

Paid maternity leave



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Current Issues

Paid Maternity Leave

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Interest in widening working women's access to paid maternity leave (PML) has received prominence as a result of the Human Rights and Equal Opportunity Commission (HREOC) discussion paper *Valuing Parenthood: Options for paid maternity leave - Interim paper 2002* released in April 2002, and the *Workplace Relations Amendment (Paid Maternity Leave) Bill* put to the Australian Parliament earlier this year by Senator Stott-Despoja. This Brief provides some background to the debate, including the moves in the 1970s to introduce maternity leave through industrial relations tribunals. It reviews the spread of PML and forms which PML may be provided to employees; the expected cost of a safety net scheme funded by government, as well canvassing some of the many possible cost-benefit scenarios which may (or may not) justify such a proposal.

Maternity leave: early standards

Provisions to allow unpaid maternity leave of 52 weeks following the birth of a child (where the employee had 12 months continuous services with the one employer) were inserted into federal awards as a result of Conciliation and Arbitration Commission test case in 1979 following an Australian Council of Trade Unions (ACTU) application for awards to provide such leave. Maternity leave followed earlier reforms to promote the interests of working women such as the equal pay cases (1969-74) and abolition of the marriage bar in the Australian Public Service (1966). In the current debate over paid maternity leave, it is often claimed that pregnancy is a social issue (even a personal issue), but not an industrial issue. A similar debate took place over 20 years ago producing the outcome that pregnancy at work came to be regarded as an industrial issue. As the *Australian Labour Law Reporter* put it:

... it is not the pregnancy as such that is being regulated but rather the leave entitlements of an employee who is pregnant. It is now accepted that maternity leave and related matters do come within the jurisdiction of industrial tribunals. (31-175)

State industrial jurisdictions followed the 1979 decision. Earlier, the *Maternity Leave (Commonwealth Employees) Act 1973* provided Commonwealth public servants with paid maternity leave for 12 weeks (with 40 weeks unpaid). Its provisions were amended in 1978 which removed the entitlement to (limited) paid paternity leave and made other changes. Maternity leave provisions in a few federal awards did precede the Commonwealth law, however at the time, the new model public sector maternity provisions were intended to be 'pace-setters', i.e. to be emulated by the private sector. (See S. Deery and D. Plowman, *Australian Industrial Relations*, 2nd ed. 1980, p.121).

In 1990 the Australian Industrial Relations Commission (AIRC) reviewed its 1979 test case decision. While not significantly enhancing the basic unpaid maternity leave entitlement, the concept of parental leave (paternity, maternity and adoption leave) was introduced into federal awards, and other issues such as returning to part-time work were addressed in an AIRC 1990/91 test case. These provisions formed the basis of a 'last resort' national standard implemented via the *Industrial Relations Act 1988*, and currently found under s.170KA and Schedule 14 of the Workplace Relations Act.

Towards paid maternity leave

The current debate on extending these provisions to **paid** maternity leave (PML) has moved considerably from a minor reference in HREOC's 1999 report Pregnant and productive, It's a right not a privilege to work while pregnant (pp.226-229). Its recommendations included a proposed review between HREOC and the Department of Employment and Workplace Relations (DEWR) of funding options for paid maternity leave.

Since then, the debate has been revived in Parliament, through, for example, questions of non-government parties seeking the Government's response to *Pregnant and productive*. In turn, the Government has supported certain recommendations of *Pregnant and productive*, reflected in its Sex Discrimination Amendment (Pregnancy and Work) Bill 2002. The ACTU developed a policy for the 2001 federal election on women's employment issues, adopting the parameters for assistance found in the revised Maternity Protection Convention, ILO Convention 183. Related to this Convention is Recommendation 191 which proposes additional standards. Australia has not ratified the Convention. However, Article 11.2(b) of the United Nations Convention on the Elimination of all forms of Discrimination Against Women, which Australia has ratified (with a reservation: note Joint Departments Submission to the PML Bill, below) commits signatories introducing "maternity leave with pay or with comparable social benefits".

