



Submission of the

HUMAN RIGHTS AND EQUAL OPPORTUNITY

COMMISSION (HREOC)

to the

PRODUCTIVITY COMMISSION

on the

INQUIRY INTO PAID MATERNITY, PATERNITY

AND PARENTAL LEAVE

2 June 2008

Human Rights and Equal Opportunity Commission

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Introduction

1. The Human Rights and Equal Opportunity Commission (HREOC) makes this submission to the Productivity Commission in its Inquiry into Paid Maternity, Paternity and Parental Leave ('the Inquiry').
2. HREOC is Australia's national human rights institution.¹
3. HREOC has undertaken substantial work over an extended period of time on the need for a national scheme of paid leave entitlements for parents, including paid maternity leave, paid paternity leave (described as 'supporting parent leave' in this submission)² and paid parental leave (collectively described as 'paid leave').
4. In 1999, HREOC conducted its National Pregnancy and Work Inquiry, which led to publication of *Pregnant and Productive: It's a right not a privilege to work while pregnant* ('*Pregnant and Productive* (1999)').³ At that time, HREOC first recommended that the Australian Government ('the Government') undertake economic modelling and analysis of possible paid maternity leave options.
5. This work was followed by HREOC's *A Time to Value: Proposal for National Maternity Leave Scheme* in 2002 ('*A Time to Value* (2002)')⁴ and *It's About Time:*

¹ HREOC is established by the *Human Rights and Equal Opportunity Commission Act 1986* ('HREOC Act'). Sections 11 and 31 of the HREOC Act set out HREOC's functions relating to human rights and equal opportunity in employment respectively. HREOC also has functions under the Commonwealth *Sex Discrimination Act 1984*, *Racial Discrimination Act 1975*, *Disability Discrimination Act 1992* and *Age Discrimination Act 2004*.

² HREOC proposes the term 'supporting parent leave' in order to be inclusive of non-birth parents who are not the father of the child.

³ See <http://www.humanrights.gov.au/sex_discrimination/publication/pregnancy/report.html> at 24 May 2008.

⁴ See <http://www.humanrights.gov.au/sex_discrimination/paid_maternity/pml2/index.html> at 24 May 2008. See also the initial publication *Valuing Parenthood: Options for paid maternity leave - Interim paper* (2002) at <http://www.humanrights.gov.au/sex_discrimination/paid_maternity/pml/index.html> at 24 May 2008, which proposes options for implementing a national paid maternity leave scheme, examines provisions in Australia compared to other countries, and canvasses the arguments for a national scheme.

Women, men, work and family in 2007 (*It's About Time* (2007)'),⁵ both involving extensive public consultation and expert input. HREOC recommended the immediate introduction of a national paid maternity leave scheme as a priority in both of these reports. In 2007, HREOC also called for consideration of paternity and parental leave entitlements.

6. In 2007/8, the new Sex Discrimination Commissioner, Elizabeth Broderick conducted her national Listening Tour.⁶ Once again, the need for a national scheme of paid leave for parents emerged as a major theme.
7. Accordingly, HREOC welcomes the opportunity to participate in this important, long-awaited inquiry for the Australian community.
8. This submission draws on HREOC's previous paid leave reports, recommendations and consultations. The submission also incorporates HREOC's recommendations from the National Inquiry into Discrimination against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits, contained in the *Same Sex: Same Entitlements Report* (2007).⁷

⁵ See <http://www.humanrights.gov.au/sex_discrimination/its_about_time/index.html> at 24 May 2008. See also the initial publication *Striking the Balance: Women, men, work and family – Discussion Paper* (2005) at <http://www.humanrights.gov.au/sex_discrimination/publication/strikingbalance/index.html> at 24 May 2008, which examined family responsibilities and paid work.

⁶ A report on the findings of the Listening Tour is currently being produced and is scheduled for release in July 2008.

⁷ <http://www.humanrights.gov.au/human_rights/samesex/report/index.html> at 24 May 2008 and <http://www.humanrights.gov.au/disability_rights/employment_inquiry/index.htm> at 24 May 2008.

