702</sup> Australian Industry Group, Submission 121, p17.

<sup>703</sup> Australian Chamber of Commerce and Industry, Submission 197, piv. See also Australian Mines and Metals Association, Submission 130, p3.

<sup>704</sup> The Centre for Business and Industry Pty Ltd, Submission 61, p4. See also Australian Hotels Association, Submission 199, p8; Jacqui Christian, Submission 11, p1; Australian Industry Group, Submission 121, p3; Soft Furnishings Industry Association of Australia Inc., Submission 132, p1.

<sup>705</sup> M H Dale, Submission 1, p1 (emphasis in original).

<sup>706</sup> See, for example, The Centre for Business and Industry Pty Ltd, Submission 61, p5; Australian Mines and Metals Association, Submission 130, p3; Women's Electoral Lobby, Submission 248, p23; Australian Hotels Association, Submission 199, p8; Australian Retailers Association, Submission 165, p2.

<sup>707</sup> Victorian Government, Submission 250, p11.

<sup>708</sup> See 13.3.2 for further discussion.

<sup>709</sup> Festival of Light, Submission 102, p5.

### 13.4.5 Childbearing as a personal choice

Just as some submissions asserted that Government should not fund paid maternity leave on the basis that childbearing is merely a personal choice,<sup>710</sup> some submissions considered that, for the same reason, employers should not be expected to fund paid maternity leave. For example, one individual commented that:

I believe if women want a family they should be prepared to pay for themselves. This is carrying human rights too far. Having a family should be the responsibility of those that choose to have it. They should not expect their employer to pay for it. This is just expecting too much.<sup>711</sup>

The Centre for Business and Industry emphasised that employers should not have to pay "... for non-productive activities of their employees".<sup>712</sup>

### 13.4.6 Employer funding would affect industries disproportionately

Existing gender segregation in the workforce would mean that the cost of paid maternity leave would impact disproportionately on certain industries and businesses. This was seen by some submissions as an argument against direct employer funding of paid maternity leave. It was also the reason that some submissions preferred a levy on all employers.<sup>713</sup>

WEL [Women's Electoral Lobby] strongly opposes any option that imposes direct costs on employers. Such a system impacts unevenly on employers, for example employers in sectors with a high proportion of women employees aged 24 to 34 years of age such as the hospitality industry.<sup>714</sup>

BPW New South Wales noted that:

... female dominated industries would bear the cost eg. Nursing, teaching, secretarial and retail.<sup>715</sup>

### 13.4.7 Particular concerns for small business

A number of submissions considered that direct employer funding would be particularly difficult for small business.<sup>716</sup>

The Council of Small Business Organisations of Australia submitted that:

[s]mall business is the major employer of women, it can be the training ground for future women entrepreneurs. As women are going into business at three times the rate that men are we could inhibit the growth of the small business sector which is of vital importance to the Australian economy if job prospects were curtailed due to small businesses not being able to fund paid maternity leave out of their own funds.<sup>717</sup>

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<sup>710</sup> See 13.3.4 above.

<sup>711</sup> Josie Oldroyd, Submission 7, p1.

<sup>712</sup> The Centre for Business and Industry Pty Ltd, Submission 61, p5.

<sup>713</sup> See 13.5 for a discussion of an employer levy.

<sup>714</sup> Women's Electoral Lobby, Submission 248, p22. See also Australian Council of Trade Unions, Submission 208, p16.

<sup>715</sup> BPW New South Wales, Submission 118, p1.

<sup>716</sup> See, for example, Australian Institute of Company Directors, Submission 53, p1; Kay Channer, Submission 52, p1; Catherine Barnett, Submission 32, p1; Local Government Association of Queensland Inc., Submission 156, p2; Karen Bijkersma, Submission 150, p2; Queensland Nurses' Union, Submission 134, p10; C Harvey, Submission 238, p1; Recruitment and Consulting Services Association, Submission 220, p4; Australian Hotels Association, Submission 199, p9; Labor Council of New South Wales, Submission 218, pp6-7; motherInc, Submission 196, p6; Western Australian Government, Submission 245, p6; Hunter Business Chamber, Submission 243, p1.

<sup>717</sup> Council of Small Business Organisations of Australia Ltd, Submission 117, p1.

One small business operator outlined the effect this would have on her business.

I have an office of three staff (all women) and if I had to pay them maternity leave, plus employ a new person in their absence, there is no way my business would be able to support this. I would have to close my doors ... and that is a fact!<sup>718</sup>

BPW Australia considered that:

[s]mall and micro businesses should not be expected to pay towards PML [paid maternity leave] for their staff. It is generally agreed that most businesses in this sector would not be able to withstand such pressure on their financial viability.<sup>719</sup>

In contrast to this view, there were some submissions that considered that small business should be treated in the same way as other businesses.<sup>720</sup> This was particularly the case of submissions arguing in favour of the imposition of a levy on all employers.

One individual submitted that:

... I do not believe any business should be exempt. Smaller business[es] are not exempt from paying annual leave, public holidays, sick leave etc, so they should not be exempt from such an important leave as maternity leave.<sup>721</sup>

## 13.5 An employer levy

While most submissions were opposed to direct employer funding of paid maternity leave, a number of submissions considered that business should contribute to the cost of paid maternity leave through an employer levy.

A contribution from business was considered reasonable in light of the benefits of paid maternity leave to employers.<sup>722</sup> As outlined in Chapter 10, these include direct benefits to individual employers and more general labour force benefits. The Australian Manufacturing Workers' Union considered that:

[e]mployers should bear some of the costs associated with paid maternity leave. It is a work related entitlement. Employers receive the benefits of women's participation in the labour force, their skills and their contribution to society through reproduction.<sup>723</sup>

The Australian Federation of University Women submitted that:

**[t]he idea that employers could be required to contribute according to their capacity should not be ruled out.** Ultimately employers will benefit from reduced retraining costs and good staff morale in retaining experienced staff who feel valued in their double role as parent and employee.<sup>724</sup>

The Australian Council of Trade Unions considered employers should contribute to funding paid maternity leave given they benefit from female labour force participation. The Australian Council of Trade Unions argued that a contribution would assist employers to attract highly skilled workers to Australia, and that it

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<sup>718</sup> Sandra Skelton, Submission 13, p1.

<sup>719</sup> BPW Australia, Submission 148, p11.

<sup>720</sup> See, for example, National Pay Equity Coalition, Submission 224, p29.

<sup>721</sup> Melissa Austin, Submission 149, p7.

<sup>722</sup> See, for example, Australian Manufacturing Workers' Union, Submission 237, p2; Australian Federation of University Women Inc., Submission 202, p2; Australian Council of Trade Unions, Submission 208, pp15-16; Equal Opportunity Commission Victoria, Submission 240, p3; New South Wales Working Women's Centre, Submission 225, p17; Melissa Austin, Submission 149, p6; Australian Capital Territory Ministerial Advisory Committee on Women, Submission 120, pp9-10; Labor Council of New South Wales, Submission 218, p5.

<sup>723</sup> Australian Manufacturing Workers' Union, Submission 237, p2.

<sup>724</sup> Australian Federation of University Women (Inc.), Submission 202, p2 (emphasis in original).

would improve loyalty of staff and the reputation of the organisation among consumers. A contribution to a national paid maternity leave scheme, that submission argued, would benefit employers at a micro level by reducing employee replacement costs and staff absenteeism; and at a macro level by assisting to maintain a long term labour market supply and a pool of consumers.<sup>725</sup>

One individual submitted that:

[i]t is also hard to understand that ... a country that requires business to pay their employees annual leave (with annual leave loading), sick leave, long service leave etc, ... [does not require business] to assist employees whilst on maternity leave. Businesses need to understand that if they wish to retain committed and skilled employees, then they need to assist employees in having a smooth transition from work to maternity leave and then back to work.<sup>726</sup>

A significant number of submissions, in particular those from unions, proposed a specific model of joint funding through a government payment and an employer levy.<sup>727</sup> This model involved a government funded payment to the level of the Federal Minimum Wage, a legislated employer levy to fund payment up to Average Weekly Earnings, and negotiated employer top up to full wage replacement. The Australian Council of Trade Unions estimated that the annual cost of their proposed employer levy would be approximately \$240 million, and that "[w]ithout any cross-subsidisation, the weekly cost per employee would be \$0.59".<sup>728</sup>

This model was seen as a means of recognising the benefits to employers of the introduction of a national paid maternity leave scheme while overcoming many of the disadvantages of direct employer funding.

In recognition of the benefits to employers, the ACTU [Australian Council of Trade Unions] calls for employers to fund the gap between the federal minimum wage and women's pre-leave incomes. The ACTU [Australian Council of Trade Unions] calls for legislation introducing a levy on employers to fund the gap between the federal minimum wage and the average weekly earnings ... If such a levy were introduced with this cap, paid maternity leave would deliver full income replacement for 87% of all women accessing the scheme. If capped at AWE [Average Weekly Earnings] the scheme will meet the ILO [International Labour Organization] requirement for 2/3 of pre-leave income for 97.5% of Australia's working mothers.<sup>729</sup>

An employer levy was considered to be a means of avoiding the employment discrimination against women that would result from direct employer funding of paid maternity leave.<sup>730</sup> For example, the Australian Manufacturing Workers Union Vehicle Division recommended that:

[a]n employer levy is needed that does not constitute a disincentive to women's employment, whilst it does accommodate the financial restrictions of small business. The appropriate response

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<sup>725</sup> Australian Council of Trade Unions, Submission 208, pp15-16. See also Equal Opportunity Commission Victoria, Submission 240, p3.

<sup>726</sup> Melissa Austin, Submission 149, p6.

<sup>727</sup> See, for example, Northern Territory Trades and Labor Council, Submission 84, p1; New South Wales Public Service Association, Submission 110, p5; Independent Education Union of Australia, Submission 204, pp6-7; United Trades and Labor Council of South Australia, Submission 211, p4; Labor Council of New South Wales, Submission 218, p5; Australian Manufacturing Workers' Union, Submission 237, pp10-11; Australian Manufacturing Workers' Union Vehicle Division Statement in Australian Manufacturing Workers' Union, Submission 237, p19; National Entitlement Security Trust in Australian Manufacturing Workers' Union, Submission 237, Appendix Three, p2; Australian Nursing Federation, Submission 123, p10; YWCA of Victoria, Submission 127, p18; Australian Services Union MEU Private Sector Victorian Branch, Submission 154, pp3,4; Australian Council of Trade Unions, Submission 208, p22; Finance Sector Union, Submission 161, cover letter; Australian Education Union, Submission 122, p2; Victorian Independent Education Union, Submission 163, pp2-3; Australian Liquor, Hospitality and Miscellaneous Workers Union, Submission 153, p1; Queensland Nurses' Union, Submission 134, pp9-10; Community and Public Sector Union (PSU Group), Submission 227, p3; CSIRO Staff Association, Submission 226, p3; Job Watch Inc., Submission 191, p13.

<sup>728</sup> Australian Council of Trade Unions, Submission 208, p25.

<sup>729</sup> Australian Council of Trade Unions, Submission 208, p24.

<sup>730</sup> See 13.4.2 for further discussion. See also Queensland Council of Unions, Submission 239, p14.

would be to set a levy on the total number of employees (not on the number of women employed), as a payroll levy that “kicks in” at a certain level (larger employers would therefore subsidise small business).<sup>731</sup>

Some submissions considered that an employer contribution to paid maternity leave would assist in establishing the payment as a workplace entitlement and maintaining a workforce connection between employers and women on paid maternity leave. The CSIRO Staff Association considered that:

... any such scheme would benefit by inclusion of an employer component, to help maintain the employment relationship through the period of maternity leave and better encourage the return to work.<sup>732</sup>

Immigrant Women’s Speakout also noted that an employer levy would spread the costs of paid maternity leave more evenly across employers. The uneven cost to business was seen as a disadvantage of direct employer funding.<sup>733</sup>

Submissions were received that argued against an employer levy. For example the Victorian Automobile Chamber of Commerce considered that an employer levy would effectively be a new tax on business.

Once again this [an employer levy] detracts the whole issue of maternity leave being a societal issue and places it back in the employment arena. In essence the levy is a new tax, which is paid by employers.<sup>734</sup>

The Australian Chamber of Commerce and Industry considered that an employer levy would be costly and complex to administer, would be an additional cost on employment thus reducing the ability of employers to create new jobs and would be a new tax on employment.<sup>735</sup> The National Pay Equity Coalition pointed out that:

[i]n some industries, including some where women’s employment is concentrated, labour costs are very finely calculated (for example, retail and hospitality). In those industries, even a relatively small levy could affect the viability of enterprises, especially small ones, and/or their capacity to employ people.<sup>736</sup>

Some submissions considered that an employer levy would lead to employment discrimination against women. For example the New South Wales Young Lawyers Employment and Industrial Law Committee argued that “[t]he use of an employer levy will increase discrimination against women”.<sup>737</sup>

The Shop, Distributive and Allied Employees’ Association considered that an employer levy would undermine the existing social security system.

[O]n the face of it a levy on employers has substantial problems from the perspective of protection of Australia’s unique social security system. If a levy can be imposed in this instance, then why not for other things? The imposition of a levy could open the way for others to argue that other social security and family support payments be made in a similar way. Such a development would spell the death knell for Australia’s social security system.<sup>738</sup>

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<sup>731</sup> Australian Manufacturing Workers Union Vehicle Division Statement in Australian Manufacturing Workers Union, Submission 237, p19.

<sup>732</sup> CSIRO Staff Association, Submission 226, p3; United Trades and Labor Council of South Australia, Submission 211, p3.

<sup>733</sup> See 13.3.3 and 13.4.6 above for further discussion.

<sup>734</sup> Victorian Automobile Chamber of Commerce, Submission 112, p16. See also Australian Chamber of Commerce and Industry, Submission 197, p57; New South Wales Young Lawyers Employment and Industrial Law Committee, Submission 246, p2; Women’s Electoral Lobby, Submission 248, p22; Women’s Health in the North, Submission 60, p5; Motor Traders’ Association of New South Wales, Submission 141, p4; Shop, Distributive and Allied Employees’ Association, Submission 173, pp29-30.

<sup>735</sup> Australian Chamber of Commerce and Industry, Submission 197, pp56, 57.

<sup>736</sup> National Pay Equity Coalition, Submission 224, p29.

<sup>737</sup> New South Wales Young Lawyers Employment and Industrial Law Committee, Submission 246, p2.

<sup>738</sup> Shop, Distributive and Allied Employees’ Association, Submission 173, pp29-30.



## 13.6 HREOC's position

Submissions demonstrate that there is substantial community support for Government playing a role in funding a national paid maternity leave scheme. Those employers and employer groups who supported the introduction of paid maternity leave did so on the grounds that such a scheme be government funded. They considered that business did not have the capacity to pay for such a benefit. The majority of submissions from women's groups supported government funding as a means of ensuring that all women in paid work could access paid maternity leave and that the introduction of such a scheme did not increase employment discrimination against women on the ground of pregnancy or potential pregnancy. The scheme recommended by the majority of union submissions also included a role for Government in funding a minimum entitlement.

As discussed in Part C, HREOC considers that significant community benefits would result from the introduction of paid maternity leave. Objectives such as ensuring the health and wellbeing of women and their children, promoting equality, eliminating discrimination, contributing to the maintenance of Australia's fertility rate and assisting with the maintenance of Australia's human capital are all social objectives that benefit the entire community. Taxpayer funding is a means of distributing the cost of this measure amongst those who benefit.

As set out in Chapter 10, HREOC recognises that employers will benefit from the introduction of paid maternity leave. These benefits include direct benefits such as a reduction in recruitment costs and increased staff loyalty, as well as broader economic benefits such as access to a more highly skilled labour force.

HREOC notes that the direct benefits of paid maternity leave will vary considerably between employers, and in some cases will not outweigh the costs of such a payment. The macro-economic benefits to employers are less directly tangible and may not be acknowledged by some employers as sufficient reason for an employer contribution to paid maternity leave. HREOC is also concerned at the impact of a directly employer funded scheme on women's employment, particularly given employers' willingness to admit that they would discriminate in their employment decisions under such a scheme.

An employer levy would spread the cost of paid maternity leave more evenly across employers and would reduce the chance of increased discrimination on the basis of pregnancy or potential pregnancy. However, HREOC acknowledges that there would be considerable employer resistance to the introduction of such a levy.

Therefore, HREOC does not propose a compulsory employer contribution to paid maternity leave, either through direct payments or an employer levy. HREOC does, however, see a role for employers to top up a government funded component through enterprise bargaining and strongly encourages employers to do so.<sup>739</sup>

In light of these concerns with employer funding, HREOC considers that a national scheme of paid maternity leave should be funded by the federal Government. HREOC considers that funding such a scheme is an appropriate role for the Government. This view is based on the community benefits of paid maternity leave, the failure of the existing system to deliver paid maternity leave across the workforce, and the significant community support for such an approach.

### RECOMMENDATION 1

That a national paid maternity leave scheme be immediately implemented and funded by the federal Government.

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<sup>739</sup> See 19.4 for further discussion.



# 14. Coverage

## 14.1 Introduction

One of the most basic issues to determine in designing a paid maternity leave scheme is the coverage of such a scheme. While at first glance this appears to be a simple matter, it was in fact one of the most controversial issues in the consultations and submissions.

This Chapter covers the issue of whether paid maternity leave should be available to:

- women versus men and women;
- women in paid work versus all women; and
- adoptive parents.

There was clear support for including adoptive parents in a paid maternity leave scheme. However, opinion was fairly evenly divided in relation to whether the payment should be for mothers only or able to be taken by either the mother or father and whether the payment should be available to all women or only women in paid work.

## 14.2 Payment to women versus payment to both men and women

### 14.2.1 Introduction

Significant opinion was voiced on whether paid leave should be for the mother or the primary carer of a child. Almost half of the submissions received by HREOC addressed the question of whether leave should be provided as maternity or parental leave.

This Chapter canvasses the views of those in support of parental leave and those who favoured maternity leave. International standards and the approach taken in other countries is provided as a comparison in deciding this element of a proposed Australian scheme.

### 14.2.2 International standards and practices

The Maternity Protection Convention specifies that 14 weeks of paid leave should be available for **women** in paid work.

The International Labour Organization differentiates between maternity leave which "... is designed to protect working women during their pregnancy and recovery from childbirth"<sup>740</sup> and parental leave which it defines as "... a long term leave to allow parents to take care of an infant or young child".<sup>741</sup>

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<sup>740</sup> International Labour Organization "Beyond childbirth: Parental, paternity and adoption leave" *Maternity Protection at Work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103) and Recommendation, 1952 (No. 95)* Report V(1) International Labour Conference 87th Session Geneva 1999 [www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-v-1.htm](http://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-v-1.htm).

<sup>741</sup> International Labour Organization "Beyond childbirth: Parental, paternity and adoption leave" *Maternity Protection at Work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103) and Recommendation, 1952 (No. 95)* Report V(1) International Labour Conference 87th Session Geneva 1999 [www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-v-1.htm](http://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-v-1.htm).

The possibility of including parental leave in the Maternity Protection Convention was discussed and rejected in the process of revising the 1952 Maternity Protection Convention.<sup>742</sup> In deciding to focus on maternity leave, the International Labour Office noted that:

... the new proposed instruments would focus on protection for women during their pregnancy and recovery from childbirth, that is on child-bearing rather than on child-rearing.<sup>743</sup>

CEDAW specifies paid maternity leave as a measure that state parties should take "... to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work".<sup>744</sup> The CEDAW working party considered replacing "maternity leave" with "paid leave for parents", however it did not adopt this suggestion, instead retaining the provision that the leave should be specifically for women.<sup>745</sup>

Practice varies internationally regarding whether leave is provided as maternity leave or parental leave, with the majority of countries providing leave specifically for women in the weeks around childbirth.<sup>746</sup> In reviewing practice among Member States, the International Labour Office observed that:

... those Members which have adopted a parental leave scheme providing benefits typically reserve the early portion of that leave for the employed mother.<sup>747</sup>

Canada provides 17 weeks paid maternity leave followed by 35 weeks of paid parental leave, which can be taken by either parent or shared within the first year following the child's birth.

Denmark provides 18 weeks paid maternity leave which includes four weeks leave before the birth. This is followed by 10 weeks paid parental leave which can be taken by either the mother or father. There is also a separate and additional entitlement to two weeks paid paternity leave which can be taken concurrently with the maternity leave.

Ireland provides 18 weeks paid maternity leave including up to four weeks before the birth. This is followed by 14 weeks unpaid parental leave.

Japan provides 14 weeks paid maternity leave.

As of April 2003, the United Kingdom will provide 26 weeks paid maternity leave and two weeks paid paternity leave. There is also an entitlement for up to 13 weeks of unpaid parental leave which can be taken at any time up to the child's fifth birthday.

Norway provides the option of either 48 weeks paid parental leave at full income replacement, 52 weeks paid parental leave at 80 per cent replacement rate or the paid leave can be combined with part time work for up to two years. Nine weeks of this period is reserved for the mother, consisting of three weeks compulsory leave before the birth and six weeks leave following the birth. Four weeks of leave are reserved for the father.

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<sup>742</sup> The 1952 Maternity Protection Convention was revised and became open for signature as International Labour Organization *Maternity Protection Convention 2000* (No 183).

<sup>743</sup> International Labour Organization *Maternity Protection at Work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103) and Recommendation, 1952 (No. 95)* Report V(1) International Labour Conference 87th Session Geneva 1999 [www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-v-1.htm](http://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-v-1.htm).

<sup>744</sup> *Convention on the Elimination of All Forms of Discrimination Against Women* GA Res 180 (XXXIV 1970), 19 ILM 33 (1980), Article 11(2).

<sup>745</sup> 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, p139.

<sup>746</sup> The following information on provisions in various countries is drawn from Columbia University, Clearinghouse on International Developments in Child, Youth and Family Policies *Issue Brief* Spring 2002 [www.childpolicyintl.org/issuebrief/issuebrief5.htm](http://www.childpolicyintl.org/issuebrief/issuebrief5.htm) and the Mutual Information System on Social Protection in the EU Member States and the EEA (MISSOC) *Maternity Leave: Prior to and after confinement* [www.europa.eu.int/comm/employment\\_social/missoc/2002/missoc\\_87\\_en.htm](http://www.europa.eu.int/comm/employment_social/missoc/2002/missoc_87_en.htm).

<sup>747</sup> International Labour Organization "Beyond childbirth: Parental, paternity and adoption leave" *Maternity Protection at Work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103) and Recommendation, 1952 (No. 95)* Report V(1) International Labour Conference 87th Session Geneva 1999 [www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-v-1.htm](http://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-v-1.htm).

France provides a basic rate of 16 weeks of paid maternity leave, with longer periods available in the event of multiple births and 26 weeks available in the case of the birth of a third or subsequent child. Eleven days of paid paternity leave is available as a separate and additional entitlement to be taken within the four months following the birth.

The New Zealand Paid Parental Leave scheme confers the primary entitlement to paid leave on women, with the ability to transfer this leave to a spouse. Where leave is transferred, the spouse must meet the eligibility criteria for leave, and the level of payment is calculated on the basis of the spouse's earnings.<sup>748</sup>

### 14.2.3 Payment to women

#### Introduction

Many submissions supported paid maternity leave being provided specifically for women.<sup>749</sup> The majority of employer groups in favour of a paid leave scheme considered that this should be a payment specifically for women. This view was also supported by a range of other groups including women's groups, unions, academics, and health professionals.

#### Maternal health and recovery

There was a strong view amongst those who considered that leave should be specifically for women, that this was required to deliver on the health and wellbeing objectives of paid maternity leave.<sup>750</sup> More specifically, these submissions referred to the need for paid leave to be specifically for women due to the fact that it is women who give birth and require time away from the workplace to sufficiently recover.<sup>751</sup> For example the Australian Hotels Association considered that:

... the payment should be made to women only to recognise the physical demands of the later stages of pregnancy, birth, recovery from birth and establishment [of breastfeeding].<sup>752</sup>

The Women's Studies Research Unit supported maternity leave on the basis that:

... the need for leave is inextricably linked with maternal health (recovery from childbirth, sleep deprivation) and child health (establishment of bonding and breastfeeding where possible).<sup>753</sup>

The New South Wales Working Women's Centre drew attention to international standards, noting that:

ILO [International Labour Organization] and CEDAW recommend paid maternity leave for good reason – the health and well being of mother and child, and to ensure equality in employment ...<sup>754</sup>

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<sup>748</sup> *Parental Leave and Employment Protection Act 1987* (NZ).

<sup>749</sup> See, for example, National Tertiary Education Union, Submission 169, p4; Patricia Todd and Judy Skene, Submission 176, p1; Women's Action Alliance (Australia) Inc., Submission 146, p7; Australian Hotels Association, Submission 199, p5; Labor Council of New South Wales, Submission 218, p6; Centre for Applied Social Research RMIT University, Submission 234, pp9,10; Victorian Government, Submission 250, Attachment pp3-4; New South Wales Working Women's Centre, Submission 225, p12; Local Government Association of Queensland Inc., Submission 156, p2; National Council of Women – Western Australia provided through the National Women's Council of South Australia, Submission 128D, p1; Australian Mines and Metals Association, Submission 130, p2; BPW Adelaide East, Submission 178A, p1; Women's Health in the North, Submission 60, p3; Karen Simmer, Submission 72, pp2-3.

<sup>750</sup> See Chapter 5 for further discussion of the health and wellbeing benefits of paid maternity leave.

<sup>751</sup> See, for example, BPW Adelaide East, Submission 178A, p1; Women's Action Alliance (Australia) Inc., Submission 146, p7; Centre for Applied Social Research RMIT University, Submission 234, p10.

<sup>752</sup> Australian Hotels Association, Submission 199, p5.

<sup>753</sup> Women's Studies Research Unit, School of Social Work, University of Melbourne, Submission 48, pp4-5. See also Women's Health in the North, Submission 60, p3.

<sup>754</sup> New South Wales Working Women's Centre, Submission 225, p12. See also Victorian Government, Submission 250, Attachment pp3-4; Patricia Todd and Judy Skene, Submission 176, p1; BPW Adelaide East, Submission 178A, p1; Karen Simmer, Submission 72, pp2-3.

Coles Myer recommended that:

[a] paid maternity leave system which is government funded should provide payments to women only as the primary objective of such a scheme would be to ensure optimal health for women and infants.<sup>755</sup>

The Australian Education Union submitted that:

[p]aid maternity leave is for mothers in recognition of the physical demands of the later stages of pregnancy, birth, recovery from birth and establishment, where possible of breast feeding.

In recognition of these physical facts affecting mothers this payment should not be intended to be transferable between a mother and her spouse except in exceptional circumstances.<sup>756</sup>

Women at the Third Annual Victorian Women's Summit supported providing a payment specifically for women in recognition of the fact that:

- women have the babies;
- women do the breastfeeding;
- women have the health issues associated with giving birth.<sup>757</sup>

The Work + Family Policy Research Group considered that maternity and parental leave serve different purposes. That submission considered that:

[m]aternity and parental leave are not interchangeable. Maternity leave is about recognising women's physical and other health needs immediately before and after childbirth, and facilitating the opportunities for breast-feeding. Parental leave is about both parents having opportunities to establish close ties with their infants and facilitating participation by men as well as women in the early care of their infant children. In line with the differing objectives of maternity and parental leave, the latter should come into effect after the former - as happens in *all* member countries of the European Union.<sup>758</sup>

The same approach is taken by the Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 (Cth), introduced by the Democrats into the Senate on 16 May 2002, which limits paid maternity leave to women only on the grounds of the health and wellbeing of the mother.

[The Bill] provides paid leave for mothers in recognition of the physical demands of the later stages of pregnancy, recovery from birth and establishment, where possible, of breastfeeding. In recognition of these physical factors affecting mothers, this payment is not intended to be transferable between an employee and their spouse except in exceptional circumstances.<sup>759</sup>

The New South Wales Working Women's Centre also considered that:

... more generic forms of leave such as parental or paternity leave de-gender the nature of child birth and the necessity for leave, and may be subject to further debate and/or trade-off over time.<sup>760</sup>

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<sup>755</sup> Coles Myer Ltd, Submission 107, p10.

<sup>756</sup> Australian Education Union, Submission 122, p24.

<sup>757</sup> Victorian Government, Submission 250, Attachment p4.

<sup>758</sup> Work + Family Policy Research Group University of Sydney, Submission 251, p11 (emphasis in original).

<sup>759</sup> Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 (Cth) *Explanatory Memorandum*, p2.

<sup>760</sup> New South Wales Working Women's Centre, Submission 225, p12.

## Addressing women's disadvantage in the workforce

Some submissions considered payment to women was a means of addressing the disadvantage that women experience in the workforce as a result of maternity.<sup>761</sup> For example, the New South Wales Labor Council recommended:

... payment made to the mother. This recognises the fact that it is women who give birth and are discriminated against in terms of their workforce experience as a result. Furthermore, the period of payment is relatively short to allow for recovery from birth and establishment of breastfeeding.<sup>762</sup>

The Centre for Applied Social Research submitted that:

... it is our view that the 14 weeks maternity leave should be paid to women only, in recognition of ... the need to protect women against discrimination because of their child-bearing responsibilities.<sup>763</sup>

While Coles Myer identified health and wellbeing as the primary objective of paid maternity leave, this employer also submitted that:

... supplementary benefits of such a scheme, such as reducing workplace inequity for women can be achieved by limiting the payment to women. In practice a payment made to a woman in many cases will also provide assistance to men as part of the domestic unit.<sup>764</sup>

## Maternity leave as a priority

Some submissions advocated that paid maternity leave should be achieved before seeking to extend the payment to primary caregivers.<sup>765</sup>

The Women's Economic Policy Analysis Unit noted that:

... evidence from countries where paid *paternity* leave is available (eg. Germany and Sweden) shows that fathers' access rate is appallingly low. As such WEPAU argues that firstly a model of paid *maternity* leave must be introduced; once the scheme is operational it may be appropriate to extend such provisions to fathers and/or partners.<sup>766</sup>

## Ensuring women's access to leave

Some submissions contended that a system of parental leave would lead to some women returning to work before they were ready. This could occur in cases where the family was financially better off if the woman returned to work within the 14 weeks and the father took the paid parental leave. The Women's Action Alliance noted that:

... if it were payable to the father, because he usually earns more than the mother, there would be a financial incentive for him to claim it rather than her.<sup>767</sup>

A concern was also raised in some consultations that power imbalances within some families could mean that some women could be pressured to give up the paid leave.<sup>768</sup> This issue was not raised in the submissions.

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<sup>761</sup> See Chapter 7 for further discussion of the benefits of paid maternity leave in addressing women's workplace disadvantage.

<sup>762</sup> Labor Council of New South Wales, Submission 218, p6.

<sup>763</sup> Centre for Applied Social Research RMIT University, Submission 234, p10.

<sup>764</sup> Coles Myer Ltd, Submission 107, p10.

<sup>765</sup> See, for example, New South Wales Working Women's Centre, Submission 225, p12; Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, ppv,16; Carrie Parsons, Submission 25, p1; Karen Simmer, Submission 72, pp2-3.

<sup>766</sup> Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p16 (emphasis in original).

<sup>767</sup> Women's Action Alliance (Australia) Inc., Submission 146, p7.

<sup>768</sup> See, for example, union consultation, Hobart, 27 June 2002; women's groups and community consultation, Hobart, 25 June 2002.

## Exceptions

Several submissions suggested that the paid leave entitlement be transferred to the primary carer in the case of death or incapacity of the birth mother. For example, BPW Australia suggested:

[p]articular consideration needs to be given to a partner where the mother has died in childbirth, allowing for the partner to take the full 14 weeks.<sup>769</sup>

The Australian Retailers Association argued that:

[t]he eligibility criteria should take into consideration the fact that circumstances may occur where the mother is not able to provide for the health and well being of the child and access to the benefits of the scheme should not be unduly restrictive.<sup>770</sup>

This exception is consistent with Paragraph 10(1) and (2) of the International Labour Organization Recommendation 191.<sup>771</sup>

### 14.2.4 Payment to primary caregiver

#### Introduction

A significant number of submissions supported a system of paid parental leave that made payments to the primary care giver.<sup>772</sup> As with payments to women only, this approach was also supported by a broad range of groups including women's groups, academics, unions, and a limited number of employer groups.

HREOC notes that any system that made payments available to the parent performing the role of primary carer should not discriminate against same-sex couples. Non-birth parents in same-sex relationships should receive the same treatment as fathers in heterosexual relationships.

#### Choice and flexibility

Some submissions considered that paid parental leave should be provided in order to give families choice and flexibility regarding who took leave following the birth of a child.<sup>773</sup>

While it is true that in many families it will be the mother that takes paid parental leave this should be a choice made by each family instead of being forced on them ... If we value parenthood we should value choices made by parents that cater for the best needs of their families.<sup>774</sup>

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<sup>769</sup> BPW Australia, Submission 148, p8. See also New South Wales Public Service Association, Submission 110, p4; Australian Education Union, Submission 122, p24.

<sup>770</sup> Australian Retailers Association, Submission 165, p21.

<sup>771</sup> International Labour Organization *Maternity Protection Recommendation 2000* (No 191).

<sup>772</sup> See, for example, National Pay Equity Coalition, Submission 224, p4; YWCA of Australia, Submission 228, p16; Association of Independent Schools of Victoria, Submission 108, p3; Shop, Distributive and Allied Employees' Association, Submission 173, p18; Hawke Institute, Submission 174, p3; Job Watch Inc., Submission 191, p14; Catholic Women's League Australia Inc., Submission 195, p2; Women in the Department of Education and Children's Services Reference Committee, South Australia, Submission 201, p1; Law Institute of Victoria, Submission 215, p3; Equal Opportunity for Women in the Workplace Agency, Submission 217, p2; Equal Opportunity Commission Victoria, Submission 240, p2; New South Wales Young Lawyers Employment and Industrial Law Committee, Submission 246, p1; Law Council of Australia, Submission 247, p3; Queensland Working Women's Service, Submission 219, p10; Adoptive Families Association of the Australian Capital Territory Inc., Submission 115, pp1-2; Northern Territory Trades and Labor Council, Submission 84, p1; Jason Corney, Submission 164, p1; Mothers of In(ter)vention, Submission 104, p2; Chris Van Der Wijngaart, Submission 35, p1; Kay Channer, Submission 52, p2; Penny Stewart, Submission 31, p1; EMILY's List, Submission 159, p3; Immigrant Women's Speakout Association New South Wales Inc., Submission 158, pp12-13; Men's Confraternity (Western Australia) Inc., Submission 249, p1.

<sup>773</sup> See, for example, BPW Australia, Submission 148, p8; International Adoptive Parents Association, Submission 145, p1.

<sup>774</sup> Australian Society for Intercountry Aid for Children (New South Wales) Inc., Submission 51, p1.



An individual submission argued that "... the important issue is that parents should have a choice and that paid leave should not be simply limited to women".<sup>775</sup> Another individual noted that raising children was a family duty and as such:

[f]amilies should be able to choose who will take of the childcare responsibilities – whether that is the mother, father, joint etc. Therefore paid maternity leave needs to be about providing income to the primary care giver.<sup>776</sup>

The Catholic Women's League of Australia suggested that:

[w]hile the physical acts of pregnancy and giving birth belong to a female there are many cases where a mother may choose to go back to employment while a father chooses to be the primary care giver – for example (and not limited to) the case of adoption or when the father works from home, or the mother's workplace takes precedence.<sup>777</sup>

BPW Australia considered that allowing choice in who took paid leave would influence some women's decisions on whether to have a child.

[t]his is particularly important to our members who run their own businesses or who earn significantly more than their partners – it would suit the family finances for the partner to spend some time as principal carer to free the mother up to return to work at least part-time as soon as possible. This would be a deciding factor for these potential parents in determining when and indeed whether to have a child.<sup>778</sup>

## The changing roles of mothers and fathers

Another rationale for providing paid leave to the primary caregiver was gender equity concerns and the rights of men and fathers. As the Victorian Women Lawyers pointed out, "[f]amilies are not just a women's issue".<sup>779</sup>

The Australian Capital Territory Ministerial Advisory Council on Women pointed out that over time, a paid parental leave scheme:

... will lead to the development of a new standard being established in the society, including an enhanced understanding that caring responsibilities belong to both men and women.<sup>780</sup>

One individual considered that:

[b]y stipulating that each new parent has the right to a period of leave, the government will recognise parental leave as an entitlement for all, and not discriminate against fathers, or restrict their options of work/family arrangements.<sup>781</sup>

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<sup>775</sup> Kate Purcell and Tim O'Reilly, Submission 20, p1.

<sup>776</sup> Melissa Austin, Submission 149, p4.

<sup>777</sup> Catholic Women's League Australia Inc., Submission 195, p2.

<sup>778</sup> BPW Australia, Submission 148, p8. See also Joan Cross, Submission 138, p1; Kay Channer, Submission 52, p2; Victorian Women Lawyers, Submission 137, p3; Aboriginal and Torres Strait Islander Commission, Submission 116A, p2; National Pay Equity Coalition, Submission 224, p19; YWCA of Australia, Submission 228, p16; Queensland Working Women's Service, Submission 219, p10; Equal Opportunity Commission Victoria, Submission 240, p2. See also Australian Council of Trade Unions, Submission 208, p36; Equal Opportunity for Women in the Workplace Agency, Submission 217, p6; Anti-Discrimination Board of New South Wales, Submission 214, p18; Women in the Department of Education and Children's Services Reference Committee, South Australia, Submission 201, p1; Association of Independent Schools of Victoria, Submission 108, p3; Council for Equal Opportunity in Employment Ltd, Submission 252, p4.

<sup>779</sup> Victorian Women Lawyers, Submission 137, p2.

<sup>780</sup> Australian Capital Territory Ministerial Advisory Council on Women, Submission 120, p7. See also Patricia May, Submission 70, pp1-2; Joan Cross, Submission 138, p1; Equal Opportunity Commission Victoria, Submission 240, p2; Anti-Discrimination Board of New South Wales, Submission 214, p18; Job Watch Inc., Submission 191, p14; New South Wales EEO Practitioners' Association, Submission 77, p2.

<sup>781</sup> Patricia May, Submission 70, p2.

An associated argument raised in a number of submissions supporting payment to the primary caregiver was the belief that payment to the mother would only reinforce the gendered stereotypes of men as the breadwinners and women as the homemakers. One individual noted that:

... in restricting leave to only mothers there are implications, which suggest that the father has no obligation, or desire to take time off to care for a child, thus reinforcing the male "breadwinner" mentality.<sup>782</sup>

An academic was concerned that any new system should challenge current gendered roles.

There are signs that both women and men want greater equality in care-giving and income-earning. Women's bodies bear and breastfeed babies, and paid maternity leave gives recognition to this reality. However, a scheme must avoid any suggestion that babies and young children are the responsibility of individual mothers rather than of both parents, and of the community.<sup>783</sup>

One individual drew attention to the changing gender roles in our society.

Our society has dramatically changed from the times, where the man was the breadwinner and the woman threw in her job at the first sign of pregnancy to stay at home to be a full time mother.<sup>784</sup>

## Recognising the role of fathers

A corollary to these gender equity and gender stereotype arguments is the contention made in several submissions that where parenting is shared, both parents want recognition and encouragement of this by making any payment available to the primary caregiver.<sup>785</sup> One individual considered that men should have the same child raising opportunities as women.

Implementing Paid Maternity Leave only addresses the financial issue for women but the converse issue of allowing men the same child raising opportunities as women has been downplayed to the point where it barely rates a mention, let alone is addressed with equal importance. Addressing both sides of the issue is implementing gender equality, which is the purpose of the HREOC whereas only addressing the women's issue is feminism.<sup>786</sup>

An individual submission considered that:

[t]he main disadvantage of limiting paid leave to women is that it limits the options available to women and removes any incentive to fathers to take time off to care for their children. Indeed it has the disadvantage of creating a financial barrier or penalty for men seeking to care for children while their partner returns to work.<sup>787</sup>

The Men's Confraternity, Western Australia pointed out that there are many fathers "... who are denied the opportunity of experiencing those first few months of their child's life, because the option is not available to them".<sup>788</sup>

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<sup>782</sup> Kimberley Meyer, Submission 105, p3.

<sup>783</sup> Marty Grace, Submission 151, p2.

<sup>784</sup> Melissa Austin, Submission 149, pp3-4.

<sup>785</sup> See, for example, Australian Women Lawyers, Submission 140, p2; Australian Council of Trade Unions, Submission 208, p36; Aboriginal and Torres Strait Islander Commission, Submission 116F, p1 and 116E, p1; R and N Cornhill, Submission 131, pp5-6; Adoptive Families Association of the Australian Capital Territory Inc., Submission 115, p1; Equal Opportunity for Women in the Workplace Agency, Submission 217, p6; Job Watch Inc., Submission 191, p14; Guy Whitcomb, Submission 5, p1; Hawke Institute, Submission 174, p3; Kate Purcell and Tim O'Reilly, Submission 20, p1.

<sup>786</sup> Cameron Paroz, Submission 147, p1. See also BPW Australia, Submission 148, p8; Victorian Automobile Chamber of Commerce, Submission 121, p8; Immigrant Women's Speakout Association New South Wales Inc., Submission 158, pp12-13; Joan Cross, Submission 138, p1; National Pay Equity Coalition, Submission 224, p19; Australian Capital Territory Ministerial Advisory Council on Women, Submission 120, p7.

<sup>787</sup> Kate Purcell and Tim O'Reilly, Submission 20, p1. See also Patricia May, Submission 70, pp1-2; Penny Stewart, Submission 31, p1.

<sup>788</sup> Men's Confraternity (Western Australia) Inc., Submission 249, p1.

The Women's Council, Liberal Party of Australia (South Australia) strongly asserted that:

... both parents are responsible for the production of children and therefore both parents have a responsibility for their care. Should fathers choose to play a full time caring role in the early weeks of the lives of their children, they should have access to paid parental leave on equal terms with mothers.<sup>789</sup>

The Anti-Discrimination Board of New South Wales considered that creating a parental leave entitlement would have symbolic value.

Although the gender neutrality of terms such as parental leave may in practice be at odds with the reality of women's primary responsibility for childbirth and child rearing, as Therese MacDermott has argued the use of a gender neutral entitlement to parental leave rather than maternity leave seeks to encourage *"at least the idea, if not actuality, of shared parenting."*<sup>790</sup>

## Changing workplace cultures

Some submissions contended that extending paid leave to the primary caregiver may have wide-reaching positive effects on workplace culture and the acceptance and use of work/family balance policies.<sup>791</sup> An individual submission considered that:

[a] parental income maintenance may assist in encouraging fathers to take on greater child caring responsibilities and challenge managerial cultures which currently impede Australian men accessing unpaid parental leave provisions.<sup>792</sup>

The National Women's Council of South Australia submitted that:

... a parental leave element is essential if work place cultures are to change to support, instead of obstruct, a balance between work and home responsibilities, if stronger family ties and interaction between parents and children is to be supported, and the economic and social benefits of this family policy are to be fully realised.<sup>793</sup>

The Equal Opportunity for Women in the Workplace Agency suggested that providing parental leave would allow for sharing of family responsibilities between men and women and therefore inevitably have a positive effect on gender equity at work.<sup>794</sup>

## Discrimination against women

A number of submissions expressed concern that limiting paid leave to mothers only would exacerbate the discrimination women already face in employment as employers would be reluctant to employ women of child-bearing age.<sup>795</sup> An individual stated that discrimination:

... will have a greater potential to be limited under a parental policy than a maternity one. A maternity leave policy has potential to further exacerbate the potential for employers to discriminate against women, a parental leave policy, to which all parents are entitled, will go some way in minimising gender associations of parenting leave.<sup>796</sup>

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<sup>789</sup> Women's Council, Liberal Party of Australia (South Australia), Submission 100, p1.

<sup>790</sup> Anti-Discrimination Board of New South Wales, Submission 214, p18 (emphasis in original).

<sup>791</sup> See, for example, Australian Services Union South Australia and Northern Territory, Submission 189, p5.

<sup>792</sup> Patricia May, Submission 70, p2.

<sup>793</sup> National Women's Council of South Australia, Submission 68, p1. See also Victorian Women Lawyers, Submission 137, p3.

<sup>794</sup> Equal Opportunity for Women in the Workplace Agency, Submission 217, p6.

<sup>795</sup> See 8.3 and 13.4.2 for further discussion.

<sup>796</sup> Patricia May, Submission 70, p2. See also Penny Stewart, Submission 31, p1; Melissa Austin, Submission 149, pp3-4; R and N Cornhill, Submission131, pp5-6.