HREOC's sex discrimination commissioner Pru Goward presented five options for extending paid maternity leave in Valuing Parenthood: Options for paid maternity leave - Interim paper 2002 in April 2002. The Australian Democrats developed a paid maternity leave proposal for the 2001 election, and tabled the Workplace Relations Amendment (Paid Maternity Leave) Bill in May 2002 (see its Explanatory Memorandum) as a proposed amendment to the Workplace Relations Act.

Who gets paid maternity leave?

Appreciating the variety of instruments listed above for providing maternity leave, it can be seen that focus on any one bargaining level, may miss the others. At the higher end of estimates Dr Barbara Pocock estimates that **39 per cent of female employees** have access to paid maternity leave of some form (about 7 weeks on average):

- 39 per cent of female employees in Australia can take an average of seven weeks' paid maternity leave, up from 28 per cent in 1997.
- Although 77 per cent of women in the finance and insurance industries have access to paid maternity leave, only one per cent are covered in the retail sector, and 2 per cent in hotels and restaurants.
- Among developed countries, only the US and Australia have not legislated for minimum paid maternity leave across the workforce. Sweden provides 15 months of parental leave at 75 per cent of salary. (Work and family: the crunch: A better life can be legislated).

Another source of data on entitlements is the the Joint Departments' Submission. It made reference to unpublished data from the ABS *Survey of employment arrangements and superannuation* (ABS Cat. No. 6361.0), conducted over 2000, which found:

- 38 per cent of female employees responded that they were entitled to paid maternity leave (51 per cent of full time employees and 21 per cent of part time employees)
- women in casual employment had almost negligible access to paid maternity leave (0.4 per cent of self-identified casuals responded that they were entitled to paid maternity leave, compared to 53.6 per cent of other female employees)
- the highest coverage of paid maternity leave (percent of female employees) occurred in the following industries: Government Administration and Defence (68.1 per cent), Communication Services (59.1 per cent), Finance and Insurance (59 per cent) and Education (57 per cent)
- the lowest coverage of paid maternity leave was found in the following industries: Agriculture (4.5 per cent), Accommodation, Cafes and Restaurants (13.4 per cent), Retail (20.2 per cent of female employees) and Cultural and Recreational Services (28.2 per cent)
- the highest incidence of paid maternity leave was recorded in the following occupations: Managers and Administrators (65 per cent) and Professionals (54 per cent)
- the lowest incidence of paid maternity leave was recorded in the following occupations: Elementary Clerical, Sales and Service Workers (18 per cent) and labourers and related workers (21 per cent) and access to paid maternity leave was higher the greater an employee's length of service with an employer.

Senate Committee Review 2002

The Workplace Relations Amendment (Paid Maternity Leave) Bill has become subject to a Senate Employment, Workplace Relations and Education Committee inquiry, (see Report). Submissions to that inquiry provide useful information. Most canvass funding options for paid maternity leave, but many express concern over the limited extent of the possible provision. PML proposals from the ACTU and the Australian Democrats PML Bill (and separately from HREOC) reflect the basic parameters of the ILO C. 183, i.e. some form of payment generally for 14 weeks, although HREOC intends to firm its proposal in a subsequent report. The costings for the proposal mentioned below adopt a payment for 14 week framework.

Submissions from business generally oppose PML if business is required to pay for it, while otherwise being supportive of the need for PML, and most business submissions recognise the contributions to PML and work and family policies already being made either via company policy or workplace agreements.