Summary

9. There is an urgent need to establish a national paid leave scheme. However it is essential that a national paid leave scheme progressively realises a range of key national public policy objectives.
10. A national paid leave scheme should:
 - a. ensure the health and wellbeing of mothers, babies, fathers and families;
 - b. address women's workplace disadvantage as a result of their maternal role;
 - c. promote gender equality by fostering shared responsibility between men and women for the care of children;
 - d. deliver benefits to the economy and employers;
 - e. foster economic security for parents and children;
 - f. deliver social benefits for the Australian community as a whole; and
 - g. comply with Australia's international human rights obligations and labour standards.⁸
11. HREOC considers that implementing a national paid leave scheme should be staged and continuously improved over time in order to achieve these key national objectives in an effective and sustainable way. HREOC therefore proposes a national paid leave scheme which is implemented in two stages.
12. HREOC's proposed National Paid Leave Scheme (Stage One) introduces a first phase of paid maternity leave (14 weeks) and supporting parent leave (two weeks). Stage One should be introduced immediately.

⁸ Further detail and reference material for each of these objectives can be found in HREOC's *A Time to Value: Proposal for National Maternity Leave Scheme* <http://www.humanrights.gov.au/sex_discrimination/paid_maternity/pml2/index.html> at 24 May 2008.

13. Two years after implementation of Stage One, the Government should conduct a comprehensive, independent review (the ‘Two Year Review’) of Stage One in order to assess its effectiveness in contributing to the key national objectives. Following the Two Year Review, HREOC proposes introduction of the National Paid Leave Scheme (Stage Two). Stage Two builds on Stage One by introducing an additional paid parental leave component (38 weeks, of which four weeks are reserved for the supporting parent on a “use it or lose it’ basis). HREOC recognises that its current Stage Two proposal may need to be modified and improved before introduction, depending on the outcomes and learnings from the Two Year Review.
14. HREOC considers that its National Paid Leave Scheme will positively contribute to the key national objectives. In particular,:
15. **Paid Maternity Leave** will:
 - a. provide an essential minimum period of paid leave for mothers to recover physically and emotionally from birth, to establish breastfeeding and to bond with the child;
 - b. enable babies to form a secure attachment to their mother;
 - c. address the disadvantage that women experience in their ability to stay attached to the labour market as a result of giving birth;
 - d. increase the labour market attachment of mothers by contributing to an increase in return to paid work following childbirth;
 - e. ease the financial pressure on mothers, fathers and other supporting parents at a time when additional expenses are incurred as a result of a new child.
16. **Supporting Parent Leave** will:
 - a. Enable supporting parents to bond with their child;
 - b. Enable babies to form a secure attachment with their other parent;
 - c. Support the sharing of parenting responsibilities from an early stage; and

- d. Provide new mothers with support from their partner while they adjust to their new role and, where applicable, provide support where the mother is transitioning back to paid work.

17. **Paid Parental Leave** will:

- a. Enable mothers to continue breastfeeding according to choice;
- b. Support parents to provide personal care for their child for the first year of the child's life;
- c. Contribute to healthy child development during the first year;
- d. Support working parents to share their parenting responsibilities and their paid work according to choice;
- e. Provide greater flexibility and choice for parents as to how they arrange their parenting responsibilities with their paid work;
- f. Enable supporting parents, particularly fathers, to take leave from paid work in order to enhance bonding with their child, contribute to healthy child development and establish a strong parenting relationship based on partnership with the child's mother.

18. In conjunction with other key national public policies (such as the right to request flexible work, and early childhood education and care), a **National Paid Leave Scheme** will:

- a. Enhance women's workforce participation and participation in public life;
- b. Facilitate supporting parents' greater participation in family life;
- c. Increase economic security for women, men and their families;
- d. Contribute to reduction in the gender pay gap and inequality in retirement savings;
- e. Provide benefits to employers by attracting and retaining female staff, leading to increased productivity;

- f. Provide a greater economic return for investment in education and skills development of women;
 - g. Contribute to maintaining an acceptable aged dependency ratio to support the ageing Australian population;
 - h. Value the role of children and parenting as an investment which provides social and economic benefits to the country.
19. HREOC urges the Inquiry to model the likely impact of both State One and Stage Two of its National Paid Leave Scheme. The modelling should separately assess both stages of the proposal against its key national objectives, taking into account the interaction with current government payments, and other paid work and family responsibility policies such as the right to request flexible working arrangements and the unpaid parental leave entitlements contained in the proposed National Employment Standards, and both committed and mooted reforms to the provision of early childhood education and care services.
 20. HREOC may then modify its proposal in the subsequent stage of this inquiry.
 21. Promotion and education of a new national paid leave scheme within the Australian community is essential. HREOC urges that the implementation of the National Paid Leave Scheme be accompanied by a comprehensive education and awareness-raising campaign that meets the diverse communication needs of the community. Promotion and education strategies should be tailored for, and targeted towards, groups less likely to have information about the new entitlements. All information should be culturally appropriate and made available in an accessible format.
 22. A national paid leave scheme should be subject to continuous review, informed by a strong evidence base. HREOC urges the Government to develop and fund an independent research agenda which will generate reliable evidence over time of the impacts of the national paid leave scheme in conjunction with other key public policy initiatives, including social security and family assistance payments, the right to request flexible work arrangements, and early childhood education and care policies, on the key national objectives.