The Equal Opportunity Commission of Victoria considered that:

[a] gender neutral scheme would also seem to reduce the risk of “employment backlash” against women, as schemes focused solely on women may (dependent on funding arrangements) result in a knee-jerk reaction whereby women are subjected to potential disadvantage in terms of obtaining employment.<sup>797</sup>

Where a national scheme of paid maternity leave is funded by the taxpayer rather than individual employers, this concern may be less of a problem. This is because the direct cost of paid maternity leave would be borne by the Government and not the employer. There is not the same incentive for employers to not employ women of childbearing age in order to avoid the cost of paid maternity leave.

The Equal Opportunity for Women in the Workplace Agency considered that providing parental leave instead of maternity leave will “... address the concern of many men (employers and employees) about ‘special treatment’ for women”.<sup>798</sup>

## Transferability

A number of submissions canvassed the possibility of making the entitlement to paid maternity leave transferable to the other parent or primary caregiver.<sup>799</sup> This was seen as enabling a system of parental leave that acknowledged that the primary entitlement for leave should rest with the mother. In particular, these submissions proposed that the primary entitlement to paid leave reside with the mother, with the decision to transfer to be made by the mother. This proposal was supported by a significant proportion of the unions that made submissions. For example, the Australian Council of Trade Unions wrote that:

[t]he ACTU [Australian Council of Trade Unions] does not oppose the extension of eligibility to the child’s father or other primary caregiver in circumstances where the mother has genuinely opted to transfer her leave entitlement.

...

However the ACTU [Australian Council of Trade Unions] believes that, consistent with the anti-discrimination purpose, and to support maternal recovery post birth, the primary entitlement should rest with the mother.<sup>800</sup>

The National Pay Equity Coalition submitted that:

[w]hile a key rationale for paid maternity leave is to provide a period of leave for maternal and child health while maintaining the mother’s workforce attachment, there may be circumstances where the overall welfare of the household is best secured by transfer of the leave to the partner. That decision is one for the mother. It is cost neutral whether the leave is taken by the mother or her partner, provided the paid maternity leave entitlement is based on her earnings and transferred at that rate.<sup>801</sup>

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<sup>797</sup> Equal Opportunity Commission Victoria, Submission 240, p2.

<sup>798</sup> Equal Opportunity for Women in the Workplace Agency, Submission 217, p6.

<sup>799</sup> See, for example, Community and Public Sector Union (PSU Group), Submission 227, p18; Australian Council of Trade Unions, Submission 208, p36; National Pay Equity Coalition, Submission 224, p4; Women’s Electoral Lobby, Submission 248, p20; Job Watch Inc., Submission 191, p14; Victorian Independent Education Union, Submission 163, p3; EMILY’s List, Submission 159, p3; Karen Bijkersma, Submission 150, p1; Australian Women Lawyers, Submission 140, p2; Aboriginal and Torres Strait Islander Commission, Submission 116 Part E, p1; R and N Cornhill, Submission 131, p5; Adoptive Parents Association of the Australian Capital Territory Inc., Submission 115, p1; BPW Australia, Submission 148, p8; Australian Services Union MEU Private Sector Victorian Branch, Submission 154, p3; Queensland Nurses’ Union, Submission 134, p8; Australian Nursing Federation, Submission 123, p9; Labor Council of New South Wales, Submission 218, p6; Community and Public Sector Union – State Public Services Federation Group, Submission 230, p9; Women’s Electoral Lobby, Submission 248, p27.

<sup>800</sup> Australian Council of Trade Unions, Submission 208, p36.

<sup>801</sup> National Pay Equity Coalition, Submission 224, p19.

The Independent Education Union proposed that:

[a]s in the recently introduced New Zealand model, there should be provision for women to transfer part of the maternity payment to a partner but the mother should be the primary recipient, for example, for at least six weeks of the payment.<sup>802</sup>

### Limits on transferability

Even for those submissions that considered transferability, a view was often expressed that the duration of paid leave proposed (14 weeks) was probably inadequate to permit transferability given that women needed much of this time to recover from childbirth. The YWCA of Australia noted that:

[w]ithin a debate about 14 weeks leave there is likely to be little time for mothers to allocate to non-birth giving parents. Many women will want and need to take time off before the birth and the ILO [International Labour Organization] recommends 6 weeks leave after the birth, although this should not be a forced absence. However, it is still important to include transferability in the options in the development of a new system of parental payments.<sup>803</sup>

A number of submissions suggested that a portion of the leave should be reserved for the mother, with the remaining period available to either parent. Such an approach would reflect the practice in many State and federal awards of requiring women to take leave for six weeks prior to the birth of a child, unless a medical certificate is provided.<sup>804</sup>

The Illawarra Forum and the Illawarra Women's Health Centre considered:

[t]hat maternity leave should be available to the female parent solely for the first 8 weeks with the remaining 6 weeks negotiable as parental or maternity leave and available to either partner in the parenting arrangement. The condition that only the female parent be eligible for the first eight weeks is in recognition of the health and recuperation periods associated with childbirth.<sup>805</sup>

The Women's Electoral Lobby submitted that:

[o]ne consideration is restricting any transfer of entitlements until after the seventh week, partitioning the first six weeks following child-birth for post partum recovery. Some women's circumstances, however, may dictate the need for transferability before this point. Any system should not be unnecessarily restrictive.<sup>806</sup>

The Australian Capital Territory Ministerial Advisory Council on Women proposed that six weeks be reserved for the mother, with the remaining period available to either parent.<sup>807</sup> BPW Australia considered that two weeks of a 14 week period should be able to be transferred to a woman's partner.<sup>808</sup>

## 14.2.5 HREOC's position

In the debate surrounding the revision of the Maternity Protection Convention, two distinct positions emerged. These same positions reflect those that have emerged in consultations and submissions around an Australian scheme. The International Labour Office characterised these two approaches as follows.

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<sup>802</sup> Independent Education Union of Australia, Submission 204, p8.

<sup>803</sup> YWCA of Australia, Submission 228, p16.

<sup>804</sup> Note that this requirement is not included in the *Workplace Relations Act 1996* (Cth) and therefore could potentially be challenged on the grounds of being disadvantageous compared to the Act.

<sup>805</sup> Illawarra Forum Inc. and Illawarra Women's Health Centre, Submission 162, p2.

<sup>806</sup> Women's Electoral Lobby, Submission 248, p20.

<sup>807</sup> Australian Capital Territory Ministerial Advisory Council on Women, Submission 120, p2.

<sup>808</sup> BPW Australia, Submission 148, p8. See also New South Wales Public Service Association, Submission 110, p4.

[T]he first, based on maternity protection, focuses on the employment rights of an employed woman during pregnancy, maternity leave and following her return to work as well as on the health of the mother and child; the second, based on parental leave, lays greater stress on gender equality and shared responsibilities of parents with regard to childrearing.<sup>809</sup>

HREOC acknowledges the validity of both of these approaches. There was significant division in the consultations and the submissions regarding the preferred approach. Based on the information available, HREOC considers that it is not possible to determine which of these approaches has greater community support.

However, on balance, HREOC is of the view that a fourteen week paid leave scheme should be exclusively for the use of the mother. In particular, HREOC is of the view that establishing a system focused on maternity protection is a particularly pressing concern. HREOC considers that such protection should be a basic right for women in paid work in Australia. This approach is consistent with international practice that reserves a short period of paid leave specifically for women in recognition of the impact of childbirth on women's health.

The majority of the objectives outlined in Part C directly relate to women and their experience in the workforce. It is women who experience disadvantage in the workplace based on maternity. Similarly it is women who require a period of time out of the workforce immediately prior to and following the birth of a child in order to recover from the birth and ensure their health and wellbeing. This period will also enable women, where possible, to establish breastfeeding which will benefit their child. The obvious exception to this is the situation of adoptive parents.

A paid parental leave scheme fails to acknowledge the distinct experience of women and the particular disadvantage that they experience as a result of maternity.

Making a period of fourteen weeks available to either parent will also potentially undermine the ability of a paid leave system to guarantee women a period of leave from paid work. It will mean that some women are still faced with financial pressure to return to work, particularly where a family will receive higher government payments or greater weekly income from doing so. Making a system transferable will not overcome this issue.

HREOC is not convinced that making paid parental leave available to the primary caregiver, male or female, will, on its own, encourage men to be the primary carers of newborn babies. International experience has demonstrated that there is a very low take up rate by men where paid parental leave is available to either parent, particularly where this leave is paid at a rate below full income replacement.<sup>810</sup>

HREOC acknowledges the role of fathers in families and the importance of encouraging and supporting men to participate in caring for children. However, HREOC does not consider that reducing women's access to the initial short period of paid maternity leave is the best way to acknowledge this role. HREOC considers that a better approach would be to provide a separate entitlement to be taken concurrently as a supporting parents' benefit in addition to paid maternity leave.

HREOC notes the difference between a short period of paid maternity leave and the longer existing provision of twelve months unpaid parental leave. The primary objective of unpaid parental leave is to provide for the needs of the child, and to enable one parent to provide full time care for a child while retaining a right to return to the same employment position following leave. This leave, which is focused primarily on the care of a child, should remain available to either parent.

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<sup>809</sup> International Labour Organization "Beyond childbirth: Parental, paternity and adoption leave" *Maternity Protection at Work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103) and Recommendation, 1952 (No. 95)* Report V(1) International Labour Conference 87th Session Geneva 1999 [www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-v-1.htm](http://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-v-1.htm).

<sup>810</sup> See Chapter 17 for a discussion of payment level.

Should the Government decide to introduce a longer period of paid leave than recommended, HREOC would support this additional period being for the primary carer. However, in HREOC's view the initial period would still need to be reserved exclusively for the mother.<sup>811</sup>

HREOC recommends that the proposed period of paid leave be limited to women only, with the entitlement transferable to a woman's partner only in exceptional circumstances (such as death or incapacity of the mother). An exception to this general rule is adoptive parents, where, due to the fact that adoptive parents do not give birth to their children, the primary caregiver of the adopted child is eligible for paid leave at the time of placement of the adopted child with his or her adopted family. The situation of adoptions is discussed at 14.5.

## RECOMMENDATION 2

That a national scheme of paid leave at the time of the birth of a child be provided for women. The exceptions to this, where payment can be made to a woman's partner, should include where the mother has died, where the mother is not medically able to care for the child (based on a doctor's opinion), or where the child has been adopted.

### 14.3 Supporting parents' leave

There was strong support in many submissions for at least two weeks paid leave that could be taken concurrently with, and in addition to, maternity leave.<sup>812</sup> Such leave would allow a father or same sex partner to support the mother, care for other children and bond with the infant.

The Finance Sector Union of Australia conducted a survey of its members and reported that:

... taking time off after their baby is born is important for both parents. Almost all respondents (91.8%) agreed or strongly agreed, "It is important to find ways to extend the period of leave both parents can take together after their baby is born."<sup>813</sup>

The National Pay Equity Coalition considered that:

[t]here are strong arguments in favour of providing a period of paid parental leave for partners of women giving birth. Women now stay in hospital for quite brief periods after birth and do require care in the immediate post-birth period. There are many household accommodations to be made particularly in relation to establishing breastfeeding, sleeping, baby-care and looking after other family members.<sup>814</sup>

The Australian Council of Trade Unions recommended that:

... HREOC should examine the case for additional paid leave for the father or alternative supporter (eg grandparent) to care for the mother and any siblings. Two weeks concurrent paid leave is not uncommon.<sup>815</sup>

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<sup>811</sup> Duration of leave proposed is discussed in Chapter 16.

<sup>812</sup> See, for example, YWCA of Australia, Submission 228, p18; Community and Public Sector Union – State Public Services Federation Group, Submission 230, p8; Centre for Applied Social Research RMIT University, Submission 234, p10; Women's Electoral Lobby, Submission 248, pp20,27; National Pay Equity Coalition, Submission 224, p4; Union of Australian Women, Submission 89, p2; Lyn Collins and Barbara Pocock, Submission 232, p8. One submission was steadfastly against paid paternity leave: Stefan Slucki, Submission 63, p1.

<sup>813</sup> Finance Sector Union, Submission 161, p8.

<sup>814</sup> National Pay Equity Coalition, Submission 224, p20.

<sup>815</sup> Australian Council of Trade Unions, Submission 208, p36. See also Women's Health in the North, Submission 60, p3; Women's Studies Research Unit, School of Social Work, University of Melbourne, Submission 48, pp4-5; New South Wales Working Women's Centre, Submission 225, p12; motherInc, Submission 196, p2; Australian Education Union, Submission 122, pp2-3; Community and Public Sector Union (PSU Group), Submission 227, p19.

The Queensland Working Women's Service submitted that:

[i]n addition to a period of paid leave available for women, we consider that paid leave for the woman's partner would be essential. This would enable both partners to spend time together as a family and adjust to the new routine. The Employment Bill recently introduced by the United Kingdom, provides for two weeks of paid paternity leave for working fathers.<sup>816</sup>

The Community and Public Sector Union, State Public Services Federation Group recommended that:

... in order to encourage partner support and the balancing of family responsibilities that a period of two weeks paid parental leave be available to partners to be taken at the time of the birth.<sup>817</sup>

The importance of a father bonding with his child was often presented as an argument for the provision of the additional period of paid leave for the non-birth parent.

The Australian Federation of University of Women (South Australia) noted that:

[t]here is evidence from Sweden for example, indicating that when fathers are included in the early bonding process the level of child abuse, and the consequent socially and economically costly impact on the child's emotional, physical and educational growth declines. Such paid maternity/parenting support is a valuable form of social insurance.<sup>818</sup>

Workplace safety for supporting parents was also raised as an important consideration by another submission. The Ethnic Communities' Council of Victoria submitted that:

**[t]he provision of paid paternal or supporting parental leave of at least two weeks** to be taken at the time of the child first being in the home would reduce family pressure, have health and safety benefits for the supporting parent and his/her workplace and build and consolidate family support at a critical time.<sup>819</sup>

A number of submissions suggested eligibility criteria for paid supporting parent leave as well as level of payment. For example, the Australian Education Union proposed "... 15 days paid paternity leave, for each child, with no service requirement for eligibility".<sup>820</sup> The Centre for Applied Social Research suggested "... 2 weeks paid parental leave for the partner of the birthmother or adoptive parent at replacement income up to average weekly earnings".<sup>821</sup> The Community and Public Sector Union, State Public Services Federation Group proposed that the same eligibility criteria should apply to both forms of leave.<sup>822</sup>

HREOC strongly urges the Government to consider introducing two weeks supporting parent leave in addition to, and to be taken concurrently with, the fourteen weeks of paid maternity leave. The same eligibility criteria as apply to maternity leave should apply, and be based on the supporting parent income. Such leave would allow bonding between that parent and their child, and would provide an important support to the mother and other children in the family. It would also provide community recognition of the role of fathers.

While HREOC considers that such leave would have significant benefits, it is a second order issue to that of a national paid maternity leave scheme.<sup>823</sup>

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<sup>816</sup> Queensland Working Women's Service, Submission 219, p10. See also Marty Grace, Submission 151, pp4-5; Australian Services Union South Australia and Northern Territory, Submission 189, p6; National Women's Council of South Australia, Submission 128B, p2.

<sup>817</sup> Community and Public Sector Union – State Public Services Federation Group, Submission 230, p8.

<sup>818</sup> Australian Federation of University Women (South Australia) Inc., Submission 179, p2. See also Eleanor Wilson, Submission 133, p7; Confidential, Submission 216, p5.

<sup>819</sup> Ethnic Communities' Council of Victoria, Submission 242, p7 (emphasis in original).

<sup>820</sup> Australian Education Union, Submission 122, p23.

<sup>821</sup> Centre for Applied Social Research RMIT University, Submission 234, p9.

<sup>822</sup> Community and Public Sector Union – State Public Services Federation Group, Submission 230, p9.

<sup>823</sup> This has not been costed in the model in the Appendix.



## 14.4 Women in paid work versus all women

### 14.4.1 Introduction

An area of contention in the submissions and public debate was whether paid maternity leave should be limited to women in paid work or made available to all women. Opinion on this issue largely depended on the objectives that paid maternity leave was considered to meet and judgment about the adequacy of existing payments at the time of birth of a child.

An online maternity leave poll conducted by motherInc is illustrative of the spread of views on this issue. The poll found that 37 per cent considered “all mums” should receive maternity leave, 49 per cent believed that the payment should be for “paid working mums”, three per cent supported the payment being for “non-paid mums [only]” and 10 per cent were unsure.<sup>824</sup>

### 14.4.2 International standards and practices

#### The Maternity Protection Convention

The Maternity Protection Convention identifies paid maternity leave as a measure specifically aimed at supporting women in paid work.

##### Article 2

1 This Convention applies to all employed women, including those in atypical forms of dependent work.<sup>825</sup>

#### United Kingdom

The United Kingdom has three schemes, covering:

- women with a strong labour force attachment;
- self-employed women and women in intermittent paid work; and
- women not in paid work or with minimal recent paid work history.

Women who have been employed by the same employer for 26 continuous weeks up to the week which is 15 weeks prior to the expected birth date (qualifying week) are eligible for Statutory Maternity Pay, provided their average weekly earnings are more than the minimum earnings requirement (£75 per week).<sup>826</sup>

The Maternity Allowance is available to women who are employed or self-employed, earn a minimum weekly requirement (£30) and who are not entitled to Statutory Maternity Pay.<sup>827</sup> A woman must have been employed or self-employed in at least 26 weeks in the 66 week period until the expected week of childbirth.<sup>828</sup>

The Incapacity Benefit is available to women who cannot access Statutory Maternity Pay or the Maternity Allowance and have paid National Insurance contributions and have been incapable of work for a minimum period.<sup>829</sup>

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<sup>824</sup> motherInc, Submission 196, p3. Note that respondents to this poll were self selected so the results should be treated with care. See 1.3.4 for details of this poll.

<sup>825</sup> International Labour Organization *Maternity Protection Convention 2000* (No 183).

<sup>826</sup> United Kingdom Department of Trade and Industry *Maternity Rights: A guide for employers and employees* May 2002, p29 [www.dti.gov.uk/er/individual/maternity/pdf](http://www.dti.gov.uk/er/individual/maternity/pdf).

<sup>827</sup> United Kingdom Department of Trade and Industry *Maternity Rights: A guide for employers and employees* May 2002, p31 [www.dti.gov.uk/er/individual/maternity/pdf](http://www.dti.gov.uk/er/individual/maternity/pdf).

<sup>828</sup> United Kingdom Department of Trade and Industry *Maternity Rights: A guide for employers and employees* May 2002, p31 [www.dti.gov.uk/er/individual/maternity/pdf](http://www.dti.gov.uk/er/individual/maternity/pdf).

<sup>829</sup> United Kingdom Department for Work and Pensions October 2002 [www.dwp.gov.uk](http://www.dwp.gov.uk).

## New Zealand

The New Zealand Paid Parental Leave scheme is for parents in paid work.

[Y]ou are eligible for the payment if you have been employed by the same employer for more than 12 months and you worked an average of 10 hours per week, including at least 1 hour per week or 40 hours per month, for that employer during that period.<sup>830</sup>

### 14.4.3 Payment for all women

It was strongly argued by a significant proportion of individuals and organisations that payment should go to all women on the basis of equity.<sup>831</sup> This was based on the view that all births, and not just those to women in paid employment, should be supported by society.

In particular, it was argued that including women who are not in paid work would provide recognition of women's unpaid work and the sacrifices that these women are making in choosing to care full time for children rather than undertake paid work.<sup>832</sup>

Some submissions considered that all mothers should receive paid maternity leave due to the community benefits of women having children.<sup>833</sup> For example, the Shop, Distributive and Allied Employees' Association considered that:

[p]aid maternity leave should recognise the contribution to the overall development of the nation's human capital which the having and raising of children brings. As all women contribute in this regard, subject to a means test, the payment should go to all women.<sup>834</sup>

The social benefits of motherhood were also emphasised by the Australian Chamber of Commerce and Industry as the basis on which payment should be made. "Any payment should not be employment based. Maternity is a societal not an employment issue."<sup>835</sup>

The Festival of Light considered that:

[m]aternity support systems should support all families with children and should be funded by the taxpayer, since they benefit the whole community. Maternity support should not be based on employment, since many mothers are not in the paid workforce.<sup>836</sup>

Making paid maternity leave available to women in paid and unpaid work was seen as a means of recognising and valuing the unpaid work undertaken by women at home caring for children.

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<sup>830</sup> New Zealand Department of Labour *Parental Leave 1: General entitlements* Fact Sheet [www.ers.dol.govt.nz/bin/fact.asp](http://www.ers.dol.govt.nz/bin/fact.asp).

<sup>831</sup> See, for example, Australian Chamber of Commerce and Industry, Submission 197, p55; Rosemary Freney, Submission 80, p1; Kay Channer, Submission 52, p1; Marty Grace, Submission 151, p1; Melissa Austin, Submission 149, p5; Karen Bijkersma, Submission 150, p1; Women's Action Alliance (Australia) Inc., Submission 146, p4; Endeavour Forum, Submission 144, p1; Motor Traders' Association of New South Wales, Submission 141, p5; Eleanor Wilson, Submission 133, p3; Presbyterian Women's Association of Australia in New South Wales, Submission 126, p1; Australian Business Industrial, Submission 119, p4; Greg Byrne, Submission 124, p1; Aboriginal and Torres Strait Islander Commission, Submission 116E, p1, 116F, p2, 116G, p1; A Rolfe, Submission 111, p2; Equal Opportunity Commission Victoria, Submission 240, p3; Catholic Women's League Tasmania Inc., Submission 236, p2; Isobel Gawler, Submission 235, p1; YWCA of Australia, Submission 228, p17; Cathy Sherry, Submission 205, p5; Graeme Cray, Submission 186, p1; Australian Family Association (New South Wales), Submission 103, p1; Australian Federation of University Women (South Australia) Inc., Submission 179, p3.

<sup>832</sup> See 11.3.2 for further discussion of this issue.

<sup>833</sup> See 9.2 for further discussion of this issue.

<sup>834</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p12. See also Eleanor Wilson, Submission 133, p3.

<sup>835</sup> Australian Chamber of Commerce and Industry, Submission 197, p55.

<sup>836</sup> Festival of Light, Submission 102, p5.

The [Australian Family Association (New South Wales)] believes that paid maternity benefit should be paid to all mothers and not only mothers in the workforce who wish to return to the workforce. To discriminate against mothers who wish to care for their children at home is to diminish the role that those mothers play and the work which they do. Being a homemaker is work and should be recognised.<sup>837</sup>

The Catholic Women's League Australia drew attention to the undervaluing of unpaid care undertaken by parents in the home.

The illusion that stay at home parents are having a holiday when they care for their children would be compounded by paid maternity leave. A universal payment however recognizes all stay at home primary care givers, regardless of which parent chooses to stay at home or go back to employed work.<sup>838</sup>

Some submissions considered that making paid maternity leave available to all new mothers better supported the range of choices that women make about family and work. The Endeavour Forum argued that "[t]he Government should be helping women, especially mothers, to exercise genuine choice, instead of funnelling women into a predetermined end".<sup>839</sup> An individual submittor argued that, if women are able to choose:

... whether or not to have paid employment, the government has a duty to equitably support either role. Mothers who choose to stay at home need to receive as much support and financial incentives for this choice, as those who do not. To do otherwise would be to further discriminate against and punish the women who are already among the most financially vulnerable in today's society.<sup>840</sup>

A number of submissions noted that all families face increased costs at the time of the birth of a child, and so considered that all new mothers should receive paid maternity leave.<sup>841</sup> The Shop, Distributive and Allied Employees' Association suggested that such a payment for women should be means tested.

[W]here the mother has not been in paid employment prior to childbirth this may still be a time of financial impost on her family. This in turn may lead to financial hardship. Consequently the SDA [Shop, Distributive and Allied Employees' Association] believes that paid maternity leave should be made available to all mothers, subject to a means test.<sup>842</sup>

The Australian Family Association asked:

[w]hy cannot stay at home mothers also be entitled to some financial relief? Not only do babies cost a lot of money for all women, whether working or not, but the stay at home mum chooses to forgo the income for the sake of the baby and its well being. Thus the woman in the paid work force is getting a double set of financial benefits, while the stay at home mum receives none.<sup>843</sup>

An individual argued that:

[f]inancial assistance at the time of birth is no doubt beneficial to a family, if not specifically to a woman's career. However, all babies cost the same amount of money, whether their mother works or not. Further, the cost of a baby, relative to total family income, is likely to be greater in families where there has already been, or will be, only one income for a longer period of time.<sup>844</sup>

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<sup>837</sup> Australian Family Association (New South Wales), Submission 103, p1.

<sup>838</sup> Catholic Women's League Australia Inc., Submission 195, p2. See also Catholic Women's League Western Australia, Submission 129, p1; Equal Opportunity Commission Victoria, Submission 240, p3; Salt Shakers, Submission 109, pp4-5.

<sup>839</sup> Endeavour Forum, Submission 144, p1.

<sup>840</sup> Eleanor Wilson, Submission 133, p3.

<sup>841</sup> See also Victorian Automobile Chamber of Commerce, Submission 112, p15.

<sup>842</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p12.

<sup>843</sup> Australian Family Association, Submission 92, p1.

<sup>844</sup> Cathy Sherry, Submission 205, p5. See also Catholic Women's League Tasmania Inc., Submission 236, p2; Equal Opportunity Commission Victoria, Submission 240, p3; Eleanor Wilson, Submission 133, p3.

Some submissions saw the need to treat all new mothers in the same way as a reason for making paid maternity leave available to all mothers.<sup>845</sup> Limiting paid maternity leave to women in paid work was considered to discriminate against women who were not in the workforce, as well as some other groups of women.

The Australian Family Association (New South Wales) drew attention to the women who would miss out under a work based scheme.

To implement a scheme which is only to provide paid maternity leave for mothers who elect to return to the workforce would be to create a scheme not to the benefit of most mothers.<sup>846</sup>

The YWCA of Australia compared the position of mothers receiving government assistance before the birth of a child with that of employed women.

Having examined the current payments available, the accessibility requirements and the means testing associated with the various payments, the YWCA fails to see a compelling reason why we would create a system that pays less in benefits for parent(s) of newborn children, who have been dependent on the limited benefits that are available from Centrelink than we are proposing to pay to people who have a recent history of employment.

...

We fail to see the validity of an argument that creates greater inequality between women in and out of the workforce by paying a higher government funded payment to parents of newborns who have 12 months continuous workforce attachment and those who do not have 12 months continuous workforce attachment.<sup>847</sup>

The Women's Action Alliance expressed concern that:

... a system of maternity leave that excludes women because they choose not to be in paid work when their children are young would compound this discrimination and we could not support it. It would set up a system of haves and have nots. It would also be poorly targeted, being likely to advantage the wealthy over the poor.<sup>848</sup>

A payment to all women was supported by some submissions on the ground that this would have a greater impact on Australia's fertility rate. One individual argued that women not in paid work also face financial disincentives in having children.

Relieving the financial stresses of having a baby for women not in paid employment would remove barriers from them having more children, just as it would for women in paid employment. This is also true for women in part-time, casual, or self-employed paid employment.<sup>849</sup>

Several submissions drew attention to the fact that certain groups of women are disadvantaged in relation to paid employment. Limiting paid maternity leave to women in employment was considered to further entrench this disadvantage.<sup>850</sup> For example, the Australian Federation of University Women (South Australia) noted that:

[o]ur market-driven society has a major impact on women who are mostly employed in casual or part-time positions. Women may conceive while in paid employment and be sacked or retrenched six months into the pregnancy. There is no such thing as "non-working women". All women

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<sup>845</sup> See, for example, Kolan Shire Council, Submission 81, p1; Monica Naughton, Submission 155, p1; Motor Traders' Association of New South Wales, Submission 141, p5; Victorian Automobile Chamber of Commerce, Submission 112, p15; Salt Shakers, Submission 109, pp4-5.

<sup>846</sup> Australian Family Association (New South Wales), Submission 103, p1.

<sup>847</sup> YWCA of Australia, Submission 228, p17.

<sup>848</sup> Women's Action Alliance (Australia) Inc., Submission 146, p2. See also Graeme Cray, Submission 186, p1; Endeavour Forum, Submission 144, p1; Motor Traders' Association of New South Wales, Submission 141, p5.

<sup>849</sup> Eleanor Wilson, Submission 133, p3. See also Motor Traders' Association of New South Wales, Submission 141, p5; Karen Bijkersma, Submission 150, p1.

<sup>850</sup> See, for example, Victorian Automobile Chamber of Commerce, Submission 112, p15; Beryl Byrne, Submission 157, p1.

should receive **maternity support** with educational, social and financial assistance available to help achieve successful, anxiety free, bonding or attachment with their newborn child. Anxiety has been correlated with many health and social problems, for both the mother and child.<sup>851</sup>

Similarly, the YWCA of Australia considered:

... that a new system must not exclude significant numbers of young women excluded because of the changing nature of the workforce and entrench poverty for parent(s) of newborns.<sup>852</sup>

An individual noted that unemployment may not be a matter of choice and recommended that "... students, already full time parents, carers of aged parents and unemployed ... should not be discriminated against".<sup>853</sup>

#### 14.4.4 Women in paid work

In its traditional construction, paid maternity leave is a workforce entitlement that is directed to women in paid work. Both the Maternity Protection Convention and CEDAW position paid maternity leave as a right for women who must take leave from paid work at the time of birth. This view was advocated by a broad range of groups.<sup>854</sup>

Some submissions considered that paid maternity leave ought to be a workforce entitlement, and as such should be limited to women in paid work. One union considered that:

... it is important that a national paid maternity leave scheme is viewed as an entitlement for workers ... [T]he objectives of a paid maternity leave scheme are different to those for family support payments for women outside the workforce.<sup>855</sup>

Another union, the United Trades and Labor Council of South Australia, strongly recommended that "... paid maternity leave is acknowledged as a workers' entitlement and provided as a national scheme in this context".<sup>856</sup>

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<sup>851</sup> Australian Federation of University Women (South Australia) Inc., Submission 179, p3 (emphasis in original).

<sup>852</sup> YWCA of Australia, Submission 228, p17.

<sup>853</sup> Rosemary Freney, Submission 80, p1. See also Isobel Gawler, Submission 235, p1; Marty Grace, Submission 151, p3; Catholic Women's League Australia Inc., Submission 195, p3.

<sup>854</sup> See, for example, Australian Hotels Association, Submission 199; Women in the Department of Education and Children's Services Reference Committee, South Australia, Submission 201, p1; Independent Education Union of Australia, Submission 204, p6; United Trades and Labor Council of South Australia, Submission 211, p3; Centre for Applied Social Research RMIT University, Submission 234, p10; Ethnic Communities' Council of Victoria, Submission 242, p6; Victorian Government, Submission 250, p7; Women's Electoral Lobby, Submission 248, p23; New South Wales Working Women's Centre, Submission 225, p7; Queensland Working Women's Service, Submission 219, p11; Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p15; National Pay Equity Coalition, Submission 224, p16; Karen Wakely, Submission 30, p2; Women's Economic Think Tank, Submission 256, pp4-5; Women's Health in the North, Submission 60, p4; Penny Stewart, Submission 31, p1; Carrie Parsons, Submission 25, p1; Australian Industry Group, Submission 121, p19; Australian Retailers Association, Submission 165, p22; Immigrant Women's Speakout Association New South Wales Inc., Submission 158, p13; Australian Liquor, Hospitality and Miscellaneous Workers Union, Submission 153, p4; Union Research Centre on Organisation and Technology, Submission 254, p7; Aboriginal and Torres Strait Islander Commission, Submission 116A, p2, 116C, p2, 116G, p1; Community and Public Sector Union – State Public Services Federation Group, Submission 230, p9; Western Australian Government, Submission 245, p2; Patricia Todd and Judy Skene, Submission 176, p1; New South Wales Public Service Association, Submission 110, p5; Council for Equal Opportunity in Employment Ltd, Submission 252, p3; Job Watch Inc., Submission 191, p14; Coles Myer Ltd, Submission 107, pp10-11; Labor Council of New South Wales, Submission 218, p6; Work + Family Policy Research Group University of Sydney, Submission 251, p10; Women's Studies Research Unit, School of Social Work, University of Melbourne, Submission 48, p5; New South Wales EEO Practitioners' Association, Submission 77, p2; National Tertiary Education Union, Submission 169, p3; BPW Australia, Submission 148, p8; Australian Council of Trade Unions, Submission 208, p17.

<sup>855</sup> New South Wales Public Service Association, Submission 110, p5.

<sup>856</sup> United Trades and Labor Council of South Australia, Submission 211, p3.

A submission from two academics argued that:

[p]aid maternity leave relates to the position of women in paid employment and needs to be considered separately from the needs of non-working mothers. The question of a family's financial needs at the time of the birth of a new child is a separate issue affecting all parents and is not the primary objective of paid maternity leave. Paid maternity leave is not a welfare issue, it is a right for women in paid employment.<sup>857</sup>

A significant number of submissions proposing that paid maternity leave be limited to women in paid work, did so on the grounds that the purpose of such leave was to provide income replacement at the time of the birth. For example, Coles Myer argued that:

... making a payment to women who are not employed would in fact advantage this group over those who are employed as a payment to this group would increase their income whereas a payment to those who forego salary in order to have a child will at best ensure their income level is not reduced as a result of child birth.<sup>858</sup>

The Women's Economic Policy Analysis Unit pointed out that paid maternity leave:

... is designed specifically to provide income maintenance for the 14-week maternity leave period. It is not a policy designed to compensate for the subsequent financial disadvantage that women providing un-paid care face beyond this period.<sup>859</sup>

An individual pointed out that:

[i]ndividuals not in paid work have already adjusted to living off whatever income is available to them, be it a social security benefit, or the income of a partner. They are presumably not about to lose it as a result of having a baby. Having a baby is not going to change their immediate income situation in a way that is not already acknowledged by existing Family Assistance and ChildCare Benefit provisions.<sup>860</sup>

Those submissions that considered that one of the objectives of paid maternity leave was to address women's workforce disadvantage also saw this as a payment specifically to women in paid work.<sup>861</sup>

The New South Wales Working Women's Centre agreed.

It will also offset the disadvantages in employment experienced by women needing to take time off to have children. A national scheme which enjoys broad community support would also make a substantial contribution to other workplace pressures experienced by women at this time, particularly in relation to employment security, assisting the difficulties faced by women returning to work after maternity leave.

**As outlined in the objectives, a paid maternity leave scheme recognises the economic and career disruption caused by childbirth to women in paid employment. This is the rationale we submit as the basis for a work-related paid maternity leave scheme.**<sup>862</sup>

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<sup>857</sup> Patricia Todd and Judy Skene, Submission 176, p1.

<sup>858</sup> Coles Myer Ltd, Submission 107, pp10-11.

<sup>859</sup> Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p15.

<sup>860</sup> Karen Wakely, Submission 30, pp2-3. See also Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p15; New South Wales EEO Practitioners' Association, Submission 77, p2; Carrie Parsons, Submission 25, p1; Community and Public Sector Union – State Public Services Federation Group, Submission 230, p9; Labor Council of New South Wales, Submission 218, p6; Queensland Working Women's Service, Submission 219, p11; National Pay Equity Coalition, Submission 224, p16; Penny Stewart, Submission 31, p1.

<sup>861</sup> See Chapter 7 for a discussion of women's workforce disadvantage.

<sup>862</sup> New South Wales Working Women's Centre, Submission 225, p13 (emphasis in original). See also Community and Public Sector Union – State Public Services Federation Group, Submission 230, p9; Union Research Centre on Organisation and Technology, Submission 254, p7.

Some submissions considered that paid maternity leave for women in paid work would assist women's labour force attachment.<sup>863</sup> For example, the Australian Industry Group considered that:

[i]t is appropriate to provide a specific payment for women in employment as a means of recognising the opportunity costs they face when having children, as well as encouraging them to return to the workforce.<sup>864</sup>

The Women's Studies Research Unit, School of Social Work, University of Melbourne suggested that:

[l]imiting paid maternity leave only to those women in the paid workforce encourages women to take up their citizenship rights within the public sphere, and is an incentive towards women's autonomy.<sup>865</sup>

The Council for Equal Opportunity in Employment collected responses from its corporate members.

Responses on questions relating to the structure of the scheme were divided on whether it should be paid exclusively to employed mothers or universally to all women becoming mothers. In general, responses indicated that if the objective of the scheme were to encourage labour force attachment, then such payments should be made to women who were in paid employment prior to the pregnancy or birth.<sup>866</sup>

Paid maternity leave was seen in some submissions as addressing health and wellbeing issues specifically relating to women in paid work. The Australian Retailers Association submission, for example, supported:

... the entitlement being work related on the basis that the primary objective of a paid maternity leave scheme should be to provide women with a genuine opportunity to take time out of the work force to fully recover from childbirth.<sup>867</sup>

The New South Wales Working Women's Centre advocated:

... a scheme that provides for paid leave from such employment in order to give birth, establish breast feeding pattern where desired and recover from the birth without undue financial pressure to return to work earlier than the time needed.<sup>868</sup>

Coles Myer noted that improving women's and babies health would also have financial benefits.

The primary impact of a paid maternity leave scheme will be to provide women with a genuine opportunity to take time out of the work force to fully recover from child birth. This would assist a reduction in health care expenditure.<sup>869</sup>

A number of submissions considered that there was a gap in existing provisions by Government in relation to women in paid work.<sup>870</sup>

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<sup>863</sup> See also 6.7 and 10.4 for a discussion of women's labour force attachment.

<sup>864</sup> Australian Industry Group, Submission 121, p19. See also Centre for Applied Social Research RMIT University, Submission 234, p10; Immigrant Women's Speakout Association New South Wales Inc., Submission 158, p13.

<sup>865</sup> Women's Studies Research Unit, School of Social Work, University of Melbourne, Submission 48, p5. See also Women's Health in the North, Submission 60, p4.

<sup>866</sup> Council for Equal Opportunity in Employment Ltd, Submission 252, p3.

<sup>867</sup> Australian Retailers Association, Submission 165, p22.

<sup>868</sup> New South Wales Working Women's Centre, Submission 225, p13. See 5.2 for a full discussion of health and wellbeing issues for women.

<sup>869</sup> Coles Myer Ltd, Submission 107, p10. See also National Pay Equity Coalition, Submission 224, p16; United Trades and Labor Council of South Australia, Submission 211, p3; Queensland Working Women's Service, Submission 219, p11. See also 10.4 for a discussion of economic benefits to society from a paid maternity leave scheme.

<sup>870</sup> See 3.4.2.

One respondent to the motherInc maternity leave poll said bluntly that she could not:

... see why dole bludgers and single mums with 2 & 3 kids to different partners should be getting my hard earned tax dollars and when I as a WORKING woman wish to have a family don't get any support from the government.

Give back a little to the women who help support all those who choose not to work and stop penalising us for trying to create a better future for our family.<sup>871</sup>

An additional benefit of limiting paid maternity leave to women in paid work was that this would limit the cost of the scheme to the Government. The National Pay Equity Coalition pointed out "... that extending PML [paid maternity leave] to all births would double the number of eligible births and significantly increase the costs of a PML [paid maternity leave] scheme ..."<sup>872</sup>

## 14.4.5 Dual track

### Introduction

Amongst those groups who saw paid maternity leave as a work related payment, there was widespread recognition of the need to provide support for women outside the labour force.<sup>873</sup> For example, a respondent to the motherInc maternity leave poll asserted that:

[w]omen who are not "working" (that is in the paid workforce) should also be compensated for their work in raising children but the forum for that is not under the umbrella of maternity leave.<sup>874</sup>

An individual submission noted that:

[t]here is no reason why there cannot be a range of options, including paid maternity leave available to suit a number of circumstances. Much of the Australian debate about policy initiatives is divided between those arguing for policy measures making it easier for mothers to be employed, and those arguing for measures to support mothers who leave the workforce for significant periods or do not participate in the paid workforce. However there is obviously the potential to implement policy, which supports mothers and families in a variety of ways to complement individual circumstances.<sup>875</sup>

In contrast to those who considered that paid maternity leave should be structured as a universal payment to all women at the birth of a child, there was a view expressed that there should be more than one type of payment to suit women's different circumstances. This would mean that paid maternity leave would be introduced for women in paid employment, accompanied by one or more payments to women not in paid work. Of those who supported this dual track approach, opinion varied as to whether current payments were adequate, whether a new payment for women not in paid work should be introduced, and whether a review of existing benefits was required. A review of current arrangements is discussed at 3.4.4.

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<sup>871</sup> motherInc, Submission 196, p4.

<sup>872</sup> National Pay Equity Coalition, Submission 224, p16. See also Women's Economic Think Tank, Submission 256, p4.

<sup>873</sup> See, for example, Job Watch Inc., Submission 191, p15; New South Wales EEO Practitioners' Association, Submission 77, p2; New South Wales Young Lawyers Employment and Industrial Law Committee, Submission 246, p2; United Trades and Labor Council of South Australia, Submission 211, p3.

<sup>874</sup> motherInc, Submission 196, p18.

<sup>875</sup> Kimberley Meyer, Submission 105, p3. The submission referred to B Probert and J Murphy "Majority opinion or divided selves? Researching work and family experiences" (2001) 9(4) *People and Place* 25.



## Retain existing payments for women not in paid work

Some submissions considered that the existing system of payments for women with children should continue. For example, the Australian Industry Group considered that:

[I]n addition to the establishment of a paid maternity leave scheme for working women, it is equitable to provide social welfare assistance to those who would be unable to access the scheme. Ai Group proposes that assistance to non-working women and eligible men take the form of various existing benefits such as Maternity Allowance and Maternity Immunisation Allowance.<sup>876</sup>

Similarly, the National Pay Equity Coalition noted that:

[o]ther social security payments are appropriate and are paid for compensating families for additional costs associated with having children. Parenting payments are paid to low income earners who are taking care of children, whether they are partnered or not and there are also family tax benefits to assist with the costs of raising children.<sup>877</sup>

The Community and Public Sector Union, State Public Services Federation Group noted that:

Women who are not in the workforce do not derive their income from employment and should not be covered by the scheme. Women who are not in the workforce are covered by various forms of Federal government allowances and taxation arrangements.<sup>878</sup>

## A new payment for women not in paid work

Some submissions considered that the Government should introduce a new payment for women not in paid work that was of equivalent value to the paid maternity leave entitlement for women in paid work.<sup>879</sup> Such a payment implies that there would be a flat rate of payment to all women, either through paid maternity leave or the alternative payment system.<sup>880</sup>

The Association of Independent Schools of Victoria argued that:

... payments, in some form, should be available to women, and thus to families, who are not in the workforce at the time of giving birth to, or adopting, a child. Such an approach supports the view that assisting women and men, and thus families, with their parenting responsibilities has an overall benefit to society. That is, if paid parental leave is introduced for women and men in the workforce, then a similar system of payments needs to be available to men and women who are not in paid work through the social security system.<sup>881</sup>

The Australian Nursing Federation suggested that:

[w]omen outside the workforce should also have access to financial support to the equivalent value of any maternity leave payment. The means of payment could be through the social security system.<sup>882</sup>

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<sup>876</sup> Australian Industry Group, Submission 121, p19.

<sup>877</sup> National Pay Equity Coalition, Submission 224, p16.

<sup>878</sup> Community and Public Sector Union – State Public Services Federation Group, Submission 230, p9. See also Australian Liquor, Hospitality and Miscellaneous Workers Union, Submission 153, p4; Immigrant Women's Speakout Association New South Wales Inc., Submission 158, p13.

<sup>879</sup> See, for example, Australian Education Union, Submission 122, pp2,11.

<sup>880</sup> See 17.3.3 for discussion of flat rate payments.

<sup>881</sup> Association of Independent Schools of Victoria, Submission 108, p4.

<sup>882</sup> Australian Nursing Federation, Submission 123, p9.

The Australian Council of Trade Unions pointed out that a dual track system:

... recognises different family choice, and allows tailoring of both schemes to best meet their purposes, and ensures that no woman is excluded from societal support due to the nature of her employment, paid or unpaid, formal or informal.<sup>883</sup>

Other submissions supported the introduction of a new payment for women who were not in paid work, but considered that this payment should be paid at a lower rate than the maximum rate of government funded paid maternity leave.<sup>884</sup> For example, two academics suggested that:

[m]others outside the paid labour market should also have access to a basic payment on the birth of a new baby, to assist with the financial pressures of a new child. This should be set at about \$2000 – the basic level of paid maternity leave available to working women.<sup>885</sup>

The Women's Economic Think Tank proposed that women who are not eligible for paid maternity leave should receive a basic payment of 50 per cent of the full rate of paid maternity leave. This would also be a minimum payment for women in paid work. The submission proposed that this payment be named Family Tax Benefit Part C and that it be available for 14 weeks on a non means tested basis. It would replace most of the existing payments such as Parenting Payment, Youth Allowance and the Baby Bonus.<sup>886</sup>

The Anti-Discrimination Board of New South Wales proposed a safety net for women who did not qualify for paid maternity leave.

