

Dear Productivity Commission,

I note a component of this inquiry is to identify models of parental leave that could be used in Australia. I would like to make a modest contribution by adding some considerations specifically with relation to a potential paid maternity leave (PML) model:

1. A PML policy should attempt to facilitate positive cultural change towards women's paid employment and 'biological role' (organizational, individual and national culture plays a role)
2. The PML policy should have regard to real maternity 'needs' and note the ILO standard of 14 weeks was borne out of a political settlement, and that 'need' represents up to 6 months but can vary from workplace to workplace.
3. The Productivity Commission considers when recommending a maternity policy, extends coverage to women 'attached' to the workforce and at the same time a policy that does not 'crowd' out the bargaining of PML or Parental leave conditions in the workplace.
4. The Government when making a decision concerning paid maternity leave, that 'cost' not be a primary factor in the decision making process.
5. The Government considers a PML policy containing 2 parts 5A and 5B:
5A (i) Provide for a government funded full income replacement paid maternity leave income contingent loans (similar to HECS) be made available for up to 52 weeks (during the weeks 5B is active 5A does not apply).
(ii) That these loan repayments are linked to the family income, ie single or two parent(s).
5B Provide for a government funded paid maternity leave scheme replacing 5A every second week up to 14 weeks on the minimum wage. 5B optional for the applicant.

Explanation for 5A & 5B

- (a) To mitigate the financial shock over a longer period of time arising from inadequate or lack of PML, ie prevent a mother from returning to work earlier than desired for financial reasons.
- (b) To make the loan repayments a non-gender issue. Making the matter for both genders to consider when bargaining employer assisted repayment as part of their employment conditions. I envisage a future where even the most male dominated industries (tending to have strong bargaining power) having strong PML income contingent loan repayment conditions (which could lead to bargaining for parental leave provisions).
- (c) To prevent the crowding out or loss of existing PML entitlements for those who currently have access.
- (d) To promote a positive cultural change
- (e) To facilitate employers (eg small businesses) contributions in smaller amounts over a longer period of time. (ie it would be easier to bargain for small maternity contribution over a number of years over a 14 week block).
- (f) To attempt to share the cost between employee, employer and the state.
- (g) To protect the low income & vulnerable sector of the economy.

The context of the above is based upon a policy paper I wrote in October last year in a uni. course assignment examining paid maternity leave. I've attached the paper as it provides the arguments for the above; it examines the media debate in 2006/2007 & scholarly work concerning PML (issues revolving around the approach the Australian government has taken, the standard, access and the issue of who pays).

Regards
Gary

Policy Paper – Women, Work & Family [*Paid Maternity Leave*]**Overview**

This policy paper is for the attention of the Shadow Minister for Workplace Relations, the Hon Julia Gillard, and attempts provide to an alternative to the traditional binary arguments for paid maternity leave that have been pursued in tedium, which the minister would note does not effectively address the maternity needs of working women.

As identified above the paper focuses on the key policy area of Women, Work and Family, an area receiving significant attention and debate from the media, public and scholars. In particular the paper narrows its focus on the topic area of Paid Maternity Leave (PML) and attempts to identify and address the issues around government approach, the PML standard, access and costs associated with PML.

The paper is divided up into 4 main parts, the first summarises the debate in the media in 2007 which largely centers on the governments current policy focus on the maternal role of women, the government's rejection of HREOC's PML recommendation and Senator Despoys's Private Members Bill, the second a literature review, summarizing and subjecting the scholarly research to critical review, identifying key points such as the nation's culture and an examination of the ILO standard, the third identifies areas for further research and the fourth provides a list for her Honour's consideration.

Media Summary

The first section of the paper examines in media discussion in 2007 around PML.

The main elements of the debate/discussion about paid maternity leave revolves around four main issues; first the approach the Australian government has taken, second the length of leave proposed, third who currently gets paid maternity leave benefits and who doesn't and the fourth who pays.

On the first issue, the media identified the government's rejection the HREOC's recommendation for 14 weeks a government funded paid maternity leave, which the federal government argued would benefit only working women¹. Instead the government increased maternity allowances (baby bonus), which is a payment to mothers irrespective of their attachment to the workforce. David Wilson² noted despite HREOC's recommendation for PML both major parties were silent on budget night, citing also Baird's pessimism over PML ever occurring in Australia. It is perhaps indication that PML costs will have to be borne out by the employer and employee. Minister Hockey argued low unemployment had led to increasing occurrence of PML offered to employees and that the baby bonus is equivalent to having 10 weeks PML. Nethercole³ cited the Prime Minister focusing on increasing birth rates as a policy agenda to directly addressing falling fertility by the baby bonus. In addition to that the government argued the implementation of PML would be too costly for the government and businesses in particular small business, Peatling indicated it would cost approximately \$213 million⁴.