23. As noted above, HREOC proposes a formal Two Year Review of a national paid leave scheme, in whichever form it initially takes. The Two Year Review should be included in the legislative arrangements for introduction of the scheme. The Two Year Review is essential in order to measure the impacts of Stage One of the scheme, and to implement a more substantial package of paid leave measures taking into account the findings of the review.
24. A national paid leave scheme must be considered as part of a suite of measures to enable people to meet their paid work and family responsibilities.
25. HREOC's two-staged proposal for a National Paid Leave Scheme is summarised in the table set out below.

Table of HREOC's Proposed National Paid Leave Scheme for Parents

HREOC's PROPOSAL FOR A NATIONAL PAID LEAVE SCHEME					
	STAGE ONE for immediate implementation		STAGE TWO for implementation (with possible modification) following Two Year Review		
	PAID MATERNITY LEAVE ('PML')	SUPPORTING PARENT LEAVE ('SPL')	PAID MATERNITY LEAVE ('PML')	SUPPORTING PARENT LEAVE ('SPL')	PAID PARENTAL LEAVE ('PPL')
Duration	<p>PML will provide for an entitlement to 14 weeks of paid leave to be taken immediately prior to and/or following the birth of the child.</p> <p>PML must be taken as a continuous block.</p> <p>A woman may elect to take less than the full 14 weeks of PML, but will only receive payment in the weeks taken as maternity leave.</p>	<p>SPL will provide for up to two weeks of paid leave for the supporting parent (see Coverage below) to be taken concurrently with the PML period, or immediately after the PML period.</p> <p>Where the birth mother is not in paid employment, the SPL is to be taken in the first 14 weeks after birth of the child.</p> <p>SPL must be taken in a continuous block.</p> <p>The supporting parent may elect to take less than the full two weeks of SPL, but will only receive payment for the period of leave taken.</p>	Same as Stage One	<p>SPL will provide for up to two weeks of paid leave to be taken concurrently with the PML period only. SPL can no longer be taken immediately at the end of the PML period.</p> <p>In other respects, duration is the same as Stage One of SPL.</p>	<p>PPL will provide for up to 38 weeks of paid parental leave, to be taken following the PML period and within the first year of the child's birth.</p> <p>However, four weeks of the 38 weeks of PPL may only be taken by the supporting parent, with the exception of a sole parent, in which case, the sole parent is entitled to up to the full 38 weeks of PPL.</p> <p>The parents of a child may share the 34 weeks of PPL to which both parents are entitled. For example, parents may choose a shared care arrangement, with both parents undertaking paid work on a part-time basis, sharing the care of the child at alternative times.</p> <p>However, PPL time cannot be taken concurrently by both parents at the same time.</p>
Coverage	<p>PML is to be provided to women at the time of the birth of a child.</p> <p>The exceptions to this, where payment can be made to the supporting parent, will include:</p>	<p>SPL is to be provided to the supporting parent of the child.</p> <p>The supporting parent is either the father of the child, or the partner of the mother, depending upon</p>	Same as Stage One	Same as Stage One	<p>PPL is to be provided to the birth mother and/or the supporting parent, subject to the restrictions set out under Duration, above.</p>