In the interests of equity and fairness, consideration must be given to the provision of an income safety net for those women workers who do not meet the qualifying employment eligibility criteria ...<sup>887</sup>

#### 14.4.6 HREOC's position

HREOC considers that paid maternity leave should be a payment to women in paid work. The objectives identified in Part C specifically relate to women in paid work. In particular, the loss of income as a result of childbirth and workplace discrimination based on maternity are issues that specifically relate to women in paid work.

As set out in Chapter 3, HREOC considers that there is a gap in current government payments and workplace entitlements that mean that many women in paid work do not get adequate support to enable them to stay home for an extended period at the birth of a child. A government funded paid maternity leave scheme would address this gap.

While the Maternity Allowance, Family Tax Benefit Parts A and B and the Baby Bonus do not meet the objectives of paid maternity leave in their own right, there is clearly some overlap between these payments. HREOC considers that if government funded paid maternity leave were introduced, it should replace these family assistance payments during the period of paid maternity leave. This would better equate the level of government payments to women in paid work and those not in paid work.

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<sup>883</sup> Australian Council of Trade Unions, Submission 208, p17. See also Queensland Nurses' Union, Submission 134, pp8,16; Queensland Council of Unions, Submission 239, p12.

<sup>884</sup> See, for example, Aboriginal and Torres Strait Islander Commission, Submission 116F, p2; Melissa Austin, Submission 149, p5.

<sup>885</sup> Lyn Collins and Barbara Pocock, Submission 232, p8.

<sup>886</sup> Women's Economic Think Tank, Submission 125, p7.

<sup>887</sup> Anti-Discrimination Board of New South Wales Submission 214, p17.

Limiting paid maternity leave to women in the paid workforce does not rule out the need for financial support of women outside the paid workforce at the time of the birth of a child. HREOC strongly supports the role of Government in providing support for all families at the birth of a child. However, the need of those women not in paid work at the birth of a child is not one for income replacement or a period out of the workforce.

HREOC is not in a position to comment on the adequacy of existing payments to women outside the paid workforce. HREOC does note that these payments have been extended in recent years by the government, through the introduction of Family Tax Benefit Part B and the Baby Bonus, which are both targeted at single income families.<sup>888</sup> However, many submissions argued that these payments should be reviewed to ensure their adequacy.

HREOC acknowledges that should the Government decide to make paid maternity leave available to all women, the objectives set out in Part C will still be met. However this would be at a greater cost than otherwise and may not be in a form that best meets the needs of women not in the paid workforce.

HREOC is firmly of the view that the different circumstances in which women live mean that a single government payment for all families, whatever their circumstances is not good policy. HREOC recommends that the Government ensure that all women and families with new babies receive adequate assistance for their needs. This may or may not mean that payments to women in different circumstances are equivalent, and may require a review of the government assistance package for families. HREOC's primary recommendation, however, is that an adequate government assistance package should include a paid maternity leave scheme for women in paid work as a central component.

## RECOMMENDATION 3

That a government funded national scheme of paid maternity leave be available for women in paid work.

### 14.5 Adoptive parents

#### 14.5.1 Introduction

While not all submissions received discussed the issue of paid leave for adoptive parents, only one submission opposed the provision of paid leave to adoptive parents.<sup>889</sup> Those who did address the issue of adoptive parents were strongly of the view that these parents should be eligible for paid parental leave in order to care for their children at the time that the child enters the household. This section sets out the grounds on which submissions considered that adoptive parents and children should be included in a national scheme of paid parental leave.

In 2000-2001 there were 514 adoptions of children in Australia. This consisted of 377 placement adoptions and 137 known child adoptions. Of the 377 placement adoptions, 88 were adoptions of local children and 289 (or 77 per cent) were intercountry adoptions.<sup>890</sup>

Not all the submissions received on adoption drew a distinction between local and intercountry placement adoptions, however a number explicitly argued that paid leave be made available in either case.<sup>891</sup>

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<sup>888</sup> See 3.4 for a discussion of the provisions and their adequacy, and calls for a review.

<sup>889</sup> Local Government Association of Queensland Inc., Submission 156, p2.

<sup>890</sup> Australian Institute of Health and Welfare *Adoptions Australia 2000-01* AIHW Canberra 2002, p3. See also International Adoptive Parents Association, Submission 145, p1-2; Kate Purcell and Tim O'Reilly, Submission 20, p2; P and M Marshall, Submission 45, p2.

<sup>891</sup> Women's Electoral Lobby, Submission 248, p27; Northern Territory Trades and Labor Council, Submission 84, p1.

One submission suggested that known adoptions may constitute an exception to the requirement for paid leave.

I accept that it may be arguable that “known” adoptions may be a special case as the child may already be part of the family and the adoption is merely legalizing the status of the child as a member of that family.<sup>892</sup>

## 14.5.2 Equity for adoptive parents and adopted children

Many submissions supported the inclusion of adoptive parents into a paid maternity leave scheme for equity reasons.<sup>893</sup>

The Tasmanian Branch of the Australian Society for Intercountry Aid for Children submitted that:

[w]e strongly believe that a paid parental leave scheme should include adoptive parents on the same basis as biological parents and that eligibility should not be limited to adopted children of a particular age. It would be discriminatory and unfair to exclude adoptive families from any scheme of paid parental leave.<sup>894</sup>

Some submissions outlined the costs of adoption and the inequities in financial support provided for biological and adoptive parents. Many felt strongly that current arrangements often disadvantage adoptive parents.<sup>895</sup> This included the fees that are charged for adoption in Australia and overseas, as well as the qualifying conditions for existing government payments. The International Adoptive Parents Association submitted that:

[I]ntercountry adoption is usually more expensive than having biological children. The fees charged by the Australian Government adoption agencies and the overseas countries impose a severe financial burden on adopting families. In addition, the requirement that one parent stay home with the child for the first 12 months adds to this financial pressure. Adoptive parents should therefore be entitled to the same paid leave arrangements as biological parents.<sup>896</sup>

One individual recounted the cost involved in their adoption.

Adoption is already more expensive than having a child in the biological way. It cost our family approximately \$26,000 to adopt our Chinese daughter ... An additional expense is the requisite 12 months one parent is obliged to spend away from the workforce. The small gesture of providing ... paid leave would cost little in terms of numbers of applicants involved but would be one way of making it easier for adoptive families.<sup>897</sup>

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<sup>892</sup> Anne Sheehan, Submission 40, p1.

<sup>893</sup> See, for example, Queensland Nurses' Union, Submission 134, p9; Australian Nursing Federation, Submission 123, p9; Aboriginal and Torres Strait Islander Commission, Submission 116C, p4; Community and Public Sector Union – State Public Services Federation Group, Submission 230, p10; YWCA of Australia, Submission 228, p16; Queensland Council of Unions, Submission 239, p17; Job Watch Inc., Submission 191, p14; Victorian Government, Submission 250, p7; Ethnic Communities' Council of Victoria, Submission 242, p7; New South Wales Public Service Association, Submission 110, p5; Hawke Institute, Submission 174, p4; National Women's Council of South Australia, Submission 68, p4; Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p15; Union of Australian Women, Submission 89, p3; Narelle Wasley, Submission 69, p1; Lisa Dibb, Submission 28, p1; Sandra Wills, Submission 29, p1; Angelo Zanatta, Submission 180, p1; Work + Family Policy Research Group University of Sydney, Submission 251, Women's Studies Research Unit School of Social Work, University of Melbourne, Submission 48, p5; International Adoptive Parents Association, Submission 145, pp1-2; Kate Purcell and Tim O'Reilly, Submission 20, p2; Australian Society for Intercountry Aid for Children (New South Wales) Inc., Submission 51, p2; Australian Services Union South Australia and Northern Territory, Submission 189, p7; Queensland Working Women's Service, Submission 219, p10; Australian African Children's Aid and Support Association Inc., Submission 22, p1; Australian Education Union, Submission 122, p2; Australian Services Union MEU Private Sector Victorian Branch, Submission 154, p3; EMILY's List, Submission 159, p3; Independent Education Union of Australia, Submission 204, p6; Adoptive Families Association of the Australian Capital Territory Inc., Submission 115, pp2-7; R and N Cornhill, Submission 131, pp6-8; Centre for Applied Social Research RMIT University, Submission 234, p9; Australian Capital Territory Ministerial Advisory Council on Women, Submission 120, p8.

<sup>894</sup> Tasmanian Branch of the Australian Society for Intercountry Aid for Children, Submission 209, p1. See also Susanna Lobez, Submission 47, pp1-3.

<sup>895</sup> See, for example, Tasmanian Branch of the Australian Society for Intercountry Aid for Children, Submission 209, p2; Confidential, Submission 170, p1.

<sup>896</sup> International Adoptive Parents Association, Submission 145, p2.

### 14.5.3 Health and wellbeing of adoptive children

Clearly the health and wellbeing issues differ between adoptive parents and children and women giving birth and newborn babies. However, submissions were still strongly of the view that adoptive children had significant health and wellbeing issues that warranted ensuring a primary carer was financially supported to spend time with them as they adjusted to their new home.

At a consultation with adoptive parents the point was made that most, if not all, adopted children suffer from sleeping problems, either as a result of the trauma they have suffered in institutions or as a result of the adoption process. Sometimes these problems can be quite severe.<sup>898</sup>

Submissions noted that most adopted children, particularly intercountry adoptees, are special needs children. Adopted children, especially intercountry adoptions, have frequently been institutionalised, often resulting in mental and emotional development delays. This means that health costs may be particularly high.<sup>899</sup>

One individual noted that:

[s]ince returning to Australia [from Ethiopia] we have faced the same financial burdens as any other young family. However, on top of these we have encountered significant medical and pharmaceutical bills, as both of our children had chronic health problems when we adopted them, and one of them still has. These medical conditions have been caused by a combination of malaria, malnutrition, poor past medical treatment and various infections that are part and parcel of being orphans in a third world country.<sup>900</sup>

Many submissions also considered that, to overcome these developmental problems, adoptive parents require time to bond effectively with their children, particularly older children.<sup>901</sup>

Sandra Wills considered that a period of bonding between parent and adopted child was important to "... address issues of post-institutionalisation and attachment ... [and] to assist them with a new language".<sup>902</sup>

### 14.5.4 Government requirements for adoption

State and Territory Government departments responsible for administering adoption processes require that one adoptive parent remain at home with the child, usually for a period of six or 12 months after the placement. This enforced period away from paid work was considered by some as a reason for providing adoptive parents with paid leave. For example, an individual submitted that:

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<sup>897</sup> Susanna Lobez, Submission 47, p2. See also Australian Retailers Association, Submission 165, p22.

<sup>898</sup> Adoptive parents consultation, Sydney, 19 June 2002.

<sup>899</sup> Adoptive parents consultation, Sydney, 19 June 2002.

<sup>900</sup> L Hayes, Submission 43, p2.

<sup>901</sup> See, for example, Tasmanian Branch of the Australian Society for Intercountry Aid for Children, Submission 209, p3; Susanna Lobez, Submission 47, p1-3; and Kristine and Michael Ryan-Wilson, Submission 41, p1.

<sup>902</sup> Sandra Wills, Submission 29, p1. See also International Adoptive Parents Association, Submission 145, pp1-2; Kate Purcell and Tim O'Reilly, Submission 20, p2; P and M Marshall, Submission 45, p2; Adoptive parents consultation, Sydney, 19 June 2002; Australian Adoption Campaign, Submission 44, p5; Confidential, Submission 67, p1.

[t]he State government community service departments recognise the need for newly adopted children to have consistent, intensive parental care ... It should be inconceivable that adoptive parents be compelled both by the needs of their child but also by their state government to spend considerable time absent from work and at home with their child and not be supported as biological parents in provision of maternity leave.<sup>903</sup>

### 14.5.5 Age of adopted child

The *Workplace Relations Act 1996* (Cth) provides access to unpaid maternity leave for parents of adoptive children who are under five years of age.<sup>904</sup>

According to the most current information available, of the 377 placement adoptions in 2000-2001, 64 children (17 percent) were over the age of five years at the time of placement. Of these 377 adopted children, 289 were intercountry adoptees, and 88 local adoptees.<sup>905</sup> Only 130 children of the 377 placement adoptions were aged under one year.<sup>906</sup>

Of those submissions received which referred to adoptive parents, only a limited number of submissions suggested that paid leave for adoptive parents be restricted to cases where the adopted child was under the age of five years.<sup>907</sup> One submission advocated restricting paid leave to cases where the adopted child was under one year of age.<sup>908</sup> One submission, while arguing that there was a requirement for an age limit to be set, advocated making room for exceptions.

Care needs to be exercised in the setting of such age limits. In principle, there are arguments for a limit to be imposed – such as under school aged children. However, there must be ability for exceptional circumstances to be considered. (Eg overseas adoptions or children with disabilities, ie those requiring a period of adjustment).<sup>909</sup>

However, the majority of submissions advocated no age restrictions.<sup>910</sup> The reasons for this related to the additional disadvantage faced by older adopted children. The Equal Opportunity Commission Victoria considered that:

[i]mposing an age restriction in relation to older children may in fact compound the potential disadvantages already faced by these children.<sup>911</sup>

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<sup>903</sup> P and M Marshall, Submission 45, p2. See also International Adoptive Parents Association, Submission 145, pp1-2 and Susanna Lobe, Submission 47, pp1-3: "The [Victorian] Department of Human Services or their interstate equivalents strictly require one adoptive parent to spend 12 months being the primary carer –being a condition of the adoption assessment, it is not optional. This requirement necessitates enormous juggling of time in the family if the carer parent wants to resume even a part-time career. Compare this with a born child where many mothers can and do return to work within days of the child's birth. This is simply not an option for adoptive mothers". For information on State adoption processes and requirements see, for example, New South Wales Department of Community Services, Adoptions and Permanent Care Services [www.community.nsw.gov.au/adoptions/adoptachild.htm](http://www.community.nsw.gov.au/adoptions/adoptachild.htm); Queensland Department of Families [www.families.qld.gov.au/department/reviews/documents/consultpaperCh10.pdf](http://www.families.qld.gov.au/department/reviews/documents/consultpaperCh10.pdf); Victoria Department of Human Services, Community Care Division [www.hnb.dhs.vic.gov.au/commcare/lyafsinte.nsf/frameset/Community+Care?OpenDocument](http://www.hnb.dhs.vic.gov.au/commcare/lyafsinte.nsf/frameset/Community+Care?OpenDocument).

<sup>904</sup> Schedule 1A *Workplace Relations Act 1996* (Cth).

<sup>905</sup> Australian Institute of Health and Welfare *Adoptions Australia 2000-2001* AIHW Canberra 2002, p4.

<sup>906</sup> Australian Institute of Health and Welfare *Adoptions Australia 2000-2001* AIHW Canberra 2002, pp7-9.

<sup>907</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p24; Association of Independent Schools of Victoria, Submission 108, p3; Immigrant Women's Speakout Association New South Wales Inc., Submission 158, p13.

<sup>908</sup> Western Australian Government, Submission 245, p5.

<sup>909</sup> Queensland Nurses' Union, Submission 134, p15.

<sup>910</sup> See, for example, Women's Electoral Lobby, Submission 248, p27; New South Wales EEO Practitioners' Association, Submission 77, p2; Equal Opportunity Commission Victoria, Submission 240, p3; Australian Capital Territory Ministerial Advisory Council on Women, Submission 120, p8; Coles Myer Ltd, Submission 107, p10; New South Wales Public Service Association, Submission 110, p5; Paul Webb, Submission 42, p1; Narelle Wasley, Submission 69, p1; Patricia Todd and Judy Skene, Submission 176, p1; International Adoptive Parents Association, Submission 145, pp1-2.

<sup>911</sup> Equal Opportunity Commission Victoria, Submission 240, p3.

The Tasmanian Branch of the Australian Society for Intercountry Aid for Children submitted that:

[c]hildren being adopted at 5 years of age or older have generally lived in one of two situations (sometimes a combination of both). These situations are: having lived in an institution in a 3<sup>rd</sup> world country where it is likely they experienced emotional and physical deprivation, or having lived in an abusive family environment and been removed from the care of that family. In addition, most older children have been adopted from overseas and need to adjust to a new language and culture when they come to Australia.<sup>912</sup>

#### 14.5.6 HREOC's position

There are compelling reasons for making paid leave available to parents of adoptive children. These include equity with biological parents, the needs of adoptive parents and adopted children to bond and sometimes establish breastfeeding, and the State and Territory Governments' requirement for intercountry adoptions that at least one adoptive parent take between six and twelve months out of the paid workforce following the placement of a child. As such, HREOC strongly recommends that paid maternity leave be available to adoptive parents.

HREOC supports the view presented in submissions that older adoptive children require a period of adjustment and, particularly in the case of intercountry adoptions, may have significant health and wellbeing concerns that would be assisted by their parent having access to a period of paid leave. As such, HREOC is of the view that no age limit should apply. HREOC would also urge the Government to review applying an age limit to access unpaid adoptive leave as provided for under the *Workplace Relations Act 1996* (Cth).

HREOC recommends that paid leave be available for the primary carer of adopted children in placement adoptions (both local and intercountry adoptions) but not for known child adoptions as there are not the same concerns in relation to family adjustment when a known child is adopted.

The objectives of paid adoptive leave all relate to ensuring that an adopted child has access to a primary carer at the point of placement with a new family. In light of this fact, and that maternal recovery from birth is not an issue in adoption, HREOC supports the payment being made to the primary carer. This would be established as a limited exception to paid maternity leave.

### RECOMMENDATION 4

That paid maternity leave be available to the primary carer of an adopted child irrespective of the age of the child.

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<sup>912</sup> Tasmanian Branch of the Australian Society for Intercountry Aid for Children, Submission 209, p4. See also P and M Marshall, Submission 45, p4; Confidential, Submission 49, p7.





# 15. Eligibility

## 15.1 Introduction

Any scheme available only to women in paid work will need to establish a standard or definition for paid work. HREOC considers that any eligibility criteria should aim to ensure as many women in paid work as possible are covered, that the distinction between women in paid and unpaid work is justified and that the criteria are simple to administer.

Possible eligibility criteria could include:

- limiting eligibility to women in particular types of work;
- requiring a certain duration of work with one or multiple employers;
- requiring a certain amount of work, such as a minimum number of hours per week;
- requiring a certain level of earnings from work; and/or
- limiting eligibility on the basis of family income (means testing).

For example, the *Workplace Relations Act 1996* (Cth) provides for unpaid parental leave subject to certain eligibility criteria. That leave is restricted to “employees” with 12 months continuous service with a single employer. “Employees” are defined as not including casual and seasonal workers. This provision also does not include independent contractors and self-employed persons.

This Chapter covers:

- international standards and practices;
- the possible link between paid maternity leave and unpaid parental leave eligibility criteria;
- length of service for eligibility;
- forms of work that are eligible; and
- means testing.

A strong theme from unions and women’s groups was the need to ensure that any eligibility criteria enabled broad coverage and reflected the nature of the labour market and women’s employment.

It is also important to note that the need for eligibility criteria is only relevant to a system of paid maternity leave that is limited to women in paid work such as HREOC proposes.<sup>913</sup> Eligibility criteria relating to length and type of employment would not apply should the Government choose to implement a system of paid maternity leave available to all women.

The difficulty in defining eligibility so that women in precarious employment did not miss out on income replacement at the time of birth<sup>914</sup> and the administrative costs in establishing eligibility, led some to support a scheme for all women. For example, the Shop, Distributive and Allied Employees’ Association supported a scheme for all women. It considered that difficulties with a scheme for women in paid work included that:

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<sup>913</sup> See 14.4 for a discussion of whether a paid maternity leave scheme should be available to all women or limited to those in paid work.

<sup>914</sup> See 15.4.

[t]here would be significantly increased administrative costs for government ... in establishing and monitoring that the women have met the eligibility criteria.

There would also be additional and possibly onerous costs for women to prove they have met the eligibility criteria, if they have had a number of employers in the previous 12 months.<sup>915</sup>

## 15.2 International standards and practices

### 15.2.1 Maternity Protection Convention

The Maternity Protection Convention states that paid maternity leave should be available to all women in paid employment; however, it does permit Member States to apply eligibility criteria for access to such payment. Article 6(6) of the Convention provides that women who are not eligible for paid maternity leave should, subject to any relevant means test, have access to social security payments.

#### Article 2

- 1 This Convention applies to all employed women, including those in atypical forms of dependent work.
- 2 However, each Member which ratifies this Convention may, after consulting the representatives of organizations of employer and workers concerned, exclude wholly or partly from the scope of the Convention limited categories of workers when its application to them would raise special problems of a substantial nature.
- 3 Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, list the categories of workers thus excluded and the reasons for their exclusion. In its subsequent reports, the Member shall describe the measures taken with a view to progressively extending the provisions of the Convention to these categories.<sup>916</sup>

### 15.2.2 United Kingdom

The United Kingdom's Statutory Maternity Pay is available to women who have been employed by the same employer for 26 continuous weeks up to the week which is 15 weeks prior to the expected birth date (qualifying week), provided their average weekly earnings are more than the minimum earnings requirement (£75 per week).<sup>917</sup>

Women who are not eligible for Statutory Maternity Pay may be entitled to the Maternity Allowance if they are employed or self-employed and earn a minimum weekly requirement (£30).<sup>918</sup> A woman must have been employed or self-employed in at least 26 weeks in the 66 week period until the expected week of childbirth.<sup>919</sup>

Women who cannot access Statutory Maternity Pay or the Maternity Allowance may be eligible for Incapacity Benefit.<sup>920</sup> This requires that the woman has paid National Insurance contributions and has "... been incapable of work because of sickness or disability for at least 4 days in a row including weekends and public holidays".<sup>921</sup>

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<sup>915</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p26.

<sup>916</sup> International Labour Organization *Maternity Protection Convention 2000* (No 183).

<sup>917</sup> United Kingdom Department of Trade and Industry *Maternity Rights: A guide for employers and employees* May 2002, p29 [www.dti.gov.uk/er/individual/maternity/pdf](http://www.dti.gov.uk/er/individual/maternity/pdf).

<sup>918</sup> United Kingdom Department of Trade and Industry *Maternity Rights: A guide for employers and employees* May 2002, p31 [www.dti.gov.uk/er/individual/maternity/pdf](http://www.dti.gov.uk/er/individual/maternity/pdf).

<sup>919</sup> United Kingdom Department of Trade and Industry *Maternity Rights: A guide for employers and employees* May 2002, p31 [www.dti.gov.uk/er/individual/maternity/pdf](http://www.dti.gov.uk/er/individual/maternity/pdf).

<sup>920</sup> United Kingdom Department for Work and Pensions *Maternity Allowance*, p2 [www.dwp.gov.uk/lifeevent/benefits/maternity\\_allowance.htm](http://www.dwp.gov.uk/lifeevent/benefits/maternity_allowance.htm).

<sup>921</sup> United Kingdom Department for Work and Pensions *Incapacity Benefit*, p2 [www.dwp.gov.uk/lifeevent/benefits/incapacity\\_benefit.htm](http://www.dwp.gov.uk/lifeevent/benefits/incapacity_benefit.htm).

### 15.2.3 New Zealand

The New Zealand Paid Parental Leave scheme limits access to the scheme on the basis of length of employment and amount of work undertaken.

Specifically, the New Zealand scheme provides that:

[y]ou are eligible for the payment if you have been employed by the same employer for more than 12 months and you worked an average of 10 hours per week, including at least 1 hour per week or 40 hours per month, for that employer during that period.<sup>922</sup>

For employees on fixed term agreements, your rights to leave and payment end when your fixed term ends. For example, if a fixed term agreement is completed six weeks after the date of birth and the mother takes leave commencing two weeks before the birth, the entitlement is eight weeks leave and payment.

If a genuine redundancy situation arises during your period of leave, you must be advised. The redundancy should be handled in terms of your employment agreement. Your parental leave payment would continue unchanged if you are made redundant.<sup>923</sup>

Women are not entitled to leave or payment if they are:

- self-employed;
- not in paid employment; or
- fail the eligibility test of 12 months employment at an average of 10 hours work per week.<sup>924</sup>

The New Zealand scheme will be reviewed after 12 months of operation. This review will include consideration of the eligibility criteria.

## 15.3 Eligibility criteria for unpaid leave and paid leave

As noted above, the *Workplace Relations Act 1996* (Cth) provides for 12 months unpaid parental leave for “employees” with 12 months continuous service with a single employer.

The Workplace Relations Amendment (Paid Maternity Leave) Bill 2002, provided that the existing eligibility criteria for unpaid parental leave would apply to paid maternity leave. The Democrats have since indicated that they intend to amend this Bill in order to relax the eligibility criteria for both unpaid and paid maternity leave.<sup>925</sup> The proposed amendments will have the effect of creating different eligibility criteria for paid and unpaid leave.

There was some support in submissions for the view that the same eligibility criteria should apply for unpaid and paid maternity leave.<sup>926</sup>

The Australian Chamber of Commerce and Industry considered that a qualifying period was an appropriate approach for employment related maternity leave.

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<sup>922</sup> New Zealand Department of Labour *Parental Leave 1: General Entitlements* Fact Sheet, p2 [www.ers.dol.govt.nz/bin/fact.asp](http://www.ers.dol.govt.nz/bin/fact.asp).

<sup>923</sup> New Zealand Department of Labour *Parental Leave 1: General Entitlements* Fact Sheet, p2 [www.ers.dol.govt.nz/bin/fact.asp](http://www.ers.dol.govt.nz/bin/fact.asp).

<sup>924</sup> New Zealand Department of Labour *Parental Leave 4: Parental Leave FAQs* Fact Sheet, p1 [www.ers.dol.govt.nz/bin/fact.asp](http://www.ers.dol.govt.nz/bin/fact.asp).

<sup>925</sup> Employment, Workplace Relations and Education Legislation Committee *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002: Report of the Australian Democrats* Commonwealth of Australia Canberra September 2002, pp35-37.

<sup>926</sup> Additional support for this view is outlined below at 15.5.2.

The need for a proper qualifying period is recognised in those agreements which do provide for paid maternity leave. ACCI [Australian Chamber of Commerce and Industry] understands that most, if not all such agreements provide paid maternity leave based on the 12 month qualifying period which underpins the universal unpaid entitlement.

....

This remains a relevant approach to this issue and the correct approach to eligibility to all forms of employment linked maternity leave, either paid or unpaid.<sup>927</sup>

That submission cited a number of agreements that include a 12 month qualifying period for employer provided paid maternity leave.<sup>928</sup>

Immigrant Women's Speakout proposed a single eligibility requirement.

Eligibility requirements for paid and unpaid maternity leave should be the same. Eligibility criteria must be made explicit for both paid and unpaid maternity leave so as to ensure transparency of process and outcomes in the maternity scheme.<sup>929</sup>

The Queensland Working Women's Service supported a 12 month qualifying period.

We consider that women should have 12-months' service with the same employer to be eligible for paid maternity leave – that is, the same eligibility requirements that currently exist for unpaid parental leave.<sup>930</sup>

While a number of groups felt that paid and unpaid maternity leave eligibility requirements should be the same, for some this meant changing the eligibility criteria for unpaid leave.

The Australian Council of Trade Unions acknowledged that a single set of eligibility criteria would be administratively simple. However, it argued:

... that such a scheme would entrench already discriminatory practices. Instead, the ACTU [Australian Council of Trade Unions] would support amendments to existing provisions to reflect a more equitable outcome.<sup>931</sup>

The Women's Economic Think Tank considered that:

[t]here needs to be some more flexible options fed into both eligibility for paid and unpaid leave. The Maternity Leave Legislation [*Workplace Relations Act 1996* (Cth)] at present can present problems for those who are not eligible for the twelve months many women would prefer to take.<sup>932</sup>

Other submissions also emphasised that government funded paid maternity leave, without a right to return to work, was essentially different to current unpaid parental leave provisions and would not need to have the same eligibility criteria. For example, Coles Myer wrote that it:

... considers the eligibility criteria for paid and unpaid maternity leave should not necessarily be the same. As one of the critical features of a paid maternity leave system is to ensure women have the right to a period of rest following the birth of a child this right should be respected regardless of length of service, for example. On the other hand, extended periods of unpaid maternity leave have eligibility requirements attached which take into account the issues facing

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<sup>927</sup> Australian Chamber of Commerce and Industry, Submission 197, p50.

<sup>928</sup> *Hobart City Council Enterprise Agreement 2001; Southern Cross University Enterprise Bargaining Agreement 2000; Hanna Sports - SDA Doncaster Enterprise Agreement 1998; Zurich Enterprise Agreement 2001* cited in Australian Chamber of Commerce and Industry, Submission 197, p49.

<sup>929</sup> Immigrant Women's Speakout Association New South Wales Inc., Submission 158, p14.

<sup>930</sup> Queensland Working Women's Service, Submission 219, p11.

<sup>931</sup> Australian Council of Trade Unions, Submission 208, p18.

<sup>932</sup> Women's Economic Think Tank, Submission 125, p6.

both women and employers with regard to such leave. For example, it may be unduly onerous to require an employer to ensure a position is available for an employee who is absent from the workplace for 12 months after only working with the employer for a matter of weeks.<sup>933</sup>

The Australian Retailers Association drew attention to the difference between unpaid and paid maternity leave as a reason that there was not a need for a single eligibility criterion.

The existing unpaid leave provisions require ... eligibility criteria based on pre existing service with the same employer and takes into consideration the employer's obligation to ensure that the women's previous position is available to her should she choose to return to work.

This leave can be distinguished from a scheme that has financial considerations with an objective of allowing an adequate period of rest following the birth of a child.

Eligibility criteria for payment under this scheme need not be dependent upon the right to return to the workplace.<sup>934</sup>

One submission, from the Work + Family Policy Research Group at the University of Sydney, suggested that the components of any leave scheme be disentangled.

Under current law we note that the eligibility criteria for the twelve months unpaid parental leave and the guaranteed return to work entitlement are one and the same. We submit that the entitlement to leave and the entitlement to return to work are separate issues, with both being significant aspects of a paid maternity/parental leave scheme. We thus seek to differentiate them and their eligibility criteria more clearly.<sup>935</sup>

That submission recommended that eligibility for paid maternity leave require six months employment in the previous 12 months<sup>936</sup> and that "eligibility for guaranteed return to work ... remain at the current 12 months service requirement".<sup>937</sup>

HREOC considers that the same eligibility criteria should not apply to unpaid and paid maternity leave.

The Union Research Centre on Organisation and Technology argued that:

[i]f paid maternity leave is implemented with the current eligibility requirements it may apply only to those women already benefiting from existing maternity leave arrangements. It may be seen as a regressive measure if casual and other marginal workers are not taken into account. This would be likely for two reasons. Firstly, women in high skilled, full-time employment are in stronger bargaining positions, thus many already have access to paid maternity leave. Secondly, it could increase the attractiveness of casual labour to employers, thus further marginalising women workers.<sup>938</sup>

The 12 month qualifying period for unpaid parental leave is based on a balancing of obligations and benefits between employers and employees. The obligation on the employer to hold a position open for an employee is balanced by an established relationship with the employee. The benefits to the employer of retaining a staff member with 12 months employment history in the organisation are also much more direct. In contrast, a paid maternity leave scheme funded by Government and without a right to return to the same position imposes minimal to no cost on employers and hence does not require the same level of balancing of the interest of employers and employees.<sup>939</sup>

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<sup>933</sup> Coles Myer Ltd, Submission 107, p11.

<sup>934</sup> Australian Retailers Association, Submission 165, p24.

<sup>935</sup> Work + Family Policy Research Group University of Sydney, Submission 251, p11.

<sup>936</sup> Work + Family Policy Research Group University of Sydney, Submission 251, p11.

<sup>937</sup> Work + Family Policy Research Group University of Sydney, Submission 251, p11.

<sup>938</sup> Union Research Centre on Organisation and Technology, Submission 254, p8.

<sup>939</sup> See Chapter 19 for a discussion of employers' role.

As outlined at 6.3, paid maternity leave is designed to replace income when women take a break from the workforce for childbirth. It focuses on the loss of income that women experience due to maternity, not the employment relationship with a specific employer.

## 15.4 Forms of work

As previously noted, Australia's existing unpaid parental leave arrangements do not apply to parents undertaking certain forms of paid work, such as seasonal workers, many casuals and self-employed. Similarly, the New Zealand paid parental leave scheme excludes certain categories of workers, and in particular, the self-employed.

There was significant concern expressed in submissions that eligibility for paid maternity leave should not depend on the type or form of work that women undertake. This was seen to be significant due to the changing nature of the labour force, including increasing casualisation.

An individual noted the decreasing numbers of long term, permanent jobs.

I think it is important that women in short-term, non-permanent jobs also have access to paid maternity leave. These days it is a rare privilege to have a long-term, permanent job. Many women are self-employed in micro-businesses or work in a series of fixed-term contracts. If the government is paying for maternity leave, I believe that all tax-paying women should be eligible.<sup>940</sup>

The National Pay Equity Coalition drew attention to the situation of contract workers, casuals and seasonal workers.

An increasing proportion of the workforce is employed on a succession of contracts. Currently they do not meet eligibility criteria for unpaid maternity leave. While casuals do have entitlements that is only if they are employed on a continuous basis by a single employer. Workers who may have been employed for many years can miss out where they are seasonal workers – working non-continuous periods but with the same employer – or where they are contract workers. These workers are contributing to the national economy through their labour productivity and through their tax payments and consumption. Their capacity to continue in paid work clearly affects their lifetime earnings, economic opportunities, their families' economic wellbeing, their retirement incomes and the national economy, in various ways.<sup>941</sup>

The Australian Education Union considered that any scheme should include women in atypical work.

The recognition of emerging employment relationships is significant. This development along with the adoption of the ILO [International Labour Organization] Convention No.177 on Homework and the ILO [International Labour Organization] Convention No.175 on Part-time Work means that ILO [International Labour Organization] standards are beginning to recognise atypical forms of work organisation.

Thus, we believe that any paid maternity leave scheme should apply to all employed women, including those in atypical forms of dependent work such as home workers, part-time, temporary and casual workers.<sup>942</sup>

A number of submissions also pointed out that gender segregation in the workforce meant that women were often concentrated in more precarious forms of employment, outside the traditional model of permanent full time employee. The result is that restricting paid maternity leave to women in particular forms of employment would disadvantage a large proportion of women.<sup>943</sup>

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<sup>940</sup> Confidential, Submission 216, p5.

<sup>941</sup> National Pay Equity Coalition, Submission 224, p17.

<sup>942</sup> Australian Education Union, Submission 122, p22.

<sup>943</sup> See also 7.4 for discussion on this issue.

Submissions noted the need to ensure that women who are casuals, contract workers and self-employed had access to paid maternity leave, with particular emphasis placed on self-employed women.<sup>944</sup>

A smaller number of organisations also considered that women undertaking work related activities, such as education and training, should be eligible for paid maternity leave. For example, the YWCA of Australia argued:

... for a position that included study whether secondary or tertiary as a form of workforce participation, educational attainment being a leading indicator of workforce attachment ...<sup>945</sup>

Similarly, the Women's Economic Policy Analysis Unit considered that "[s]tudents in qualification or work related courses should also have access to PML [paid maternity leave] (provided they meet the 12 months eligibility criteria)".<sup>946</sup> The Women's Economic Think Tank considered that:

[s]tudents in qualification or work related courses should still be covered with their Austudy or other form of income support being counted as if it were part time work income.<sup>947</sup>

HREOC considers that the form of a woman's employment should not affect her eligibility for paid maternity leave. This would mean that women in casual work, on contract and the self-employed should have access to a government funded system of paid maternity leave. The relevant point is that the woman has been required to forego regular income due to the birth of a child. This applies equally to women in paid work regardless of their form of employment.

HREOC acknowledges that women in education and training are undertaking work related activities and that these women are likely to enter the labour force at some future stage. However, this situation is not considered equivalent to women in paid work as income is not foregone. Women who take a break from or cease education and training due to the birth of a child should have access to social security payments. HREOC has not assessed the adequacy of social security payments for students and trainees as this was considered beyond the scope of this paper.<sup>948</sup>

## 15.5 Length of service

### 15.5.1 Introduction

The key proposals put forward for length of service as an eligibility criterion were:

- 12 months employment with a single employer;
- a portable length of service requirement;
- a length of service requirement within a longer period of time; and
- no minimum.

With the exception of those submissions that considered there should be no minimum length of service for qualification, there was a considerable level of support for the principle that there be a minimum qualifying period of employment for paid maternity leave. For example, the Labor Council of New South Wales:

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<sup>944</sup> See, for example, YWCA of Australia, Submission 228, p18; Australian Council of Trade Unions, Submission 208, pp18-21; National Pay Equity Coalition, Submission 224, p17; Job Watch Inc., Submission 191, p14; Hawke Institute, Submission 174, p4; Anti-Discrimination Board of NSW, Submission 214, p15; Australian Education Union, Submission 122, p22; EMILY's List, Submission 159, p2; Shop, Distributive and Allied Employees' Association, Submission 173, pp14-15, 27; Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, pp7-8; Ethnic Communities' Council of Victoria, Submission 242, p5; Janette Denison, Submission 79, p1; BPW Australia, Submission 148, p6; Australian Retailers Association, Submission 165, p14; BPW New South Wales, Submission 118, p1; National Diversity Think Tank, Submission 221, p3; BPW International, Submission 82, p1; National Tertiary Education Union, Submission 169, p8.

<sup>945</sup> YWCA of Australia, Submission 228, p18.

<sup>946</sup> Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p20.

<sup>947</sup> Women's Economic Think Tank, Submission 125, p7.

<sup>948</sup> However see 3.4 for a discussion generally of the adequacy of current arrangements.

... believes that eligibility should be as wide as possible but that there is a need to demonstrate some attachment to the labour force prior to giving birth. This would allow women who have changed jobs or who are casual or work less than full time hours to access paid maternity leave.<sup>949</sup>

## 15.5.2 Twelve months with a single employer

As noted at 15.3 on eligibility criteria for unpaid leave and paid leave, a number of submissions considered that 12 months employment with a single employer should be required for eligibility for paid maternity leave.<sup>950</sup> The arguments in favour of this included that it was in line with eligibility criteria for unpaid parental leave, that it demonstrated workforce attachment, and that it already had widespread community acceptance.

These were the grounds on which the Victorian Women Lawyers supported a 12 month qualifying period.

Currently there is a requirement that a woman have worked for their employer for at least 12 months in order to be legally entitled to unpaid maternity leave. This period of time has gained community acceptance as demonstrating that the woman is in a genuine working arrangement, and therefore the employer should accommodate her family needs. VWL [Victorian Women Lawyers] acknowledges that to be entitled to paid or unpaid maternity leave there should be a genuine working arrangement in place. VWL [Victorian Women Lawyers] believes that the requirement of 12 months continuous service should apply in order to be entitled to paid or unpaid maternity leave by law.<sup>951</sup>

A submission by an individual stated that:

[w]hilst some may argue a qualifying period is discriminatory – I do believe that a minimum length of employment should be set. This would prevent the primary care givers seeking out employment whilst the woman is pregnant to secure a reasonable income whilst on maternity leave. A reasonable period would be 12 months before the leave is to be taken.<sup>952</sup>

However, as outlined at 15.3 in this Chapter, a significant number of groups have argued against an eligibility criterion of 12 months employment with a single employer. Those opposing this proposal considered that this requirement was too rigid, that it excluded large numbers of women in paid employment and that it did not reflect the changing nature of the labour force and women's experience in paid employment.

The Ethnic Communities' Council of Victoria considered that requiring 12 months continuous employment would be problematic.

It has the potential to exclude those whose hours may have been variable and those in long term but intermittent and or casual working relationships with their employers, low income contractors and/or subcontractors and other seasonal workers and outworkers, whether or not they are described as working for wages.<sup>953</sup>

The Australian Council of Trade Unions noted that a 12 month qualifying period would disadvantage women relative to men, and in particular would exclude many young women.<sup>954</sup> See 3.2.2 for further discussion.

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<sup>949</sup> Labor Council of New South Wales, Submission 218, p6. See also Jason Corney, Submission 164, p1.

<sup>950</sup> See, for example, Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p17; Australian Industry Group, Submission 121, p24; Local Government Association of Queensland Inc., Submission 156, p2; Australian Hotels Association, Submission 199, p6; Australian Chamber of Commerce and Industry, Submission 197, p49; Karen Wakely, Submission 30, p3; Melissa Austin, Submission 149, p5; Victorian Women Lawyers, Submission 137, p2; Victorian Government, Submission 250, p9; Recruitment and Consulting Services Association, Submission 220, p4.

<sup>951</sup> Victorian Women Lawyers, Submission 137, p2.

<sup>952</sup> Melissa Austin, Submission 149, p5.

<sup>953</sup> Ethnic Communities' Council of Victoria, Submission 242, p5.

<sup>954</sup> Australian Council of Trade Unions, Submission 208, p19.



Similarly, the Labor Council of New South Wales was concerned about the number of women that such a condition would exclude.

[A]lmost one third of women are casual workers and ... 25% of women have been in their current jobs for less than 12 months. If such limits were to be included then significant numbers of working women would not benefit from the scheme.<sup>955</sup>

The Shop, Distributive and Allied Employees' Association considered that "[t]his option also discriminates against those in precarious employment because it is unlikely that they will have had continuous employment in the previous 12 months".<sup>956</sup>

### 15.5.3 A portable length of service requirement

A number of groups considered that the required period of employment for eligibility for paid maternity leave could be worked with more than one employer.<sup>957</sup>

This is based on the fact that a government funded scheme is concerned with labour force attachment rather than a relationship with a single employer. It means that women who change employment whilst pregnant will not be disadvantaged. The greater use of contract and casual work means that it is now more likely that women will change employment within a 12 month period.<sup>958</sup>

Portability will also mean that those women who change jobs, such as those who move for a promotion or pay increase, will not be penalised. It is possible that the current system of qualification for unpaid maternity leave could create labour market inefficiencies through inhibiting the movement of labour. HREOC has not done closer analysis or modeling of any labour market effect of qualifying periods. However, it is also clear that for a government funded scheme such a criterion would not create unfairness to any particular employer.

The YWCA of Victoria noted that the changing nature of work means that many women change jobs during a year.

The reality of the job market for an increasing number of workers, particularly young women and ethnic women (particularly in the hospitality, service and manufacturing sectors) is the necessity to move between a number of employers during a twelve-month period.<sup>959</sup>

The Australian Education Union considered that "... the eligibility should be based upon the work history and not the employer/employee relationship".<sup>960</sup>

The Illawarra Forum and Illawarra Women's Health Centre considered that the fact that the scheme would be government funded influenced this decision concluding that "... therefore individual employers would not be disadvantaged if employing a worker who takes maternity leave during their first twelve months of employment ...".<sup>961</sup>

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<sup>955</sup> Labor Council of New South Wales, Submission 218, p6.

<sup>956</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p26.

<sup>957</sup> See, for example, YWCA of Victoria, Submission 127, p19; Australian Education Union, Submission 122, p25; Illawarra Forum Inc. and Illawarra Women's Health Centre, Submission 162, pp3,6; Victorian Government, Submission 250, Attachment p4; BPW Australia, Submission 148, p9; Australian Retailers Association, Submission 165, p23.

<sup>958</sup> See 2.4.4 for further discussion.

<sup>959</sup> YWCA of Victoria, Submission 127, p19.

<sup>960</sup> Australian Education Union, Submission 122, p25.

<sup>961</sup> Illawarra Forum Inc. and Illawarra Women's Health Centre, Submission 162, p6.

At the Third Annual Victorian Women's Summit:

[t]he view was expressed that women in non-continuous employment should be eligible for paid maternity leave. The idea was put forward of carrying credit for time at work from one job to the next. It was felt that this would be particularly beneficial to young women and those with diverse employment forms who may change jobs quite frequently due to the nature of work available. This type of initiative would work if the national scheme is paid by government.<sup>962</sup>

While the Australian Retailers Association did consider that a minimum length of employment may be appropriate, it noted that this should not be with a particular employer.

Given the primary objective of a paid maternity leave scheme is to ensure women have the ability to have a period of rest at the time of the birth of a child it is not appropriate to impose any minimum length of service with a particular employer in order to be eligible to receive the government payment.<sup>963</sup>

On the other hand, the Australian Chamber of Commerce and Industry considered that portability would be impractical and increase the possibility of discrimination against women.