This approach to the reproduction of labour/population is out of sync with the trends showing high levels of women participating in the workforce, and remains within the realms of welfare.

The second issue deals with the length of PML proposed, given Australia does not have legislated minimum PML condition, there has been arguments from both the public and scholars for 14 weeks of PML⁵, the most recognized is Despoya's amendment bill⁶ and HREOC's recommendations reported by many media sources, this unlike the latter recommends the phasing in of parental leave to promote equality in caring responsibilities.

¹ Conway D 'BBQ stopper' sizzles on for wealthy, time-poor Aussies, *Australian Associated Press General News*, 8 March 2007.

² Wilson D, Politicians Fail Families Again, *The Age*, 26 May 2007

³ Nethercote J, OK Treasurer, here's how to make Australia really female-friendly, *Crikey* 3 April 2007.

⁴ Peatling S, New deal for working parents rejected, *The Sydney Morning Herald*, 8 March 2007.

⁵ Peatling S, We'll share maternity leave costs, say workers, *The Sydney Morning Herald*, 14 July 2007.

⁶ Doran S, Mother of all issues *The Sydney Morning Herald*, 21 July 2007

⁶ Franklin M, Paid maternity leave much cheaper than baby bonus, *The Australian*, 10 September 2007

The third important element being discussed begs the question of distribution of women whom have access to paid maternity leave benefits. Media reported those in the retail, cleaning, hospitality and care sectors of the economy were far less likely have paid maternity leave entitlements than those in the finance and insurance industries, and even in those industries the distribution is uneven and largely depends on the employer⁷. Chapman distinguished between the provision of PML more likely to be localized in the city than rural areas, which is linked to industry distribution. This is quickly realized as the low income and higher income sectors of the economies, or also those whom are vulnerable with little bargaining power and those with stronger bargaining power. A reason for the differences is the need for some employers to retain skilled and loyal employees ie the monetary value of the employee to the employer⁸ this will maintain a segment of the economy which will perpetually inadequate access to PML.

The fourth element of the debate is largely concerned with widespread contingent approval for the commencement of legislated paid maternity leave, a requisite for consideration revolves around cost. The question of ‘who pays?’ is unveiled, this is a point of contention employer groups support for the scheme contingent upon a state funded scheme, or as an opinion argues families should absorb the cost.

Peter Hendy contended small businesses were adverse to employer funded PML because it had a larger impact on small business, however this is an unsatisfactory argument as any increase in cost like would likely be transferred on to the consumer (depending on the elasticity of the product/business).

Literature Review

This part of the paper will offer a summary and subject the research conducted on paid maternity leave to critical scrutiny. In particular, the discussions revolve around the four

⁷ MacDonald E, Paid maternity leave: pressure on; Massive public support may affect elections, *Canberra Times*, 14 July 2007

Biddulph S, Paid care for babies a pale imitation of parental love, *The Sydney Morning Herald*, 16 July 2007

Williams N, Cost of extra baby leave ‘is worth it’, *The Advertiser*, 1 August 2007

Wilson D, Politicians fail families, again, *The Age*, 26 May 2007

Peating S, We’ll share maternity leave costs, say workers, *The Sydney Morning Herald*, 14 July 2007

⁸ Allen E, Fair play for parents, *The Courier Mail*, 18 July 2007

key themes identified above; the government's approach to women, standard, access and cost of paid maternity leave.

The first theme revolves around the approach the government has taken towards women; despite the increasing women participating in the workforce the Federal Government has focused on a welfare orientated⁹ approach in the form of maternity allowances (baby bonus). Whilst scholars have commended the benefits of such a scheme, it has also been criticized for being out of sync with modern families (being irrespective of attachment to the workforce). This orientation promotes the traditional male breadwinner model, female dependence upon a male partner for economic security¹⁰ and Australia has sustained the welfare approach by re-enforcing the primacy of the maternal role over workforce participation. Baird however identifies the strongest movement in paid maternity leave having occurred outside government policy either from bargaining or business case approach creating industry specific patterns¹¹ which will be discussed further in the third theme.