HREOC's PROPOSAL FOR A NATIONAL PAID LEAVE SCHEME

STAGE TWO for implementation (with possible modification) following Two Year Review			
	STAGE ONE for immediate implementation		
	PAID MATERNITY LEAVE ('PML')	SUPPORTING PARENT LEAVE ('SPL')	PAID PARENTAL LEAVE ('PPL')
	where the mother has died; where the mother is not medically able to care for the child (based on a doctor's opinion) or gives up care of the child; or where the child has been adopted.	which person is to share parental responsibility for the child. The exception to this is where the birth mother is a sole parent, (i.e. no supporting parent) in which case SPL is to be provided to women in receipt of PML.	
Eligibility	In order to be eligible for PML, 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.	In order to be eligible for SPL, the supporting parent 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.	In order for a birth mother to be eligible for PPL, she must be supporting parent must be in paid work. In order for a supporting parent to be eligible for PPL, the parent must be eligible for SPL, and the birth mother must have returned to paid work (unless the birth mother does not share parental responsibility for the child).
Payment level	PML 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. Payment is to be paid as taxable income, including superannuation, on a pro rata basis. Previous weekly earnings are to be calculated as the greater of either:	SPL is to be paid at the rate of the Federal Minimum Wage, or the supporting parent's previous weekly earnings from all jobs, whichever is the lesser amount. Payment is to be paid as taxable income, including superannuation, on a pro rata basis. Previous weekly earnings are to be calculated as the greater of either:	The payment level of SPL is to be calculated on the same basis as Stage Two of PML, by reference to the supporting parent's average weekly earnings. PPL is to be paid at the same rate as Stage Two of the person's PML or SPL, whichever is the applicable payment.

HREOC's PROPOSAL FOR A NATIONAL PAID LEAVE SCHEME

HREOC's PROPOSAL FOR A NATIONAL PAID LEAVE SCHEME					
STAGE ONE for immediate implementation			STAGE TWO for implementation (with possible modification) following Two Year Review		
	PAID MATERNITY LEAVE ('PML')	SUPPORTING PARENT LEAVE ('SPL')	PAID MATERNITY LEAVE ('PML')	SUPPORTING PARENT LEAVE ('SPL')	PAID PARENTAL LEAVE ('PPL')
	<ul style="list-style-type: none"> - the average of 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 12 months. 	<ul style="list-style-type: none"> - the average of a supporting parent's weekly earnings from all jobs immediately prior to taking leave; or - the average of their weekly earnings from all jobs during the time in employment over the previous 12 months. 			
Funding source	PML is to be funded by the Australian Government.	SPL is to be funded by the Australian Government.	<p>If the payment level is increased to two-thirds of the woman's previous weekly earnings or more, the two-year review should confirm the most effective funding model which will continue to meet the key national objectives of a national paid leave scheme.</p> <p>If the payment level remains at the Federal Minimum Wage, PML should continue to be funded by the Australian Government.</p>	The funding source is the same as Stage Two of PML.	The funding source for PPL is the same as Stage Two of PML and SPL.
Payment mechanism	<p>PML is to be paid as a fortnightly payment during the period of leave.</p> <p>For women who have been in employment with the same employer for the 40 weeks of the past 52 weeks, payment is to be made by that employer.</p> <p>For women who have been with more than one employer during the same period of eligibility, the</p>	<p>SPL is to be paid as a fortnightly payment during the period of leave.</p> <p>For supporting parents who have been in employment with the same employer for 40 weeks of the past 52 weeks, payment is to be made by that employer.</p> <p>For supporting parents who have been with more than one employer during the same period of</p>	The payment mechanism will be dependent upon the funding source for Stage Two of PML.	The payment mechanism will be dependent upon the funding level and source for Stage Two of SPL.	The payment mechanism is to be the same as the person's Stage Two PML or SPL, whichever is the applicable payment.

HREOC's PROPOSAL FOR A NATIONAL PAID LEAVE SCHEME					
		STAGE TWO for implementation (with possible modification) following Two Year Review			
		PAID MATERNITY LEAVE ('PML')	SUPPORTING PARENT LEAVE ('SPL')	PAID MATERNITY LEAVE ('PML')	PAID PARENTAL LEAVE ('PPL')
		<p>woman may elect to receive payment as either:</p> <ul style="list-style-type: none"> - a fortnightly payment from Government to the individual; or - a payment from the employer to the individual, with the employer being reimbursed by the Government as above (subject to the employer agreeing to offer this option). <p>Where payment is made by the employer, the employer is reimbursed by Government for the PML cost, which may include a reasonable administration fee.</p>	<p>eligibility, the parent may elect to receive payment as either:</p> <ul style="list-style-type: none"> - a fortnightly payment from Government to the individual; or - a payment from the employer to the individual, with the employer being reimbursed by the Government as above (subject to the employer agreeing to offer this option). <p>Where payment is made by the employer, the employer is reimbursed by the Government for the SPL cost, which may include a reasonable administration fee.</p>		
NATIONAL PAID LEAVE SCHEME ARRANGEMENTS APPLICABLE TO BOTH STAGE ONE AND STAGE TWO					
Role of employers	<p>Employers should be encouraged to continue existing provisions for paid leave. Parents, including public servants, should not be excluded from any government funded component of the National Paid Leave Scheme on the basis of receiving employer provided paid leave.</p> <p>Employer "top ups" to a government funded paid leave are to be provided for and encouraged. Such top ups should be negotiated through standard bargaining mechanisms.</p> <p>Employers may be required to play a role in validating entitlement to government funded paid leave.</p>				
Interaction with the social security and other government payments	A person who receives paid leave entitlements under the National Paid Leave Scheme will continue to be entitled to applicable social security and family assistance schemes, including the Baby Bonus, in accordance with existing eligibility criteria.				
Interaction with	Paid leave must be considered as part of a suite of measures to enable Australians to meet their paid work and family responsibilities.				