Any government funded scheme linked to employment would need to determine eligibility based on employment with a single employer. Portability is impractical in this area (as in almost all areas of employment). It would appear to only serve to multiply and maximise the scope for discrimination against women.<sup>964</sup>

The specific models proposed, based on a portable length of service criterion, required six to 12 months employment prior to accessing paid maternity leave.<sup>965</sup> Such a scheme would require continuous employment but would allow movement between employers and positions. For example, the Australian Retailers Association proposed that:

[a] minimum period of eight to twelve months in the workforce, prior to full term birth, may be appropriate as the payment of maternity leave is a work related payment.<sup>966</sup>

The Union of Australian Women recommended that a national paid maternity leave scheme:

... be paid to all women who have 26 weeks in paid employment, not necessarily with the same employer. Increasingly, work is available in 6 month contracts, whether for young academics or public service work, for example. Casual work is often precarious.<sup>967</sup>

The Immigrant Women's Speakout considered that:

... the current 12 months eligibility requirement for unpaid leave is too onerous and disadvantages new labour market entrants and women at risk of job insecurity, such as immigrant and refugee women. Six months is a more reasonable period in the context of today's labour market.<sup>968</sup>

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<sup>962</sup> Victorian Government, Submission 250, Attachment p4.

<sup>963</sup> Australian Retailers Association, Submission 165, p23.

<sup>964</sup> Australian Chamber of Commerce and Industry, Submission 197, p50.

<sup>965</sup> See, for example, Illawarra Forum Inc. and Illawarra Women's Health Centre, Submission 162, p6; Australian Women Lawyers, Submission 140, p3; Australian Capital Territory Ministerial Advisory Council on Women, Submission 120, p8; Aboriginal and Torres Strait Islander Commission, Submission 116H, p1; New South Wales Young Lawyers Employment and Industrial Law Committee, Submission 246, p2; Western Australian Government, Submission 245, p3; Lisa Park, Submission 212, p1; BPW International, Submission 82, p1; Karen Bijkersma, Submission 150, p2; BPW New South Wales, Submission 118, p1; Australian Retailers Association, Submission 165, p23.

<sup>966</sup> Australian Retailers Association, Submission 165, p23.

<sup>967</sup> Union of Australian Women, Submission 89, p2.

<sup>968</sup> Immigrant Women's Speakout Association New South Wales Inc., Submission 158, p13.

BPW New South Wales proposed that eligibility be based on having paid tax, as opposed to being in a particular job, arguing that eligibility should be established "... after 12 months of paying tax (this would allow for permanent, part-time and casual employees to access payments)".<sup>969</sup>

#### 15.5.4 A length of service requirement within a longer period of time

A number of submissions proposed extending the concept of portability to permit breaks in employment. These proposals would require a woman to have worked for between six and 12 months within a longer period of time and with any number of employers.<sup>970</sup> This would allow for short spells of unemployment, short breaks between positions and contracts, and/or time out of the workforce due to family and caring responsibilities. This may more closely resemble the reality of many women's working lives, while still establishing that eligible women have significant labour force attachment. For example, the National Pay Equity Coalition argued that paid maternity leave should be:

[p]aid to employees with 12 months continuous service and self-employed in business for 52 of the last 104 weeks and employees in employment in 52 of the last 104 weeks.<sup>971</sup>

The Western Australian Government considered that:

[f]or casual employees and any other employees who have had a break between contracts of employment, the Government would support the extension of this criterion to employees who have been employed on a regular or systematic basis for at least 12 months of the preceding 18 months.<sup>972</sup>

The Hawke Institute also recommended a system that permitted breaks in employment.

To be inclusive of freelance workers, short-term contract workers, seasonal workers, and those workers who have had to take off periods of time for caring duties, eligible parents would be those who have accumulated a total of the twelve months of work related activities. These activities need not be continuous but should be restricted to the past five years.<sup>973</sup>

The Women's Electoral Lobby proposed the following eligibility criteria.

Women who are the birth or adoptive mother and who are:

- employed full time with 52 weeks of continuous employment with one or a series of employers;
- employed part time or on a casual basis with 52 weeks of employment with one or a series of employers;
- employed part time or on a casual basis with the equivalent of 52 weeks of employment over 2 years with one or a series of employers; and
- self employed with 52 weeks of continuous employment (or the equivalent over 2 years);
- women working in the private sector, including small businesses; and
- public sector employees.<sup>974</sup>

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<sup>969</sup> BPW New South Wales, Submission 118, p1.

<sup>970</sup> See, for example, Western Australian Government, Submission 245, p3; Hawke Institute, Submission 174, pp1,4; National Pay Equity Coalition, Submission 224, p4; Women's Health in the North, Submission 60, p4; Women's Electoral Lobby, Submission 248, p19; Anti-Discrimination Board of New South Wales, Submission 214, p16; Women's Studies Research Unit, School of Social Work, University of Melbourne, Submission 48, p6; Women's Economic Think Tank, Submission 125, pp6-7; Work + Family Policy Research Group University of Sydney, Submission 251, p11.

<sup>971</sup> National Pay Equity Coalition, Submission 224, p4.

<sup>972</sup> Western Australian Government, Submission 245, p3.

<sup>973</sup> Hawke Institute, Submission 174, p4.

<sup>974</sup> Women's Electoral Lobby, Submission 248, p19.

The Women's Economic Think Tank suggested that the eligibility requirement should be "... 12 months labour force attachment with at least 6 months employment within this time including at least three months at the time that leave was applied for".<sup>975</sup>

### 15.5.5 No minimum

A significant number of submissions preferred that there be no minimum length of employment required to be eligible for paid maternity leave.<sup>976</sup> For example, the Independent Education Union considered that:

[t]his payment should be available to all working women who take leave to give birth or adopt a baby, with no artificially imposed qualifying periods. The IEU [Independent Education Union] believes that a woman's entitlement to paid maternity leave should rely only on evidence of the existence of an employment relationship.<sup>977</sup>

The Australian Council of Trade Unions considered that its proposal for government funding and a dual system of equivalent payment to women in paid and unpaid work meant that a minimum length of employment was not necessary.

Those who support exclusions based on length of employment argue that without such qualifications, women will abuse the system by getting a job and claiming benefits, without having made a contribution to the workplace to "earn" their entitlement. This argument has some weight where the employer funds the entitlement. It has little weight in the context of a taxpayer-funded scheme, where the fact that a woman changed employer within the qualifying period is irrelevant, as entitlement doesn't attach to a particular employer.

Similarly, the argument that women will enter the labour force to claim the benefit is discounted if the family support measure available to women outside the labour force is of equivalent value to paid maternity leave.<sup>978</sup>

A qualifying period for paid maternity leave was seen by some to restrict women's reproductive choices. As one individual noted "... sometimes being pregnant isn't always planned".<sup>979</sup>

As noted above, there was concern that a qualifying period of employment would reinforce the structural disadvantage that women experience in the workforce.

The [Australian Services Union] MEU/Private Sector Victorian Branch submit that no qualifying period or minimum service ought to apply to a national paid maternity leave scheme as this would create a form of discrimination. Women are more likely to have breaks in paid employment as a result of family responsibilities. Applying a qualifying period would further disadvantage those women.<sup>980</sup>

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<sup>975</sup> Women's Economic Think Tank, Submission 125, p6.

<sup>976</sup> See, for example, Australian Council of Trade Unions, Submission 208, p19; Victorian Independent Education Union, Submission 163, p2; Australian Education Union, Submission 122, p25; Kay Channer, Submission 52, p2; Australian Services Union MEU Private Sector Victorian Branch, Submission 154, pp3-4; Queensland Nurses' Union, Submission 134, p8; Australian Nursing Federation, Submission 123, p9; Aboriginal and Torres Strait Islander Commission, Submission 116E, p1, 116F, p2; New South Wales Working Women's Centre, Submission 225, p14; Queensland Council of Unions, Submission 239, p13; Centre for Applied Social Research RMIT University, Submission 234, p10; Independent Education Union of Australia, Submission 204, p6; Women in the Department of Education and Children's Services Reference Committee, South Australia, Submission 201, p1; Coles Myer Ltd, Submission 107, p11; New South Wales Public Service Association, Submission 110, p5; New South Wales EEO Practitioners' Association, Submission 77, p2.

<sup>977</sup> Independent Education Union of Australia, Submission 204, p6.

<sup>978</sup> Australian Council of Trade Unions, Submission 208, p19.

<sup>979</sup> Aboriginal and Torres Strait Islander Commission, Submission 116E, p1. See also Aboriginal and Torres Strait Islander Commission, Submission 116F, p2.

<sup>980</sup> Australian Services Union MEU Private Sector Victorian, Submission 154, pp3-4.

This was supported by the New South Wales Working Women's Centre, which considered that:

[b]ecause of the high incidence of temporary and casual employment among women, particularly young women and women from rural and regional areas, as well as women in certain occupational groups where employment patterns are irregular, the Working Women's Centre submits that the scheme needs to be available to **all working women**.<sup>981</sup>

A strong argument in favour of having no qualifying period for paid maternity leave relates to the health and wellbeing objectives of paid maternity leave.<sup>982</sup> Ensuring that women are not forced back to work for financial reasons before they and their babies are physically recovered from childbirth was considered by some to be an objective that should apply to all women, and not just those who have been in paid work for a certain period of time. For example, Coles Myer stated that:

[g]iven the primary objective of a paid maternity leave scheme is to ensure women have the ability to have a period of rest at the time of the birth of a child it is not appropriate to impose any minimum length of service in order to be eligible to receive the government payment. A minimum length of employment criterion would not deliver any foreseeable additional benefit to the government or community at large other than limiting the availability of the payment somewhat arbitrarily. To apply such a restriction may result in women continuing to be compelled to return to work without having the period of rest they require in order to recover from the birth.<sup>983</sup>

A system that had no minimum length of employment for eligibility would also better reflect the International Labour Organization's preferred position. While the Maternity Protection Convention does permit eligibility criteria to be applied, the International Labour Organization's preferred position is that no such limits be placed on access by women in paid work to paid maternity leave.

### 15.5.6 HREOC's position

On balance, HREOC considers that requiring women to have undertaken a certain length of employment in order to be eligible for paid maternity leave is reasonable, even for a government funded scheme.

The proposed national paid maternity leave scheme will only be available to women in paid work. As such it is important to establish a standard for what constitutes paid work. This standard should be sufficient to justify the different treatment of women in paid work and those in unpaid work. In HREOC's view, requiring no minimum length of employment would create a system where women in very similar circumstance would be treated in very different ways, with no justification for this difference.

In addition, eligibility criteria will assist in establishing that a woman has been receiving regular income from employment. This is important if the objective of paid maternity leave is to provide income replacement. The eligibility criteria will establish that the woman is foregoing a particular level of income due to the birth of her child.

HREOC does not consider that the same eligibility criteria should apply to unpaid parental leave and paid maternity leave. HREOC is of the view that the difference between these two types of leave warrants different eligibility criteria. In particular, HREOC considers that the fact that paid leave would be funded by the government and would not place additional obligations on individual employers means that eligibility for paid maternity leave should not depend on the employment relationship between a woman and a specific employer.

HREOC strongly supports eligibility criteria for paid maternity leave that allow portability between employers and also permit short breaks in a woman's employment history. HREOC considers that this better reflects the reality of the Australian labour market and women's employment. It also means that the focus is on the income that the woman is foregoing rather than the employment relationship with a single employer.

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<sup>981</sup> New South Wales Working Women's Centre, Submission 225, p14 (emphasis in original).

<sup>982</sup> See Chapter 5.

<sup>983</sup> Coles Myer Ltd, Submission 107, p11.

An additional factor to consider in establishing eligibility criteria is to ensure that it is a standard which has public support and is seen as a legitimate standard. On this basis, HREOC has leaned towards more conservative eligibility criteria.

HREOC recommends that women be required to have worked 40 weeks in the past 52 weeks, with any number of employers. HREOC considers that this standards strikes a balance between the need to reflect the circumstances of women's work and the need to maintain public confidence in the system.

Forty weeks is a longer period than the usual gestation of 38 weeks. As such, it ensures that a woman would not get a job after becoming pregnant for the sole purpose of receiving paid maternity leave.

HREOC considers that it is highly unlikely that any woman would seek employment purely on these grounds. In addition, given the high level of pregnancy discrimination in the workforce, HREOC is of the view that many women would find it difficult to gain employment in the later stages of their pregnancy. However, this principle was one which was important to employer groups.<sup>984</sup>

The other benefit of a 40 week within 52 weeks qualifying period is that it will provide a level of protection to women who experience pregnancy discrimination. Complaints to HREOC on the ground of pregnancy discrimination increase in the final three months of pregnancy. As such, a woman who has worked continuously up to the final three months of pregnancy, and then is dismissed or resigns from employment, will still receive the 14 weeks of government funded maternity leave payments. This is an important protection in those cases where pregnancy discrimination has been established, as well as those where a woman has not filed a complaint, has not been able to prove a complaint, or where a complaint has not yet been decided.

In light of the fact that these eligibility criteria are a compromise position, it may be appropriate to review the criteria once the system has commenced operating. Such a review should consider the number of women in paid work who are not able to access paid maternity leave due to the eligibility criteria, as well as possible ways of extending the scheme to a greater proportion of women in paid work.<sup>985</sup>

## 15.6 Means testing

A number of submissions proposed that any system of paid maternity leave be means tested.<sup>986</sup> These submissions considered that means testing was a way to limit the cost of a paid maternity leave scheme to Government and to better target assistance to those most in need.

The Shop, Distributive and Allied Employees' Association supported means testing.

This payment should be means tested. There is no argument that can be mounted which, on the grounds of fairness and equity, justify making this payment to the wealthy. However such a means test should be fair and equitable. The current regime of means tests applicable to family support payments are unduly harsh and deny many families access to them, in full or part. A more relaxed means test than those currently in place needs to be established. There is, nevertheless no grounds for justifying such a payment to high income earners.<sup>987</sup>

The Women's Action Alliance recommended that "[i]f our social justice commitment is to assist the poor first then targeting via a means test should be adopted".<sup>988</sup>

An individual submission emphasised the importance of targeting a government payment.

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<sup>984</sup> Employer groups, unions and women's organisations roundtable, Melbourne, 27 August 2002.

<sup>985</sup> See 22.4 for further discussion on review of the scheme.

<sup>986</sup> See, for example, Joan Larsen, Submission 85, p1; Australian Mines and Metals Association, Submission 255, p15; New South Wales State Chamber of Commerce, Submission 231, p4; Cathy Sherry, Submission 205, p5.

<sup>987</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p16.

<sup>988</sup> Women's Action Alliance (Australia) Inc., Submission 146, pp5-6.

Financial assistance should be provided to all women who have babies, regardless of their work status. Payments should be means-tested. The alternative, of government funded maternity leave, will result in some low to middle income families receiving appropriate assistance, some middle to high income families receiving inappropriate assistance and many low to middle income families missing out. Of course this could be rectified by payments to women at home, (such as the Baby Bonus), but a simplified form of means-tested payments to all women, working or not, would seem preferable.<sup>989</sup>

Those who have argued against a means test<sup>990</sup> do so on the grounds that a means test could mean that significant numbers of women in paid work are excluded from accessing paid maternity leave, that it will penalise higher paid women, and that it will undermine the principle that paid maternity leave is designed to replace the income of women who are currently forced to forego income on the basis of maternity. The Women's Electoral Lobby noted that:

[w]omen on leave from the workplace due to child-birth are expected to work in the future, are able to work and are employed – therefore a social security system of payment is not appropriate. Means testing and a flat rate of payment do not uphold a principle of income replacement recognising women's foregone earnings.<sup>991</sup>

The Australian Industry Group considered that “[t]o provide a means tested payment would effectively penalise women in higher paying occupations (who already face higher opportunity costs)”.<sup>992</sup> The National Pay Equity Coalition drew attention to the number of women who would miss out if a means test were applied.

If a means test were set at limiting entitlement to those who earn less than the federal minimum wage, with no payment for those who earn above \$431, around six in ten women would not receive PML [paid maternity leave]. Similarly if a means test limited entitlement to those earning below average weekly earnings, more than 30% of women would not receive any payment.<sup>993</sup>

The National Diversity Think Tank stressed the importance for economic security for women in their own right.

[P]aid maternity leave should be provided to an individual woman in her own right, the only criteria being that she is removing herself from the workplace in order to have a child (i.e. from wage-earner with economic independence to non-wage-earner) hence the existence of a partner / the gender of a partner / or if the partner is earning, is irrelevant.<sup>994</sup>

The Victorian Government noted that not all government family assistance payments are currently means tested. It considered that this approach should extend to government funded paid maternity leave.

The Victorian Government believes that a paid maternity leave scheme involving a payment of \$431.40 per week, or approximately \$6,040 over 14 weeks, is a very modest scheme and ... should not be means tested.<sup>995</sup>

The Hawke Institute considered that “[i]t is important that parenting leave be a right rather than a welfare entitlement”.<sup>996</sup>

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<sup>989</sup> Cathy Sherry, Submission 205, p5.

<sup>990</sup> See, for example, Women's Economic Think Tank, Submission 125, p6; National Diversity Think Tank, Submission 221, p3; Law Council of Australia, Submission 247, p3; Australian Women Lawyers, Submission 140, p2.

<sup>991</sup> Women's Electoral Lobby, Submission 248, p23.

<sup>992</sup> Australian Industry Group, Submission 121, p19.

<sup>993</sup> National Pay Equity Coalition, Submission 224, p24.

<sup>994</sup> National Diversity Think Tank, Submission 221, p3.

<sup>995</sup> Victorian Government, Submission 250, p12. See also 3.4.1 for a description of existing government family assistance payments and means tests.

<sup>996</sup> Hawke Institute, Submission 174, p5.

One of the benefits of paid maternity leave is that it may influence workplaces to be more accepting of the need for employees to be able to combine work and family. If the Government chose to means test paid maternity leave, it would be sending a message that women who are successful in gaining higher paid positions should not expect to be supported by the Government and the community in combining work and family.

HREOC does not support means testing of paid maternity leave. Paid maternity leave is concerned with addressing the workplace disadvantage faced by women due to their childbearing role, and to ensure that women are not financially penalised through a forced absence from the workforce on the birth of a child. These are different to the goals of social security payments which are designed to assist those in the community who are "... not expected to work (retired people, lone parents and carers), unable to work (people with disabilities and the sick) or unable to find work (the unemployed)".<sup>997</sup>

The non-means testing of paid maternity leave recognises that a primary goal of such a scheme is to provide all women and children with the opportunity to stay at home together for the first few months after birth. For this reason, paid maternity leave is conditional on taking leave from paid employment. The goal is time out of the workforce by means of income replacement rather than income supplementation for low income families.

## RECOMMENDATION 5

That in order to be eligible for paid maternity leave a woman must have been in paid work (including casual employment, contract work and self-employment) for 40 weeks of the past 52 weeks with any number of employers and/or in any number of positions. Access to this payment should not be means tested.

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<sup>997</sup> P Whiteford and G Angenent *The Australian System of Social Protection – An overview* Department of Family and Community Services Occasional Paper No 6 Second Edition Commonwealth of Australia Canberra 2001, p7.



# 16. Duration

## 16.1 Introduction

While there was debate in submissions about the duration of any paid leave, it is clear that the International Labour Organization standard of a 14 week minimum is influential. Submissions also recognised that many of the international comparator countries have or are in the process of extending their paid leave. However most submissions preferred to advocate for an acceptable, achievable minimum standard.

This Chapter reviews the range of recommendations for the duration of paid maternity leave, referring to various international standards and practices. Proposals in submissions for the duration of paid maternity leave varied from six weeks<sup>998</sup> to five years.<sup>999</sup> The key proposals are outlined below.

It should be noted that the period of paid maternity leave would overlay existing unpaid maternity leave provisions, which provide eligible employees with access to twelve months unpaid leave.<sup>1000</sup> Access to 12 months **unpaid** parental leave available under awards and legislation would continue according to existing provisions. This Chapter focuses on the length of time for which a maternity leave **payment** should be made. The proposal would not bestow any additional or new rights to unpaid leave.

## 16.2 International standards and practices

Under the Maternity Protection Convention, the International Labour Organization requires Member States who have ratified the Convention to provide no less than 14 weeks of paid maternity leave.<sup>1001</sup> Recommendation 191 recommends that Member States extend this period to at least 18 weeks of paid leave.<sup>1002</sup>

New Zealand provides "... up to 12 weeks paid parental leave, which is taxpayer funded".<sup>1003</sup>

Subject to Parliamentary approval, the United Kingdom will extend the duration of Statutory Maternity Pay and the Maternity Allowance from 18 to 26 weeks in April 2003.<sup>1004</sup>

In Canada, maternity benefits are available for up to 15 weeks.<sup>1005</sup>

Denmark provides up to 28 weeks paid maternity leave to mothers, the last 10 weeks of those may be in favour of the father.<sup>1006</sup>

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<sup>998</sup> Local Government Association of Queensland Inc., Submission 156, p3.

<sup>999</sup> See, for example, Festival of Light, Submission 102, p4; Presbyterian Women's Association of Australia in New South Wales, Submission 126, p1; Endeavour Forum, Submission 144, p1.

<sup>1000</sup> See 3.2 for a discussion of the availability of unpaid parental leave.

<sup>1001</sup> International Labour Organization *Maternity Protection Convention 2000* (No 183), article 4(1).

<sup>1002</sup> International Labour Organization *Maternity Protection Recommendation 2000* (No 191).

<sup>1003</sup> New Zealand Department of Labour *Parental Leave 1: General Entitlements* Fact Sheet, p1 [www.ers.dol.govt.nz/bin/fact.asp](http://www.ers.dol.govt.nz/bin/fact.asp).

<sup>1004</sup> United Kingdom Department of Trade and Industry *Work and Parents: Competitiveness and Choice* [www.dti.gov.uk/erl/review.htm](http://www.dti.gov.uk/erl/review.htm).

<sup>1005</sup> Human Rights Development Centre *Maternity, Parental and Sickness Benefits* [www.hrdc-drhc.gc.ca/ae-ei/pubs/special\\_e.shtml#How](http://www.hrdc-drhc.gc.ca/ae-ei/pubs/special_e.shtml#How).

<sup>1006</sup> Mutual Information System on Social Protection in the EU Member States and the EEA (MISSOC) *Maternity Leave: Prior to and after confinement* [europa.eu.int/comm/employment\\_social/missoc/2002/missoc\\_87\\_en.htm](http://europa.eu.int/comm/employment_social/missoc/2002/missoc_87_en.htm).

France provides a basic rate of 16 weeks of paid maternity leave, with longer periods available in the event of multiple births and 26 weeks available in the case of the birth of a third or subsequent child. Paid leave commences six weeks before the expected week of birth, or eight weeks if the woman already has two or more children.<sup>1007</sup>

Ireland provides 18 weeks paid maternity leave.<sup>1008</sup>

In Japan, 14 weeks paid maternity leave is available.<sup>1009</sup>

## 16.3 Twelve weeks/three months

A number of submissions proposed a period of 12 weeks or three months for paid maternity leave.<sup>1010</sup> Some submissions considered that three months was an absolute minimum length of paid leave to ensure the health and wellbeing of the mother and her baby.<sup>1011</sup> For example, one respondent to the maternity leave poll conducted by motherInc commented that:

... I don't think paid maternity leave needs to be for a year. I think at least for the first 3 months – until you get yourself back on your feet and back into a sensible sleep pattern – otherwise you just don't cope with the stresses.<sup>1012</sup>

The Australian Breastfeeding Association considered that:

[t]he first 12-14 weeks are critical in establishing breastfeeding, and we believe that ensuring adequate financial support for all mothers during the first months of a baby's life should be the priority for policy in this area.<sup>1013</sup>

Twelve weeks was also argued on the ground that it would be consistent with the 12 weeks provided for federal public servants through the *Maternity Leave (Commonwealth Employees) Act 1973* (Cth). For example, the Women's Action Alliance noted that:

[i]t could be argued that as the Commonwealth government provides its own employees with 12 weeks paid leave that a Maternity Payment equal to 12 weeks of the basic rate of pension OR of the minimum wage OR of women's average weekly earnings would constitute a comparable social benefit [for the purposes of complying with Article 11 of CEDAW]. If this were put in place Australia could then withdraw its reservation to CEDAW on these grounds.<sup>1014</sup>

Twelve weeks was considered a minimum to ensure that Australia's provision was comparable to overseas schemes, and particularly the New Zealand scheme. The Women in the Department of Education and Children's Services Reference Committee, South Australia noted that:

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<sup>1007</sup> Mutual Information System on Social Protection in the EU Member States and the EEA (MISSOC) *Maternity Leave: Prior to and after confinement* [europa.eu.int/comm/employment\\_social/missoc/2002/missoc\\_87\\_en.htm](http://europa.eu.int/comm/employment_social/missoc/2002/missoc_87_en.htm).

<sup>1008</sup> Mutual Information System on Social Protection in the EU Member States and the EEA (MISSOC) *Maternity Leave: Prior to and after confinement* [europa.eu.int/comm/employment\\_social/missoc/2002/missoc\\_87\\_en.htm](http://europa.eu.int/comm/employment_social/missoc/2002/missoc_87_en.htm).

<sup>1009</sup> Columbia University, Clearinghouse on International Developments in Child, Youth and Family Policies "Maternity, Paternity and Parental Leave in the OECD Countries 1998-2002" *Issue Brief* [www.childpolicyintl.org/issuebrief/issuebrief5table1.pdf](http://www.childpolicyintl.org/issuebrief/issuebrief5table1.pdf).

<sup>1010</sup> See, for example, Recruitment and Consulting Services Association, Submission 220, p4; Women's Action Alliance (Australia) Inc., Submission 146, pp5,8; Aboriginal and Torres Strait Islander Commission, Submission 116A, p2, 116F, p2; Women in the Department of Education and Children's Services Reference Committee, South Australia, Submission 201, p1; Australian Breastfeeding Association, Submission 222, pp6-7,8; Jason Corney, Submission 164, p1; motherInc, Submission 196, p20; Australian Industry Group, Submission 121, p23.

<sup>1011</sup> For a discussion of the benefits of paid maternity leave for the health and wellbeing of the mother and child see Chapter 5. motherInc, Submission 196, p20.

<sup>1013</sup> Australian Breastfeeding Association, Submission 222, p8; see also pp6-7.

<sup>1014</sup> Women's Action Alliance (Australia) Inc., Submission 146, p5. See also Aboriginal and Torres Strait Islander Commission, Submission 116F, p2.

[i]deally there is an expectation that a period of between 12 and 16 weeks would be appropriate so that Australian policies are comparable to those of other countries.<sup>1015</sup>

## 16.4 Fourteen weeks

A significant majority of submissions in favour of paid maternity leave supported the provision of 14 weeks paid leave.<sup>1016</sup> This length of leave was supported by a broad range of groups, including unions, employers, employer groups, women's groups and academics.

The Maternity Protection Convention requires that Member States provide 14 weeks paid maternity leave, which can be taken immediately prior to and following the birth of a child. This includes a compulsory period of six weeks following the birth of a child.

### Article 4

1 On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave not less than 14 weeks.

...

4 With due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six week's compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers.<sup>1017</sup>

A considerable number of submissions favoured 14 weeks of paid leave on the ground that this was the duration of leave advocated by the International Labour Organization.<sup>1018</sup>

The Australian Women Lawyers supported 14 weeks paid leave on the grounds that "[t]his is the ILO [International Labour Organization] Standard and is internationally recognized as an appropriate period".<sup>1019</sup> The Victorian Government supported 14 weeks paid leave on similar grounds.

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<sup>1015</sup> Women in the Department of Education and Children's Services Reference Committee, South Australia, Submission 201, p1. See also Recruitment and Consulting Services Association, Submission 220, p4; Jason Corney, Submission 164, p1.

<sup>1016</sup> See, for example, Australian Federation of University Women – Victoria, Submission 101, pp1,2; Coles Myer Ltd, Submission 107, p11; National Tertiary Education Union, Submission 169, p7; Work/Life Association, Submission, 171, p4; Shop, Distributive and Allied Employees' Association, Submission 173, p19; Job Watch Inc., Submission 191, p13; Australian Hotels Association, Submission 199, p7; United Trades and Labor Council of South Australia, Submission 211, p4; Anti-Discrimination Board of New South Wales, Submission 214, p9; Law Institute of Victoria, Submission 215, p3; Labor Council of New South Wales, Submission 218, p5; Lyn Collins and Barbara Pocock, Submission 232, p7; Centre for Applied Social Research, RMIT University, Submission 234, p9; Western Australian Government, Submission 245, p3; Law Council of Australia, Submission 247, p3; Victorian Government, Submission 250, p9; Queensland Council of Unions, Submission 239, p13; Women's Electoral Lobby, Submission 248, p18; Australian Manufacturing Workers' Union Vehicle Division Statement in Australian Manufacturing Workers' Union, Submission 237, pp18-19; Australian Manufacturing Workers' Union, Submission 237, p2; New South Wales Working Women's Centre, Submission 225, p16; Community and Public Sector Union – State Public Services Federation Group, Submission 230, p8; YWCA of Australia, Submission 228, p18; National Pay Equity Coalition, Submission 224, p4; Women's Economic Think Tank, Submission 125, p5; Queensland Nurses' Union, Submission 134, p9; Australian Education Union, Submission 122, p2; Australian Retailers Association, Submission 165, p24; Australian Council of Trade Unions, Submission 208, p21; New South Wales EEO Practitioners' Association, Submission 77, p4; Warwick Giles, Submission 97, p1; Northern Territory Trades and Labor Council, Submission 84, p1; BPW Australia, Submission 148, pp9-10; Victorian Independent Education Union, Submission 163, p2; Illawarra Forum Inc. and Illawarra Women's Health Centre, Submission 162, p2; Immigrant Women's Speakout Association NSW Inc., Submission 158, p14; EMILY's List, Submission 159, p2; Australian Services Union MEU Private Sector Victorian Branch, Submission 154, pp2,3; Melissa Austin, Submission 149, p5; Australian Liquor, Hospitality and Miscellaneous Workers Union, Submission 153, p1; Australian Women Lawyers, Submission 140, p2; Flight Attendants' Association of Australia, Submission 139, p1; BPW New South Wales, Submission 118, p2.

<sup>1017</sup> International Labour Organization *Maternity Protection Convention 2000* (No 183).

<sup>1018</sup> See, for example, Australian Education Union, Submission 122, p23; Immigrant Women's Speakout Association New South Wales Inc., Submission 158, p14; Australian Services Union MEU Private Sector Victorian Branch, Submission 154, p2; Australian Liquor, Hospitality and Miscellaneous Workers Union, Submission 153, p1; Flight Attendants' Association of Australia, Submission 139, p1; YWCA of Australia, Submission 228, p18; Coles Myer Ltd, Submission 107, p11; Western Australian Government, Submission 245, p3; Melissa Austin, Submission 149, p5; Australian Retailers Association, Submission 165, p24; Australian Council of Trade Unions, Submission 208, p21.

<sup>1019</sup> Australian Women Lawyers, Submission 140, p2.

Fourteen weeks paid maternity leave is the International Labour Organization (ILO) minimum standard. The majority of countries that provide for paid maternity leave, including the United Kingdom, the Netherlands, Germany, Canada and Japan provide for 14 or more weeks. The Victorian Government believes that 14 weeks is therefore the preferred starting point for the introduction of a paid maternity leave scheme in Australia.<sup>1020</sup>

The New South Wales Working Women's Centre submitted that:

... the grounds for requiring the length of this period have been firmly established in the international arena, based on those put forward by the ILO [International Labour Organization], WHO [World Health Organization] and the rationale for the CEDAW.<sup>1021</sup>

Fourteen weeks was also supported on the grounds of the health and wellbeing of the mother and the child.<sup>1022</sup> The Shop, Distributive and Allied Employees Association supported a minimum of 14 weeks paid leave, to be extended over time, arguing that this period "... is a minimum time to satisfy the objectives with due regard to the health of the mother and child, establishing a breast feeding regime and care arrangements for the baby".<sup>1023</sup>

The Australian Council of Trade Unions considered that:

[f]ourteen weeks would at least protect the health of the mother, give her the best chance of establishing breast-feeding, and reflect the limited availability of formal childcare for babies under 13 weeks.<sup>1024</sup>

Some employer groups, in favour of paid maternity leave, supported the provision of 14 weeks paid leave, including Coles Myer<sup>1025</sup> and the Australian Hotels Association.<sup>1026</sup>

The Australian Manufacturing Workers' Union Vehicle Division noted that a guaranteed period of time out of the workforce is particularly important for women who work in physically demanding positions and the union "... strongly advocates for a minimum of 14 weeks paid maternity leave".<sup>1027</sup>

The Australian Family Association (Queensland) opposed a 14 week period of paid maternity leave on the following grounds.

- Full pay for a very limited time (14 weeks?) would not alleviate current reliance on dual incomes and may be perceived as tokenism only.
- New mothers may mistakenly be led to believe that the first 14 weeks is the only essential time needed to nurture a child. "Bonding" is a process that requires longer than the first 14 weeks of a child's life and, by remaining in the workforce, mothers and their children are denied this opportunity.
- An "officially" recognised short absence from work may erroneously promote a perception that having a child represents no more than a brief interruption in a career.<sup>1028</sup>

## 16.5 Sixteen weeks

A number of submissions considered that 16 weeks was a more appropriate length of time for paid maternity leave, on the ground of the health and wellbeing of the mother and child.<sup>1029</sup> A health expert submitted that:

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<sup>1020</sup> Victorian Government, Submission 250, p9.

<sup>1021</sup> New South Wales Working Women's Centre, Submission 225, p16.

<sup>1022</sup> See Chapter 5 for further discussion of the health and wellbeing objectives of paid maternity leave.

<sup>1023</sup> Shop, Distributive and Allied Employees Association, Submission 173, p19.

<sup>1024</sup> Australian Council of Trade Unions, Submission 208, p21. See also Queensland Council of Unions, Submission 239, p13.

<sup>1025</sup> Coles Myer Ltd, Submission 107, p11.

<sup>1026</sup> Australian Hotels Association, Submission 199, p7.

<sup>1027</sup> Australian Manufacturing Workers' Union Vehicle Division Statement in Australian Manufacturing Workers' Union, Submission 237, pp18-19.

<sup>1028</sup> Australian Family Association, Submission 114, p3. See also 6.7.

[t]he minimum duration of breastfeeding for optimal benefits is controversial, but is most likely four months. This reinforces the suggestion that 16-weeks paid maternity leave would be appropriate.<sup>1030</sup>

One individual at the Katherine community consultation noted that at 16 weeks babies have more regular feeding patterns. In particular, “[b]abies can only get on to solids at four months. Having your baby on solids is what enables you to go back to work”.<sup>1031</sup>

## 16.6 Eighteen weeks

A small number of submissions recommended 18 weeks of paid maternity leave, in light of the International Labour Organization recommendation that Member States extend paid maternity leave to this duration.<sup>1032</sup>

International Labour Organization Recommendation 191 states that:

Paragraph 1

- 1 Members should endeavor to extend the period of maternity leave referred to in Article 4 of the Convention to at least 18 weeks.
- 2 Provision should be made for an extension of the maternity leave in the event of multiple births.
- 3 To the extent possible, measures should be taken to ensure that the woman is entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave, before or after childbirth.<sup>1033</sup>

A small number of submissions recommended that 18 weeks of paid leave be available to each parent, meaning the Government would fund 36 weeks paid leave in relation to each birth.<sup>1034</sup> These submissions recommended that single parents be eligible for 27 weeks of paid leave to minimise discrimination against single parents.

In line with International Labour Organization Recommendation 191, Paragraph 1(1), the Public Service Association of New South Wales recommended additional paid leave for multiple births.

Additional leave available in event of multiple births – one week’s paid leave for every extra child, i.e. 19 weeks for twins, 20 weeks for triplets, etc (if 18 weeks maternity leave). A multiple birth can be a great emotional and financial strain on the family. Increasing the leave entitlement by just a few weeks goes some way to relieving the strain. Extra leave provides limited recognition of the fact that had the children been born separately the mother would have been entitled to two (or more) lots of maternity leave.<sup>1035</sup>

## 16.7 Six months

A number of submissions considered that six months, or 26 weeks, should be provided as paid maternity leave,<sup>1036</sup> particularly on the basis of promoting the health and wellbeing of the mother and child. For example, Women’s Health in the North asserted that:

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<sup>1029</sup> See, for example, Karen Bijkersma, Submission 150, p2; Tresillian Family Care Centres, Submission 166, p2; Karen Simmer, Submission 72, pp1-2. See also Chapter 5.

<sup>1030</sup> Karen Simmer, Submission 72, p1. See also Anna Edgelow, Submission 78, p1.

<sup>1031</sup> Women’s groups and community consultation, Katherine, 6 June 2002.

<sup>1032</sup> See, for example, Queensland Working Women’s Service, Submission 219, p11; Ethnic Communities’ Council of Victoria, Submission 242, p6; New South Wales Public Service Association, Submission 110, p4.

<sup>1033</sup> International Labour Organization *Maternity Protection Recommendation 2000* (No 191).

<sup>1034</sup> Australian Services Union South Australia and Northern Territory, Submission 189, p4; National Women’s Council of South Australia, Submission 68, p2; Hawke Institute, Submission 174, p2.

<sup>1035</sup> New South Wales Public Service Association, Submission 110, p4.

... six months is a better period of time to take leave after the birth of a baby before returning to paid employment to allow for parent-child bonding and establishment of breastfeeding. The World Health Organization recommends full breastfeeding for six months.<sup>1037</sup>

Similarly, the Union of Australian Women emphasised the health concerns of women up to six months after giving birth and argued that “[l]ess than 6 months is too short a time”.<sup>1038</sup>

The World Health Assembly, the governing body of the World Health Organization, encourages Member States to take measures to enable women to breastfeed for six months. Providing six months paid maternity leave would be one possible means of achieving this. The Fifty-fourth World Health Assembly urged member states to:

... set up or strengthen interinstitutional and intersectoral discussion forums with all stakeholders in order to reach national consensus on strategies and policies including reinforcing, in collaboration with ILO [International Labour Organization], policies that support breastfeeding by working women, in order substantially to improve infant and young child feeding and to develop participatory mechanisms for establishing and implementing specific nutrition programmes and projects aimed at new initiatives and innovative approaches;

... strengthen activities and develop new approaches to protect, promote and support exclusive breastfeeding for six months as a global public health recommendation, taking into account the findings of the WHO [World Health Organization] expert consultation on optimal duration of exclusive breastfeeding.<sup>1039</sup>

In comments provided to the motherInc maternity leave poll, an individual commented that six months is more likely to influence a woman’s decision to have a child.

The Government should pay for at least 6 months maternity leave to encourage women to have children. I plan on being a mum one day but am working full time and the thought of being away from the workforce unpaid does not appeal to me thus I keep putting it off.<sup>1040</sup>

Another individual submission considered that six months of paid maternity leave would better support women’s labour force participation.

Being paid for the first six months (rather than adhering to a bare minimum) won’t make most women less tired but will go a long way to relieving family financial pressures at a time which is one of the most stressful in a woman’s life. It is clear that the community supports paid maternity leave ... and I believe that making it six months long, in step with other leading industrial countries, will ensure a much greater retention of women in the workforce and a workforce of women who are happy to return to work.<sup>1041</sup>

## 16.8 Twelve months

A full year of paid maternity leave was seen as ideal by some submissions.<sup>1042</sup> One individual commented that:

I think a year’s paid maternity leave would be a welcome relief to all families and an incentive for women to return to work happier, healthier and knowing they have done the right thing by themselves and their child.<sup>1043</sup>

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<sup>1036</sup> See, for example, motherInc, Submission 196, p7; Victorian Government, Submission 250, Attachment p5; Women’s Studies Research Unit, School of Social Work, University of Melbourne, Submission 48, p6. Michelle Falstein Coppola, Submission 38, p2; Work + Family Policy Research Group University of Sydney, Submission 251, pp10-11; Mothers of In(ter)vention, Submission 104, p2; Beverley Walker, Submission 192, p1; Australian Federation of University Women (South Australia) Inc., Submission 179, pp2-3.

<sup>1037</sup> Women’s Health in the North, Submission 60, p4.

<sup>1038</sup> Union of Australian Women, Submission 89, p2. See also 5.2.

<sup>1039</sup> Fifty-fourth World Health Assembly *Infant and Young Child Nutrition* World Health Assembly 54.2 Agenda Item 13.1, 18 May 2001, pp2-3.

<sup>1040</sup> motherInc, Submission 196, p7.

<sup>1041</sup> Michelle Falstein Coppola, Submission 38, p2.

One employer at the Brisbane employer consultation considered that 12 months paid leave was necessary if a scheme were to affect the fertility rate.

I think it is a social issue. Fourteen weeks paid isn't going to make a difference to the mortgage, pay the bills etc. If we want women to make a difference to society, pay 12 months! If that is the social agenda. If population stats are troublesome and we need to keep producing ... lets be serious if that is the agenda. Fourteen weeks won't make a difference.<sup>1044</sup>

## 16.9 HREOC's position

HREOC considers that a national paid maternity leave scheme should provide 14 weeks of paid leave, able to be taken immediately prior to and following the birth of a child.

Fourteen weeks of paid leave is consistent with the International Labour Organization's view on the minimum period of paid leave a woman should have access to at the time of childbirth. Based on current medical evidence, a guaranteed 14 week period of paid leave would appear to be sufficient time for the majority of women to recover from childbirth and to establish breastfeeding.<sup>1045</sup> A period of 14 weeks paid maternity leave also has considerable community support, being the preferred option in the majority of submissions.

It may be appropriate to limit the period of paid leave available prior to the birth to six weeks, to ensure that a period of paid leave is available following the birth. However, HREOC would not condone any compulsory period of leave, whether paid or unpaid, being mandated for either the period before or after the birth of a child.<sup>1046</sup>

Given that 14 weeks is a basic length of paid leave, and to ensure that the health and wellbeing objectives of paid maternity leave are met, the leave should be taken as a continuous block.

HREOC considers that this is a minimum entitlement, and that the Government should consider extending this period over time. As proposed at 14.2, this minimum period ought to be the entitlement of birth mothers only, with some limited exceptions.<sup>1047</sup> However, should a period longer than 14 weeks paid leave be set, the additional period should also be made available to the primary caregiver, whether or not they are the birth mother.

### RECOMMENDATION 6

That a national scheme of paid maternity leave provide for up to 14 weeks of paid leave to be taken immediately prior to and/or following the birth of a child.

The paid leave must be taken as a continuous block.

A woman may elect to take less than the full 14 weeks of paid maternity leave, but will only receive payment in the weeks taken as maternity leave.

<sup>1042</sup> See, for example, Australian Family Association, Submission 92, p1; Australian Capital Territory Ministerial Advisory Council on Women, Submission 120, p8; Eleanor Wilson, Submission 133, p7.

<sup>1043</sup> Carrie Parsons, Submission 25, p1.

<sup>1044</sup> Employers consultation, Brisbane, 24 May 2002.

<sup>1045</sup> See 5.2.

<sup>1046</sup> Human Rights and Equal Opportunity Commission *Pregnant and Productive: It's a right not a privilege to work while pregnant* HREOC Sydney 1999, p178.

<sup>1047</sup> Exceptions include where the mother has died, where the mother is not medically able to care for the child (based on a doctor's opinion), or where the child has been adopted.





# 17. Payment level

## 17.1 Introduction

The level of payment provided under a paid maternity leave scheme depends on the objectives of such a scheme. As discussed in Part C, HREOC considers that a government funded paid maternity leave scheme would provide a level of income replacement for women to assist in addressing their workforce disadvantage and to ensure that they are not forced for financial reasons to return to the workforce before they have physically recovered from childbirth.

In her work on paid maternity leave, Marian Baird has highlighted the importance of the underlying objectives of any scheme to its design.

A guiding philosophy for paid maternity leave is required if a rational decision is to be made. If providing women with paid maternity leave is regarded as a welfare measure provided by the state, then a small amount comparable with other welfare payments may be justified. If the philosophy is to satisfy women's demands for some income, then an amount equivalent to average weekly earnings or minimum weekly earnings may suffice. However, if paid maternity leave is driven by the desire to improve women's economic independence and to redress the cost of career interruptions, then full income replacement is warranted.<sup>1048</sup>

This Chapter examines issues relating to the structure of the payment level for paid maternity leave as well as the actual dollar amount to be paid.

The international standard for paid maternity leave established by the International Labour Organization and the interpretation of this standard is discussed. Establishing a level of payment for a national scheme that complies with the standard and is simple to understand and apply to Australian conditions is surprisingly complex and contested.

The key proposals in submissions for a payment level in an Australian paid maternity leave scheme were: a social security level payment; Federal Minimum Wage; Average Weekly Earnings; or full wage replacement. Each of these options is considered in this Chapter.

## 17.2 International standards and practices

### 17.2.1 Maternity Protection Convention

A key principle identified under the Maternity Protection Convention is the adequacy of payments to ensure the standard of living for a woman and her child.

Article 6

- 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.<sup>1049</sup>

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<sup>1048</sup> Marian Baird "Paid maternity leave in Australia: HREOC's Valuing Parenthood" *The Drawing Board* 14 June 2002 [www.econ.usyd.edu.au/drawingboard/digest/0206/baird.html](http://www.econ.usyd.edu.au/drawingboard/digest/0206/baird.html).