Pocock similarly critiques the welfare approach, she argued that maternity allowance is not a substitute for a policy tied to employment to support labour market attachment¹². The inadequate recognition of a woman's 'biological role' and participation in the workplace creates barriers to employment and pigeonholes women into the primary carer role and to jobs that with lower job quality¹³. Pocock argued dependence on the male wage and the slow uptake of PML through the bargaining or business case model requires for institutional intervention to reconcile the 'biological role' in the workforce¹⁴. A

⁹ Baird, M. (2004), 'Orientations to Paid Maternity Leave: Understanding the Australian Debate', *Journal of Industrial Relations*, 46, 3, pp. 265

¹⁰ Ibid

¹¹ Baird M. (2005), 'Parental Leave in Australia: The Role of the Industrial Relations System', *Law in Context*, 23, 1, 45

¹² Pocock, B. (2005), 'Labour Market "Deregulation" and Prospects for an Improved Australian Work/Care Regime', in J. Isaac & R. D. Lansbury (eds), *Labour Market Deregulation: Rewriting the Rules*, The Federation Press, Leichhardt, pp. 52

¹³ Charlesworth, S (2007) 'Part-time and part-committed'?: The Challenges of part-time Work in policing, *Journal of Industrial Relations* 49, 1 pp38-39

¹⁴ Pocock, B. (2005), 'Labour Market "Deregulation" and Prospects for an Improved Australian Work/Care Regime', in J. Isaac & R. D. Lansbury (eds), *Labour Market Deregulation: Rewriting the Rules*, The Federation Press, Leichhardt, pp. 54

weakness in this argument sees the problem being associated the ‘maternity allowance’; however it is unclear if a potential solution would be its removal. Even if maternity allowance was removed and time was reset, a key factor in determining the way forward would be national culture.

Whitehouse¹⁵ notes the government’s preference for non-workforce participatory policy which encourages mothers to exit the workforce upon child birth and argues a policy that support women’s attachment to the workforce would enhance gender equality and key to equality is the role both parents should play in the caring role. She also observed that attitudinal/ cultural factors differentiates Australia from other nations¹⁶, she argued paid maternity leave should be accompanied by paternity leave provisions to re-enforce an equity based culture.

Charlesworth’s examination of Victorian Police found a dominant culture emerges that influences its members views which also influences the approach to the woman’s role¹⁷. This is suggestive organization culture plays a key role and any policy should have regard to cultural recognition of a woman’s role in the workplace. And Peetz¹⁸ comments on the widespread cultural norm in Australia where women’s work are undervalued and argues only through collective action can this be redressed. The author of this paper would argue this does not need to be just female collective representation but also male representation by making proposals for non-gender specific recommendations. A key difficulty in collective bargaining also has to do with the capacity of the collective to take industrial action which the vulnerable sector, the escape strategy has to be a viable option ie there needs to be an easier transition from one job to the other or better conditions elsewhere to facilitate the strategy.

¹⁵ Gillian Whitehouse (2005), Policy and Women’s Workforce Attachment, Just Policy No.35 .

¹⁶ Ibid

¹⁷ Charlesworth, S (2007) ‘Part-time and part-committed’?: The Challenges of part-time Work in policing, Journal of Industrial Relations 49, 1 pp38-39

¹⁸ Peetz D., (2005), Brave new workplace: How individual contracts re changing our jobs, Allen and Unwin, St Leonard’s.

Examining the approach on the international level, the ILO's decision to address the issue in the 1990's was due to increasing female participation in the workforce which also attempted to address retention rate¹⁹. A problem arises with the application of the leave provisions for casual & seasonal workers, Earle noted the approach of excluding certain groups of women from paid maternity leave on the basis of employment status, length of service would be inconsistent with the concept of equity for maternity protection. This suggests any attempts by the ILO to define women workers could pose the danger of governments attempting to minimize their obligations.

Hence a comprehensive policy attached to employment needs to go beyond legislation and has to have a capacity to bring about cultural change, to encourage bargaining on the issue of maternity leave irrespective gender.

On the second theme concerning what the PML standard should be; decentralization of the IR system has reduced the number of minimum conditions which many women in the low paid sector are dependent upon²⁰. Pocock argued the necessity for an improved minimum standard to protect those with inadequate or no access to maternity leave benefits²¹. On this point we may ask, what should the standard be?