Of special importance is the joint submission by the Department of the Prime Minister and Cabinet, the Department of Employment and Workplace Relations and the Department of Family and Community Services (the Joint Departments Submission, July 2002), particularly in light of the excellent data provided therein. However the submission avoids putting a view on a funding option for paid maternity leave. It shows that there are four instruments for funding paid maternity leave:

- Workplace Agreements (as well as individual contracts)
- Company Policy
- Legislation, and
- Awards

Thus, there has been no one bargaining level to pursue maternity leave. As Justice Munro of the AIRC observed:

Many significant employee benefits, for instance maternity leave, accrued rights protection, and severance pay are evolutions of national policies pursued by unions at all available negotiation levels. (T1982, 16/10/2000)

Workplace Agreements

HREOC's 1999 Pregnant and productive, It's a right not a privilege to work while pregnant provided evidence of the incidence of PML in a survey of certified agreements (**Enterprise Bargaining Agreements** (EBAs - upon certification by the AIRC are referred to as Certified Agreements, CAs). Paid maternity leave appeared in only 7% of CAs.

Subsequently, HREOC's Valuing Parenthood: Options for paid maternity leave - Interim paper 2002 reported that only 6.7% of current enterprise agreements mention paid maternity leave. This encompasses 21% of all public sector agreements and 3.4% of private sector agreements and 0.7% of Australian Workplace Agreements (AWAs, which are registered individual employment contracts) mentioned paid maternity leave. This information drew upon survey work of agreements undertaken by ACIRRT and reported in its March 2002 ADAM Report. The public sector, community services and utilities set the standard, while the finance sector, once known as a leader, had only 7.4% of agreements mentioning paid maternity leave. The ADAM Report found also that that occurrence of paid maternity leave in CAs had declined marginally from 6.7% to 6.5% over 1998-2001. However as the Joint Departments' Submission notes, a small number of CAs can cover a large number of employed women.

Company Policy

Company policy often provides a particular entitlement, or allows time-off without disciplinary penalties under particular circumstances. Large organisations and public sector agencies may have extensive 'Human Resource' policies which are likely to address a range of issues such as conduct and behaviour, dress codes and the like. The attraction of this form of arrangement is that such policies are not legally binding, since they are not formalised under an EBA or other instrument. However it may be that a company policy manual be referred to in an applicable EBA or other instrument, and overall the extent to which company policy represents a legal obligation is grey. Also, eligibility to a company policy benefit may be varied according to the candidate/applicant. For researchers, over-reliance on internal policies may make assessment of the extent of a provision or entitlement difficult, short of a major survey such as the Australian Workplace Industrial Relations Surveys.

Legislation

Paid maternity leave may be legislated by the Commonwealth and./or the States in respect of their public servants and employees covered by State awards. Legislation providing for paid maternity leave applies to Australian Public Servants (and then only those employed under public service legislation). Privatising an APS service, eg the Commonwealth Employment Service in 1998, effectively removed paid maternity leave, as observed in the CPSU-(PSU) submission. (see also attachment). According to the *CCH Australian Labour Law Reporter*, New South Wales, Victoria, South Australia, Queensland, Western Australia and the Australian Capital Territory provides employees in those States with a standard entitlement to (unpaid) maternity leave (see also the Joint Departments' Submission). Note that other forms of leave have been legislated for under State industrial jurisdictions, eg annual leave and long service leave, depending on the State. However it is clear that the States also use award and

agreement provisions for paid maternity leave for their public servants, but the standards generally trail the Commonwealth's 1973 standard (12 weeks pay at the employee's salary) in respect of their public services (see table below).

Awards

Federal awards tend to incorporate the 1990/91 unpaid parental leave test case clause. Maternity leave is an allowable matter (s.89A(2)(h) under the Workplace Relations Act.

Parental leave in federal awards was revisited under the award simplification process (Print Q5596). The Joint Department's Submission informs that 87 awards (out of 2169 currently) contain a **paid** maternity leave provision. It can be presumed that these arrangements were made prior to the WR Act coming into effect. There is no clear reason why federal awards cannot be used to pay maternity leave. Indeed the National Farmers Federation in its submission on PML alerts to the possibility that an application to the AIRC for PML to be included in federal awards 'could be made at any time'. Unpaid maternity leave has been recently extended to casuals with requisite service employed under federal awards following the Parental Leave Casual Employees decision (and extended by legislation in New South Wales and Queensland).