<sup>1049</sup> International Labour Organization *Maternity Protection Convention 2000* (No 183).

The Maternity Protection Convention sets out an appropriate minimum standard for maternity leave payments via two payment systems. Article 6(3) provides that where the maternity leave payment is based on a woman's previous earnings, the amount of such payment must not be less than two-thirds of that woman's previous earnings or the portion of those earnings taken into account for the purpose of calculating that payment. Article 6(4) provides that where the maternity leave payment is calculated by methods other than a simple percentage of previous earnings, the amount of such payment must be "comparable" on average to the payments made if the two-thirds rate has been applied to all protected persons. The intention of this provision is to ensure equivalent protection despite differences in payment systems.<sup>1050</sup>

The International Labour Organization, through Recommendation 191, considers that Member States should aspire to a system of paid maternity leave that provides full wage replacement.<sup>1051</sup>

## 17.2.2 United Kingdom

As noted previously, the United Kingdom provides Statutory Maternity Pay to women who have been employed for a continuous period of 26 weeks and Maternity Allowance to women who are self-employed or have been employed but do not qualify for Statutory Maternity Pay.<sup>1052</sup>

Subject to Parliamentary approval, from April 2003, the Statutory Maternity Pay Scheme will provide an eligible woman with 90 per cent of her average weekly earnings for the first six weeks of leave (or at the flat rate of £100 if this is higher), and then for the remainder of leave (up to 20 weeks), the lesser of the flat-rate weekly payment (£100) or 90 per cent of her average weekly earnings, calculated as an average of the woman's weekly earnings within a particular eight week period.<sup>1053</sup>

In addition, from April 2003, the Maternity Allowance will be increased to £100 per week, or 90 per cent of the woman's average weekly earnings if this is less than £100 per week, for 26 weeks.<sup>1054</sup>

## 17.2.3 New Zealand

The New Zealand scheme was introduced in legislation that came into effect in 2002. Parents receive either their previous earnings or NZ\$325 per week, whichever is the lesser amount. Previous earnings are the greater of the employee's ordinary pay prior to taking leave or the employee's average weekly earnings.<sup>1055</sup>

The payment replaces 100% of previous earnings up to a maximum of \$325 per week, for jobs that the parent takes (qualifying) parental leave from. If you have more than one job, you are entitled to up to \$325 in total, not on a job-by-job basis.<sup>1056</sup>

The New Zealand Paid Parental Leave Scheme provides 46.7 per cent of New Zealand's Average Weekly Ordinary Time Earnings (full time employees).<sup>1057</sup>

\$325 rate means approx 50% of eligible women will get 80% of their earnings, and approx a third will get 100%.<sup>1058</sup>

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<sup>1050</sup> International Labour Office *Maternity Protection at Work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)* Report IV (2a) International Labour Conference 88th Session Geneva 2000, p76 [www.ilo.org/public/english/standards/relm/ilc/ilc88/pdf/rep-iv2a.pdf](http://www.ilo.org/public/english/standards/relm/ilc/ilc88/pdf/rep-iv2a.pdf).

<sup>1051</sup> International Labour Organization *Maternity Protection Recommendation 2000 (No 191)*.

<sup>1052</sup> See 15.2.2 for a more detailed discussion of the eligibility criteria of these two schemes.

<sup>1053</sup> United Kingdom Department of Trade and Industry *Maternity Leave – Changes: A basic summary* [www.dti.gov.uk/er/matleafr.htm](http://www.dti.gov.uk/er/matleafr.htm).

<sup>1054</sup> United Kingdom Department of Trade and Industry *Maternity Leave – Changes: A basic summary* [www.dti.gov.uk/er/matleafr.htm](http://www.dti.gov.uk/er/matleafr.htm).

<sup>1055</sup> *Parental Leave and Employment Protection Act 1987 (NZ)*.

<sup>1056</sup> New Zealand Department of Labour *Parental Leave 1: General Entitlements* Fact Sheet, p1 [www.ers.dol.govt.nz/bin/fact.asp](http://www.ers.dol.govt.nz/bin/fact.asp).

<sup>1057</sup> NZ\$695.50: Statistics New Zealand *Quarterly Employment Survey: May 2002 Quarter*, Table 7 [www.stats.govt.nz/domino/external/pasfull/pasfull.nsf/7cf46ae26dcb6800cc256a6200a2248/4c2567ef00247c6acc256c0d0072e309?OpenDocument](http://www.stats.govt.nz/domino/external/pasfull/pasfull.nsf/7cf46ae26dcb6800cc256a6200a2248/4c2567ef00247c6acc256c0d0072e309?OpenDocument).

<sup>1058</sup> Trudie McNaughton *Paid Parental Leave: The New Zealand Experience* Speech to the 14th Women, Management and Employment Relations Conference Sydney 26 July 2002.

## 17.3 Structure of the payment level

### 17.3.1 Introduction

There are a number of basic decisions about the payment level that significantly influence the cost of any system for Government. These structural elements apply, regardless of the actual dollar level of payment that is decided upon. These include:

- whether the payment is to be capped;
- whether the payment is to be paid at a flat or variable rate;
- whether there is to be a floor for the payment; and
- how previous earnings are to be calculated, if they are the basis for payment.

### 17.3.2 Capping

Capping payments has the effect of limiting the cost of a paid maternity leave scheme to Government.

Although the Maternity Protection Convention does not expressly provide for an upper limit or ceiling on maternity leave payments, the view of the International Labour Organization is that this is implicit in the Convention. Specifically the International Labour Office has stated that:

[i]n the view of the Office, the possibility for a Member to set an upper limit for benefits is implicit in the phrase “or of such of those earnings as are taken into account for the purpose of computing benefits”. The two-thirds replacement rate would have to be met only for the portion of earnings thus taken into account.<sup>1059</sup>

In effect, all of those submissions that proposed a maternity leave payment at a rate less than full income replacement are placing some sort of limit on the level of maternity leave payments. The various views on what constitutes an appropriate cap on maternity payments are discussed below at 17.4.

The National Pay Equity Coalition noted that government funding of a scheme may influence the decision to cap payments available under the scheme.

It may be considered undesirable for a full income replacement scheme to be funded through taxation. Internationally, full income replacement schemes are largely contribution-based.<sup>1060</sup>

The YWCA of Australia supported placing an upper limit on payments, submitting that:

[t]he YWCA is ... happy to advocate for the government to fund a minimum level of parental payment in order to ensure that this does not become a scheme where people on higher incomes receive more benefits than people on lower incomes.<sup>1061</sup>

HREOC supports a cap for government funded paid maternity leave. HREOC sees the role of government funded paid maternity leave as providing a minimum income replacement entitlement for women in paid work around the time of childbirth. The ideal payment level is full income replacement in order to ensure all of the objectives of paid maternity leave are met. However, HREOC does not necessarily consider that it is the role of government to provide full income replacement. In particular, given that a range of benefits of paid maternity leave can accrue directly to employers, there may be a role for employers to top up the government payment to the level of full wages.<sup>1062</sup> Most employers currently providing paid maternity leave do so at full wage level.

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<sup>1059</sup> International Labour Office *Maternity Protection at Work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)* Report IV (2a) International Labour Conference 88th Session Geneva 2000, p76 [www.ilo.org/public/english/standards/relm/ilc/ilc88/pdf/rep-iv2a.pdf](http://www.ilo.org/public/english/standards/relm/ilc/ilc88/pdf/rep-iv2a.pdf).

<sup>1060</sup> National Pay Equity Coalition, Submission 224, p25.

<sup>1061</sup> YWCA of Australia, Submission 228, p19.

<sup>1062</sup> See Chapter 19 for a discussion of the role of employers.

HREOC also notes the importance of ensuring that the cap for paid maternity leave is linked to an externally set rate that reflects changes in market wages. This will ensure the maintenance of the real value of the payment over time. In contrast to this approach, the National Pay Equity Coalition noted that:

... Australia's experience on this matter has been that twice before a maternity payment has been introduced, stagnated and over time its real value has decreased.<sup>1063</sup>

### 17.3.3 Flat or variable rate

#### Flat rate payment

A flat rate payment would mean that all women would receive the same level of maternity leave payment, regardless of their previous earnings.<sup>1064</sup> This approach was supported by those who considered that payments should be made to all women and not just limited to those in paid work. This approach would be easier to administer as there would be no need to calculate or establish a woman's previous earnings. Supporters of this approach also considered that it provides a more equitable outcome between women.

The Shop, Distributive and Allied Employees' Association argued that:

[a] flat fixed payment eliminates the potential to make arbitrary, discriminatory decisions about who should receive the payment and who should not, and about the level of the payment because it would not be related to previous wages, length of service, or hours worked and on what basis.<sup>1065</sup>

The Australian Chamber of Commerce and Industry considered that:

[i]t is also difficult to reconcile the proposed basis of payment based on previous earnings with any general notion of equity or supporting the meeting of costs. A single rate, capped approach would appear more appropriate.<sup>1066</sup>

Coles Myer supported a flat rate in order to ensure that women received an adequate level of payment.

Coles Myer Ltd. considers paid maternity leave should be paid as a fixed amount reflective of the minimum amount of money on which a woman could expect to support herself and her new child to a reasonable standard of living.<sup>1067</sup>

A flat rate payment would also mean that women with lower or no earnings would receive proportionately more than women in higher paid positions. One of the criticisms of the Government's Baby Bonus was that those who had higher earnings received higher payments.<sup>1068</sup> This criticism would equally apply to a paid maternity leave scheme that linked previous earnings with payment level. The higher the payment cap, the greater is this criticism. As one individual pointed out:

[i]f [payment level] is calculated against weekly earnings women on lower wages, who really need financial assistance, will receive a smaller amount than those in highly paid positions.<sup>1069</sup>

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<sup>1063</sup> National Pay Equity Coalition, Submission 257, p7.

<sup>1064</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p18; Australian Chamber of Commerce and Industry, Submission 197, p56; Beryl Byrne, Submission 157, p1; Hawke Institute, Submission 174, p6; Australian Services Union South Australia and Northern Territory, Submission 189, p7; Women's Action Alliance (Australia) Inc., Submission 146, pp4,6,8.

<sup>1065</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p18.

<sup>1066</sup> Australian Chamber of Commerce and Industry, Submission 197, p56.

<sup>1067</sup> Coles Myer Ltd, Submission 107, p12. See also Women's Action Alliance (Australia) Inc., Submission 146, p8; Australian Retailers Association, Submission 165, p25.

<sup>1068</sup> See 3.4.3.

<sup>1069</sup> Beryl Byrne, Submission 157, p1.

The Women's Action Alliance suggested another approach.

The payment should be a **flat rate** rather than tied to income level. If it were to be tied to income level then it should be **inversely** so – so that lower income households receive more than higher income ones.<sup>1070</sup>

## Variable rate payment

The alternative to a flat rate is a variable rate linked either to a woman's previous earnings or some other objective variable or method of calculation. The Australian Capital Territory Ministerial Advisory Council on Women considered that:

[p]aid maternity leave should be paid as a proportion of income. If, as was discussed earlier, paid maternity is a work place condition, then it needs to be linked into the level of income that the woman was earning when leave was taken. Paid maternity leave in this way is not a reward for having a child, but a necessary condition of employment similar to other types of leave.

It is a concern that if a fixed rate were paid, then it would in effect be a lowest common denominator payment, disadvantaging those women in higher paid employment.<sup>1071</sup>

BPW Australia argued that payments should be available:

... at 100% of wages/salary for those earning under the AWE [Average Weekly Earnings] rate – it would be a mistake to encourage women to have babies for a pay rise.<sup>1072</sup>

HREOC supports the introduction of a variable rate of payment for paid maternity leave. HREOC opposes a flat rate payment on the basis that it would see some women receive more than they had previously earned. This is inconsistent with the concept of income replacement – that paid maternity leave should replace the income that a woman must forego due to maternity.

### 17.3.4 A floor for payment

It is possible to structure a paid maternity leave system such that there is a lowest amount that women receive as payment. This would ensure that women with particularly low earnings would receive a guaranteed level of payment. For example, Barbara Pocock and Lyn Collins suggested that “[a] minimum payment of about \$2000 should be paid to any working woman whose entitlement would otherwise be less than this, based on their normal earnings”.<sup>1073</sup> Another individual suggested that payment:

... could be staggered so that non-employed women receive an acceptable minimum wage or the average working wage and employed women receive their regular working wage.<sup>1074</sup>

The New South Wales Working Women's Centre submitted that:

... in order to address the discriminatory effects of labour market inequities, and the potential of compound discrimination experienced by women who are dismissed or disadvantaged in their employment while pregnant, a **floor** should be set for the income replacement program. The Centre proposes that this be set at minimum weekly earnings.<sup>1075</sup>

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<sup>1070</sup> Women's Action Alliance (Australia) Inc., Submission 146, p6 (emphasis in original).

<sup>1071</sup> Australian Capital Territory Ministerial Advisory Council on Women, Submission 120, p9.

<sup>1072</sup> BPW Australia, Submission 148, p9.

<sup>1073</sup> Lyn Collins and Barbara Pocock, Submission 232, p8.

<sup>1074</sup> Karen Bijkersma, Submission 150, p1.

<sup>1075</sup> New South Wales Working Women's Centre, Submission 225, p15 (emphasis in original).

HREOC does not support a floor for payment as part of a paid maternity leave system. HREOC considers a better approach would be for women to receive family assistance and income support payments where this would provide a greater level of financial support. Existing family assistance and income support payments are designed to provide a safety net payment for all women, particularly where they have not previously been in paid work.<sup>1076</sup> This represents an alternative to a floor to the paid maternity leave scheme.

These other family assistance payments would consist of the Maternity Allowance (\$811.44 lump sum payment),<sup>1077</sup> Family Tax Benefit Part A (\$126.70 maximum per fortnight),<sup>1078</sup> and Family Tax Benefit Part B (\$108.78 maximum per fortnight).<sup>1079</sup> A woman receiving maximum Family Tax Benefit payments and the Maternity Allowance would receive \$2 459.80 in the first 14 weeks of her baby's life. This is equivalent to \$175.70 per week for fourteen weeks. In addition to this, the woman may also be eligible for Parenting Payment,<sup>1080</sup> Rent Assistance,<sup>1081</sup> Large Family Supplement,<sup>1082</sup> Multiple Birth Allowance<sup>1083</sup> and a Health Care Card,<sup>1084</sup> as well as the Baby Bonus.<sup>1085</sup> Depending on family income, a woman who earns less than \$175.70 per week may be better off electing to take family assistance payments than paid maternity leave.<sup>1086</sup>

The Government should ensure that women are provided with adequate information and guidance to be able to choose between paid maternity leave and other government payments.

### 17.3.5 Assessing previous earnings

A system of paid maternity leave that provides income replacement must determine what income or previous earnings are to be replaced. It is also necessary to determine whether payment is based on a woman's primary source of income or whether previous earnings will take into account the situation where a woman has had earnings from more than one position. This is important given the increasing incidence of multiple job holding, in particular for lower income workers.

The Women's Economic Policy Analysis Unit considered that:

[d]espite the overwhelming benefits to both women and the broader community in such a [paid maternity leave] proposal, the greatest challenge will be in determining the eligibility rule – particularly for women who may reduce their hours in the last few months prior to their child's birth, women as casual workers and women holding more than one job. As a means of addressing the level of [paid maternity leave] for women who may decrease their hours of work prior to the birth of their child, WEPAU [Women's Economic Policy Analysis Unit] proposes that the rate of remuneration (the minimum wage) for [paid maternity leave] is calculated as a proportion of the employee's working hours/earnings over the previous 12 months.<sup>1087</sup>

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<sup>1076</sup> See 3.4 for a discussion of the adequacy of existing benefits and their possible review.

<sup>1077</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002*, Commonwealth of Australia Canberra 2002, p4.

<sup>1078</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002*, Commonwealth of Australia Canberra 2002, p2.

<sup>1079</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002*, Commonwealth of Australia Canberra 2002, p4.

<sup>1080</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002*, Commonwealth of Australia Canberra 2002, p6.

<sup>1081</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002*, Commonwealth of Australia Canberra 2002, p3.

<sup>1082</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002*, Commonwealth of Australia Canberra 2002, p3.

<sup>1083</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002*, Commonwealth of Australia Canberra 2002, p3.

<sup>1084</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002*, Commonwealth of Australia Canberra 2002, p5.

<sup>1085</sup> Australian Taxation Office *Baby Bonus 2002* [www.ato.gov.au/scripts/axos/axos.asp?CONTEXT=&KBS=Baby001i.xra&go=ok](http://www.ato.gov.au/scripts/axos/axos.asp?CONTEXT=&KBS=Baby001i.xra&go=ok).

<sup>1086</sup> See Chapter 21 for a discussion of the interaction of a national system of paid maternity leave and existing government family assistance payments.

<sup>1087</sup> Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p19. This submission notes that "[w]hilst the figures on multiple-job holding are scarce, available evidence suggests that women's involvement in more than one-two jobs is a growing trend – symptomatic of the 'working poor'".

A branch of the Australian Services Union suggested that:

[p]ayments should be based on women's salary immediately prior to taking maternity leave or in the case of a woman who has transferred to part time hours, based on the average wage over the previous 12 month period.<sup>1088</sup>

The New South Wales Working Women's Centre drew attention to the issue of over-award payment and variations of salary packaging. Its submission noted that:

[w]hilst there are solid grounds for determining the rate of pay at ordinary earnings, there are also particular occupational groups who might be disadvantaged by this – particularly women working in Award-free employment, working multiple jobs, working on rolling and/or short-term and varied contracts, independent contractors and women who derive their income primarily on commission or piece-rates.<sup>1089</sup>

The Australian Council of Trade Unions argued that:

[w]here a woman holds multiple jobs her entitlement should be based on her cumulative income. Multiple job holding is more common amongst females ... reflecting women's concentration in casual employment.

As the Australian Council of Trade Unions' model spreads funding responsibility across employers, there is no rationale to tie eligibility to a particular employer.<sup>1090</sup>

As noted at 17.2.3 above, the New Zealand scheme provides parents with the lesser of a capped rate, or previous earnings. The scheme includes two methods for calculating previous earnings, being the greater of earnings immediately prior to taking leave or an average of earnings over the preceding 12 months. The New Zealand scheme also takes account of earnings from multiple jobs.

HREOC agrees with the New Zealand approach and considers that previous earnings should be calculated as either a woman's earnings immediately prior to taking leave or an average of earnings over the previous twelve months, whichever is the greater, and should take account of earnings from multiple jobs.

## 17.4 Amount of payment

### 17.4.1 Submissions on the Maternity Protection Convention

The Maternity Protection Convention sets out a series of criteria for establishing the level of payment for paid maternity leave.

#### 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.

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<sup>1088</sup> Australian Services Union MEU Private Sector Victorian Branch, Submission 154, p3.

<sup>1089</sup> New South Wales Working Women's Centre, Submission 225, p15.

<sup>1090</sup> Australian Council of Trade Unions, Submission 208, pp26-27. The submission refers to ABS 6361.0 *Employment Arrangements and Superannuation* April – June 2000, pp17-18 which indicates that "... 8.4% of females hold two or more jobs compared to only 6.5% of males".

- 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.<sup>1091</sup>

There was disagreement amongst submissions on the interpretation of the International Labour Organization standard, and in particular the dollar amount of the minimum entitlement based on the calculation spelt out in Article 6(4).

Some submissions argued that payment capped at the rate of the Federal Minimum Wage would satisfy the requirement in its own right, or that it came close enough to this standard to be acceptable.<sup>1092</sup> For example, the Flight Attendants' Association of Australia contended that:

[i]t is essential that such a scheme [ie paid maternity leave] must be based on achieving 14 weeks paid maternity leave at Living Wage level as a minimum standard, which is in line with the International Labour Organization recommendations.<sup>1093</sup>

The Western Australian Government considered that, while Australia was not yet obliged to comply with the Maternity Protection Convention, this Convention provided a useful guide on what constituted an acceptable minimum payment. It considered that the Federal Minimum Wage met this standard.

The average weekly ordinary time earnings for females in Western Australia as at February 2002, was \$730.20. Two thirds of this is \$486.80. The Federal minimum weekly wage is currently \$431.40.

The Western Australian Government supports the proposal that the Federal Government pays 14 weeks paid maternity leave at the level of the federal minimum wage, with employers having the option to top this up to the level of the employee's previous earnings or part thereof, through an agreement negotiated with their employees.<sup>1094</sup>

The Women's Economic Policy Analysis Unit stated that:

[w]hilst the proposed minimum payment of \$431.40 (linked to movements in the federal minimum wage) to women in full time employment would, for many women, fail to meet minimum paid maternity leave standards as specified by Article 6 of ILO [International Labour Organization] convention 183 [Maternity Protection Convention] (which specifies income replacement at two-thirds of previous earnings), we do see this as a minimum amount to be topped up by the employer subject to workplace/enterprise based negotiations.<sup>1095</sup>

Others considered that payment up to Average Weekly Earnings was required to meet the Maternity Protection Convention.<sup>1096</sup>

The National Pay Equity Coalition disputed that the Federal Minimum Wage met the standard set by the Maternity Protection Convention.<sup>1097</sup> Its interpretation of the Convention was that:

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<sup>1091</sup> International Labour Organization *Maternity Protection Convention 2000* (No 183).

<sup>1092</sup> See, for example, Victorian Government, Submission 250, p10.

<sup>1093</sup> Flight Attendants' Association of Australia, Submission 139, p1.

<sup>1094</sup> Western Australian Government, Submission 245, p7.

<sup>1095</sup> Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p21.

<sup>1096</sup> See, for example, Australian Manufacturing Workers' Union, Submission 237, pp9-10; YWCA of Victoria, Submission 127, p19; Women's Electoral Lobby, Submission 248, p18.

<sup>1097</sup> National Pay Equity Coalition, Submission 257, p2.



[t]he test required by [the Maternity Protection Convention] is that women should receive at least two thirds of their previous income. Ideally this test would be addressed if the payment was tailored to meet the two thirds requirement for the earnings that each women eligible for paid maternity leave receives.<sup>1098</sup>

The National Pay Equity Coalition contended that Average Weekly Earnings was a better measure "... to capture the full distribution of women's earnings".<sup>1099</sup> This submission calculated that:

[a] scheme capped at average weekly earnings would provide at least two thirds of previous income (in keeping with [the Maternity Protection Convention] article 6) for around 95% of women and would provide income replacement for around 75%.<sup>1100</sup>

## 17.4.2 Social security payment

A very limited number of submissions proposed making payment at a rate equivalent to existing social security payments. The Women's Action Alliance pointed out that:

[a]s politics is the art of the possible we believe it would be more likely in the short term that the Government would agree to a payment equal to 12 or 14 weeks of Newstart or the Parenting Payment.<sup>1101</sup>

The Festival of Light suggested that the maximum parenting benefit "... would be a good start".<sup>1102</sup>

As noted at 6.3, the purpose of paid maternity leave is quite different to that of social security. HREOC concurs with the National Pay Equity Coalition that:

[paid maternity leave] is far more analogous to workers compensation than to social security since it is a provision for a temporary absence required for the worker to be able to return to paid workforce participation and economic self-sufficiency. Some argue that low levels of social security payments and general availability without a specified duration while people meet eligibility requirements (including stringent means testing) mean that recipients must cut their expenses in line with their incomes. [Paid maternity leave] is an entirely different type of benefit. It provides a bridge to continuing participation in paid work and ongoing economic self-sufficiency rather than requiring an ongoing downgrading of standard of living and/or entering into income support arrangements.<sup>1103</sup>

## 17.4.3 Federal Minimum Wage

A significant proportion of submissions supported government funded paid maternity leave at a rate of up to the Federal Minimum Wage.<sup>1104</sup> In addition, those groups that proposed a two tier model of government funding topped up by an employer levy considered that the Federal Minimum Wage was an appropriate

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<sup>1098</sup> National Pay Equity Coalition, Submission 257, p4.

<sup>1099</sup> National Pay Equity Coalition, Submission 257, p5.

<sup>1100</sup> National Pay Equity Coalition, Submission 224, p25.

<sup>1101</sup> Women's Action Alliance (Australia) Inc., Submission 146, p8.

<sup>1102</sup> Festival of Light, Submission 102, p4. See also Chris Van Der Wijngaart, Submission 35, p1.

<sup>1103</sup> National Pay Equity Coalition, Submission 224, p25.

<sup>1104</sup> See, for example, Association of Independent Schools of Victoria, Submission 108, p5; Australian Hotels Association, Submission 199, p7; Recruitment and Consulting Services Association, Submission 220, p4; Western Australian Government, Submission 245, p7; Law Council of Australia, Submission 247, p3; Victorian Government, Submission 250, p10; Work + Family Policy Research Group University of Sydney, Submission 251, p12; Women's Economic Think Tank, Submission 125, p5; National Tertiary Education Union, Submission 169, p7; Immigrant Women's Speakout Association New South Wales Inc., Submission 158, p15; Australian Industry Group, Submission 121, p23; Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p21; Australian Mines and Metals Association, Submission 255, p15; Flight Attendants' Association of Australia, Submission 139, p1; Australian Women Lawyers, Submission 140, pp2-3; Women's Health in the North, Submission 60, p4; Eleanor Wilson, Submission 133, p6; Shop, Distributive and Allied Employees' Association, Submission 173, p17; Law Institute of Victoria, Submission 215, p3; Women's Studies Research Unit, School of Social Work, University of Melbourne, Submission 48, p6.

contribution by Government.<sup>1105</sup> As such, the Federal Minimum Wage was the most widely supported payment level for government funding of paid maternity leave.

The Federal Minimum Wage was seen by many as a minimum standard for paid maternity leave. A key provision of the Maternity Protection Convention is that payment should ensure that a woman and her child can maintain a suitable standard of living. The Australian Council of Trade Unions suggested that "... the national minimum wage represents a modest claim for an adequate income to maintain a mother and her child at a reasonable standard of living".<sup>1106</sup>

The Shop, Distributive and Allied Employees' Association noted that:

[t]he Federal Minimum wage has been determined as the bare minimum income for working people at which they can have a chance to make ends meet. As such it is the lowest acceptable rate for a paid maternity leave scheme.<sup>1107</sup>

The Federal Minimum Wage has the benefit of being externally set through negotiations between representatives of Government, employers and employees. It also has wide community recognition and a reasonable level of support as representing a minimum level of payment for work. HREOC agrees with the Australian Council of Trade Unions' position on this.

The rate of payment should be benchmarked against an appropriate external rate, to avoid erosion of its value over time. The minimum wage is an appropriate benchmark because it is an independently assessed rate, which is varied from time to time, reflecting the needs of employees in the context of living standards generally.

...

The minimum wage is also appropriate because it is independently set, with the industrial parties and governments having opportunities to present their case to the AIRC [Australian Industrial Relations Commission].<sup>1108</sup>

The Victorian Government recommended that:

... a national maternity leave scheme should be paid at the level of the federal minimum wage at a minimum with pro rata payment for those in part time and casual employment. It is consistent with the ILO [International Labour Organization] standard, provides a level of payment that is comparable to New Zealand, and is based on an annual assessment by the AIRC [Australian Industrial Relations Commission] of the level of wages required "to maintain a safety net of fair minimum wages for all award reliant employees". The Victorian Government also believes that it is more likely to have a broad base of support in the community as a level of payment that the community can reasonably sustain.<sup>1109</sup>

Limiting payment level to the Federal Minimum Wage was also seen as an acceptable means of limiting the cost of any scheme to Government, and ensuring that government funding is appropriately targeted. The Association of Independent Schools of Victoria pointed to the fact that "... salaries differ significantly throughout society ..." <sup>1110</sup> and suggested that:

... the maximum payment should be equivalent to the federal minimum award wage, except where the carer was earning less than the federal minimum award wage during the 12 months preceding the period of leave as the primary carer of the newborn or adopted child.<sup>1111</sup>

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<sup>1105</sup> See, for example, Australian Education Union, Submission 122, p2; Australian Liquor, Hospitality and Miscellaneous Workers Union, Submission 153, p1; YWCA of Victoria, Submission 127, p18.

<sup>1106</sup> Australian Council of Trade Unions, Submission 208, p24.

<sup>1107</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p17.

<sup>1108</sup> Australian Council of Trade Unions, Submission 208, pp23-24.

<sup>1109</sup> Victorian Government, Submission 250, p10.

<sup>1110</sup> Association of Independent Schools of Victoria, Submission 108, p5.

<sup>1111</sup> Association of Independent Schools of Victoria, Submission 108, p5.

The Australian Council of Trade Unions called for:

... the Commonwealth to assume responsibility for funding paid maternity leave for 14 weeks up to the level of the federal minimum wage (currently \$431pw) ... [F]orty-eight percent (48%) of women workers earn less than \$500pw, and 35% earn less than \$400pw. Payment to the federal minimum wage would ensure full income replacement for the lowest paid women. Almost half of the Commonwealth's contribution to the paid maternity leave scheme (excluding its contribution as employer) would be paid to women earning less than the federal minimum wage. The cap therefore allows an appropriate level of targeting of taxpayer funding to lower-paid women.<sup>1112</sup>

Limiting payment to the level of the Federal Minimum Wage was also seen to provide employers with the flexibility to top up payments and hence retain their position as employer of choice. Employer top ups are further discussed at 19.4. Immigrant Women's Speakout considered that the Federal Minimum Wage should be preferred "... as this amount allows employers, unions and employees to bargain above this amount. Such a framework ensures a level of flexibility in the system."<sup>1113</sup>

Some groups did argue against a cap at the Federal Minimum Wage on the basis that this did not provide income replacement for the majority of women and would not address the inequities between those women who may or may not receive employer funded paid maternity leave. The United Trades and Labor Council of South Australia asserted that:

[a] national scheme which provided paid maternity leave for all, funded by the Federal Government at the minimum Federal wage level or at a social security pension rate would continue to create a big difference between those who currently have paid leave and those who don't. It would also mean that many women workers may have their conditions undermined or removed in the next round of bargaining.<sup>1114</sup>

#### 17.4.4 Average Weekly Earnings

A significant proportion of groups thought that paid maternity leave should be paid up to the level of Average Weekly Earnings.<sup>1115</sup> As noted at 17.4.3 above, some, in particular unions, thought that this should be funded through a government payment to Federal Minimum Wage level plus an employer levy.

It should be noted that while there was support for payment at the rate of "average weekly earnings", there was no consistency between organisations in terms of which measure of Average Weekly Earnings was being used. For example, the Women's Electoral Lobby<sup>1116</sup> and the National Pay Equity Coalition<sup>1117</sup> referred to Average Weekly Earnings based on all employees total earnings (\$684.70),<sup>1118</sup> while the Australian Council of Trade Unions<sup>1119</sup> and the Australian Manufacturing Workers' Union<sup>1120</sup> referred to Average Weekly Earnings based on full time adult total earnings (\$897.30)<sup>1121</sup> and the YWCA of Victoria<sup>1122</sup> referred to public sector full time adult total earnings (\$981.10).<sup>1123</sup>

<sup>1112</sup> Australian Council of Trade Unions, Submission 208, p22. See also YWCA of Victoria, Submission 127, p18.

<sup>1113</sup> Immigrant Women's Speakout Association New South Wales Inc., Submission 158, p15.

<sup>1114</sup> United Trades and Labor Council of South Australia, Submission 211, p4. See also National Pay Equity Coalition, Submission 224, p25.

<sup>1115</sup> See, for example, Australian Manufacturing Workers' Union, Submission 237, p2; Australian Education Union, Submission 122, p2; National Pay Equity Coalition, Submission 224, pp4,25; EMILY's List, Submission 159, p3; BPW Australia, Submission 148, p9; YWCA of Victoria, Submission 127, p18; Queensland Nurses' Union, Submission 134, p9; Australian Nursing Federation, Submission 123, p9; Australian Business Industrial, Submission 119, p16; Community and Public Sector Union – State Public Services Federation Group, Submission 230, p8; Women's Electoral Lobby, Submission 248, p18; Centre for Applied Social Research RMIT University, Submission 234, p9; Lyn Collins and Barbara Pocock, Submission 232, pp7-8; Anti-Discrimination Board of New South Wales, Submission 214, p15; Mothers of In(ter)vention, Submission 104, p2; Australian Federation of University Women – Victoria, Submission 101, p1; National Women's Council of South Australia, Submission 68, p7.

<sup>1116</sup> Women's Electoral Lobby, Submission 248, p20.

<sup>1117</sup> National Pay Equity Coalition, Submission 224, p22.

<sup>1118</sup> ABS 6302.0 *Average Weekly Earnings* February 2002, p4.

<sup>1119</sup> Australian Council of Trade Unions, Submission 208, p24.

<sup>1120</sup> Australian Manufacturing Workers' Union, Submission 237, p2.

<sup>1121</sup> ABS 6302.0 *Average Weekly Earnings* February 2002, p4.

<sup>1122</sup> YWCA of Victoria, Submission 127, p19.

<sup>1123</sup> ABS 6302.0 *Average Weekly Earnings* February 2002, p10.

The key reason given for preferring a form of Average Weekly Earnings to the Federal Minimum Wage was that it would ensure a greater proportion of women would receive full income replacement.

The [Anti-Discrimination Board of New South Wales] considers that payment up to a maximum level of AWE [Average Weekly Earnings] would best achieve the goal of providing *full income replacement* for as many women workers as possible.<sup>1124</sup>

The National Pay Equity Coalition recommended:

[a] scheme with a cap at average weekly earnings [\$684.70] so that income replacement is provided for women earning below average weekly earnings and those who earn more are paid at average weekly earnings would provide income replacement for around 75% of women and would provide some benefit to those who earn more in recognition of the drop in their and their household earnings.<sup>1125</sup>

The Australian Council of Trade Unions calculated that 87 per cent of women would receive full income replacement under a paid maternity leave scheme that paid up to Average Weekly Earnings for full time adult total earnings (\$897.30).<sup>1126</sup>

Some organisations considered that payment at the level of Average Weekly Earnings was needed to ensure an adequate standard of living for women and their children. The National Women's Council of South Australia suggested that the appropriate rate of payment for a scheme "... should be commensurate with average earnings and which could be seen to sustain the needs of mother and child for the prescribed period."<sup>1127</sup> Australian Business Industrial submitted that it:

[did] not object to this payment being made at the average weekly rate of pay. This would provide most women with a suitable income for this 14 week period to be able to support themselves and child while they are not earning. This would also provide opportunity for employers who wanted to create or maintain a competitive advantage in the labour market to provide for higher levels of payment or additional weeks of payment for their employees.<sup>1128</sup>

Some groups considered that payment up to Average Weekly Earnings represented a reasonable cost to Government and ensured that government payments were targeted at those who currently missed out on employer funded paid maternity leave.<sup>1129</sup>

## 17.4.5 Full wage replacement

A number of submissions proposed that paid maternity leave should be paid at the level of a woman's previous earnings.<sup>1130</sup>

Many of those who proposed that paid maternity leave be capped at a rate below some women's earnings still considered that the ideal would be full wage replacement. However these submissions proposed that this should be negotiated between employers and employees.<sup>1131</sup>

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<sup>1124</sup> Anti-Discrimination Board of New South Wales, Submission 214, p15 (emphasis in original).

<sup>1125</sup> National Pay Equity Coalition, Submission 224, p25. See also Community and Public Sector Union – State Public Services Federation Group, Submission 230, p8.

<sup>1126</sup> Australian Council of Trade Unions, Submission 208, p24.

<sup>1127</sup> National Women's Council of South Australia, Submission 68, p7.

<sup>1128</sup> Australian Business Industrial, Submission 119, p16.

<sup>1129</sup> See, for example, Centre for Applied Social Research RMIT University, Submission 234, p10; National Pay Equity Coalition, Submission 224, p21.

<sup>1130</sup> See, for example, Aboriginal and Torres Strait Islander Commission, Submission 116A, p2, 116C, p2, 116E, p1, 116F, p2, 116G, p1, 116H p1; New South Wales Working Women's Centre, Submission 225, p15; Carrie Parsons, Submission 25, p1; Australian Council of Trade Unions, Submission 208, p22; Job Watch Inc., Submission 191, p13; Public Service Association of South Australia Inc., Submission 198, p2; Northern Territory Trades and Labor Council, Submission 84, p1.

<sup>1131</sup> See 19.4 for discussion of employer top ups.

Those in favour of full wage replacement noted that this was consistent with the definition and purpose of paid maternity leave. As the Australian Council of Trade Unions declared:

[i]n view of the purpose of paid maternity leave; to provide income security for working women; we call for a scheme that provides 100% of the women's pre-leave income during the period of leave.<sup>1132</sup>

The New South Wales Working Women's Centre submitted that:

... the maternity leave entitlement should ensure income replacement, paid at a rate equivalent to income foregone for the period of leave. This is in keeping with the objectives and logic of a paid maternity leave scheme ...<sup>1133</sup>

The New South Wales EEO Practitioners' Association supported full wage replacement.

As the intention behind a paid maternity leave scheme is to compensate women for lost earnings, maternity leave should not be means tested and should be paid at a replacement level of earnings, rather than average weekly earnings (with a discretionary "top-up" by employers).

...  
Payment at replacement level earnings ... has a practical impact given the high cost of living, the necessity for dual incomes (particularly in capital cities), and the growing number of women primary breadwinners.<sup>1134</sup>

Comparisons were also drawn with other forms of leave from paid work. Paid maternity leave was considered to be of equal value to these other forms of leave, and it was therefore claimed that paid maternity leave should be equally paid. The Queensland Council of Unions emphasised that:

[a]s a work related entitlement, maternity leave is no different to sick, long service leave, jury service leave and defence forces leave which are funded at 100% income replacement.<sup>1135</sup>

A submission from two academics considered that:

[a]s a right, maternity leave should be paid in full as are other forms of leave such as sick leave, annual leave, long service leave. Why should it be any different? Nobody raises the question of what can be afforded when it comes to paying sick leave, nor should this stance be adopted in relation to maternity leave.<sup>1136</sup>

Paying maternity leave payments at full wage replacement was considered important by some submissions if this payment were to address the workforce disadvantage experienced by women as a result of maternity. An academic submitted that:

[t]his idea of participating while bringing about change provides a basis for thinking about how to structure paid maternity leave for employed women. Some women may want to change employment in the long run to reduce or eliminate inequality, but in the meantime participating equally with men in the existing system is a worthy goal. This equal participation means increasing the rewards in financial, career and status terms for women in employment. According to this principle, we should ensure that women in employment receive full replacement of wages while on paid maternity leave.<sup>1137</sup>

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<sup>1132</sup> Australian Council of Trade Unions, Submission 208, p22. But see 17.4.3 and 17.4.4 – the Australian Council of Trade Unions proposed a minimum payment to Federal Minimum Wage by Government with an employer levy to fund payment to Average Weekly Earnings.

<sup>1133</sup> New South Wales Working Women's Centre, Submission 225, p15.

<sup>1134</sup> New South Wales EEO Practitioners' Association, Submission 77, p3.

<sup>1135</sup> Queensland Council of Unions, Submission 239, p14. See also New South Wales EEO Practitioners' Association, Submission 77, p3.

<sup>1136</sup> Patricia Todd and Judy Skene, Submission 176, p1.

<sup>1137</sup> Marty Grace, Submission 151, p2.

Some submissions considered that paid maternity leave at the level of full wage replacement was a means of recognising and valuing the achievements of women who are in higher paid positions. For example, the New South Wales EEO Practitioners' Association submitted that:

[p]ayment at replacement level earnings places a higher symbolic value on women's earnings, in particular the contribution of women at senior levels to positive economic outcomes for business and the community.<sup>1138</sup>

One individual noted that "[s]ome have worked hard to get where they are in the work place and if they are on \$30k a year then that should be the amount they are paid while on leave".<sup>1139</sup>

There was also a view that maternity leave payments for public servants, which are paid at full wage replacement level, should be used as a benchmark for a broader system of paid maternity leave. One individual suggested maternity leave paid, "... if possible equivalent to what government employees are receiving now".<sup>1140</sup>

Opposition to a government funded paid maternity leave scheme at full wage replacement largely related to a concern to limit the cost to Government of such a scheme and to incorporate a level of targeting within the scheme. The Women's Action Alliance stated that they would not support "... 'an individual's full pay or a proportion of it' – for equity reasons".<sup>1141</sup>

The position of the Australian Chamber of Commerce and Industry was that:

[w]hether a scheme is designed to supplement financial support while absent from the workplace, or to replace income is a fundamental issue to be determined prior to being able to further consider this issue. The first approach seems the more appropriate basis for government policy and expenditure. Equity and budgetary considerations would appear to discard full pre-maternity earnings, and mitigate in favour of some form of targeted single rate approach, with capping and/or means testing.<sup>1142</sup>

#### 17.4.6 Levels of income replacement of various caps

As noted at 17.2.1 above, International Labour Organization Recommendation 191 sets full income replacement as a standard to which Member States should aspire. Article 6(3) of the Maternity Protection Convention provides that an individual woman shall receive two-thirds of her previous earnings or such earnings as are taken into account in computing benefits. Both of these standards can be used as a basis on which to assess the various possible caps for paid maternity leave. HREOC notes that these two standards provide guidance on payment level but, as discussed further at 17.5, is of the firm view that the Maternity Protection Convention does not mandate payment at this level.

As shown in at Table 17.1 below, a payment up to the level of the Federal Minimum Wage would provide full wage replacement for between 35 per cent and 48 per cent of women and will replace two-thirds of previous earnings for between 62 and 73 per cent of women.<sup>1143</sup> More precise figures are not able to be given as women's earnings are only collected in \$100 bands, as opposed to actual earnings.

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<sup>1138</sup> New South Wales EEO Practitioners' Association, Submission 77, p3.

<sup>1139</sup> Carrie Parsons, Submission 25, p1.

<sup>1140</sup> Aboriginal and Torres Strait Islander Commission, Submission 116G, p1. See also 116F, p2.

<sup>1141</sup> Women's Action Alliance (Australia) Inc., Submission 146, p8.

<sup>1142</sup> Australian Chamber of Commerce and Industry, Submission 197, p52.

<sup>1143</sup> See also Australian Council of Trade Unions, Submission 208, pp22-23.

Table 17.1: Distribution of women's earnings relative to the Federal Minimum Wage in August 2001<sup>1144</sup>

Weekly earnings in all jobs	No. of women	Proportion of total	Cumulative proportion	PML (up to Federal Minimum Wage <sup>(b)</sup> ) as % of previous earnings <sup>(c)</sup>
Under 100	241,800	7.1%	7.1%	100.0%
100 and under 200	280,700	8.3%	15.4%	100.0%
200 and under 300	311,500	9.2%	24.6%	100.0%
300 and under 400	358,900	10.6%	35.2%	100.0%
400 and under 500	437,100	12.9%	48.2%	90.7%
500 and under 600	458,700	13.6%	61.7%	74.2%
600 and under 700	376,800	11.1%	72.8%	62.8%
700 and under 800	277,900	8.2%	81.1%	54.4%
800 and under 900	184,800	5.5%	86.5%	48.0%
900 and under 1,000	134,600	4.0%	90.5%	42.9%
1,000 and under 1,200	170,600	5.0%	95.5%	37.1%
1,200 and under 1,400	68,000	2.0%	97.5%	31.4%
1,400 and under 1,600	33,200	1.0%	98.5%	27.2%
1,600 and under 1,800	14,600	0.4%	99.0%	24.0%
1,800 and under 2,000	10,200	0.3%	99.3%	21.5%
2,000 and over	25,100	0.7%	100.0%	20.4%
<b>Total<sup>(a)</sup></b>	<b>3,384,500</b>	<b>100.0%</b>		

Source: ABS 6310.0 *Employee Earnings, Benefits and Trade Union Membership* August 2001, p9.

(a) Excludes 203,300 women whose earnings could not be determined.

(b) Based on Federal Minimum Wage of \$408 in 2001. While the current Federal Minimum Wage is \$431, the 2001 rate has been used to ensure consistency with the data on women's earnings, for which 2001 figures are the most recent.

(c) Assumes actual earnings at midpoint of range in column 1 (except for "2,000 and over" where earnings are assumed to be \$2,000).

<sup>1144</sup> The Australian Council of Trade Unions included a similar table in their submission. Australian Council of Trade Unions, Submission 208, p23.

The table below repeats this calculation for each of the various proposed caps. Clearly, the greater the level of the cap, the greater the proportion of women who receive two-thirds of their previous income and the greater the proportion who receive full income replacement.