Earle examines the development of the ILO standard of 12 weeks²², recently revised to 14 weeks which attempts to address the issue of interrupted paid work for the birth of the child and return to work linked with the biological role. She however identified the standard as a conservative agreement to balance the needs of other nations, hence the standard is based upon a political settlement and does not represent of necessity (ie. working mothers are likely to utilize more than 14 weeks). This is also suggestive of

¹⁹ Earle, J. (1999), 'The International Labour Organisation and Maternity Rights: Evaluating the Potential for Progress', *The Economics and Labour Relations Review*, 10, 2, pp. 203-20

²⁰ Baird, M, Cooper R and Oliver, D (2007) *Down and Out with Work Choices: the impact of Work Choices in the work and lives of women in low paid employment*. pp4

²¹ Pocock, B. (2005), 'Labour Market "Deregulation" and Prospects for an Improved Australian Work/Care Regime', in J. Isaac & R. D. Lansbury (eds), *Labour Market Deregulation: Rewriting the Rules*, The Federation Press, Leichhardt, pp. 52

²² Earle, J. (1999), 'The International Labour Organisation and Maternity Rights: Evaluating the Potential for Progress', *The Economics and Labour Relations Review*, 10, 2, pp. 203-20

domestic policy effecting international standards, which gives rise to an opportunity for a role Australia can play to improve international standards. Earle argued a standard which attempts to address ‘need’ would provide up to 6 months, however this may vary from organization to organization depending on the facilities available for example breast feeding facilities.

Hence when we consider a standard we are faced with two different paths in determining the standard, the first option a minimum condition to mitigate the harshness borne out of the inadequate access to PML or a second option, a standard which attempts to address a real ‘need’.

For example if we examine the minimum conditions proposed by Despoya²³, the proposal attempts to mitigate the problem of inadequate PML and to satisfy international standards. Similarly the HREOC²⁴ report recommends 14 weeks PML, with the phasing in of paid paternal leave, this recommendation had regard to valuing caring responsibilities. Thus there are more options than the binary argument to take up the ILO standard.

We now turn to the third theme concerning access to PML; Gillian Whitehouse cites estimates from the HILDA wave 2 report indicating approximately 1/3 of Australian women employees (public & private sectors) have access to paid maternity leave²⁵, and a strong indicator is the workplace size, where the likelihood of access to paid maternity leave was significantly higher in larger organizations.

O’Neill²⁶ cites higher end estimates by Barbara Pocock suggesting around 39% of female employees have access to an average of 7 weeks paid maternity leave, however this is not

²³ *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002*– Explanatory Memorandum
Workplace Relations (Guaranteeing Paid Maternity Leave) Amendment Bill 2007– Explanatory Memorandum

²⁴ Recommendation 14 of *It's about time: Women, men, work and family* - final paper 2007

²⁵ Gillian Whitehouse (2005), *Policy and Women’s Workforce Attachment*, Just Policy No.35

²⁶ Steve O’Neill, *Paid Maternity Leave*, E-Brief: Online Only issued 13 September 2002; updated 11 August 2004 on http://www.aph.gov.au/library/intguide/ECON/maternity_leave.htm accessed 17 October 2007.

distributed equally from industry to industry. The statistics indicate 72% have access in the finance and insurance sectors and approximately 1% in retail 2 % in hotels and restaurants. This is perhaps reflected in their capacity to bargain, and their skill/dollar value to the firm ie bargaining & business case.

The government views the primacy of economic growth and decreasing unemployment as medicine for improving PML conditions. This view is similar to that of neoclassical economy theory, arguments of growing aggregate demand to encourage employers to offer these benefits.

Scholars have resisted those arguments, Pocock argues the imperfection of humans, Peetz argues differences in bargaining power and O'Brien and Wanroy et al, illustrates a clear high income and low income sectors of the economy, the issue is that many scholars & research has identified women occupying the low income sectors of the economy whom are vulnerable with little or no bargaining power. Nevertheless despite the validity of Pocock's & Peetz's arguments they do not propose an alternative amendment to the economic model.

On the fourth theme addressing cost to fund PML, Whitehouse²⁷ argues without a social insurance fund, it would be a politically difficult task, and that maternity leave provisions have always been vulnerable in the context of political conservatism favoring traditional family models, and that funding for maternity leave provisions consistently ends up in arguments over who should pay.

The NFAW survey²⁸ conducted in July 2007 indicated 78% support for shared financial responsibility between the employer, worker and government.

²⁷ Whithouse, G (2004), From family wage to parental leave: the changing relationship between arbitration and the family, *Journal of Industrial Relations* 64, 4.

²⁸ National Foundation for Australian Women, Paid Maternity Leave [Survey]
<http://www.nfaw.org/social/maternity/index.html> accessed 21 October 2007.