NATIONAL PAID LEAVE SCHEME ARRANGEMENTS APPLICABLE TO BOTH STAGE ONE AND STAGE TWO	
other work and family reconciliation policies	Modelling of HREOC's proposal must take into account likely interaction with work and family reconciliation policies such as the right to request flexible working arrangements and the provision of early childhood education and care.
Interaction with existing legislation	<p>Current industrial arrangements in relation to paid leave should continue.</p> <p>Under Stage One all employees taking paid leave who are eligible under these provisions would be accorded the right to return to their previous job in keeping with the return to work guarantee that applies under the unpaid parental leave provisions of the <i>Workplace Relations Act 1996</i>.</p> <p>Under Stage Two, further consideration of the interaction between unpaid parental leave is needed assuming the eligibility for the broader scheme of paid leave remains the same as the initial stage in order to establish a coherent set of paid and unpaid leave entitlements.</p>
Independent review and other institutional arrangements	<p>The National Paid Leave Scheme, including the Two Year Review, should be legislated at national level.</p> <p>The Two Year Review should be an independent review which enables participation by relevant stakeholders.</p> <p>The Minister for Employment and Workplace Relations should have ministerial responsibility for implementation, monitoring and review of the National Paid Leave Scheme.</p> <p>A policy unit should be established within the Department of Education, Employment and Workplace Relations and adequately resourced to coordinate implementation, promotion and education, monitoring and review of the scheme over time.</p> <p>The implementation of the scheme should be accompanied by a comprehensive community awareness and education campaign that meets the diverse communication needs of the community and which includes targeted education strategies for groups less likely to have information about the new entitlements, including information available in an accessible format.</p> <p>The Government should invest in a comprehensive longitudinal research program to inform ongoing monitoring, research and evaluation of the new scheme, including assessing its interaction with other work and family reconciliation policies and early childhood education and care services, in order to continually improve the effectiveness of these measures.</p>

Key Recommendations

26. HREOC recommends: That, as part of a first stage of a National Paid Leave Scheme, a non-transferable national scheme of 14 weeks paid maternity leave be introduced, principally to ensure the health and wellbeing of mothers and babies, to address the workplace disadvantage that women experience as the result of maternity, and to contribute to women's ability to participate on equal terms with men in all aspects of life (**Recommendation 1**).
27. HREOC recommends: That, as part of a first stage of a National Paid Leave Scheme, a non-transferable, separate entitlement of two weeks supporting parent leave be introduced and made available either at the time of birth for the supporting parent to take concurrently with the birth mother's paid maternity leave, or immediately after that period of paid leave, principally to support the bonding between that parent and their child, as an important support for the mother and/or as a way of transitioning to alternative care arrangements following the mother's return to paid work (**Recommendation 2**).
28. HREOC recommends: That following an independent review after two years, any necessary modifications and improvements to the National Paid Leave Scheme are made and that Australia implement a second stage of measures. This would provide in total:
 - 38 weeks of paid parental leave, of which 4 weeks may only be taken by the supporting parent, in addition to;
 - 14 weeks paid maternity leave; and
 - 2 weeks paid supporting partner leave to be taken concurrently at the time of birth.

HREOC urges the modelling and analysis of each stage of the scheme by the Productivity Commission during the course of the current Inquiry so that the best funding model for stage two can be determined and so that community views on the suitability of models can be canvassed (**Recommendation 3**).

29. HREOC recommends: That the Government remove its reservation to Article 11(2)(b) of the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* (**Recommendation 4**).
30. HREOC recommends: That the Government take steps towards ratification of the *Maternity Protection Convention 2000 (No 183) (ILO Convention 183)*, and ensure compliance with other provisions of that Convention (**Recommendation 5**).
31. HREOC recommends: That following implementation of Stage One of HREOC's proposal, the scheme be independently reviewed after 2 years in order to measure the impacts of the first phase, including determining how well it is meeting its objectives, impacts on business, interactions with existing government payments, and other work and family policy measures, and to make any necessary improvements in order to implement a second stage of a more substantial paid leave entitlements (**Recommendation 14**).
32. The full list of recommendations may be found in the appendices to this submission.