Table 17.2: Level of income replacement of various paid maternity leave caps in August 2001

<b>Paid Maternity Leave Cap</b>	<b>\$<sup>(a)</sup></b>	<b>% of women who receive full income replacement<sup>(b)</sup></b>	<b>% of women who receive 2/3 of their previous income<sup>(b)</sup></b>
Parenting Payment (partnered) <sup>1145</sup>	161.40	7% to 15%	15% to 25%
Parenting Payment (single) <sup>1146</sup>	201.0	15% to 25%	25% to 35%
Two-thirds of AWE (all women)	356.13	35% to 48%	48% to 62%
Federal Minimum Wage	408	35% to 48%	62% to 73%
Two-thirds of AWE (all employees total earnings)	448.87	35% to 48%	73% to 81%
AWE (all women)	534.2	48% to 62%	81% to 87%
Two-thirds of AWOTE	558.4	62% to 73%	81% to 87%
Two-thirds of Full time adult total earnings	582.27	62% to 73%	87% to 91%
AWE (all employees total earnings)	673.3	73% to 81%	91% to 96%
Full time adult ordinary time earnings (AWOTE)	837.6	81% to 87%	96% to 98%
Full time adult total earnings	873.4	87% to 91%	98% to 99%
Full wage replacement	No limit	100%	100%

Source: ABS 6302.0 *Average Weekly Earnings* August 2001, p4 and ABS 6310.0 *Employee Earnings, Benefits and Trade Union Membership* August 2001, p9.

(a) August 2001 figures are used for the Federal Minimum Wage and the various AWE measures to ensure consistency with the data on women's earnings at Table 17.1.

(b) Earnings were assumed to be at the midpoint of the earnings range (except for "2,000 and over" where earnings are assumed to \$2,000). The calculation in Table 17.1 was repeated for each of the possible PML caps. A summary is presented here.

A government funded scheme will extend coverage beyond those already entitled to employer provided 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.<sup>1147</sup> Access to existing employer provided paid maternity leave schemes is concentrated amongst higher income earners.

For example, 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. Fifty-one 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 reported that they had access to paid maternity leave.<sup>1148</sup>

Similarly women in higher skilled positions have greater access to existing employer provided paid maternity leave. Sixty-five per cent of managers and administrators and 54 per cent of professionals had access to paid maternity leave. In contrast only 18 per cent of elementary clerical, sales and service workers and 21 per cent of labourers and related workers had access to paid maternity leave.<sup>1149</sup>

<sup>1145</sup> Department of Family and Community Services "Parenting Payment and Associated Rates – July 1995 to Present Date" *Guide to Social Security Law* [www.facs.gov.au/guide/ssguide/52450.htm](http://www.facs.gov.au/guide/ssguide/52450.htm).

<sup>1146</sup> Department of Family and Community Services "Parenting Payment and Associated Rates – July 1995 to Present Date" *Guide to Social Security Law* [www.facs.gov.au/guide/ssguide/52450.htm](http://www.facs.gov.au/guide/ssguide/52450.htm).

<sup>1147</sup> ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000, unpublished data. See also 3.3.

<sup>1148</sup> ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000, unpublished data. See also 3.3.



The National Pay Equity Coalition compared existing access to paid maternity leave and the level of income replacement provided by the Federal Minimum Wage and Average Weekly Earnings (all women) by occupational group (Table 17.3 and 17.4 below). Such a calculation highlights that there is significantly different access to paid maternity leave by occupational group under the existing arrangements. It also demonstrates that a government funded scheme would provide a significantly different level of income replacement to women according to their occupational group.

Table 17.3: **Occupational distribution of earnings and the level of income replacement of the Federal Minimum Wage**<sup>1150</sup>

<b>Occupational group</b>	<b>% on income replacement at Federal Minimum Wage</b>	<b>% on 2/3 previous earnings* at Federal Minimum Wage</b>	<b>% with PML#</b>	<b>Average Weekly Earnings (women)*</b>
Managers	3.9	10.6	78	1078
Professionals	18.4	35.1	60	726
Associate Professionals	20.7	45.5	45	640
Trades	44.2	81.5	26	432
Advanced clerical and sales workers	23.8	57.1	47	566
Intermediate clerical, sales and service workers	39.3	72.8	40	459
Intermediate production and transport workers	43.4	85.9	21.2	414
Elementary clerical, sales and service workers	40.7	66	16	304
Labourers	62.8	88.4	31	330
All	37.4	64.4	42	521

\* Calculated from ABS Cat. no. 6306.0 *Employee Earnings and Hours*, May 2000 Table 6 Distribution of all employees, occupation, females, May 2000.

# Unpublished data ABS Cat. no. 6361.0 *Employment Arrangements and Superannuation, Australia*, April to June 2000 (M2).

<sup>1149</sup> ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000, unpublished data. See also 3.3.

<sup>1150</sup> National Pay Equity Coalition, Submission 257, p3.

Table 17.4: Occupational distribution of earnings and the level of income replacement of Average Weekly Earnings (persons)<sup>1151</sup>

Occupational group	% on income replacement	% on 2/3 previous earnings*	% with PML <sup>#</sup>	Average Weekly Earnings (women)*
Managers	18.2	53.4	78	1078
Professionals	30.9	81.0	60	726
Associate Professionals	54.7	89.3	45	640
Trades	87.3	98.2	26	432
Advanced clerical and sales workers	66.6	95.6	47	566
Intermediate clerical, sales and service workers	81	99.0	40	459
Intermediate production and transport workers	87.8	97.6	21.2	414
Elementary clerical, sales and service workers	96.3	99.5	16	304
Labourers	94.5	99.2	31	330
All	75.2	93.2	42	521

\* Calculated from ABS Cat. no. 6306.0 *Employee Earnings and Hours*, May 2000 Table 6 Distribution of all employees, occupation, females, May 2000.

# Unpublished data ABS Cat. no. 6361.0 *Employment Arrangements and Superannuation, Australia*, April to June 2000 (M2).

## 17.5 A two tiered system

HREOC considers that the appropriate level of payment is the Federal Minimum Wage. Article 6(4) of the Maternity Protection Convention sets the minimum entitlement by reference to two-thirds of the Average Weekly Earnings for all women,<sup>1152</sup> a measure which is significantly lower than Average Weekly Earnings for all employees. HREOC is concerned that this entrenches systemic discrimination inherent in pay differentials between men and women. As such, HREOC considers it is preferable that this rate be based on an average weekly wage for *all* employees. Based on the May 2002 rate of the Average Weekly Earnings for all employees of \$689.00,<sup>1153</sup> two-thirds of this rate would be \$459.33. The weekly Federal Minimum Wage is \$431.40. These two levels are sufficiently comparable to justify payment at Federal Minimum Wage level. In addition, the Federal Minimum Wage is more than two-thirds of Average Weekly Earnings for all women, which, as noted at 17.4.6, provides strict compliance with the Maternity Protection Convention. However, as discussed, the Federal Minimum Wage is to be preferred in that regard.

The Federal Minimum Wage also provides a safety net of fair minimum wages,<sup>1154</sup> is regarded by many in the community as providing a reasonable standard of living, is set annually by an independent organisation and has a reasonable level of community support.

HREOC notes that any government funded national paid maternity leave scheme should be considered in

<sup>1151</sup> National Pay Equity Coalition, Submission 257, p4.

<sup>1152</sup> As opposed to the suggested level of two-thirds of each woman's income as set out in Article 6(3). See 17.4.1 for further discussion.

<sup>1153</sup> ABS 6302.0 *Average Weekly Earnings* May 2002, p4.

<sup>1154</sup> The *Workplace Relations Act 1996* (Cth) provides that "... the Commission must ensure that a safety net of fair minimum wages and conditions of employment is established and maintained": section 88B(2).

conjunction with employer funded paid maternity leave provided through awards, agreements and company policy. If the Government were to introduce a national scheme of paid maternity leave, this would create a two tier system of paid maternity leave consisting of the government minimum payment with an optional or negotiated employer top up.

It is HREOC's view that a government provided paid maternity leave scheme up to the level of the Federal Minimum Wage, in conjunction with existing employer provided paid maternity leave would mean that a significant majority of women in paid work would receive full wage replacement during a period of paid maternity leave. As discussed at 19.4, HREOC encourages employers to top up the government funded minimum payment in order to extend full income replacement to all women.

It is important that these two tiers of the system be considered together in determining the level of income replacement that women in paid work will receive through maternity leave payments.

HREOC acknowledges that a national system of paid maternity leave up to Federal Minimum Wage would fall short of the aspiration of full income replacement provided for under ILO Recommendation 191. Similarly, as pointed out by the National Pay Equity Coalition, at the Federal Minimum Wage level there would be certain occupational categories where significant numbers of individuals did not receive two-thirds of their previous income. As highlighted by the National Pay Equity Coalition:

- 43 per cent of advanced clerical and sales workers would not receive two-thirds of their previous income;
- 54 per cent of associate professionals would not receive two-thirds of their previous income;
- 34 per cent of elementary clerical, sales and service workers would not receive two-thirds of their previous income.<sup>1155</sup>

This result reflects the fact that these women are generally higher income earners, and hence the Federal Minimum Wage represents a smaller proportion of their current earnings. However, provided they met the eligibility criteria, all of these women would receive a payment of over \$400 per week from the Government.

HREOC considers that it is disingenuous to view a Government scheme in isolation from negotiated employer funded paid maternity leave. Tables 17.3 and 17.4 show that, to a large extent, the occupations that receive lower levels of income replacement under a government scheme are those occupations that are more likely to receive employer funded paid maternity leave.

It is not possible to determine the level of income replacement available to women under the two tier system. This would be an important piece of information to collect following the introduction of a government funded scheme, in order to fully evaluate the level of income replacement that women on paid maternity leave are actually receiving.<sup>1156</sup>

HREOC considers that it is appropriate for a government funded scheme to provide the greatest proportional benefit to lower income women. This is consistent with the redistributive role of Governments and is a principle that is widely supported in the community. Those occupations where the government funded scheme will provide the highest levels of income replacement are also largely those occupations in which women are least likely to be able to bargain with their employer to gain paid maternity leave.

A government scheme of paid maternity leave at the Federal Minimum Wage would provide two-thirds

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<sup>1155</sup> National Pay Equity Coalition, Submission 257, p3. See Table 17.3.

<sup>1156</sup> See 22.2 for a discussion of the need for additional statistical collections.

income replacement for:

- 10.6 per cent of managers (78 per cent currently receive employer funded paid maternity leave);
- 35.1 per cent of professionals (60 per cent currently receive employer funded paid maternity leave);
- 88.4 per cent of labourers (31 per cent currently receive employer funded paid maternity leave);
- 81.5 per cent of tradespeople (26 per cent currently receive employer funded paid maternity leave);
- and
- 66 per cent of elementary clerical, sales and service workers (16 per cent currently receive employer funded paid maternity leave).<sup>1157</sup>

The employer funded paid maternity leave component for each occupational group would mean that significantly more women actually receive two-thirds of their income.

## 17.6 HREOC's position

As outlined in Part C of the paper, HREOC recognises that the purpose of paid maternity leave is to replace the income that women forego due to a period of absence from the paid workforce at the time of the birth of a child. Thus the ideal level of payment for such a scheme should be 100 per cent of a woman's previous earnings. HREOC considers that this is a goal that the community should work towards. International Labour Organization Recommendation 191 sets full income replacement as a standard to which Member States should aspire.

However, HREOC acknowledges that a minimum compliance scheme may be needed in order to be accepted by Government and the community. HREOC also recognises concern at the regressive nature of a full income replacement scheme if funded solely by Government. HREOC considers that the appropriate role for a Government funded scheme, particularly as a first step, is to provide a minimum entitlement.

The Federal Minimum Wage represents an appropriate minimum entitlement. It provides a safety net of fair minimum wages,<sup>1158</sup> is regarded by many in the community as providing a reasonable standard of living, is set annually by an independent organisation and has a reasonable level of community support.

HREOC supports a paid maternity leave scheme that combines a capped amount and an earnings-related component. HREOC supports maternity leave payments at the rate of the Federal Minimum Wage or a woman's previous earnings, whichever is less. HREOC considers that this rate of payment meets the level of payment established under Article 6 of the Maternity Protection Convention.

### RECOMMENDATION 7

That government funded paid maternity leave be paid at the rate of the Federal Minimum Wage, or the woman's previous weekly earnings from all jobs, whichever is the lesser amount.

Previous weekly earnings are to be calculated as the greater of either a woman's weekly earnings from all jobs immediately prior to taking leave or an average of her weekly earnings from all jobs during the time in employment over the previous twelve months.

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<sup>1157</sup> See Table 17.3.

<sup>1158</sup> The *Workplace Relations Act 1996* (Cth) provides that "... the Commission must ensure that a safety net of fair minimum wages and conditions of employment is established and maintained": section 88B(2).

# 18. Payment mechanism

## 18.1 Introduction

The payment mechanism refers to the way in which payments are made to eligible women. The key options are a payment made directly from the Government to mothers, or a payment made indirectly from Government through employers to mothers. Both of these options and issues relating to the timing of maternity leave payments are discussed in this Chapter.

The payment mechanism is important in ensuring the efficient operation of the scheme, minimising the administrative impost on employers, women and the Government and ensuring that women are able to access the scheme.<sup>1159</sup>

The cost and complexity of administering a paid maternity leave scheme were seen by one individual as a reason for not introducing such a scheme.

The cost of establishing, administering and maintaining another Government body will not benefit the community ... This nation will be poorer as the administering of this body will be top-heavy. It will be inflationary. It will require more heads of the public service. There are already many well paid public servants involved in family assistance.<sup>1160</sup>

HREOC agrees that administration of government benefits presents challenges and care must be taken to ensure that a new scheme, such as paid maternity leave, does not duplicate existing structures or become too cumbersome. However, these challenges can be addressed and should not defeat a proposal for a national scheme.

The discussion of payment mechanisms included in this chapter is based on the view that the national scheme of paid maternity leave should be government funded.<sup>1161</sup> On this basis, information from submissions on payment mechanisms for other forms of funding has not been included.<sup>1162</sup>

## 18.2 International practices

Under the Statutory Maternity Pay scheme in the United Kingdom, employers make the payment to the employee, usually on the normal pay day, unless otherwise agreed. The employer is then reimbursed by the Department of Inland Revenue for an amount equal to 92 per cent of the Statutory Maternity Payments they have made in the previous tax period. This amount can be deducted from the employer's PAYE (Pay As You Earn) tax installments and National Insurance contributions. Small employers can deduct 100 per cent of the Statutory Maternity Payments they have paid out, plus 4.5 per cent to cover costs.<sup>1163</sup>

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<sup>1159</sup> See Australian Council of Trade Unions, Submission 208, p28 for a discussion of the principles that it considers should apply to the administration of a paid maternity leave scheme.

<sup>1160</sup> Beryl Byrne, Submission 157, p2.

<sup>1161</sup> For a discussion of funding options see Chapter 13.

<sup>1162</sup> In particular, a number of submissions provided information on how payments could be made to and from an employer levy. See, for example, Australian Manufacturing Workers' Union, Submission 237, Appendix Three; Queensland Nurses' Union, Submission 134, p13.

<sup>1163</sup> United Kingdom Department of Inland Revenue *Statutory Maternity Pay Manual for Employers* April 2002, p35 [www.inlandrevenue.gov.uk/pdfs/emp2002/ca29\(2\).pdf](http://www.inlandrevenue.gov.uk/pdfs/emp2002/ca29(2).pdf).

Under the New Zealand scheme, payments are made directly from the Government to eligible parents. Payments are made fortnightly by the Inland Revenue Department<sup>1164</sup> directly to eligible parents' bank accounts.<sup>1165</sup>

## 18.3 Direct and indirect payment

### 18.3.1 Direct payment from the Government to mothers

A number of submissions supported the payment being made by Government, through an agency such as the Family Assistance Office, Centrelink or the Taxation Office.<sup>1166</sup> The main reason given for this approach was a view that employers should not have to take on the costs of administering the payment. For example, the Western Australian Government pointed out that:

[i]t is important that a national paid maternity leave scheme does not impose a significant additional administrative or cost burden upon employers. This could be circumvented if the Federal Government administered the paid maternity leave scheme and paid the women direct through its own agencies.<sup>1167</sup>

Employer organisations were also concerned about administering a government payment. The Australian Chamber of Commerce and Industry submitted that:

[g]overnment payments should be paid by the government. Employers are not a substitute for Centrelink for the payment of government benefits. Employers would have a preference to only return employees to their payroll when they return to work.

There is also scope for considerable confusion in the administration, taxation etc of any payments by employers on behalf of government, and major bureaucratic and transfer costs.<sup>1168</sup>

This concern was also recognised in other submissions. The Queensland Working Women's Service suggested:

... that [maternity leave payments] be paid through Centrelink together with other family payments which will relieve the employer of any administrative costs associated with the provision of paid maternity leave.<sup>1169</sup>

Some submissions also noted that an additional benefit of direct payment by Government was that it would improve women's access to the payment. Government payment would address the concern, particularly amongst unions, that certain employers may not pass the payment on to eligible women. The New South Wales EEO Practitioners' Association proposed that the Government administer the payment "... to ensure ease of access ..."<sup>1170</sup> and the Australian Council of Trade Unions considered that:

[p]ayment via the Family Assistance Office (FAO) or alternative levy collection/administration agency would ensure that all women claiming their leave entitlement would be paid.<sup>1171</sup>

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<sup>1164</sup> New Zealand Department of Labour *Parental Leave 7: 2002 dates for paid parental leave payments by IRD* Fact Sheet, p1 [www.ers.dol.govt.nz/bin/fact.asp](http://www.ers.dol.govt.nz/bin/fact.asp).

<sup>1165</sup> *Parental Leave and Employment Protection Act 1987* (NZ).

<sup>1166</sup> See, for example, Australian Chamber of Commerce and Industry, Submission 197, p55; Australian Industry Group, Submission 121, p21; Australian Mines and Metals Association, Submission 255, p15; Western Australian Government, Submission 245, p8; Queensland Working Women's Service, Submission 219, p13; New South Wales EEO Practitioners' Association, Submission 77, p4; Association of Independent Schools of Victoria, Submission 108, p4; Australian Hotels Association, Submission 199, pp10-11.

<sup>1167</sup> Western Australian Government, Submission 245, p8.

<sup>1168</sup> Australian Chamber of Commerce and Industry, Submission 197, p55.

<sup>1169</sup> Queensland Working Women's Service, Submission 219, p13.

<sup>1170</sup> New South Wales EEO Practitioners' Association, Submission 77, p4.

<sup>1171</sup> Australian Council of Trade Unions, Submission 208, p29. See also Queensland Nurses' Union, Submission 134, p10.

A number of submissions noted that the eligibility criteria for the scheme may mean that it is more desirable, and in some cases necessary, for the Government to make direct maternity leave payments.<sup>1172</sup> HREOC agrees that, based on the proposed eligibility criteria,<sup>1173</sup> a government payment may be more appropriate for the self-employed and where there is not a well-established employment relationship.

### 18.3.2 Indirect payment from Government through employer to mothers

The alternative to direct payment by the Government is for employers to make the payment to eligible employees. Employers could either claim the payment in advance from Government, or seek reimbursement once they have made the maternity leave payments. A number of submissions, particularly from unions and women's groups, supported this approach.<sup>1174</sup>

Some submissions considered that paid maternity leave, as a work related entitlement, should be paid through employers.<sup>1175</sup> The Centre for Applied Social Research agreed with the National Pay Equity Coalition that:

[b]ecause maternity leave is a work-related entitlement ... [the] entitlement for employees should be administered through the employer in the same way as regular wage or salary payments, for the duration of the leave and that entitlement for those who are self employed, or who do not have continuity with a single employer should be paid through a central government agency in a lump sum in advance.<sup>1176</sup>

The National Pay Equity Coalition<sup>1177</sup> and the Public Service Association of New South Wales<sup>1178</sup> considered that payment should be made in the same way as wages. The Women's Electoral Lobby noted that this would be consistent with the way that other forms of leave are paid.<sup>1179</sup>

Some submissions noted that payment through the employer had the benefit of maintaining the connection between the employer and the woman. For example, the Work + Family Policy Research Group, University of Sydney, considered that:

[m]aternity and parental leave represent a continuation of the employment relationship and, for this reason, payments should be made by the employer directly to the employee.<sup>1180</sup>

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<sup>1172</sup> See, for example, Women's Electoral Lobby, Submission 248, p21; National Pay Equity Coalition, Submission 224, p4; Community and Public Sector Union – State Public Services Federation Group, Submission 230, p10; Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p19; Women's Economic Think Tank, Submission 125, p6; New South Wales Public Service Association, Submission 110, p6.

<sup>1173</sup> See Recommendation 5, Chapter 15.

<sup>1174</sup> See, for example, Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p19; Australian Services Union MEU Private Sector Victorian Branch, Submission 154, p5; BPW Australia, Submission 148, p9; Women's Economic Think Tank, Submission 125, p6; Queensland Nurses' Union, Submission 134, p13; Australian Nursing Federation, Submission 123, p10; Aboriginal and Torres Strait Islander Commission, Submission 116C, p4; Community and Public Sector Union – State Public Services Federation Group, Submission 230, p10; New South Wales Working Women's Centre, Submission 225, p17; National Pay Equity Coalition, Submission 224, p4; Women's Electoral Lobby, Submission 248, pp19,21; Work + Family Policy Research Group University of Sydney, Submission 251, pp12-13; Centre for Applied Social Research RMIT University, Submission 234, pp10-11; Union of Australian Women, Submission 89, p2; Australian Federation of University Women – Victoria, Submission 101, p1; New South Wales Public Service Association, Submission 110, pp4,6; Independent Education Union of Australia, Submission 204, pp7-8.

<sup>1175</sup> See, for example, Community and Public Sector Union – State Public Services Federation Group, Submission 230, p10.

<sup>1176</sup> Centre for Applied Social Research RMIT University, Submission 234, p10.

<sup>1177</sup> National Pay Equity Coalition, Submission 224, p4.

<sup>1178</sup> New South Wales Public Service Association, Submission 110, p4.

<sup>1179</sup> Women's Electoral Lobby, Submission 248, p19.

<sup>1180</sup> Work + Family Policy Research Group University of Sydney, Submission 251, p12.

The New South Wales Working Women's Centre supported payment through the employer on the grounds that this maintained the status gained through paid employment and the connection between the woman and her employer. Further, that submission contended that:

... payment through the employer (reimbursed by the government through the administration of the scheme) ensures that the employer maintains some responsibility and connection with the employee, thereby improving workplace culture and expectation of a smooth return to work after the maternity leave, if so desired by the employee.<sup>1181</sup>

The Australian Services Union MEU Private Sector Victorian Branch proposed payment through the employer in order to "... maintain a woman's connection with her employer ..."<sup>1182</sup> The union also submitted that "... the employer is in the best position to know exactly when maternity leave commences and ends ..."<sup>1183</sup>

However, as noted at 18.3.1, there was some concern that payment through employers would involve an additional administrative cost for employers.<sup>1184</sup> The Australian Industry Group opposed payment through the employer on the grounds that such a system "... results in double-handling of the payment and imposes administrative costs on employers".<sup>1185</sup> The Shop, Distributive and Allied Employees' Association discussed this concern from the employees' perspective.

There is no doubt that there would be significant administration costs to employers, which could generate ill will and annoyance from employers, which may be reflected in the way they treat pregnant employees.<sup>1186</sup>

Women's Economic Policy Analysis Unit disputed that these costs would be significant.

Given the benefits accruing to employers from the implementation of PML [paid maternity leave] (e.g. impact on turnover, skills atrophy etc.) and the fact that, at any one time, less than two per cent of the workforce is on maternity leave, we believe that employers will not be unduly burdened by an arrangement which vests responsibility for administration of the PML [Paid Maternity Leave] scheme in them.<sup>1187</sup>

A number of submissions proposed that the Government could compensate business for this additional administrative cost, particularly in the case of small business. The Work + Family Policy Research Group, University of Sydney, suggested that:

[c]onsideration should be given to the UK model which distinguishes between large and small employers and reimburses the latter 104% of the payment, in order to compensate for administration costs. Further research will need to determine the most appropriate way of distinguishing businesses and of determining an appropriate level of reimbursement.<sup>1188</sup>

The National Pay Equity Commission considered that these costs could be minimised by building on the existing workers compensation system.

One mechanism to significantly reduce the administrative cost of PML [paid maternity leave] to the employer would be for employers to claim the entitlement through the existing workers compensation system. The requisite claiming machinery is already in place. State jurisdictions could claim the costs back through the Commonwealth.<sup>1189</sup>

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<sup>1181</sup> New South Wales Working Women's Centre, Submission 225, p17.

<sup>1182</sup> Australian Services Union MEU Private Sector Victorian Branch, Submission 154, p5.

<sup>1183</sup> Australian Services Union MEU Private Sector Victorian Branch, Submission 154, p5.

<sup>1184</sup> See, for example, Western Australian Government, Submission 245, p8; Australian Chamber of Commerce and Industry, Submission 197, p55; Australian Industry Group, Submission 121, p21; Queensland Working Women's Service, Submission 219, p13.

<sup>1185</sup> Australian Industry Group, Submission 121, p21.

<sup>1186</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p26.

<sup>1187</sup> Women's Economic Policy Analysis Unit, Curtin University of Technology, Submission 98, p19 (footnote omitted).

<sup>1188</sup> Work + Family Policy Research Group University of Sydney, Submission 251, p13. See also Australian Council of Trade Unions, Submission 208, p28; Centre for Applied Social Research RMIT University, Submission 234, pp10-11.

<sup>1189</sup> National Pay Equity Coalition, Submission 224, p28.



As noted at 18.3.1 above, a number of unions raised concerns that payment through employers could result in some women having difficulty receiving payments, or not receiving them at all.<sup>1190</sup>

While payment as wages has merit, the ACTU [Australian Council of Trade Unions] also has concerns about payment by employers, if this might result in some women not accessing payment, for example where the employer is unaware of their obligations to pay, or where the employer is unscrupulous.<sup>1191</sup>

There is also the possibility of the woman having difficulty receiving the payment from her employer and so being financially disadvantaged and stressed if she has to pursue receiving the payment.<sup>1192</sup>

Not only would double handling of payment through employers carry the risk of greater administrative costs to employers, it may also increase cost to Government. The Shop, Distributive and Allied Employees' Association considered that payment through the employer would be a more costly option for Government.

There would be significantly increased administrative costs for government in this option both in regard to reimbursing employers and in establishing and monitoring that the women have met the eligibility criteria.<sup>1193</sup>

### 18.3.3 HREOC's position

HREOC considers that the ideal payment mechanism would be for payments to be made through employers. This would establish paid maternity leave as a work related entitlement, more directly impact on workplace cultures and assist in maintaining the link between employees on maternity leave and their employers.

Such an approach is likely to be preferred by employers who currently make maternity leave payments. It would avoid the need to adjust current payroll systems or to change existing certified agreements or company policy to take account of the government policy. It may also be possible for legislation to be drafted in such a way that those employers already paying some form of paid maternity leave could take account of the government funded payment in meeting their existing obligations. This would allow those best practice employers to make a saving on their current expenditure on paid maternity leave.

In reviewing their payment system, the United Kingdom decided to continue with payment through the employer. This was the preference of large employers who topped up government payments. In order to facilitate the system for small business, the United Kingdom Government has enabled these employers to claim payments up front and also reimburses administration costs.<sup>1194</sup> This means that cash flow issues for small business are addressed.<sup>1195</sup>

However, given the cost and additional administrative burden that payment through employers may impose on some businesses, HREOC is persuaded that any Australian system should not mandate employer payments on behalf of Government. Imposing such a role on unwilling employers may increase employment discrimination against women despite the fact that such discrimination is unlawful. Some employers may also not pass the maternity leave payments on to eligible employees.

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<sup>1190</sup> See, for example, Australian Council of Trade Unions, Submission 208, p29; Queensland Nurses' Union, Submission 134, p10; Australian Nursing Federation, Submission 123, p10; Shop, Distributive and Allied Employees' Association, Submission 173, p26.

<sup>1191</sup> Australian Council of Trade Unions, Submission 208, p29. The Australian Council of Trade Unions also saw merit in a payment as wages by employers, but did not come to a final conclusion: "... HREOC should balance these considerations": Australian Council of Trade Unions, Submission 208, p29.

<sup>1192</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p26.

<sup>1193</sup> Shop, Distributive and Allied Employees' Association, Submission 173, p26.

<sup>1194</sup> United Kingdom Department of Trade and Industry *Work and Parents, Competitiveness and Choice: A Green Paper 2000*, p39 [www.dti.gov.uk/er/g\\_paper/pdfs/wpgreen.pdf](http://www.dti.gov.uk/er/g_paper/pdfs/wpgreen.pdf).

<sup>1195</sup> Small employers (those whose National Insurance Contributions for their employee is less than £40,000 in the qualifying tax year) are reimbursed 100 per cent of the Statutory Maternity Pay, plus 4.5 per cent compensation. Larger employers recover 92 per cent of the Statutory Maternity Pay; United Kingdom Department of Inland Revenue *Statutory Maternity Pay Manual for Employers 2002*, p35 [www.inlandrevenue.gov.uk/pdfs/emp2002/ca29\(2\).pdf](http://www.inlandrevenue.gov.uk/pdfs/emp2002/ca29(2).pdf).

In addition, as noted above, the eligibility criteria that have been proposed mean that there would not be an employer to make the payments in every situation, especially in the case of self-employed women. Even where a woman was in paid employment when beginning the leave, eligibility requirements may mean that in some circumstances the employer may not be required to reserve her position under unpaid maternity leave provisions.<sup>1196</sup> In other cases, a woman may have clearly decided to resign prior to birth. In that case, requiring employers to administer payments could arguably place an unfair burden on employers who would not have an ongoing employment relationship with the woman.

HREOC therefore recommends that the Government provide for dual payment mechanisms. Women would be able to choose to take their payments as a direct payment from Government or as a payment through their employer, subject to their employer agreeing to provide this option. Employers would be given the choice to offer to make payments to employees as part of their suite of family friendly policies. This arrangement ought to be reviewed to consider efficiency, access for employees and ease of administration for employers and Government. The HREOC proposal for review of any scheme is discussed at 22.4.

## 18.4 Timing of payment

### 18.4.1 Payment at time of leave

Some existing employer provided paid maternity leave schemes pay a proportion of the payment at the time of leave and the remainder on return to work. These employers justify this on the grounds that the payment relates to a direct link between the employer and the employee and acts as an incentive for the employee to return to work.

Some submissions stated that payment under any future scheme should be made at the time of leave, as this was when additional expenses were faced. The Association of Independent Schools of Victoria considered that payment should be made "... at the time that the person is caring for the child".<sup>1197</sup> Similarly, the Australian Retailers Association considered that payment should be made at the time that expenses are incurred.<sup>1198</sup>

Submissions were also received that specifically argued against deferring payment until a woman had returned to work or requiring return to work as a condition of payment.<sup>1199</sup> The Australian Council of Trade Unions considered that such a condition:

- is inappropriate in a scheme where funding is not tied to a particular employer;
- is inconsistent with the aim of income security for women;
- is inconsistent with the aim of assisting families with costs associated with the birth of the child;
- pays inadequate regard to the difficulty (particularly for first-time mothers) of accurately stating their return to work plans.<sup>1200</sup>

One argument against a requirement that a woman return to work before she receives paid maternity leave was that such a requirement would place pressure on some women to return to work before they are ready.<sup>1201</sup> For example, the Women's Action Alliance considered that:

[t]he scheme should not bring pressure to bear upon mothers of infants and young children to return to paid work before they feel ready. The current provision of only 12 months unpaid leave is already doing this in many instances. Therefore eligibility for the payment should not be

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<sup>1196</sup> This would be subject to the indirect discrimination provisions of the *Sex Discrimination Act 1984* (Cth).

<sup>1197</sup> Association of Independent Schools of Victoria, Submission 108, p4.

<sup>1198</sup> Australian Retailers Association, Submission 165, p13.

<sup>1199</sup> See, for example, Australian Council of Trade Unions, Submission 208, p35; Independent Education Union of Australia, Submission 204, p7; National Diversity Think Tank, Submission 221, p3; Illawarra Forum Inc. and Illawarra Women's Health Centre, Submission 162, p7; E Flanagan, Submission 88, p1; Australian Education Union, Submission 122, p2; Marty Grace, Submission 151, p3; Women's Action Alliance (Australia) Inc., Submission 146, pp1,6; Salt Shakers, Submission 109, p3; New South Wales Working Women's Centre, Submission 225, p17.

<sup>1200</sup> Australian Council of Trade Unions, Submission 208, p35.

dependent upon the mother being in paid work prior to the birth or returning to paid work afterwards.<sup>1202</sup>

A requirement to return to work following paid maternity leave was also considered not to take into account the unforeseen circumstances that may arise following the birth of a child. For example, the Illawarra Forum and the Illawarra Women's Health Centre wrote that they:

... oppose any condition that requires a written commitment of "intention to return to work". There are considerable variables after the birth/adoption of a child that could influence these intentions and are unforeseen.<sup>1203</sup>

The Government could choose to link the payment to return to work if the primary objective of paid maternity leave was to increase the rate of women's return to work. However, while it is acknowledged that paid maternity leave may have an effect on the rate of women's return to work, HREOC does not see this as the most compelling reason for introducing paid maternity leave in Australia.<sup>1204</sup>

In addition, while employers may be justified in contracting with individual employees that any discretionary maternity leave payment is contingent on the employees' return to work, such a condition imposed by Government would be an inappropriate limitation on women's choice.

In particular, the scheme that HREOC has proposed is considered to be a minimum entitlement to enable women to take a guaranteed period of time out of the workforce. Reserving part of this payment until the woman has returned to work would result in some women being unable to take the full 14 weeks leave. This would undermine the health and wellbeing objectives of paid maternity leave. This hardship would be compounded if, as envisaged, many women take a longer period of unpaid leave after the first 14 weeks. As such, HREOC is strongly of the view that payments should be made at the time at which leave is taken.

## 18.4.2 Ability to alter timing of maternity leave payment

A number of submissions proposed that women be able to elect to receive their maternity leave payments at a lower rate over a longer period of time, and in particular that they may choose to take the payments at half pay for twice as many weeks or payment as a lump sum at the beginning of the leave period.<sup>1205</sup> This was seen to be a more flexible approach. For example, the New South Wales Working Women's Centre recommended that "... the scheme should provide flexible application of this payment of the equivalent of 14 weeks payment across an extended period of time".<sup>1206</sup>

One individual suggested that the payment be offered in a range of options, including "... a 3 month period of leave on full pay, or 6 months on half pay, or 12 months on ¼ pay".<sup>1207</sup> The Australian Council of Trade Unions also noted that an option to take the leave at half pay would assist with family budgeting.<sup>1208</sup> In addition, the Australian Council of Trade Unions noted that there may be health and wellbeing benefits from allowing women to spread their paid leave over a longer period of time.

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<sup>1201</sup> This issue is also discussed at 6.2 and 6.3.

<sup>1202</sup> Women's Action Alliance (Australia) Inc., Submission 146, p6. See also Salt Shakers, Submission 109, p3.

<sup>1203</sup> Illawarra Forum Inc. and Illawarra Women's Health Centre, Submission 162, p7. See also New South Wales Working Women's Centre, Submission 225, p17.

<sup>1204</sup> See Part C.

<sup>1205</sup> See, for example, Community and Public Sector Union – State Public Services Federation Group, Submission 230, p10; Australian Education Union, Submission 122, p2; Melissa Austin, Submission 149, p5; Australian Nursing Federation, Submission 123, p10; Joan Cross, Submission 138, p1; Australian Council of Trade Unions, Submission 208, pp21,28; Queensland Nurses' Union, Submission 134, p14; Australian Nursing Federation, Submission 123, p10; New South Wales Working Women's Centre, Submission 225, p16.

<sup>1206</sup> New South Wales Working Women's Centre, Submission 225, p16.

<sup>1207</sup> Joan Cross, Submission 138, p1.

<sup>1208</sup> Australian Council of Trade Unions, Submission 208, p28.

The ACTU [Australian Council of Trade Unions] also draws HREOC's attention to recent literature on post-partum recovery and the benefits of longer term breast-feeding. To facilitate longer periods of leave, where this is the families' choice, recipients should be able to elect to take the payment at half pay over double the period.<sup>1209</sup>

HREOC acknowledges that some women may prefer to be able to spread their paid leave over a longer period of time or to take the full amount up front. However, such an approach would add another dimension of complexity to administering the system. In addition, both of these approaches are inconsistent with the idea of providing a minimum entitlement as income replacement at the time of leave. HREOC considers that the Government payment should be a fortnightly payment to eligible women. This arrangement could be negotiable between an employer and an eligible woman where payment is made through the employer, to allow for existing wage systems.

## RECOMMENDATION 8

That paid maternity leave be paid as a fortnightly payment during the period of leave, administered by the federal Government and available through dual payment mechanisms.

Specifically, an individual may elect to receive payment as either:

- a fortnightly direct payment from Government to the individual; or
- a payment from the employer to the individual with the employer reimbursed by Government (subject to the employer agreeing to offer this option).

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<sup>1209</sup> Australian Council of Trade Unions, Submission 208, p21.

# 19. Role of employers

## 19.1 Introduction

As noted at 13.3, there was strong support throughout the consultation process for a government funded paid maternity leave scheme and HREOC has recommended that such a scheme be implemented. HREOC also recommended that any scheme be limited to women in paid employment.

There will inevitably be an interaction between the provision of payment under any such scheme and a woman's place of employment. Particular consideration must be given to managing payments where a woman already has access to employer funded leave, whether it is a discretionary payment or mandated under an award or agreement. Employers must also be able to introduce paid maternity leave or enhance existing systems in order to attract the best staff, retain valued employees and implement appropriate family friendly policies.<sup>1210</sup>

This Chapter discusses these issues and further considers the role of employers in assisting to administer a government funded scheme.

## 19.2 International practices

The New Zealand Paid Parental Leave scheme prevents reduction of existing employer provided paid maternity leave provisions unless there is agreement between the employer and the employee.

The New Zealand *Parental Leave and Employment Protection Act 1987* provides:

71P Amount of payment not affected by other non-statutory entitlements

- 1 An entitlement to a parental leave payment under this Part is not affected or reduced by any other entitlement that the employee may have under the terms of any employment agreement.
- 2 An employer must not, without the agreement of the employee, reduce any other entitlement that the employee may have under the terms of any employment agreement because of the employee's entitlement to a payment under this Part.
- 3 An employer who fails to comply with this section is liable to a penalty imposed by the Employment Relations Authority under the *Employment Relations Act 2000* in respect of each employee to whom the purported reduction applies.<sup>1211</sup>

## 19.3 Existing provisions

### 19.3.1 Introduction

In introducing a government funded paid maternity leave scheme, consideration needs to be given to how this interacts with existing employer provided paid maternity leave.

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<sup>1210</sup> This was also discussed at 10.2.

<sup>1211</sup> *Parental Leave and Employment Protection Act 1987* (NZ).

### 19.3.2 Possible reduction in existing provisions

There was some concern that women who currently receive employer provided paid maternity leave may be disadvantaged under a government scheme. In particular, the concern was that employers may withdraw existing paid maternity leave provisions if there is a government provided scheme. For those women who currently receive full wage replacement,<sup>1212</sup> this may mean that they actually receive lower payments and so are financially worse off under a government scheme.

The Work + Family Policy Research Group, University of Sydney, wrote that those women who are currently entitled to paid maternity leave "... should not suffer disadvantage ..." in payment or other employment benefits under the implementation of a future scheme.<sup>1213</sup>

Several unions stressed that employee entitlements should not be undermined under a paid maternity leave scheme. The Australian Education Union argued that a future scheme "... should not be seen to replace what already exists with a government payment but to complement and extend it".<sup>1214</sup> The State Public Services Federation Group of the Community and Public Sector Union submitted that:

[w]here the employee is entitled to an existing paid maternity leave arrangement provided by an employer through existing legislation, awards or agreements and which provide greater entitlements than those proposed in a national scheme then those existing arrangements must continue and must not be placed under threat.<sup>1215</sup>

The Queensland Nurses' Union submitted that:

[s]ome women already receive paid maternity leave via an industrial instrument and this existing entitlement could be worth more than 14 weeks at AWE [Average Weekly Earnings]. These workers should not be disadvantaged as a result of the introduction of a 14-week entitlement at AWE [Average Weekly Earnings] – i.e. they should maintain their higher entitlement.<sup>1216</sup>

Some submissions noted that employers should be bound to continue to provide existing levels of paid maternity leave. The Australian Nursing Federation argued that:

[p]rovision would need to be made to ensure that employers continue to be bound by existing agreements or awards that provide better outcomes for women already entitled to paid maternity leave.<sup>1217</sup>

In addition, the Australian Council of Trade Unions considered that a dispute resolution mechanism was needed to resolve disagreements over existing paid maternity leave provisions.

Any legislation should provide disincentives to reductions of existing entitlements and should provide a dispute resolution process where employers seek to reduce entitlements as a result of the introduction of a national scheme. Any jurisdictional impediments to the AIRC [Australian Industrial Relations Commission] hearing such disputes should be considered and addressed in the legislation.<sup>1218</sup>

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<sup>1212</sup> See 3.3.

<sup>1213</sup> Work + Family Policy Research Group University of Sydney, Submission 251, p12.

<sup>1214</sup> Australian Education Union, Submission 122, p25. See also Public Service Association of South Australia Inc., Submission 198, p2.

<sup>1215</sup> Community and Public Sector Union – State Public Services Federation Group, Submission 230, p8. See also Marty Grace, Submission 151, p4; United Trades and Labor Council of South Australia, Submission 211, p5.

<sup>1216</sup> Queensland Nurses' Union, Submission 134, p16.

<sup>1217</sup> Australian Nursing Federation, Submission 123, p10. See also National Pay Equity Coalition, Submission 224, p4; Lyn Collins and Barbara Pocock, Submission 232, p8.

<sup>1218</sup> Australian Council of Trade Unions, Submission 208, p28.

The Australian Chamber of Commerce and Industry considered that reduction of current employer provided paid maternity leave was unlikely.

To date, the efforts of those who have agreed to paid leave have been lauded by proponents of additional benefits. It is difficult to comprehend that such employers would reverse the human resource rationale for creating paid leave in the first place.<sup>1219</sup>

HREOC agrees that it would be unlikely that employers who currently provide paid maternity leave would seek to remove this entitlement if the Government introduced a national paid maternity leave scheme that provided a minimum entitlement for women in paid work. Those employers that currently provide paid maternity leave do so on the basis of the business case for paid maternity leave in their workplace and in order to be an employer of choice as well as to do what they consider to be the right thing. Providing a payment above the government minimum entitlement will continue to benefit these businesses.

In addition, it would be difficult for the Government to force employers to continue to pay for maternity leave in some cases. Where this provision is made through awards, certified agreements or Australian Workplace Agreements, the legal obligation to provide such payments will continue. However, where payments are made through company policy or at the discretion of management, there may not be a clear entitlement for the Government to enforce.<sup>1220</sup>

### 19.3.3 Possible exclusion of current recipients from a government scheme

The Women's Action Alliance proposed that women be eligible for either government funded paid maternity leave or employer provided paid maternity leave.

Paid maternity leave should be funded by the government. However where an employer provides paid leave for the employee she should have the choice of applying for either paid maternity leave or the government Maternity Payment, not both. Then as employer provided maternity leave becomes more common we would have an inclusive system whereby every mother would receive twelve (or fourteen) weeks pay either from the Commonwealth government (unless she is disqualified by a means test) or from her employer.<sup>1221</sup>

The Australian Council of Trade Unions argued against such an approach on the ground of the wide variation in existing paid maternity leave provisions.

Where employees are currently entitled to paid maternity leave, they should continue to receive full payment. The ACTU [Australian Council of Trade Unions] notes that some commentators have called for the exclusion of public sector employees, or workers currently entitled to paid maternity leave. While such a proposal would alleviate the burden on the national scheme, it ignores the different levels of payment currently available between the States and private sector employers.<sup>1222</sup>

The Council for Equal Opportunity in Employment pointed out that this approach would effectively penalise those employers who had been delivering good practice by providing their employees with paid maternity leave. It was argued that those employers who currently do not pay for maternity leave would not be obliged to do so, while those who do would be required to continue to pay without receiving the rewards that currently accrue to them over their competitors.

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<sup>1219</sup> Australian Chamber of Commerce and Industry, Submission 197, p56.

<sup>1220</sup> See 3.3 for further discussion.

<sup>1221</sup> Women's Action Alliance (Australia) Inc., Submission 146, p8.

<sup>1222</sup> Australian Council of Trade Unions, Submission 208, p27.

Some [members] indicated that they did not believe that those organisations who already provided such leave should be penalised for "leading the field". A system of credits which recognised that the organisation provided paid leave was regarded as necessary to ensure that such a benefit was not withdrawn by the employer.<sup>1223</sup>

HREOC considers that women who currently receive paid maternity leave should not be excluded from a government funded national paid maternity leave scheme. Very few women currently receive 14 weeks of paid maternity leave;<sup>1224</sup> women should not be disadvantaged by being prevented from accessing this basic level of support.