The table below compares paid maternity leave standards across the public services with reference to the 'major' industrial instruments (legislation, awards and EBAs).

Paid Maternity Leave Standards - Public Sector

Award/EBA Provisions	C'wealth	Vic	Qld	WA	Tas	SA	NSW
Paid Maternity Leave	12 wks	12 wks	6 wks	None	12 wks	2 wks	9 wks

Community and Public Sector Union State Public Services Federation Group: Submission to the Senate Employment, Workplace Relations and Education Committee's Inquiry into the Workplace Relations Amendment (Paid Maternity Leave) Bill 2002

How do awards, EBAs, company policies and legislation intersect?

One of the recurring debates in industrial relations is the degree of intervention of third parties in relations between employers and their employees. An industrial award and indeed laws governing workplaces (eg in health and safety matters) may be seen as an unwanted interference, and for higher productivity, workplaces should be able to self-regulate. In other words, under this scenario, either a relevant EBA or company policy would be dominant in setting conditions of employment.

The Finance Sector Union (see attachments 1,2,3) has provided to the Senate Committee its survey of work and family measures in key institutions within the banking/insurance industry and the method (award, agreement or company policy) as to how the following measures are provided to staff:

- Use of sick leave to care for family
- Specific paid leave to care for family
- Unpaid leave to care for family
- Work from Home
- Paid maternity/paternity/adoption leave

- Further unpaid maternity/paternity/adoption leave
- Time off in lieu
- Job sharing
- Part-time work
- Career break
- Pay Averaging (48/52)
- Child care subsidies (or provision)

The major institutions surveyed include the National Australia Bank (NAB), Westpac, ANZ, NRMA, AXA, in all eleven institutions (credit union conditions are considered but not according to the institution). The table comparing work and family provision and the source of the entitlement prepared by the FSU shows that company policy is significant in the NAB and the St George Bank. However comparing the source of work and family provision across the 11 financial institutions, collective agreements account for 45 per cent of such provisions, awards are a source of 35 per cent (with overlaps) and company policy accounts for the balance of about 20 per cent. Note that in this comparison, the role of legislation (the WR Act) is not included. For these financial institutions, the role of legislation is replaced by the applicable award/agreement parental leave provision, (as is required by the WR Act, s.170KA(4)).

Pros and Cons for Paid Maternity Leave

Arguments supporting PML have been canvassed in *Valuing Parenthood: Options for paid maternity leave - Interim paper 2002*. Some of these are:

- A national paid maternity leave scheme would go some way to addressing the male/female wage disadvantage and compensate for the period of childbirth and time shortly after when women take time off work or reduce their labour force activity.
- Maternity leave is generally restricted to long term, permanent employees. Industries with high proportions of women and casual workers, such as retail and hospitality, are generally less likely to offer paid maternity leave
- For couples who save money to afford each child, a period of paid leave would enable them to bring forward their decision to have a child. It may also encourage some couples to have an additional child.
- Paid maternity leave would assist with the direct costs of having children, especially the increased costs faced at the time of the birth of a child;
- Paid maternity leave encourages women to participate in the labour force and promote their economic security by enabling them to retain skills and expertise and maintain income
- Paid maternity leave would assist to reduce attrition rates, particularly for women, and encouraging women who have had babies to maintain their attachment to the workforce (benefiting the employer by reducing retraining and staff replacement costs).

The arguments against introducing paid maternity leave funded by government or by business is that it is no guarantee as a remedy against falling fertility rates.