Pocock²⁹ reasoned government funding for PML is more effective over employer funded paid maternity leave schemes, because it reduces the incentive for discriminating against fertile women whom might create additional costs for employers. This argument finds weakness on 2 points, first increased costs are usually passed on to the consumer and secondly argument takes a narrow gender view of PML, the author of this paper considers it possible to make this a non-gender issue.

A range of costings have been done with respect to the various proposals namely Despoya's private members bill³⁰ recommending 14 weeks paid maternity leave at minimum wage indicating after tax value of \$352.14 million in 2002 and \$591.6 million in 2007. HREOC's³¹ costing mirroring this model indicated after savings from family tax benefit offsets and childcare costs offsets cost would be approximately \$219 million.

The argument surrounding costing however is not helpful in enhancing the PML 'need' argument as it primarily focuses on the affordability of the scheme. A key weakness is that it is contingent upon national affordability, and begs the question if the economy experiences a downturn, would PML scheme be repealed when the nation can no longer afford it? The author of this paper nevertheless recognizes for the purposes of planning and it remains necessary to have costings available but it should not be the primary or key factor in making the decision to have PML. Baird argued this issue of costs commodifies the PML debate³². In addition government treasury should not be treated as a bottomless pit, the questions posed in the NFAW survey did not adequately inform the recipient support government funded scheme might require shifting monies out of other areas of human services in order to fund PML.

Further Research

²⁹ Pocock, B (2007) A Time to Act: Paid Maternity Leave for All South Australian Women - <http://www.nfaw.org/social/maternity/2007/SA-maternityleave.pdf> accessed 21 October 2007.

³⁰ *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002* – Explanatory Memorandum
Workplace Relations (Guaranteeing Paid Maternity Leave) Amendment Bill 2007– Explanatory Memorandum

³¹ It's about time: Women, men, work and family - final paper 2007

³² Baird, M. (2004), 'Orientations to Paid Maternity Leave: Understanding the Australian Debate', *Journal of Industrial Relations*, 46, 3, pp. 259-75.

This paper recommends 3 areas for further research.

First the debate has been relatively silent on the differences between a working mothers superannuation savings and childless working women/men. Further research would be useful in facilitating equity in this field.

Second an examination into the long term intrinsic costs associated with ‘maternity allowance’ could assist in determining the total impact the welfare approach has had on society.

And finally as alluded too earlier in the paper, scholars such as Pocock & Peetz have resisted the neoclassical economic theory model, suggesting it not reflective of the labour market. However Pocock & Peetz do not propose an alternative to improve the current economic model. This paper would suggest further research be conducted to create an economic model which has a better fit to the labour market.

List of Recommendations

1. The federal opposition considers strategies to facilitate positive cultural change to women’s paid employment and ‘biological role’
2. The federal opposition have regard to real maternity ‘needs’ and note the ILO standard of 14 weeks was borne out of a political settlement, and that ‘need’ represents up to 6 months but can vary from workplace to workplace.
3. The federal opposition considers when implementing a maternity policy that extends coverage to women ‘attached’ to the workforce.
4. The federal opposition when making a decision concerning paid maternity leave, that ‘cost’ not be a primary factor in the decision making process.
5. The federal opposition considers this papers proposal, a policy containing 2 parts 5A and 5B:

5A (i) Provide for a government funded full income replacement paid maternity leave income contingent loans (similar to HECS) be made available for up to 52 weeks (during the weeks 5B is active 5A does not apply).

(ii) That this loan repayments be linked to the family income, ie single mother, father-mother, bona fied same sex couples, etc.

5B Provide for a government funded paid maternity leave scheme replacing 5A every second week up to 14 weeks on the minimum wage. 5B optional for the applicant.

Explanatory Memo for 5A & 5B

- (a) To mitigate the financial shock over a longer period of time arising from inadequate or lack of PML, ie prevent a mother from returning to work earlier than desired for financial reasons.
- (b) To make the loan repayments a non-gender issue. Making the matter for males to consider when bargaining employer assisted repayment as part of their employment conditions. The author of this paper envisages a future where even the most male dominated industries having strong PML income contingent loan repayment conditions.
- (c) To prevent loss of existing PML entitlements for those whom currently have access.
- (d) To promote a positive cultural change
- (e) To facilitate employers (eg small businesses) to employee contributions in smaller amounts over a longer period of time. (ie it would be easier to bargain for small maternity contribution over a number of years over a 14 week block).
- (f) To attempt to share the cost between employee, employer and government.
- (g) To protect the low income & vulnerable sector of the economy.

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