HREOC also agrees that excluding women who receive employer provided paid maternity leave would penalise those employers who had been actively supporting their employees to better combine work and family. Those employers who do not provide paid maternity leave would receive a financial advantage if the Government met the cost of paid maternity leave for their employees.

Such a step would be likely to discourage employers from implementing further work and family measures. Employers may become fearful that if they lead best practice by introducing such measures, that they will be financially penalised by the Government in future years.

### 19.3.4 Public servants

A related issue is the treatment of public servants under any national paid maternity leave scheme. The issue here is whether State Governments, as the employer, should be responsible for funding paid maternity leave for State public servants.

The Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 excludes Commonwealth, State and Territory Government employees from its proposed national paid maternity leave scheme.

This Bill will provide a payment to eligible women employees other than employees of Federal, State and Territory governments, on the expectation and belief that these governments should (and in many cases already do) provide at least equivalent paid maternity leave for their employees ... It is anticipated that establishment of the Maternity Payment will create pressure on the State and Territory governments to improve their paid maternity leave provisions where they are less than 14 weeks at full pay, and this is to be positively encouraged.<sup>1225</sup>

This issue was raised in the Senate Employment, Workplace Relations and Education Legislation Committee inquiry into the Bill. In their report on this inquiry, the Democrats signalled their intention to retain this provision.

My concern with including public sector employees in the proposed scheme is that this would effectively shift the burden of providing paid maternity leave to State Government employees from State Governments to the Commonwealth, and that laggard states – most notably Western Australia and South Australia – will then avoid any responsibility.<sup>1226</sup>

HREOC did not specifically ask for submissions on this issue, however a number of submissions were received that discussed the treatment of public servants under a national paid maternity leave scheme.

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<sup>1223</sup> Council for Equal Opportunity in Employment Ltd, Submission 252, p3.

<sup>1224</sup> See 3.3.

<sup>1225</sup> Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 *Explanatory Memorandum*, p7.

<sup>1226</sup> Employment, Workplace Relations and Education Legislation Committee *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002* Commonwealth of Australia Canberra September 2002, p38.



Submissions in relation to State and Territory public servants considered that these women should be covered by a national paid maternity leave scheme, but that it would be reasonable for the federal Government to recover some or all of this cost from the State and Territory Governments. For example, the Australian Council of Trade Unions stated that:

[t]he situation with the State public sector employees is more complex, due to differential entitlements, and different sources of those rights. HREOC should explore with the parties the options including appropriate adjustments to States' grants in recognition of the Commonwealth assuming partial responsibility for payments currently borne by the States. Governments, as employers, should lead by example and provide 14 weeks at 100% income replacement.<sup>1227</sup>

The National Pay Equity Coalition submitted that:

[i]n the case of public sector employers, the reimbursement should be offset by the existing expenditure on paid maternity leave in that jurisdiction, so the introduction of the scheme would be cost and revenue neutral. The existing expenditure would be held constant ... It may be desirable for jurisdictions providing lower entitlements to be required to increase entitlements progressively to a point where public sector maternity costs are met by each jurisdiction.<sup>1228</sup>

Submissions were also received in relation to the treatment of federal public servants, calling, for example, for continuation of current legislated rights to paid maternity leave at an improved rate of 14 weeks of full income replacement.<sup>1229</sup> The Public Sector Union Group of the Community and Public Sector Union noted that the introduction of a national scheme of paid maternity leave should not disadvantage federal public servants who currently receive employer provided paid maternity leave.<sup>1230</sup>

HREOC agrees that women should not be excluded from a national scheme of paid maternity leave on the basis that they are government employees with a current entitlement. This is consistent with the view outlined above for the treatment of women who currently have access to employer provided paid maternity leave.

HREOC does consider that it would be reasonable for the federal Government to seek to reclaim the costs of paid maternity leave for State and Territory Government employees from State and Territory Governments. However, this is more appropriately an issue for negotiation between these two levels of Government.

HREOC considers there is a strong argument against pegging State and Territory Government contributions at current levels as this would penalise those States and Territories that had been supporting their employees through the provision of paid maternity leave entitlements. It would effectively reward those States that had been providing little or no paid maternity leave. This approach is consistent with the case outlined above in relation to employers who currently provide paid maternity leave.

Federal public servants are currently entitled to 12 weeks paid maternity leave under the *Maternity Leave (Commonwealth Employees) Act 1973* (Cth), subject to a 12 month qualifying period. This is part of their conditions of employment, in the same way that employer funded paid maternity leave is a condition of employment in other workplaces with employer provided paid maternity leave. HREOC considers that the introduction of a national scheme should not reduce these existing employment conditions and, as such, the legislative provisions should remain.

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<sup>1227</sup> Australian Council of Trade Unions, Submission 208, p27. See also Community and Public Sector Union – (PSU Group), Submission 227, p3.

<sup>1228</sup> National Pay Equity Coalition, Submission 224, p19.

<sup>1229</sup> See, for example, Australian Council of Trade Unions, Submission 208, p27.

<sup>1230</sup> Community and Public Sector Union – (PSU Group), Submission 227, p18.

In addition, HREOC is of the view that federal public servants should be eligible for the national paid maternity leave scheme in the same way that has been recommended for other employees who have employer provided paid maternity leave (in this case the employer is the Government). The net effect of this would be that women who had been employed by the Commonwealth for 12 months would be entitled to an additional two weeks of paid leave at up to the Federal Minimum Wage. For those federal public servants who did not have 12 months employment, they may still qualify for 14 weeks paid maternity leave subject to the qualifying conditions of the national scheme.

## RECOMMENDATION 9

That employers be encouraged to continue existing provisions for paid maternity leave and that women, including public servants, should not be excluded from any government funded national scheme on the basis of receiving employer provided paid maternity leave.

### 19.4 Employer provided top ups

A number of submissions considered that there was a role for employers in topping up any minimum paid maternity leave entitlement provided by the Government.<sup>1231</sup> Employers could top up the weekly amount of paid maternity leave to full income replacement, extend the period of paid leave, make payment available to women who do not meet eligibility criteria for the government scheme and make contributions to women's superannuation for the period of paid or unpaid maternity leave.<sup>1232</sup>

The Australian Industry Group proposed that employers and employees should retain the capacity to negotiate benefits in excess of those provided in a future scheme.<sup>1233</sup> The Work + Family Policy Research Group, University of Sydney, recommended that employers be encouraged to top up or supplement a government maternity leave payment.

We recommend ... that employers be encouraged to supplement the foundation entitlement to be provided by the government, by ways which may include increasing the pay for females on maternity leave to an amount equivalent to full income replacement, extending the period of paid leave, continuing to pay superannuation etc.<sup>1234</sup>

The Western Australian Government suggested that employers could offer more than 14 weeks paid maternity leave, reduce or eliminate the eligibility criteria for their employees and offer a paid paternity leave entitlement.<sup>1235</sup>

A number of submissions considered that bargaining was the appropriate mechanism for achieving any employer top ups. For example, Immigrant Women's Speakout submitted that:

[a]s in the case of current injury compensation payments, this amount [of paid maternity leave] can be topped up by employers in the course of collective bargaining between workers and unions or in the case of other informal or formal agreements.<sup>1236</sup>

<sup>1231</sup> See, for example, Australian Women Lawyers, Submission 140, p3; BPW Australia, Submission 148, p10; Australian Council of Trade Unions, Submission 208, p26; Victorian Government, Submission 250, p7; Law Council of Australia, Submission 247, p4; Isobel Gawler, Submission 235, p1; Union of Australian Women, Submission 89, p2; Women's Economic Think Tank, Submission 125, p6.

<sup>1232</sup> See 6.6 for further discussion of women's retirement income.

<sup>1233</sup> Australian Industry Group, Submission 121, p20.

<sup>1234</sup> Work + Family Policy Research Group University of Sydney, Submission 251, p12. See also YWCA of Australia, Submission 228, p19; Centre for Applied Social Research RMIT University, Submission 234, p10.

<sup>1235</sup> Western Australian Government, Submission 245, pp3,6.

Some employer groups stressed that any top up should be voluntary, confined to individual workplaces and should not be progressed through the award system.<sup>1237</sup> For example, the Australian Hotels Association stated that it “... do[es] not consider that any case for ‘top up’ should be progressed through the award system”.<sup>1238</sup>

The New South Wales State Chamber of Commerce argued that:

[e]mployers and employees should be free at the enterprise level to agree to whatever additional parental leave benefits suit them. The State Chamber supports the voluntary nature of this approach.<sup>1239</sup>

Some submissions considered that employers would be keen to provide such a top up, given the benefits this would bring them.

The Council for Equal Opportunity in Employment wrote that a number of employers saw a capped paid maternity leave payment as an opportunity to demonstrate commitment to employees by topping up the amount provided.<sup>1240</sup> Similarly, the Independent Education Union wrote that:

[s]ome employing authorities have told the IEU [Independent Education Union] that the provision of a government funded component would enable them to consider enhancing their current provisions at a time when teacher shortages are making the attraction and retention of staff a key priority. For example, Sydney Catholic Education Office, Australia’s largest non-government education employer, has told the IEU [Independent Education Union] that while it has concerns about its capacity to pay 14 weeks on full salary, it would consider increasing its current nine weeks if there were a national scheme which included a government funded component.<sup>1241</sup>

The Australian Retailers Association wrote that “[e]mployers could provide above minimum entitlements according to Company ability and policy as a means of attracting and retaining employees”,<sup>1242</sup> and Coles Myer agreed that employers could enhance minimum benefits “... in order to obtain commercial benefits for themselves which will have flow on benefits to society in general”.<sup>1243</sup>

In contrast, others considered that the federal Government should provide incentives for employers to top up a government funded paid maternity leave scheme.<sup>1244</sup> The National Diversity Think Tank submitted that:

[e]mployers (irrespective of size) who choose to top up payments should be entitled to tax deductions or to do so without incurring fringe benefits tax.<sup>1245</sup>

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<sup>1236</sup> Immigrant Women’s Speakout Association New South Wales Inc., Submission 158, p14. See also Australian Business Industrial, Submission 119, p2; Centre for Applied Social Research RMIT University, Submission 234, p9; Anti-Discrimination Board of New South Wales, Submission 214, p17; Hawke Institute, Submission 174, p2; Australian Services Union South Australia and Northern Territory, Submission 189, p9; United Trades and Labor Council of South Australia, Submission 211, p5; New South Wales Working Women’s Centre, Submission 225, p15; Ethnic Communities’ Council of Victoria, Submission 242, p7; Community and Public Sector Union – State Public Services Federation Group, Submission 230, p8.

<sup>1237</sup> See Chapter 20 for further discussion of the interaction of a national scheme of paid maternity leave with the industrial relations system.

<sup>1238</sup> Australian Hotels Association, Submission 199, p10. See also Australian Chamber of Commerce and Industry, Submission 197, pii.

<sup>1239</sup> New South Wales State Chamber of Commerce, Submission 231, p11.

<sup>1240</sup> Council for Equal Opportunity in Employment Ltd, Submission 252, p3.

<sup>1241</sup> Independent Education Union of Australia, Submission 204, p7.

<sup>1242</sup> Australian Retailers Association, Submission 165, p17.

<sup>1243</sup> Coles Myer Ltd, Submission 107, p12.

<sup>1244</sup> See, for example, Queensland Working Women’s Service, Submission 219, p13.

<sup>1245</sup> National Diversity Think Tank, Submission 221, p3. See also Australian Services Union South Australia and Northern Territory, Submission 189, p8.

The Australian Council of Trade Unions agreed that tax incentives were one means of encouraging further payments from employers.

For private sector employers, HREOC should consider recommending incentives to employers to maintain and improve existing schemes. The Victorian Government's offer of payroll tax concessions should be further explored.<sup>1246</sup>

HREOC considers that the business benefits to employers and their interest in supporting their employees would be sufficient incentive to motivate them to provide top ups or extensions of the scheme.

## RECOMMENDATION 10

That employer top ups to government funded paid maternity leave be provided for and encouraged. Such top ups should be negotiated through standard bargaining mechanisms.

### 19.5 Administration

As discussed in Chapter 18, the level of administration required of employers will depend on the payment mechanism used to deliver paid maternity leave. HREOC has recommended that the federal Government introduce a dual payment mechanism where individuals may elect to receive payment as either:

- a fortnightly direct payment from Government to the individual; or
- a payment from the employer to the individual with the employer reimbursed by Government (subject to the employer agreeing to offer this option).

In the event that an employer agreed to make payments to their employees and seek reimbursement from Government, they would take on the role of administering payments. Employers may agree to do this on the basis that it may make it simpler to administer top up payments. It could also be part of a suite of work and family initiatives that an employer agrees to offer its employees. Employers would in addition have the benefit of maintaining a stronger link with their employees during the paid leave period.

In the case of direct payments from Government to eligible women, some submissions noted that employers could be required to verify a woman's eligibility for payment.<sup>1247</sup>

HREOC has not investigated the best mechanism for validating a woman's eligibility for payment. As noted in Recommendation 5, Chapter 15, HREOC has recommended that the eligibility criteria allow women to accrue work with multiple employers. Making women obtain proof of employment from multiple employers may prove onerous. As such, HREOC suggests that the Australian Taxation Office may be required to determine whether a woman has undertaken sufficient work to qualify for paid maternity leave.

## RECOMMENDATION 11

That employers may agree to take on the administration of paid maternity leave payments on behalf of the Government and may be required to play a role in validating entitlement to government funded paid maternity leave entitlements.

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<sup>1246</sup> Australian Council of Trade Unions, Submission 208, p27.

<sup>1247</sup> See, for example, Australian Industry Group, Submission 121, p23; Western Australian Government, Submission 245, p8.

# 20. Interaction with the industrial relations system

## 20.1 Introduction

A number of employer groups were concerned about the interaction of a government funded paid maternity leave scheme with the industrial relations system. In particular, there was concern that paid maternity leave, even when funded by Government, would lead to enforced top up payments by employers. This Chapter considers those concerns.

## 20.2 An industrial claim for top up

Several employer groups expressed the concern that the introduction of a government funded paid maternity scheme would lead to pressure by the unions through the industrial relations system for employers to provide a top up payment.<sup>1248</sup> For example, the Australian Chamber of Commerce and Industry submitted that:

[t]he very real prospect for flow on into industrial claims by trade unions, including claims for top up to some union calculated "standard" of payment, must be properly taken into account ...<sup>1249</sup>

The Motor Trade Association of South Australia also wrote that it was "... extremely concerned ..." that any form of paid maternity leave would invite union claims for further payments by test case.<sup>1250</sup>

Australian Business Industrial elaborated by arguing that:

... given the debate is already shaped by the notion of paid maternity leave, the gap between the weekly amount of a benefit and ordinary pay becomes important. The wider this is the greater the invitation to improve on it industrially. A similar point can be made about the length of the entitlement. To the extent that the length of benefit falls short of the "standard" of 14 weeks minimum in [the Maternity Protection Convention] unions will feel some obligation to pursue make-up in the award system.<sup>1251</sup>

The National Farmers' Federation was concerned about an industrial claim for paid maternity leave in the event that the Government introduced employment related paid maternity leave or that it took no action.

The NFF's [National Farmers' Federation's] concern is based on the opportunity for unions to force paid maternity leave upon employers through applications in the Australian Industrial Relations Commission to implement paid maternity leave in its entirety or as a "top-up" to the Government payment.<sup>1252</sup>

These employer groups cited precedents where the introduction of a benefit by Government led to mandated employer funding.

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<sup>1248</sup> See, for example, Australian Business Industrial, Submission 119, p5.

<sup>1249</sup> Australian Chamber of Commerce and Industry, Submission 197, piv.

<sup>1250</sup> Motor Trade Association of South Australia Inc., Submission 142, p2.

<sup>1251</sup> Australian Business Industrial, Submission 119, p11. See also National Farmers' Federation, Submission 160, p9.

<sup>1252</sup> National Farmers' Federation, Submission 160, p9; see also p3.

There have been numerous examples during the past two decades of supposed broad community wide solutions to issues merely serving as springboards for industry and sectoral “top up” industrial claims by trade unions. These include issues such as: employee entitlements on insolvency, workers compensation, superannuation, standard working hours etc.<sup>1253</sup>

These concerns require closer examination. Unfortunately no submissions were received that provided detail on how the situation of employee entitlement on insolvency, workers compensation, superannuation and standards working hours corresponded to that of a government funded paid maternity leave scheme.<sup>1254</sup>

The National Farmers’ Federation did provide detail on the case of jury service.

There is precedent already established requiring employers to pay a “top up” of government payments even though there is no corresponding benefit to the employer. The precedent is in respect to jury service clauses within federal awards.<sup>1255</sup>

The inclusion of jury service clauses in awards by consent between the parties dates back to 1971<sup>1256</sup> in the federal industrial relations system. It was only in 1996 that such a top up provision was included in an award without the consent of both parties.<sup>1257</sup> Prior to that case, tribunals refused to grant such claims in the absence of consent by both parties.<sup>1258</sup>

The inclusion of a top up payment for jury service in the *Accommodation, Hotels, Resorts and Gaming Award 1995*<sup>1259</sup> was not the result of a test case whereby standards can be established that are applicable to other awards. The union’s application to refer the matter to the Full Bench of the Australian Industrial Relations Commission for determination in order to give the case test case status was refused by the President of the Australian Industrial Relations Commission. However, the jury service clause adopted in the *Accommodation, Hotels, Resorts and Gaming Award 1995* was selected as a standard clause with minor modifications in the *Re Award Simplification Decision*.<sup>1260</sup>

While an allowable award matter,<sup>1261</sup> by 1999 only about one-third of all federal awards contained a jury service provision.<sup>1262</sup> As such, the extension of employer top up payments for jury service across federal awards can hardly claim to be widespread.

A claim for a top up payment in relation to paid maternity leave funded by the Government would be treated as an application to vary an award above the safety net. According to the Australian Industrial Relations Commission’s Statement of Principles,<sup>1263</sup> such an application must be referred to the President of the Australian Industrial Relations Commission for consideration as a special case pursuant to section 107 of the *Workplace Relations Act 1996* (Cth). This requires that a “public interest” requirement is met in order to have an application referred to the Full Bench for determination under section 107(2). Determination by a Full Bench would give the decision the stature of a “test case”, in that standards applicable to other Awards would be established. This has not occurred in relation to jury service clauses.

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<sup>1253</sup> Australian Chamber of Commerce and Industry, Submission 197, p8.

<sup>1254</sup> But see Australian Business Industrial, Submission 119, p10 for a discussion of the interaction of legislation and awards in the case of workers compensation “top up”.

<sup>1255</sup> National Farmers’ Federation, Submission 160, p10.

<sup>1256</sup> *Metal Industry Interim Award 1971* [Print B7470] and *Metal Industry Award 1971* [Print B6934].

<sup>1257</sup> *Re Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1995* [Print N6098].

<sup>1258</sup> *Re Aluminium Industry Award 1969* AIRL 84; *Re Chemical Workers and CSR Chemicals* (1972) IASCR 129 [T57]; *Australian Workers Union v Chamber of Commerce and Industry* (1973) IASCR 118 [U44].

<sup>1259</sup> *Re Hospitality Industry – Accommodation, Hotels, Resorts and Gaming Award 1995* [Print N6098].

<sup>1260</sup> *Award Simplification Decision* [Print P7500] 23 December 1997.

<sup>1261</sup> Section 89A(2)(q) *Workplace Relations Act 1996* (Cth).

<sup>1262</sup> Senate Employment, Workplace Relations, Small Business and Education Legislation Committee *Consideration of the Provisions of the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999* Parliament House Canberra 29 November 1999, p93 [www.aph.gov.au/senate/committee/EET\\_CTTE/wrkplace/wrkplace%20relations%20report.pdf](http://www.aph.gov.au/senate/committee/EET_CTTE/wrkplace/wrkplace%20relations%20report.pdf).

<sup>1263</sup> Australian Industrial Relations Commission *Statement of Principles, Safety Net Review – Wages May 2002* [www.airc.gov.au/fullbench/pr002002.htm](http://www.airc.gov.au/fullbench/pr002002.htm).

HREOC concludes that employer concerns are only borne out by evidence to a limited degree. While these concerns warrant further consideration by Government they do not provide – as they have not provided in the case of other government entitlements – sufficient reason for denying Australian women and their children a maternity leave payment.

## 20.3 Quarantining paid maternity leave

Two possible solutions to this concern were proposed. First, it was considered by some that if the federal Government introduced a maternity payment for all women that this would ensure the social issue was addressed without linking the payment to paid employment.<sup>1264</sup>

Secondly, if the federal Government chose to introduce a work related entitlement to paid maternity leave, some employer groups considered that this should be quarantined from the industrial relations system. The key proposal to achieve this was by making paid maternity leave a non-allowable matter under the *Workplace Relations Act 1996* (Cth). The Australian Chamber of Commerce and Industry submitted that:

... any national policy changes must quarantine industry against the potential for compulsory top-up of a government funded scheme by employers through the industrial system.<sup>1265</sup>

Similarly, the Australian Retailers Association argued that:

[i]n light of Australia's unique industrial relations system it is imperative that any scheme be quarantined from this system to ensure that the burden of achieving the social objective is not one that is ultimately borne by employers as a group.<sup>1266</sup>

The Australian Mines and Metals Association also argued in favour of quarantining paid maternity leave through amendments to the *Workplace Relations Act 1996* (Cth) that would:

... remove the capacity of the Australian Industrial Relations Commission to arbitrate on matters relating to paid maternity leave including claims for "top up" payment during a period of maternity leave and prohibiting the taking of "protected action" in respect of claims relating to paid maternity leave.<sup>1267</sup>

It should be noted that the potential for industrial claims for paid maternity leave in awards will not be overcome by making paid maternity leave a non-allowable matter under the *Workplace Relations Act 1996* (Cth). Such claims could still be made in State industrial relations commissions. However, Australian Business Industrial considered that such a move at the federal level would still reduce the possibility of claims in State based awards.

It is not typical that state tribunal award making powers are restricted in the same way as the federal Commission is by the use of non-allowable matters. Nonetheless, a constraint on the federal Commission should assist stay the exercise of discretion on the part of state tribunals so its effect would be wider than first appears.<sup>1268</sup>

HREOC's interim paper did not specifically ask about the possibility of making paid maternity leave a non-allowable matter. As a result submissions were not received on this specific issue from unions and women's groups.

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<sup>1264</sup> See 14.4.

<sup>1265</sup> Australian Chamber of Commerce and Industry, Submission 197, piv.

<sup>1266</sup> Australian Retailers Association, Submission 165, p3. See also Motor Trade Association of South Australia Inc., Submission 142, p2; Australian Business Industrial, Submission 119, p16.

<sup>1267</sup> Australian Mines and Metals Association, Submission 255, p15.

<sup>1268</sup> Australian Business Industrial, Submission 119, p11.

However, it is clear that many union submissions premised their support of a government funded capped model on the assumption of continued ability to negotiate employer top ups. For example, the submission from a branch of the Australian Services Union stated that unions should retain the right to undertake industry based bargaining.

The ASU [Australian Services Union] MEU Private Sector Victorian Branch supports the right of unions to bargain for ... maternity leave payments above and beyond the 14 weeks through enterprise or industry based bargaining.<sup>1269</sup>

## 20.4 HREOC's position

HREOC does not agree that the introduction of a government funded payment should reduce women's industrial rights. Such a reduction would be deeply resented by Australian women and their families. It would further confirm to Australian women the difficulty of combining work and family responsibilities. HREOC is strongly of the view that existing industrial arrangements should continue.

While leaving maternity leave as an allowable matter under the *Workplace Relations Act 1996* (Cth) would allow unions to take a test case to the Australian Industrial Relations Commission, it is not a foregone conclusion that employers would be required to provide top up payments as an industrial standard. The Australian Industrial Relations Commission, as an independent body, would deliberate on the evidence presented to it. Employers would have the opportunity to present their arguments against employer top up. The claim would need to be argued against the requirement that awards provide a safety net of minimum wages and conditions. As such, the claim would need to establish that the safety net level should be full income replacement and not the level provided by Government under a paid maternity leave scheme.

Paid maternity leave paid to the Federal Minimum Wage would provide full income replacement to between 35 per cent and 48 per cent of women.<sup>1270</sup> Added to this is the fact that 38 per cent of women already receive some form of paid maternity leave through existing employer provided paid maternity leave provisions.<sup>1271</sup> While the current arrangements on their own do not meet the international standards for paid maternity leave, in conjunction with a government funded scheme as proposed by HREOC, Australia would comply with those standards.<sup>1272</sup>

This is not to suggest that employers should not negotiate with employees to top up paid maternity leave through industrial processes. In fact, HREOC urges employers to do so through the enterprise bargaining process.<sup>1273</sup> Leaving room for negotiation of such a provision in the enterprise bargaining process allows employers to maintain a business case for provision of top ups of paid leave, and to receive the benefits of being a best practice employer.

## RECOMMENDATION 12

That current industrial arrangements in relation to maternity leave continue.

<sup>1269</sup> Australian Services Union MEU Private Sector Victorian Branch, Submission 154, p3.

<sup>1270</sup> See 17.4.6.

<sup>1271</sup> ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data. See also 17.5.

<sup>1272</sup> See discussion at 17.2.1, 17.4.1 and 17.6.

<sup>1273</sup> See Recommendation 10, Chapter 19.



# 21. Interaction with existing government payments

## 21.1 Introduction

As described at 3.4, the federal Government provides a range of family assistance and income support payments. HREOC considers that none of these existing payments meet the objectives of paid maternity leave. However, the introduction of a maternity leave payment may overlap with some of these payments. This Chapter considers the interaction of existing payments with a government funded paid maternity leave scheme.

## 21.2 International standards and practices

### 21.2.1 Maternity Protection Convention

The Maternity Protection Convention provides that women who do not have access to paid maternity leave should be eligible for other social security payments.

#### Article 6

6 Where a woman does not meet the conditions to qualify for cash benefits under national laws and regulations or in any other manner consistent with national practice, she shall be entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance.<sup>1274</sup>

### 21.2.2 Legislative provisions

In the United Kingdom, women receiving Statutory Maternity Pay and the Maternity Allowance may also be eligible for the Child Tax Credit and Working Tax Credit schemes to be introduced in April 2003, depending on their overall income. These credits are designed to assist single parents as well as low and middle-income couple families.<sup>1275</sup> Women who are not eligible for the Statutory Maternity Pay and the Maternity Allowance may be able to claim the Incapacity Benefit.<sup>1276</sup>

The New Zealand scheme requires that people choose between taking Paid Parental Leave and the Parental Tax Credit.<sup>1277</sup> The Parental Tax Credit provides up to NZ \$1 200 for each baby.<sup>1278</sup> It is paid for the first eight weeks following the birth of a child, and can be taken as fortnightly payments or a lump sum at the end of the tax year.<sup>1279</sup> It is a means tested payment for low income families and does not require the recipient to have been in paid work prior to the birth of a child.<sup>1280</sup>

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<sup>1274</sup> International Labour Organization *Maternity Protection Convention 2000* (No 183).

<sup>1275</sup> United Kingdom Department of Inland Revenue *Tax Credit Changes from April 2003* [www.inlandrevenue.gov.uk/taxcredits/changes.htm](http://www.inlandrevenue.gov.uk/taxcredits/changes.htm).

<sup>1276</sup> United Kingdom Department for Work and Pensions *Incapacity Benefit* [www.dwp.gov.uk/lifeevent/benefits/incapacity\\_benefit.htm](http://www.dwp.gov.uk/lifeevent/benefits/incapacity_benefit.htm).

<sup>1277</sup> *Parental Leave and Employment Protection Act 1987* (NZ).

<sup>1278</sup> New Zealand Department of Inland Revenue *What is Parental Tax Credit?* [www.ird.govt.nz/familyassistance/parenttaxcred/parenttaxcredpayment.html](http://www.ird.govt.nz/familyassistance/parenttaxcred/parenttaxcredpayment.html).

<sup>1279</sup> New Zealand Department of Inland Revenue *What is Parental Tax Credit?* [www.ird.govt.nz/familyassistance/parenttaxcred/whatisparenttaxcred.html](http://www.ird.govt.nz/familyassistance/parenttaxcred/whatisparenttaxcred.html).

<sup>1280</sup> New Zealand Department of Inland Revenue *Who qualifies for Parental Tax Credit?* [www.ird.govt.nz/familyassistance/parenttaxcred/whoqualifiessparenttaxcred.html](http://www.ird.govt.nz/familyassistance/parenttaxcred/whoqualifiessparenttaxcred.html).

## 21.3 Existing government payments

### 21.3.1 Income support payments

Subject to meeting income, assets and activity tests, a woman may be eligible for Parenting Payment, Newstart Allowance and/or Sickness Benefits immediately prior to and following the birth of a child.

A woman receiving paid maternity leave would be likely to lose eligibility for these income support payments during the period of paid leave as a result of the income test.

### 21.3.2 Family assistance payments

As noted at 14.4.5, there was strong support in submissions for the continuation, and possible improvement, of existing payments for women not in paid work or who did not meet the eligibility criteria for paid maternity leave. For example, one individual noted the importance of existing payments to some families.

On no account should programs such as the Maternity Allowance and the Family Tax Benefits be stopped, unless they are replaced with programs of equal or greater value, benefiting at least the women and families they benefit now, if not more. These programs do a great deal of good in families and, hence, communities. To stop these programs would disadvantage all families and increase the struggles of having a family. This would further discourage having more children, and for those choosing to have children, increase the disparity between rich and poor.<sup>1281</sup>

The National Women's Council of South Australia considered that:

[a]s paid parental leave is only one element of a comprehensive family policy mandate, it should in no way detract from current programs which support parents, particularly those programs which are means tested.<sup>1282</sup>

A number of submissions considered that receipt of paid maternity leave should cancel eligibility for other family assistance payments. This would mean that a woman would either receive paid maternity leave or other family assistance payments during the 14 week period, but not both. Women who were not eligible for paid maternity leave would continue to receive existing family assistance payments.

The Women's Electoral Lobby<sup>1283</sup> and the National Pay Equity Coalition<sup>1284</sup> both proposed that women who receive paid maternity leave should not be eligible for the Maternity Allowance and the Maternity Immunisation Allowance. The Women's Economic Think Tank considered that paid maternity leave:

... should replace all other payments except family tax payment part A. This may be slightly reduced because of the means test, and also will generate some savings in parenting payments, baby bonus and maternity allowances.<sup>1285</sup>

Some submissions considered that paid maternity leave should replace the Baby Bonus. For example, the National Women's Council of South Australia submitted that:

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<sup>1281</sup> Eleanor Wilson, Submission 133, p4.

<sup>1282</sup> National Women's Council of South Australia, Submission 68, p6.

<sup>1283</sup> Women's Electoral Lobby, Submission 248, p20.

<sup>1284</sup> National Pay Equity Coalition, Submission 224, p4.

<sup>1285</sup> Women's Economic Think Tank, Submission 125, p6.

[i]f a family program is required to be cut in order to fund parental leave, it is recommended that the proposed "Baby-Bonus" worth \$AUS 510 million be forfeited, as its objectives and eligibility criteria are more closely comparable to a parental leave arrangement, than any of the current means tested programs.<sup>1286</sup>

The Australian Industry Group recommended that:

... the Baby Bonus scheme should be abolished. The estimated full year Budget cost of the Baby Bonus (by 2005-2006) is \$510 million. Ai Group estimates that its proposed paid maternity leave scheme would cost significantly less than this.<sup>1287</sup>

As discussed at 3.4.4 and 13.3.4, a number of submissions considered that funding for paid maternity leave should be made available through review of existing family assistance payments. This would require changes and cuts to existing family assistance payments.

Paid maternity leave could also be a taxable payment,<sup>1288</sup> as are Parenting Payment and Newstart Allowance.<sup>1289</sup> The Women's Economic Think Tank supported taxing the payment.

The payments should be taxable as income but it needs to be recognised that it is unlikely that much will be clawed back as many women will not return to work until much later reducing their annual income levels below the tax threshold.<sup>1290</sup>

The State Public Services Federation Group of the Community and Public Sector Union also considered that "[a]s this scheme is a work-related leave entitlement existing taxation, superannuation and other laws relevant to employment should apply".<sup>1291</sup>

## 21.4 HREOC's position

HREOC agrees that paid maternity leave should be introduced in addition to, rather than in place of, existing family assistance payments. Existing family assistance payments are aimed at a range of specific policy objectives, such as supporting low income families and single income families. These objectives are separate from the objectives of paid maternity leave and continue regardless of the introduction of paid maternity leave.

HREOC considers that women who receive paid maternity leave should not be eligible for the Maternity Allowance, the first 14 weeks of Family Tax Benefit Part A and Family Tax Benefit Part B and the first 12 months of payment of the Baby Bonus. Women who receive paid maternity leave should be eligible for the Maternity Immunisation Allowance and the Baby Bonus in later years. This would ensure a reasonable level of parity between government support for women who are eligible for paid maternity leave and those who are not eligible, particularly women who are not in paid work.

HREOC considers that women who receive paid maternity leave should remain eligible for existing family assistance payments beyond this 14 week period, subject to existing income tests. In particular, HREOC believes that women should retain eligibility for the Maternity Immunisation Allowance. This payment is structured to promote child immunisation and providing paid maternity leave will not deliver on this objective.

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<sup>1286</sup> National Women's Council of South Australia, Submission 68, p6. See also Women's Economic Think Tank, Submission 125, p5; National Pay Equity Coalition, Submission 224, p4; Women's Electoral Lobby, Submission 248, p20. See also 3.4.1 and 3.4.3 for further discussion of the Baby Bonus.

<sup>1287</sup> Australian Industry Group, Submission 121, p22 (footnote omitted).

<sup>1288</sup> See, for example, National Pay Equity Coalition, Submission 224, p4; Women's Electoral Lobby, Submission 248, p19.

<sup>1289</sup> Centrelink *A Guide to Commonwealth Government Payments 20 September – 31 December 2002* Commonwealth of Australia Canberra 2002, p23.

<sup>1290</sup> Women's Economic Think Tank, Submission 125, p6.

<sup>1291</sup> Community and Public Sector Union – State Public Services Federation Group, Submission 230, p10.

Depending on a family's financial situation, there will be situations in which a family will be financially better off receiving family assistance payments and income support payments rather than paid maternity leave. This will particularly be the case where a woman had relatively low earnings in paid work, for example due to working a limited number of hours per week. In these cases, the woman should have the option of taking other available social security payments where this would result in higher payments. The Government should ensure that women are provided with adequate information to make this choice.

## RECOMMENDATION 13

That a woman who receives paid maternity leave will not be eligible for the Maternity Allowance, the first 14 weeks of Family Tax Benefit Part A and Family Tax Benefit Part B, and the first 12 months of payment of the Baby Bonus. The maternity leave payment will be taxable.

Individuals will have the option of taking other available social security payments where this would result in higher payments.

# 22. Data collection and review of the scheme

## 22.1 Introduction

HREOC's interim paper, *Valuing Parenthood*, noted concerns about available data relating to patterns of work and maternity in Australia.

[T]here 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.<sup>1292</sup>

As outlined below, this need to improve data collections in relation to maternity, family responsibilities and work arrangements remains.<sup>1293</sup> This Chapter also considers the need for a review of government support for families and a review of a national paid maternity leave scheme following its implementation.

However, it is clear that there is an immediate need for the introduction of a national scheme of paid maternity leave. Data collection should not delay the introduction of a national scheme.

## 22.2 Statistics on maternity leave

The need to collect better information about the use and availability of both unpaid and paid maternity leave was supported by a number of submissions. For example, the Union Research Centre on Organisation and Technology suggested that:

[a]n analysis of usage rates of both paid and unpaid maternity leave is essential to determine the effectiveness of the provision of paid maternity leave. Though there is no comprehensive data on the rate at which women take maternity leave, research that has been conducted indicates that it is relatively low.<sup>1294</sup>

The Queensland Working Women's Service expressed concern that "... the Federal Government has not made available the necessary funds to research trends in maternity leave taken, and eligibility levels in Australia ..."<sup>1295</sup>

A number of submissions stated that there needed to be costing of paid maternity leave, as well as modelling of the behavioural and economic impacts of such a scheme. The Australian Retailers Association argued that:

[a] proper actuarial study needs to be conducted by government to ascertain the true cost of funding any paid parental leave proposal with the objective of funding through a review and re-targeting of some of the existing payment schemes.<sup>1296</sup>

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<sup>1292</sup> Human Rights and Equal Opportunity Commission *Valuing Parenthood: Options for paid maternity leave, interim paper 2002* HREOC Sydney 2002, p26.

<sup>1293</sup> See 11.4.4 and 11.8 for discussion of the need for further research on work and family issues and fertility choices.

<sup>1294</sup> Union Research Centre on Organisation and Technology, Submission 254, p7.

<sup>1295</sup> Queensland Working Women's Service, Submission 219, p13.

<sup>1296</sup> Australian Retailers Association, Submission 165, p3.

The Work/Life Association Australia strongly recommended "... that attention be given to research and economic modelling to illuminate (but not prolong) the debate".<sup>1297</sup>

Both the Australian Chamber of Commerce and Industry and the Australian Retailers Association considered that further research was required before modelling of the impact of paid maternity leave could be undertaken. The Australian Chamber of Commerce and Industry wrote that:

[t]here are some important dimensions to the data limitations:

- a) Data appears too limited to support necessary macro economic costing required to progress any particular policy approach to this issue.
- b) Proper data and research on behavioural reactions to the stimuli of additional benefits also appears essential. It cannot simply be assumed that the creation of an additional entitlement will have the benefits outlined, and will create the social changes alluded to.<sup>1298</sup>

The Australian Retailers Association similarly argued that:

[t]here is a need for sound research on which to base assumptions of the effect that the provision of any benefit may have on choices made by families. The implementation of a paid maternity leave scheme based on the benefits to society of increased fertility rate or an increased rate of return to work are not properly founded and require much further detailed research and data.<sup>1299</sup>

The Western Australian Government noted the need for collection of data on the changes in patterns of maternity leave use.

Consideration may need to be given to further research and data collection on any changes in the pattern of the take-up of maternity leave, and of parental leave taken by male employees.<sup>1300</sup>

## 22.3 HREOC's position

HREOC supports the need for better data collection on both unpaid and paid maternity leave. As noted in HREOC's interim paper, "[s]ignificant gaps in data collection for arrangements and the availability of paid maternity leave remain".<sup>1301</sup>

For example, data are not available on the number of women who are actually eligible for paid maternity leave. The majority of primary research that is available collects information on the availability of paid maternity leave in a workplace, and then assumes that all women in these workplaces meet the eligibility criteria. The *Survey of Employment Arrangements and Superannuation*<sup>1302</sup> does collect information directly from women, however there are concerns that it is not an objective assessment of the availability of paid maternity leave.

There is no national data collection of take-up rates for paid and unpaid maternity leave, meaning that it is not possible to know precisely how many women actually take unpaid or paid maternity leave.

At a more basic level, there is no recording of the number of women in paid work prior to the birth of a child. As part of the Report of the National Pregnancy and Work Inquiry, HREOC recommended:

[t]hat the Department of Employment, Workplace Relations and Small Business ensure that the AWIRS [Australian Workplace Industrial Relations Survey] survey is conducted on a regular five

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<sup>1297</sup> Work/Life Association, Submission 171, p10. See also Community and Public Sector Union – State Public Services Federation Group, Submission 230, p11; Women's Electoral Lobby, Submission 248, p31; Women's Action Alliance (Australia) Inc., Submission 146, p2.

<sup>1298</sup> Australian Chamber of Commerce and Industry, Submission 197, p16.

<sup>1299</sup> Australian Retailers Association, Submission 165, p19.

<sup>1300</sup> Western Australian Government, Submission 245, p8.

<sup>1301</sup> Human Rights and Equal Opportunity Commission *Valuing Parenthood, options for paid maternity leave: Interim paper 2002* HREOC Sydney 2002, p23.

<sup>1302</sup> ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April – June 2000 unpublished data.

year basis and include questions covering pregnancy and potential pregnancy. Useful questions could include

- The number of women who work during pregnancy,
- The distribution of pregnant employees by industry ...<sup>1303</sup>

There is also a paucity of statistical information on the number of women who return to work following the birth of a child. The Australian Bureau of Statistics Census collects information on the number of women with a child under one year who are in paid work, however this information is only collected every five years and does not provide information on how quickly within the year women returned to work. A 1998 Australian Bureau of Statistics survey did however find that 69 per cent of female employees with children under the age of six years who took a break from the workforce (using paid and/or unpaid leave) or ceased working at the time of the birth of their youngest child returned to work within a year of the birth of this child.<sup>1304</sup>

HREOC recommended in *Pregnant and Productive*:

... 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.<sup>1305</sup>

As part of the preparation of this paper, HREOC has commissioned the National Centre for Social and Economic Modelling (NATSEM) to undertake a costing of a national paid maternity leave scheme as recommended in the *Pregnant and Productive*. This costing makes assumptions based on available data and addresses many of the concerns raised above. The report of that costing is at the Appendix.

The Government should move to implement a national paid maternity leave scheme immediately. As set out in this paper, HREOC considers that the case for implementing a national scheme of government funded paid maternity leave in Australia has been established.

However, there remains a need to improve statistical collections in relation to both unpaid and paid maternity leave. Such data will be important for reviewing the effectiveness of a paid maternity leave scheme and identifying any changing needs for support in the future.

## RECOMMENDATION 14

That the Government review existing data collections to ensure that adequate information is collected on:

- the number of women in paid work during their pregnancy and immediately prior to the birth of a child;
- the number of women who are eligible for unpaid maternity leave, employer provided paid maternity leave and government funded paid maternity leave;
- the take-up rates of paid and unpaid maternity leave;
- the pattern of women's return to work following the birth of a child;
- factors affecting women's decisions to have children; and
- issues relating to combining work and family responsibilities.

The establishment of these additional data collections should not delay the introduction of a national scheme of paid maternity leave.

<sup>1303</sup> Human Rights and Equal Opportunity Commission *Pregnant and Productive: It's a right not a privilege to work while pregnant* HREOC Sydney 1999 Recommendation 4, pxxii.

<sup>1304</sup> ABS 6254.0 *Career Experience* 1998, p23.

<sup>1305</sup> Human Rights and Equal Opportunity Commission *Pregnant and Productive: It's a right not a privilege to work while pregnant* HREOC Sydney 1999 Recommendation 46, pxxvii.

## 22.4 Review of a national paid maternity leave scheme

A number of submissions proposed that a national scheme of paid maternity leave should be reviewed following either 12 months or two years of operation. The Centre for Applied Social Research argued that:

[w]hatever the structure of the scheme that is introduced, there will be inevitable anomalies and issues that arise in implementation. Thus in the legislation that introduces the paid maternity leave scheme, there should be provision for a review of the effects and implementation of the operation of the scheme after 12 months as provided for in the New Zealand legislation for Paid Parental Leave.<sup>1306</sup>

EMILY's List also submitted:

... that the paid maternity leave scheme must include a provision for review – the New Zealand National Paid Maternity Leave Scheme will be reviewed 12 months after implementation – this ensures that the scheme can be adjusted to work to the advantage of all.<sup>1307</sup>

The Australian Industry Group agreed.

- The scheme would be reviewed after a period of 12 months.
- All relevant parties should be given an opportunity to make submissions on the operation of the scheme.<sup>1308</sup>

Catholic Women's League of Western Australia suggested a two year period before:

... a major public review ... with no implied guarantee that the system will continue. Such a review should encompass

- collection of comprehensive data on the use of the scheme by working/non working women (including age, marital status, socioeconomic background).
- collection of data on fertility changes, including family size.
- sample surveys, public hearings etc, to provide data on perception of scheme by interest groups.
- collection of full data on use of maternity allowance over survey period including government funding, other (employer/employee) funding and payment of replacement staff.
- collection of data on unpaid maternity/parental leave over this period.<sup>1309</sup>

## 22.5 HREOC's position

HREOC agrees that it would be useful for the Government to undertake a review of the effectiveness of any paid maternity leave scheme that it introduces. Such a review should aim to assess the adequacy of and eligibility for paid maternity leave.

In particular, the review should consider:

- the number of women who are receiving payment under the scheme;
- the impact of paid maternity leave on the total period of maternity leave that women take from paid work;
- the number of women who are not receiving payment under the scheme, including both those in paid and unpaid work;

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<sup>1306</sup> Centre for Applied Social Research RMIT University, Submission 234, p11.

<sup>1307</sup> EMILY's List, Submission 159, p3.

<sup>1308</sup> Australian Industry Group, Submission 121, p24.

<sup>1309</sup> Catholic Women's League Western Australia, Submission 129, p2.