Senator the Hon. Nick Minchin has made the following points:

- Fertility rates have been falling in Australia and the developed world for the past 30 years. Births are forecast to exceed deaths in Australia for at least another 30 years while the total population is forecast to continue to increase through immigration until 2063. So with one of the highest fertility rates in the OECD, Australia is in far better shape to manage than many nations)
- Most experts acknowledge that the government can do little to affect fertility rates

- Paid maternity leave will cost between \$415m and \$780m per annum depending on the rate of pay and eligibility. This would be a major new burden on taxpayers. Little justification for taxpayers contributing an additional half a billion dollars to mothers in the paid workforce while ignoring all other mothers
- Senator, the Hon. Amanda Vanstone has noted that PML is one of a number of work and family measures, but by itself is unlikely to offer a solution to the multiple pressures which parents will face in deciding to commit to raising children.

Costings: PML Bill Explanatory Memorandum

The key elements of the costing of PML which is contained in the Australian Democrats' Bill's follows:

- 250,200 births and 514 adoptions (250,714 maternity events) x .72 participation rate = 180,514 x .781 in non-government employment (= 140,981) x .754 for those in current job for more than a year = 106,300.
- Of these, assume 36.3 per cent (or 38,587) earn less than minimum wage at an average of \$229/week.
- Net of the Maternity Allowance and the Maternity Immunisation Allowance, these are eligible for an average Maternity Payment of (\$229 x 14 weeks) less \$1007 = \$2199. Estimated cost for those earning less than minimum wage is \$2199 x 38,587 = **\$84.85 million.**
- For those earning above minimum wage, or 63.7 percent of 106,300 = 67,713, net of the Maternity Allowance and the Maternity Immunisation Allowance, (\$431.40 x 14 weeks) less \$1007 = \$5033. Estimated cost for those earning less than minimum wage is \$5033 x 67,713 = **\$340.80 million**
- Total approximate cost, before tax = (\$342.09m + \$85.58m) = **\$425.65 million**, after tax = **\$352.14 million.**

Costings: ACTU Proposal

- The ACTU believes that women should receive 100% of their pre-leave income during the period of leave. As a work related entitlement, maternity leave is no different from sick leave, long service leave, jury service leave and defence forces leave which are funded at 100% income replacement.
- In view of the societal benefits accruing from maternity leave, and in light of the Commonwealth's role in addressing discrimination, the ACTU supports a Commonwealth payment capped at federal minimum wage. Forty-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.
- In recognition of the benefits to employers, the ACTU calls for employers to fund the gap between the federal minimum wage and women's pre-leave incomes. The ACTU calls for legislation introducing a levy on employers to fund the gap between the federal minimum wage and the average weekly earnings (currently \$897). 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 the scheme will meet the ILO requirement for 2/3 of pre-leave income for 97.5% of Australia's working mothers.
- The ACTU proposes that the new maternity payment be of equivalent value to the Commonwealth contribution to paid maternity leave i.e. up to \$6034.00 (pre tax). Clearly this is a significant increase on the existing Maternity and Immunisation allowances. However, a re-allocation of the funding for the baby bonus, plus the allocation for family tax benefits payable during the first year of a child's life, would go a significant way towards meeting the cost. The payment could be available around the time of the birth or spread across the child's early years.

Costings: Department of Finance and Administration (Senator the Hon Nick Minchin)

"The following are indicative costings of various schemes of paid maternity leave, based on those outlined in the Sex Discrimination Commissioner's discussion paper. The estimates are for 14 weeks (International Labour Organisation recommendation) of paid maternity leave based on eligibility of **(a) women employees with one employer for 12 months or more, or (b) women employees with one or more employers for 12 months or more.**

The estimates assume that family payments such as Maternity Allowance would continue unchanged and that each option would apply to all women who have been employees for the 12 months prior to the birth of their child.

Option 1: No Cap (Full wage replacement) 14 weeks of paid maternity leave at the rate of the mother's current wage and salary (i.e. uncapped); **(a) \$680m, or (b) \$780m.**

Option 2: \$1000 per week Cap 14 weeks of paid maternity leave at the rate of the mother's current wage and salary but capped at the same level as the Baby Bonus (\$52,000 per annum); **(a) \$605m, or (b) \$715m.**

Option 3: \$754 per week Cap 14 weeks of paid maternity leave at the rate of the mother's current wage and salary but capped at the rate of a midway point between the Baby Bonus current cap and the Federal Minimum Wage; **(a) \$575m, or (b) \$660m.**

Option 4: \$431 per week Cap 14 weeks of paid maternity leave at the rate of the mother's current wage and salary but capped at the rate of the Federal Minimum Wage; **(a) \$415m, or (b) \$475m.**

Can the costs be justified?