- the number of women who are eligible for payment but are not taking the payment;
- the level of income replacement that a government scheme is actually providing;
- changes in the level of employer provided paid maternity leave;
- the proportion of women who are receiving full income replacement through the combination of government and employer provided paid maternity leave;
- the impact of government funded paid maternity leave on business, including costs and benefits; and
- the effectiveness of each of the payment mechanisms, being payment made directly by Government and payment by Government through employers.

Depending on the outcome of that review, it may be necessary to reconsider the eligibility criteria or payment levels. The Government may also wish to revisit some of the more contested aspects of the scheme as part of the review, including whether existing payments to women who are not in paid work are adequate and whether the payment should continue to be for mothers or whether it should be paid to the primary carer.

In order to assess this range of issues, the scheme will need to have been in operation for some time. As such the HREOC considers a national scheme of paid maternity leave be reviewed three years after implementation.

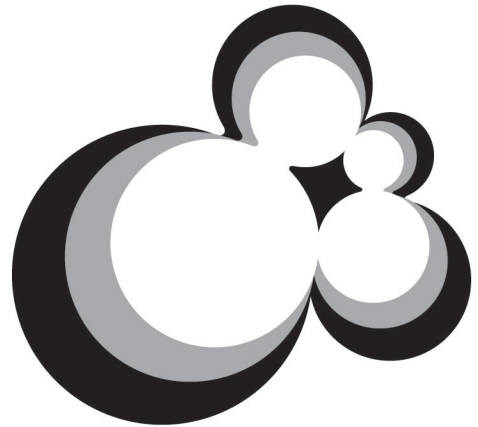
## RECOMMENDATION 15

That the effectiveness, adequacy and coverage of a national scheme of paid maternity leave be reviewed three years after the scheme's implementation.

Depending on the outcome of that review, it may be necessary to reconsider the eligibility criteria and/or payment levels. The Government may also wish to revisit some of the more contested aspects of the scheme as part of the review, including whether existing payments to women who are not in paid work are adequate and whether the payment should continue to be for mothers or whether it should be paid to the primary carer.



**APPENDIX**  
NATSEM Costing





# NATSEM

National Centre for Social and Economic Modelling

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National Centre for Social & Economic Modelling

• University of Canberra •

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Costing a Paid Maternity Leave Scheme

Rachel Lloyd, Ben Phillips, Gillian Beer and Ann Harding

Consultancy report for the Human Rights  
and Equal Opportunity Commission

8 November 2002



# About NATSEM

The National Centre for Social and Economic Modelling was established on 1 January 1993, and supports its activities through research grants, commissioned research and longer term contracts for model maintenance and development with the federal departments of Family and Community Services, Health and Ageing, and Education, Science and Training.

NATSEM aims to be a key contributor to social and economic policy debate and analysis by developing models of the highest quality, undertaking independent and impartial research, and supplying valued consultancy services.

Policy changes often have to be made without sufficient information about either the current environment or the consequences of change. NATSEM specialises in analysing data and producing models so that decision makers have the best possible quantitative information on which to base their decisions.

NATSEM has an international reputation as a centre of excellence for analysing microdata and constructing microsimulation models. Such data and models commence with the records of real (but unidentifiable) Australians. Analysis typically begins by looking at either the characteristics or the impact of a policy change on an individual household, building up to the bigger picture by looking at many individual cases through the use of large datasets.

It must be emphasised that NATSEM does not have views on policy. All opinions are the authors' own and are not necessarily shared by NATSEM.

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## Acknowledgments

The authors wish to thank Annie Abello, Matthew Toohey and Lex Weaver for their assistance.

## General caveat

NATSEM research findings are generally based on estimated characteristics of the population. Such estimates are usually derived from the application of microsimulation modelling techniques to microdata based on sample surveys.

These estimates may be different from the actual characteristics of the population because of sampling and nonsampling errors in the microdata and because of the assumptions underlying the modelling techniques. The microdata do not contain any information that enables identification of the individuals or families to which they refer.





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# Executive summary

The Human Rights and Equal Opportunity Commission (HREOC) has asked NATSEM to estimate the cost to the government of a paid maternity leave scheme. The scheme proposes that women who have worked for 40 out of 52 weeks in the previous year are eligible for 14 weeks maternity leave paid by the government at the amount of their salary prior to birth or the Federal Minimum Wage, whichever is lower. Women who receive paid maternity leave will not receive the Maternity Allowance or the Baby Bonus in the first year. They will also not be entitled to Family Tax Benefit Parts A and B for the period they are on paid maternity leave. The paid maternity leave will be taxable but not means tested.

NATSEM has developed a group model to estimate the costs of the scheme. Using ABS data, we have developed 200 hypothetical families and estimated the number of women in families such as these that would be eligible for paid maternity leave in a year.

## 1. Current system (no paid maternity leave)

Information about the woman's income both before and after the birth as well as the father's income is used to determine the family's entitlement to government benefits and their tax liability.

## 2. Proposed paid maternity leave system

The woman's income before the birth is used to determine how much paid maternity leave she would receive from the government under the proposed scheme. Her income before and after the birth and the father's income are used to determine the family's entitlement to government benefits and their tax liability. Because the woman is no longer eligible for some benefits and because her higher income will reduce entitlement to other benefits and increase tax, the government costs for these outlays will be reduced.

The *gross cost* to the government is the total cost of paid maternity leave for all women. In 2003-04 we estimate this would be \$460 million.

The *net cost* of the scheme is the cost to the government once the effect of decreases in other government outlays and increases in taxation revenue are taken into account. This is found by comparing the costs to the government under the current and proposed systems. The net cost to the government in 2003-04 is estimated to be \$213 million. In other words, \$247 million, or over half of the gross cost, would be saved by reductions in other government outlays and increased tax.

The gross cost over the next four years is estimated to be \$1 970 million while the net cost for four years is estimated to be \$864 million.

### Costs of a PML scheme in future years

Year	Gross cost \$million	Net cost \$million
2003-04	460	213
2004-05	481	215
2005-06	503	217
2006-07	526	219
<b>Total</b>	<b>1 970</b>	<b>864</b>

Source: STINMOD/01b outyears model and NATSEM calculations

These figures are likely to overestimate the cost as some women already receive maternity leave paid by the Commonwealth. For those who currently receive paid maternity leave from another employer, the government subsidy will push them into higher income bands and hence reduce the net government outlays. If these effects are taken into account, we estimate the gross cost to government in 2003-04 would be approximately \$429 million and the net cost would be \$207 million. In addition, because women are likely to return to work later under the proposed scheme, the costs to the government of child care subsidies will be reduced.

## 1 Introduction

The Human Rights and Equal Opportunity Commission (HREOC) has asked NATSEM to estimate the cost to the government of a paid maternity leave (PML) scheme. The gross and net (once the effect of decreases in other government outlays and increases in taxation revenue are taken into account) costs are to be calculated. HREOC's specification of the proposed scheme is at Attachment A.

NATSEM considered a number of different ways to cost this proposed scheme. Ideally we would use a micro dataset of women who had a baby in the previous year that contained information on women's salary prior to the birth of their child, the number of weeks worked in the year prior to the birth, and their income and their partner's income in the financial year in which the child was born. The only dataset that met these criteria was the ABS Survey of Employment and Unemployment (SEUP), a longitudinal dataset collected in 1994-97. However, the small sample of women with a child under one and the poor quality of the income data meant that we felt that this dataset was not suitable for this model.

As a result, we decided to produce a group model which allocates women to one of 200 groups based on their income, the income of their partner (if they have one) and the time of the financial year at which the baby was born. The number of women in each group eligible for PML is estimated using published and unpublished results from ABS surveys. The value of government benefits for which the family is eligible and tax liability are calculated under the current and proposed systems using the hypothetical version of STINMOD, NATSEM's static microsimulation model of the tax and transfer system. The amount of Baby Bonus is not modelled in STINMOD and so we have modelled it in Excel. All of these pieces of information are combined to estimate the gross and net costs of the scheme.

## 2 Timeframe

HREOC asked us to cost the proposal for the next four years. Given that a paid maternity scheme is unlikely to be introduced before July 2003, the first year we have costed is the financial year 2003-04. STINMOD has an 'outyears' component which allows costings for future years. We have used the projected policy parameters (for example payment rates and thresholds) for 2003-04. To estimate the average income and number of women in each of the different income groups we used the base dataset for 2003-04. This dataset is derived from the 1996-97 and 1997-98 Survey of Income and Housing Costs — but with incomes uprated to estimated 2003-04 figures using factors such as changes to the consumer price index and average weekly earnings. The dataset is also reweighted to take account of changing demographic structures in the population (Bremner et al 2002).

For the 2004-05 financial year, we repeated the process using the 2004-05 STINMOD base dataset and projected parameters. We calculated the increase in costs between 2003-04 and 2004-05 and applied this factor to calculate costs for 2006-07 and 2007-08.

### 3 Overview of the approach

To calculate the costs of a PML scheme in 2003-04 we followed the following steps:

1. Define 200 hypothetical families. Of these 160 are couple families and 40 are single parent families. Women are divided into 10 equal groups based on their pre-child income and men into 4 groups based on their income. This gives 50 groups. To take account of the timing of births during the year, it is assumed that women have their child at one of four points during the year. So for each of the 50 income groups there are four possible scenarios in terms of timing of the birth. Sections 4 and 5 give more information on how this was done.
2. Estimate how many women there are in each of our family types and how many of these are eligible for the proposed PML scheme. This is done using information from ABS surveys. Section 6 provides more detail.
3. Estimate the income of the women in each of our groups for the financial year prior to the birth (which we will refer to as pre-birth income) and in the financial year of the birth (post-birth income), under the current situation (that is, no PML scheme). To calculate her income in the financial year after the birth, we assume that the woman takes 28.8 weeks of unpaid leave and then returns to work half-time. Section 7 expands on this.
4. Estimate entitlements to government benefits and tax liability under the current situation. We calculate the family's entitlement to Baby Bonus and use STINMOD to calculate entitlement to Maternity Allowance, Family Tax Benefit Parts A and B, Newstart Allowance, Parenting Payment and income tax liability. These depend on the woman's pre-birth income and tax, her post-birth income and the income of her partner if she has one. Sections 8 and 9 provide more information.
5. Estimate the post-birth income of the women under the proposed PML scheme. We assume that all eligible women take the full 14 week entitlement to PML which is paid at the woman's pre-birth salary but capped at the Federal Minimum Wage. They also take 28.8 weeks of unpaid leave and then return to work half-time.
6. Estimate entitlements to government benefits and tax liability under the proposed PML scheme. We use STINMOD to calculate entitlement to Family Tax Benefit Parts A and B, Newstart Allowance, Parenting Payment and income tax liability. Under the proposed PML scheme, the woman is not entitled to Maternity Allowance and Baby Bonus in the first year. She is also not entitled to Family Tax Benefit for the period she is on PML. We also estimate the amount the government would pay her while she is on PML. See Section 10 for more detail.

At this point, for each of our 200 cases we know the net cost to the government of supporting these families under the current situation and under the proposed PML scheme. We also have estimated how many women there are in each of these groups.

7. We estimate the gross cost to the government, that is the total amount it will pay in PML. To do this we multiply the amount each woman receives in PML by the number of women in each group and then sum up all of the groups to get the total. This is explained further in Section 11.

8. We estimate the *net* cost to the government of the proposed PML scheme. As women's incomes increase when they receive PML, they have a reduced entitlement to some government payments and will pay more tax. Under the proposed scheme, they do not receive Maternity Allowance and Baby Bonus in the first year and the Family Tax Benefit entitlement is reduced. Therefore, the total cost to the government is reduced. For each group, we calculate the difference between the net cost to government of supporting the family under the current situation and the net cost to government under the proposed PML scheme. We then multiply this difference in net cost by the number of women in each group and sum up all of the groups to get the total. We assume that women will not be worse off in terms of their government benefits under the proposed scheme. This is explained in Section 12.

In addition, we estimate costs for the financial years 2004-05, 2005-06 and 2006-07. This is explained in Section 13.

In Section 14, we estimate the effect of assuming that a certain proportion of women receive some PML already.

## 4 Estimating the distribution of incomes

Women's entitlement to PML depends on their income before the birth. The family's entitlement to other government benefits will depend on the family's income during the financial year of the birth. This will depend on the father's income and the mother's income, which depends on her pre-birth income, return to work pattern and the timing of the birth in the year.

We defined 40 different income groups, grouping working women of child-bearing age into 10 equally sized groups (deciles) based on their earned income and the men partnered with such women into four groups (quartiles) based on their private income. We used the STINMOD outyears basefile for 2003-04 (which as detailed in Section 2 above is an updated version of the ABS Surveys of Income and Housing Costs 1996-97 and 1997-98) to estimate the average income for women in each decile and men in each quartile. We also used it to estimate the number of women in each of the 40 combined income groups (each of the 10 groups of women is paired with each of the 4 groups of men). The average incomes of the women and men in these groups and the estimated number of women in each group are given in Table A-1.

We have also defined 10 groups of single working women of child-bearing age. Again, we used the STINMOD outyears basefile for 2003-04 to estimate the average income for women in each decile. The number of single women who will be eligible for PML is likely to be fairly small. Section 6 explains how the number of single women eligible for PML was estimated.

It should be noted that we have not included women aged under 20 years, as we believe that few of these would be in the workforce when they have a child. However, self-employed women are included.

Table A-1 Distribution of women's and men's incomes used in the model

Female income deciles	Male income quartiles	Average female earned income (\$pw)	Average male private income (\$pw)	Number in group
1	1	124	263	49090
2	1	259	263	48175
3	1	368	263	49664
4	1	462	263	44501
5	1	535	263	31961
6	1	609	263	25343
7	1	688	263	22548
8	1	789	263	24013
9	1	973	263	20692
10	1	1348	263	26410
1	2	124	711	35138
2	2	259	711	30151
3	2	368	711	26344
4	2	462	711	31286
5	2	535	711	39564
6	2	609	711	43682
7	2	688	711	43170
8	2	789	711	44771
9	2	973	711	33004
10	2	1348	711	15205
1	3	124	976	23569
2	3	259	976	27304
3	3	368	976	35735
4	3	462	976	23482
5	3	535	976	32022
6	3	609	976	37440
7	3	688	976	40073
8	3	789	976	39824
9	3	973	976	50027
10	3	1348	976	33096
1	4	124	1669	41240
2	4	259	1669	31122
3	4	368	1669	35307
4	4	462	1669	45723
5	4	535	1669	32660
6	4	609	1669	38074
7	4	688	1669	41069
8	4	789	1669	36505
9	4	973	1669	42846
10	4	1348	1669	68051

Note: Only includes women (including self-employed women) in a couple aged 20-44 working full or part-time who have earned income (business income plus wage and salary income) greater than 0. Only includes men partnered with these women. Private income is income from wages and salary, own business, investments, and other private sources. Negative incomes reset to zero.

Source: STINMOD base population 2003-04



Table A-2      **Distribution of single women's incomes used in the model**

<b>Female income declines</b>	<b>Average female earned income (\$pw)</b>
1	121
2	313
3	448
4	532
5	604
6	672
7	749
8	843
9	992
10	1286

*Note:* Only includes single women (including self-employed women) aged 20-44 working full or part-time who have earned income (business income plus wage and salary income) greater than 0.

*Source:* STINMOD base population 2003-04

## 5            Timing of the birth

The woman's income in the financial year of the birth depends on when the baby is born. For example, if a woman earning \$40 000 per annum has a baby in July and currently takes unpaid maternity leave for 12 months from 1 July, she will have no earned income and the tax she pays as well as any social security entitlements will be based on this. On the other hand, if the baby is born in January and the woman takes 12 months unpaid maternity leave from 1 January, in the financial year in which the baby is born the woman's earned income will be \$20 000 and social security entitlements and tax liability will vary accordingly.

Naturally, there are 365 possible days on which the baby might be born and each will produce a slightly different outcome in terms of the woman's income. However, in order to take account of timing of the birth in a simple way, we have divided women into 4 groups assuming maternity leave begins on 1 January, 1 April, 1 July or 1 October. We assume that births are evenly distributed through the year so that one-quarter of each group has their baby in each of the quarters. As a result we now have 200 hypothetical groups (50 income groups by 4 quarters).

## 6 Estimating the number of women eligible for PML in each group

As detailed above, the number of partnered women aged 20-44 working full or part-time in each combined income group was estimated using the STINMOD outyears basefile for 2003-04. This number was divided by 4 to account for the fact that we have estimated results for women having their child at four different points in the year.

Only women who have worked for 40 weeks in the past year are eligible for PML under the proposed scheme. Using the ABS *Labour Force Experience* February 2001 (cat. no. 6206.0) publication, we estimated the proportion of women who had worked for 39 weeks or more out of those who had worked at all during the year to be 81.63 per cent. We applied this constant percentage to the number of women in each of our groups. The percentage can be changed in the model to estimate the effects.

To estimate the proportion of women aged 20-44 who have a child in a year, we used the ABS *Births* 2000 (cat. no. 3301.0) publication. From this we estimated that 6.53 per cent of women in that age group have a child. We applied this constant percentage to the number of women in each of our groups. This percentage can be changed in the model to estimate the effects upon our results.

After both of these percentages have been applied to the numbers derived from the STINMOD outyears basefile, we have estimated the number of women in each of the 160 groups of partnered women who would be eligible for PML.

As noted above, we would expect the number of single women to be eligible for PML to be fairly small. In order to estimate the number of women in each of the 10 groups of single women we examined the number of working women with children under one year of age in the STINMOD basefile. The number of single women was approximately 10 per cent of the number of partnered women. Therefore we have estimated the number in each group of single women eligible for PML to be 10 per cent of the number of partnered women.

## 7 Return to work pattern

A woman's income in the financial year of the birth will also depend on her return to work pattern. Some women are likely to return to work in the first 14 weeks (although we believe that this number will be very small if women receive PML). Many will supplement PML with a period of unpaid leave. On return to work many women will work part-time. This is a behavioural effect and hence very difficult to estimate. It is likely to depend on the woman's income and that of her husband, as well as the work culture. The best indication of what return to work patterns would be under a PML scheme are likely to come from employees who currently have a similar period of PML. That information is difficult to obtain.

The best source of information is the ABS *Career Experience* 1998 publication (cat. no. 6254.0). This gives the number of women who took various periods of unpaid leave. The length of the break is given in ranges so we used the mid-point of the range and the number of women in each group to estimate the average length of unpaid maternity leave to be 28.8 weeks. This is similar to the average length of unpaid maternity leave taken by women in the NSW Public Service.

Using the results from the ABS survey, we have assumed an average return to work pattern that is applied to all women under the current and proposed structures (Table A-3). In the current situation, women are assumed to have no PML, take 28.8 weeks unpaid leave and then return to work half time. In our scenario for the proposed scheme, women take 14 weeks PML, 28.8 weeks unpaid leave and then return to work half time.

Table A-3 **Assumed return to work patterns under current and proposed systems**

<b>Current system</b>	
Paid maternity leave	0
Unpaid maternity leave	28.8
Work fraction on return to work	0.5
<b>Proposed PML scheme</b>	
Paid maternity leave	14
Unpaid maternity leave	28.8
Work fraction on return to work	0.5

## 8 Baby Bonus

Under the proposed scheme, a woman receiving PML would not be entitled to the Baby Bonus for the first 12 months. In order to estimate the saving to the government, we need to estimate current entitlement to Baby Bonus. For each of the 200 hypothetical cases, the woman's annual taxable income before the birth is estimated by multiplying her weekly earned income by 52. (In other words, earnings from investments and social security are not included. Normally these would be included in taxable income, but including them makes the modelling much more complicated and we assume that they will be small and have little effect on the outcomes.) The gross income tax paid in the base year is estimated in Excel. Using the annual income before the birth, the base year gross tax and the number of eligible days (based on the quarter of birth), the first year Baby Bonus is calculated in Excel. (STINMOD does not model the Baby Bonus.)

## 9 Current situation

The woman's earned income in the financial year of the birth under the current situation (that is, no PML) is calculated according to the quarter of birth and the assumed return to work pattern under the current situation. This is divided by 52 to give the woman's weekly private income. This and the father's private weekly income (where appropriate) are input to the STINMOD hypothetical model to calculate the current entitlement to Maternity Allowance, Family Tax Benefit A, Family Tax Benefit B, Parenting Payment and Newstart Allowance and their income tax liability. Government expenditure under the current system for each woman is calculated by adding entitlement to Baby Bonus, Maternity Allowance, Family Tax Benefit Parts A and B, Parenting Payment and Newstart Allowance and subtracting income tax.

## 10 PML Proposal

The weekly amount of PML is estimated to be the lower of either the woman's earned income or the Federal Minimum Wage. The Federal Minimum Wage is currently \$431.40 per week. We assume that the Federal Minimum Wage will increase by 3.7 per cent per year, which has been the average growth rate for the previous five years. Therefore, the Federal Minimum Wage in 2003-04 is estimated to be \$447.40.

The woman's earned income in the financial year under the proposed scheme is calculated according to the quarter of birth, the assumed return to work pattern, and the period of paid and unpaid maternity leave. This is divided by 52 to give the woman's weekly private income. This and the father's private weekly income (where appropriate) are input to the STINMOD hypothetical model to calculate the new entitlement to Family Tax Benefit A, Family Tax Benefit B, Parenting Payment and Newstart Allowance, and their income tax liability under the proposed scheme. The Family Tax Benefit Parts A and B amounts are multiplied by 38/52 because the family is not entitled to these payments for the 14 weeks that the woman is on PML. These amounts are added to PML and social security entitlement and tax is subtracted to give government expenditure under the proposed PML scheme for each woman.

## 11 Gross cost of the scheme

Gross cost of the scheme is calculated by multiplying the amount of PML the government will pay for each case by the number of women in the group and summing across all groups. The gross cost based on our assumptions is \$460 million in 2003-04. This accords reasonably closely with other estimates of the cost of the scheme. The Department of Finance and Administration costed the scheme at \$475 million. The ACTU costed the scheme at under \$400 million. The Democrats gross estimate is \$425 million. However, it should be noted that each of these has slightly different assumptions about the scheme they are costing. The National Pay Equity Coalition has a higher estimate of \$804 million based on payment of up to Average Weekly Earnings.

## 12 Net cost of the scheme

Net cost of the scheme is calculated by subtracting the net cost to government under the current situation from the total cost to government under the proposed scheme. For the purposes of the costing we have included in the cost to government only the payments that are affected by the introduction of PML. For each hypothetical case, the net cost to government under the current situation is the amount of government payments (including Baby Bonus, Family Tax Benefit Parts A and B, Maternity Allowance, Parenting Payment and Newstart Allowance (other allowances are not affected in this model)) minus income tax. This is then multiplied by the estimated number of women in each group and summed over all the groups to give the total cost. The cost under the proposed scheme is the total amount of government payments (PML, reduced Family Tax Benefit Parts A and B, Parenting Payment Partnered and Newstart Allowance) minus tax. Again, this is multiplied by the estimated number of women in each group and summed over all the groups to give the total cost. It should be noted that we have assumed that no woman will receive less government payments under the proposed scheme than she does under the current scheme.

Under the proposed PML scheme, the government will reap some savings because the Baby Bonus and Maternity Allowance will not be paid and Family Tax Benefit Parts A and B will not be paid for the period of PML. In addition, women's incomes are likely to be higher than under the existing system, causing reductions in entitlement to other payments and an increase in tax liability.

Accounting for these 'savings', we have estimated the net cost of the proposed scheme in 2003-04 to be \$213 million. In other words, the 'savings' amount to \$247 million or over half of the gross cost of the scheme.

## 13 Future years

Using the STINMOD outyears model for 2004-05, we estimated that the increase in costs was approximately 4.57 per cent for gross costs and 0.9 per cent for net costs. Applying these factors to each of the next four years we estimate that the costs of the scheme will be as provided in Table A-4.

Table A-4 **Costs of a PML scheme in future years**

<b>Year</b>	<b>Gross cost \$ million</b>	<b>Net cost \$million</b>
2003-04	460	213
2004-05	481	215
2005-06	503	217
2006-07	526	219
<b>Total</b>	<b>1 970</b>	<b>864</b>

Source: STINMOD/01b outyears model and NATSEM calculations

So, in total, the gross cost over the next four years is estimated to be \$1 970 million and the net cost is estimated to be \$864 million.

## 14 Employees who currently receive PML

Employees who currently receive PML fall into one of two categories — those who are currently paid by the federal government and those paid by another employer (be it state government or private companies). Very few employees receive 14 weeks PML so almost all would receive an increase. For example, a worker receiving 6 weeks PML would get an additional 8 weeks PML (capped at the Federal Minimum Wage). The effect on the employee is that in most cases their income would increase (though not by as much as employees currently receiving no PML), their entitlement to government benefits would be reduced and their tax would increase. The effect on the government will depend on whether or not the employee works for the federal government or another employer. If the employee works for the federal government, the gross cost to the

government would be 2 weeks capped at the Federal Minimum Wage (as the government already pays the maternity leave for 12 weeks) and the government would reap savings from higher tax and lower government payments. For employees working for another employer, the gross cost will be 14 weeks capped at the Federal Minimum Wage (as for employees who have no entitlement to PML). There are likely to be higher savings however, as the higher incomes of this group will result in larger reductions in government payments and higher tax than for those who had no entitlement to PML.

To model these effects, we have developed a second model that allows three scenarios in terms of current PML entitlement – no entitlement, 6 weeks at full pay by an employer other than the federal government and 12 weeks at full pay with the federal government as the employer. While there are many other possible scenarios, we estimate that the 6 weeks is the average for employers other than the federal government. By adding these three scenarios, we have increased the number of cases to 600. It is difficult to estimate the number of women who are in each group but, based on unpublished 2000 Survey of Employment and Superannuation data, we have estimated that 62% have no entitlement, 30% have some entitlement funded by their employer and 8% receive full pay for 12 weeks funded by the Commonwealth.

Based on these estimations, the gross cost to the government in 2003-04 is \$429 million and the net cost is \$207 million.

## 15 Other savings

We have considered the effects on family benefits for one child only. If the family has more children, the higher income will mean that the amount of Family Tax Benefit for the older children will also be reduced and the total cost of the scheme will be lower.

In addition, if women remain out of the workforce for a longer period assisted by PML, they will have lower requirements for child care and this will be a further saving for the government in terms of Child Care Benefit.

## 16 Conclusion

The estimated gross cost to the government is \$460 million. After taking account of clawbacks to the Federal government, via reductions in existing social security and family payments and increased income tax revenue, we estimate that the net cost will be \$213 million. We estimate that the gross cost will increase by 4.57 per cent per year and the net cost will increase by 0.9 per cent. Therefore we estimate the total gross cost over four years to be \$1 970 million and the net cost is estimated to be \$864 million.

If we take account of the employees who currently receive paid maternity leave including those paid by the Commonwealth, the gross cost to the government in 2003-04 is estimated at \$429 million and the net cost is \$207 million.

## References

ABS (Australian Bureau of Statistics) 2000, *Births*, cat. no. 3301.0, ABS, Canberra.

ABS (Australian Bureau of Statistics) 1999, *Labour Force Experience*, cat. no. 6206.0, ABS, Canberra.

ABS (Australian Bureau of Statistics) 1998, *Career Experience*, cat. no. 6254.0, ABS, Canberra.

ACTU (Australian Council of Trade Unions), *ACTU Submission to HREOC's Paid Maternity Leave Inquiry*, July 2002.

Bremner, K, Beer, G, Lloyd, R, and Lambert, S 2002, *Creating a Basefile for STINMOD*, Technical Paper No. 27- National Centre for Social and Economic Modelling, University of Canberra.





# A Attachment

## Structure of proposed paid maternity leave scheme

<b>Funding</b>	The national paid maternity leave scheme is to be funded by the federal Government. (Recommendation 1)
<b>Coverage</b>	<p>Paid maternity leave is to be provided to women at the time of the birth of a child. The exceptions to this, where payment can be made to a woman's partner, will include: where the mother has died; where the mother is not medically able to care for the child (based on a doctor's opinion); or where the child has been adopted. (Recommendation 2)</p> <p>Paid maternity leave is to be available only to women in paid work. (Recommendation 3)</p> <p>Paid maternity leave is to be available to the primary carer of an adopted child irrespective of the age of the child. (Recommendation 4)</p>
<b>Eligibility</b>	In order to be eligible for paid maternity leave a woman must have been in paid work (including casual employment, contract work and self-employment) for 40 weeks of the past 52 weeks with any number of employers and/or in any number of positions. Access to this payment will not be means tested. (Recommendation 5)
<b>Duration</b>	<p>The national scheme of paid maternity leave will provide for up to 14 weeks of paid leave to be taken immediately prior to and/or following the birth of a child. (Recommendation 6)</p> <p>The paid leave must be taken as a continuous block. (Recommendation 6)</p> <p>A woman may elect to take less than the full 14 weeks of paid maternity leave, but will only receive payment in the weeks taken as maternity leave. (Recommendation 6)</p>
<b>Payment level</b>	<p>Government funded paid maternity leave is to be paid at the rate of the Federal Minimum Wage, or the woman's previous weekly earnings from all jobs, whichever is the lesser amount. (Recommendation 7)</p> <p>Previous weekly earnings are to be calculated as the greater of either:</p> <ul style="list-style-type: none"><li>• a woman's weekly earnings from all jobs immediately prior to taking leave; or</li><li>• an average of her weekly earnings from all jobs during the time in employment over the previous 12 months. (Recommendation 7)</li></ul>

**Payment mechanism**

Paid maternity leave is to be paid as a fortnightly payment during the period of leave, administered by the federal Government and available through dual payment mechanisms. (Recommendation 8)

Specifically, an individual may elect to receive payment as either:

- a fortnightly direct payment from Government to the individual; or
- a payment from the employer to the individual with the employer reimbursed by Government (subject to the employer agreeing to offer this option). (Recommendation 8)

**Role of employers**

Employers should be encouraged to continue existing provisions for paid maternity leave and women, including public servants, will not be excluded from any government funded national scheme on the basis of receiving employer provided paid maternity leave. (Recommendation 9)

Employer top ups to a government funded paid maternity leave are to be provided for and encouraged. Such top ups should be negotiated through standard bargaining mechanisms. (Recommendation 10)

Employers may agree to take on the administration of paid maternity leave payments on behalf of the Government and may be required to play a role in validating entitlement to government funded paid maternity leave entitlements. (Recommendation 11)

**Interaction with the industrial relations system**

Current industrial arrangements in relation to maternity leave will continue. (Recommendation 12)

**Payment level**

A woman who receives paid maternity leave will not be eligible for the Maternity Allowance, the first 14 weeks of Family Tax Benefit Part A and Family Tax Benefit Part B, and the first 12 months of payment of the Baby Bonus. The maternity leave payment will be taxable. (Recommendation 13)

Individuals will have the option of taking other available social security payments where this would result in higher payments. (Recommendation 13)

# Submissions

- 1 M H Dale
- 2 Katherine Whincop
- 3 Denise Traynor
- 4 Murray Johnson
- 5 Guy Witcomb
- 6 Lena Dimech
- 7 Josie Oldroyd
- 8 Ethel Ong
- 9 Martje McKenzie
- 10 Beryl Hutton
- 11 Jacqui Christian
- 12 Catherine Matson
- 13 Sandra Skelton
- 14 CONFIDENTIAL
- 15 Graham Evans
- 16 CONFIDENTIAL
- 17 Sue Pearce
- 18 Duanne Banham
- 19 Verlaine Bell
- 20 Kate Purcell and Tim O'Reilly
- 21 Dr John Patterson
- 22 Australian African Children's Aid and Support Association Inc.
- 23 Denis Wagner
- 24 CONFIDENTIAL
- 25 Carrie Parsons
- 26 Kennedy and Cooke Lawyers
- 27 Andrew Sipos
- 28 Lisa Dibb
- 29 Sandra Wills
- 30 Karen Wakely
- 31 Penny Stewart
- 32 Catherine Barnett
- 33 Ron Dickens
- 34 Brian Hopping
- 35 Chris Van Der Wijngaart
- 36 Christine Rau
- 37 Jo-anne Sheldrick
- 38 Michelle Falstein Coppola
- 39 Drew Seitam
- 40 Anne Sheehan
- 41 Khristine and Michael Ryan-Wilson
- 42 Paul Webb
- 43 Dr Lincoln Hayes
- 44 Australian Adoption Campaign
- 45 Peter and Madeleine Marshall
- 46 National Federation of Independent Business Inc.

47 Susanna Lobez  
48 Women's Studies Research Unit, School of Social Work, University of Melbourne  
49 CONFIDENTIAL  
50 Dianne Dearden  
51 Australian Society for Intercountry Aid For Children (New South Wales) Inc.  
52 Kay Channer  
53 Australian Institute of Company Directors  
54 Underemployed People's Union of Western Australia  
55 Collette Stubbs  
56 Helen Parkes  
57 Meg Murray  
58 CONFIDENTIAL  
59 Dr Vicki Clifton, Mothers' and Babies' Research Centre, John Hunter Hospital  
60 Women's Health in the North (Victoria)  
61 The Centre for Business and Industry Pty Ltd  
62 Jill Johnson  
63 Stefan Slucki  
64 Murray Ceff  
65 Maryse Usher  
66 Gerry Watts  
67 CONFIDENTIAL  
68 National Women's Council of South Australia  
69 Narelle Wasley  
70 Patricia May  
71 South Australian Equal Opportunity Commissioner  
72 Professor Karen Simmer, Neonatology Clinical Care Unit, King Edward and Princess Margaret  
Hospitals and University of Western Australia  
73 Rita Bentley  
74 Sue Lester  
75 Christine Worth  
76 University of Melbourne Postgraduate Association  
77 New South Wales EEO Practitioners' Association  
78 Anna Edgelow  
79 Janette Denison  
80 Rosemary Freney  
81 Kolan Shire Council  
82 President, BPW International  
83 Meryll McKay  
84 Northern Territory Trades and Labor Council  
85 Joan Larsen  
86 Women's Legal Service (Tasmania) Inc.  
87 Australian Institute of Health and Welfare  
88 E Flanagan  
89 Union of Australian Women Inc.  
90 Del Purcell  
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- 92 Australian Family Association
- 93 M E Noonan
- 94 Win Wise
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- 100 Women's Council, Liberal Party of Australia (South Australia Division)
- 101 Australian Federation of University Women – Victoria Inc.
- 102 Festival of Light (South Australia)
- 103 Australian Family Association (New South Wales)
- 104 Mothers of In(ter)vention
- 105 Kimberley Meyer
- 106 Dr Alex Robson, School of Economics, Faculty of Economics and Commerce,  
Australian National University
- 107 Coles Myer Ltd
- 108 Association of Independent Schools of Victoria
- 109 Salt Shakers Inc.
- 110 Public Service Association of New South Wales
- 111 A Rolfe
- 112 Victorian Automobile Chamber of Commerce
- 113 Australian Institute of Family Studies
- 114 Australian Family Association (Queensland Branch)
- 115 Adoptive Families Association of the Australian Capital Territory Inc.
- 116 Aboriginal and Torres Strait Islander Commission Katherine
  - Part A – Individual
  - Part B – Individual
  - Part C – Individual
  - Part D – Individual
  - Part E – Individual
  - Part F – Individual
  - Part G – Individual
  - Part H – Individual
- 117 Council of Small Business Organisations of Australia Ltd
- 118 BPW New South Wales
- 119 Australian Business Industrial
- 120 Australian Capital Territory Ministerial Advisory Council on Women
- 121 Australian Industry Group
- 122 Australian Education Union
- 123 Australian Nursing Federation
- 124 Greg Byrne
- 125 Women's Economic Think Tank
- 126 Presbyterian Women's Association of Australia in New South Wales
- 127 YWCA Victoria
- 128 National Women's Council of Australia Inc. Ltd

- Part A – National Women’s Council of South Australia  
 Part B – Individual  
 Part C – Individual  
 Part D – Advisers’ meeting of National Women’s Council – Western Australia
- 129 Catholic Women’s League Western Australia  
 130 Australian Mines and Metals Association Inc.  
 131 Rob and Noline Cornhill  
 132 Soft Furnishings Industry Association of Australia Inc.  
 133 Eleanor Wilson  
 134 Queensland Nurses’ Union  
 135 Dr Jane Thompson Clinical Health Improvement Program, Women’s and Children’s Health,  
 Canberra Hospital  
 136 Dr Romaine Rutman, National Centre for Epidemiology and Population Health, Australian National  
 University  
 137 Victorian Women Lawyers  
 138 Joan Cross  
 139 Flight Attendants’ Association of Australia  
 140 Australian Women Lawyers  
 141 Motor Traders’ Association of New South Wales  
 142 Motor Trade Association of South Australia Inc.  
 143 H Colley  
 144 Endeavour Forum Inc.  
 145 International Adoptive Parents Association Inc.  
 146 Women’s Action Alliance (Australia) Inc.  
 147 Cameron Paroz  
 148 BPW Australia  
 149 Melissa Austin  
 150 Karen Bijkersma  
 151 Marty Grace, Department of Social Inquiry and Community Studies, Victoria University  
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 153 Australian Liquor, Hospitality and Miscellaneous Workers Union  
 154 Australian Services Union MEU Private Sector Victorian Branch  
 155 Monica Naughton  
 156 Local Government Association of Queensland Inc.  
 157 Beryl Byrne  
 158 Immigrant Women’s Speakout Association New South Wales Inc.  
 159 EMILY’s List Australia  
 160 National Farmers’ Federation Ltd  
 161 Finance Sector Union of Australia  
 162 Illawarra Forum Inc. and Illawarra Women’s Health Centre  
 163 Victorian Independent Education Union  
 164 Jason Corney  
 165 Australian Retailers Association  
 166 Tresillian Family Care Centres  
 167 National Community Child Health Council  
 168 CONFIDENTIAL

169 National Tertiary Education Industry Union  
170 CONFIDENTIAL  
171 Work/Life Association Australia Inc.  
172 Printing Industries Association of Australia  
173 Shop, Distributive and Allied Employees' Association  
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Part B – Individual  
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180 Angelo Zanatta  
181 CONFIDENTIAL  
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188 Agnes and Matt Furlong  
189 Australian Services Union South Australia and Northern Territory Branch  
190 Hume Doors and Timber (Queensland) Pty Ltd  
191 Job Watch Inc.  
192 Beverly Walker  
193 Linda Pascal  
194 Australian Catholic Commission for Employment Relations  
195 Catholic Women's League Australia Inc.  
196 motherInc.  
197 Australian Chamber of Commerce and Industry  
198 Public Service Association of South Australia Inc.  
199 Australian Hotels Association  
200 Betty Scott  
201 Women in the Department of Education and Children's Services Reference Committee, South Australia  
202 Australian Federation of University Women (Inc.)  
203 Genevieve Atkinson  
204 Independent Education Union of Australia  
205 Cathy Sherry  
206 CONFIDENTIAL  
207 David Graham  
208 Australian Council of Trade Unions  
209 Australian Society for Intercountry Aid for Children, Tasmania  
210 Sandra Robinson  
211 United Trades and Labor Council of South Australia  
212 Lisa Park

213 Julie Lynch  
 214 Anti-Discrimination Board of New South Wales  
 215 Law Institute of Victoria  
 216 CONFIDENTIAL  
 217 Equal Opportunity for Women in the Workplace Agency  
 218 Labor Council of New South Wales  
 219 Queensland Working Women's Service Inc.  
 220 Recruitment and Consulting Services Association Ltd  
 221 National Diversity Think Tank  
 222 Australian Breastfeeding Association  
 223 Federation of Community Legal Centres (Victoria) Inc.  
 224 National Pay Equity Coalition  
 225 New South Wales Working Women's Centre Inc.  
 226 CSIRO Staff Association  
 227 Community and Public Sector Union (Public Sector Union Group)  
 228 YWCA of Australia  
 229 Paediatrics and Child Health Division, Royal Australasian College of Physicians  
 230 Community and Public Sector Union – State Public Services Federation Group  
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 238 C Harvey  
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 240 Equal Opportunity Commission Victoria  
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 242 Ethnic Communities' Council of Victoria Inc.  
 243 Hunter Business Chamber  
 244 Tasmanian Government  
 245 Western Australian Government  
 246 New South Wales Young Lawyers Employment and Industrial Law Committee  
 247 Law Council of Australia  
 248 Women's Electoral Lobby Australia Inc.  
 249 Men's Confraternity (Western Australia) Inc.  
 250 Victorian Government  
 251 Work + Family Research Group, University of Sydney  
 252 Council for Equal Opportunity in Employment Ltd  
 253 CONFIDENTIAL  
 254 Union Research Centre on Organisation and Technology Ltd  
 255 Australian Mines and Metals Association Inc. (supplementary)  
 256 Women's Economic Think Tank (supplementary)  
 257 National Pay Equity Coalition (supplementary)



# Consultations

<b>DATE</b>	<b>PAID MATERNITY LEAVE CONSULTATION</b>	<b>ASSISTED BY</b>
30 April 2002	Women's groups and community, Sydney	BPW New South Wales, Women's Electoral Lobby, YWCA New South Wales
23 May 2002	Unions, Brisbane	Queensland Council of Unions
24 May 2002	Employers, Brisbane	Council for Equal Opportunity in Employment
24 May 2002	Women's groups and community, Brisbane	Anti-Discrimination Commission Queensland
30 May 2002	Employers, Melbourne	Council for Equal Opportunity in Employment
31 May 2002	Women's groups and community, <i>Not if but how: Paid maternity leave a Victorian perspective</i> Forum, Melbourne	Centre for Applied Research at RMIT University, EMILY's List, YWCA Victoria
5 June 2002	Women's groups and community, Darwin	Anti-Discrimination Commission Northern Territory
6 June 2002	Women's groups and community, Katherine, Northern Territory	Katherine Women's Information and Legal Service
7 June 2002	Northern Territory Chamber of Commerce and Industry	
7 June 2002	Unions, Darwin	Trades and Labor Council of Northern Territory
12 June 2002	Employers, Sydney	Council for Equal Opportunity in Employment
13 June 2002	Employers, Adelaide	Council for Equal Opportunity in Employment
14 June 2002	Women's groups and community, Adelaide	Equal Opportunity Commission of South Australia

17 June 2002	Employers, Canberra	Council for Equal Opportunity in Employment
19 June 2002	Adoptive parents, Sydney	Australian Adoption Campaign
20 June 2002	Employers, Perth	Council for Equal Opportunity in Employment
20 June 2002	Women's groups and community, Perth	Women's Electoral Lobby, Office for Women's Policy, West Australia
21 June 2002	Unions, Perth	Unions Western Australia
26 June 2002	Women's groups and community, Hobart	YWCA of Tasmania, Women Tasmania
27 June 2002	Employers, Hobart	Council for Equal Opportunity in Employment
27 June 2002	Unions, Hobart	Unions Tasmania, Police Association of Tasmania
1 July 2002	Unions, Adelaide	Australian Education Union (South Australia Branch)
3 July 2002	Unions, Sydney	New South Wales Labor Council
8 July 2002	Women's groups and community, Canberra	YWCA of Canberra, Women's Electoral Lobby
9 July 2002	Unions, Melbourne	Trades and Labor Council of Victoria
16 July 2002	Unions, Canberra	Trades and Labor Council of the Australian Capital Territory
17 July 2002	Women's groups and community, Wagga Wagga, New South Wales	BPW Australia
14 August 2002	Academic roundtable, Sydney	In attendance:  Marian Baird, Work and Organisational Studies, University of Sydney; Michael Bittman, Social Policy Research Centre, University of New South Wales; Deborah Brennan, Department of Government and International Relations, University of Sydney; Bettina Cass,

Social Policy Unit, University of Sydney; Bruce Chapman, Centre for Economic Policy Research, Australian National University; Peter McDonald, Research School of Social Sciences, Australian National University; Alison Preston, Women's Economic Policy Analysis Unit, Curtin University of Technology

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27 August 2002.	Key employer, union and women's groups representatives roundtable, Melbourne.	In attendance:  Peter Anderson, Australian Chamber of Commerce and Industry; Cath Bowtell, Australian Council of Trade Unions; Sharan Burrows, Australian Council of Trade Unions; Joe De Bruyn, Shop, Distributive and Allied Employees' Association; Eva Cox, Women's Economic Think Tank; Karen Curtis, Australian Chamber of Commerce and Industry; Lisa Heap, Australian Services Union; Sandy Killick, Women's Electoral Lobby; Heather Ridout, Australian Industry Group; Joanne Schofield, Australian Liquor, Hospitality and Miscellaneous Workers Union; Meg Smith, National Pay Equity Coalition; Judith Van Unen, BPW, Australia.
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In addition to above listed consultations, the Sex Discrimination Commissioner held a number of smaller, targeted meetings with individuals and representatives from various organisations. The Commissioner also attended and addressed a number of conferences on paid maternity leave, where she answered questions and engaged in discussion on the issue.

# Acknowledgements

The Human Rights and Equal Opportunity Commission would like to thank the following people.

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