The role of maternity leave is, put simply, to maintain the link between a woman, post child-birth and her employment and career. There are likely to be a number of approaches to funding a PML safety net scheme, few of which have been put into the public arena. For governments, the analysis of the potential costs of government funded universal (safety net) PML scheme are difficult, since it is not clear from the evidence of a declining birth rate (and marriages), that government will net a 'return' from any additional safety net PML scheme cost.

The justification for the assistance provided to the unemployed used by DEWR and its predecessors may be relevant here. Essentially, the argument runs that if the cost of an employment assistance program generates outcomes for, say, 20 per cent additional placements, then if one unit of assistance equals, say, \$10 000, the 'cost per net impact' of the assistance may be \$100 000 or more, per outcome. In other words, the cost of getting one extra employed person would 'cost' on average \$100 000. This is because of the 'deadweight' factor, i.e. X-20% of unemployed would have found jobs without the assistance.

In the case of births pre-universal PML, a reference group is already available, i.e. last year's number of births (249 600) born without the benefit of a safety net PML system. The model crucially hinges on births being higher under the PML safety net scenario, but even assuming a reversal the decline in births, the 'net impact' of this PML safety net scheme could easily be a \$1 million per baby, assuming the cost of a PML scheme is say \$500m, but only 500 extra babies are born in the first year of a safety net scheme.

A possible solution would be to isolate any (hopefully positive) change in the birthrate to among just the 120 000 or so mothers with a connection to the workforce, and then of these, those who currently do not benefit from any form of PML but who will benefit under the proposed safety net scheme. Another possible justification for the cost might be in the mitigation of an otherwise more severe decline in fertility rates. It is true that current Commonwealth assistance for families is over \$16 billion ([Valuing Parenting, Appendix 4](#)), and thus there are other support schemes impacting on decisions to plan families. Against this, is the overwhelming body of evidence concerning the costs of child rearing, particularly to a dual income childless couple. Government policy would need to impact on their preferences to have any meaningful result, at least within the PML debate.

Developments in 2004

In the lead-up to the 2004 federal election, the major political parties have stepped up commitments to family-friendly workplaces. However (as of July 2004) both the Coalition and the ALP have announced enhanced maternity allowances/baby care payments rather than pursue paid maternity leave.

The ALP announced its baby-care payment on 31 March 2004. It proposes a 14 week maternity payment to mothers of \$3000 (for 14 weeks, or \$3000 spread over a year) rising to \$5300 in 2010 (1). Another element of ALP work and family policy is a proposal to facilitate easier access to part-time work for mothers returning to work following childbirth (2).

In respect of the Government, the Commonwealth Budget 2004 introduced a new Maternity Payment of \$3000, which will be increased to \$4000 on 1 July 2006 and then again to \$5000 on 1 July 2008. The cost of the maternity allowance starting at \$750m. per year and increasing, is about double the median estimates mentioned for PML in this brief. It is offset by terminating the former maternity allowance (as at 30 June 2004) and the baby bonus.

More information on these measures and other work and family policies is available in the Parliamentary Library Research Paper 2004-05 Work and Family policies as industrial and employment entitlements.

Endnotes

1. See T. Maguire, '[\\$5000 for new mums in ALP plan](#)' Daily Telegraph, 1 April 2004.
2. L. Taylor, '[Job rights: Labor opts for soft sell](#)' The Australian Financial Review, 7 April 2004, p.3.

Further Reading

1. O'Neill, Steve, [Work and family policies as industrial and employment entitlements](#), Research Paper, 9 August 2004

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