Background to this Submission: HREOC's Commitment to a National Paid Leave Scheme for Parents

33. HREOC has a long-standing commitment to achieving a national paid leave scheme for parents, particularly paid maternity leave, and has undertaken substantial work in this area.
34. HREOC is responsible for administering the *Sex Discrimination Act 1984* (Cth) (*SDA*). One of the objects of the *SDA* is to 'promote recognition and acceptance within the community of the principle of the equality of men and women.'⁹
35. HREOC's work in the promotion of paid maternity leave, supporting parent leave, and paid parental leave pursues this objective. As detailed further below, HREOC considers that a national paid leave scheme for parents will contribute to greater gender equality between men and women, particularly in the ability to engage in paid work, and to participate in the sharing of care for children.
36. As Australia's national human rights institution, HREOC's commitment to promoting paid leave for parents is also grounded in Australia's international human rights obligations, together with relevant international labour standards. HREOC's work in the area has been guided and informed by these obligations and standards, adapted and applied to Australia's domestic context.
37. In this section, the submission sets out the international human rights obligations and labour standards relevant to paid leave for parents and summarises HREOC's previous work in this area.

⁹ *Sex Discrimination Act 1984* (Cth). s 3(d).

Compliance with Australia's International Human Rights Obligations and Labour Standards

38. HREOC's commitment to the need for a national scheme of paid leave is grounded in Australia's international human rights obligations and labour standards.
39. The Australian Government has agreed to be bound by a number of international instruments which are relevant to this inquiry. These international instruments include:
- a. *Convention on the Elimination of All Forms of Discrimination Against Women* ('CEDAW');¹⁰
 - b. *Convention (No 156) Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities* ('ILO Convention 156');¹¹
 - c. *Convention (No 111) Concerning Discrimination in respect of Employment and Occupation* ('ILO Convention 111');¹²
 - d. *Convention (No 159) Concerning Vocational Rehabilitation and Employment of Disabled Persons* ('ILO Convention 159');¹³

¹⁰ *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981), ratified by Australia 28 July 1983. The Convention is set out in the Schedule to the *Sex Discrimination Act 1984* (Cth).

¹¹ *Convention (No 156) Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities*, opened for signature 23 June 1981, 1331 UNTS 295 (entered into force 11 August 1983), ratified by Australia 30 March 1990. The following articles are of particular importance to this Inquiry: art 3(1) (non-discrimination on basis of family responsibilities); art 7 (workers with family responsibilities to be integrated into the labour force).

¹² *Convention (No 111) Concerning Discrimination in respect of Employment and Occupation*, opened for signature 25 June 1958, 362 UNTS 31 (entered into force 15 June 1960), ratified by Australia 15 June 1973, entered into force for Australia 15 June 1974. The following articles are of particular importance to this Inquiry: art 2 (non-discrimination in employment); art 3 (government responsibility re non-discrimination in employment).

e. *International Covenant on Civil and Political Rights* ('ICCPR'),¹⁴

f. *International Covenant on Economic, Social and Cultural Rights* ('ICESCR'),¹⁵ and

g. *Convention on Rights of the Child* ('CRC').¹⁶

40. Australia has also signed but not yet ratified the *Convention on the Rights of Persons with Disabilities*.¹⁷

41. In addition to Australia's international human rights obligations set out above, a number of international labour standards are relevant to the need for a paid leave scheme for parents, as follows:

¹³ *Convention (No 159) Concerning Vocational Rehabilitation and Employment (Disabled Persons)*, UNTS 1401 (entered into force 20 June 1985), ratified by Australia 7 August 1990, entered into force for Australia 7 August 1991. The following articles are of particular importance to this Inquiry: art 3 (promoting employment opportunities for people with disabilities); art 4 (non-discrimination in employment on the basis of disability).

¹⁴ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), ratified by Australia 13 August 1980, entered into force for Australia 13 November 1980. The following articles are of particular importance to this Inquiry: art 2(2) (right to non-discrimination); art 3 (non-discrimination on the grounds of sex); art 17 (non-interference with privacy and family); art 23(2) (right to a family).

¹⁵ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976), ratified by Australia 10 December 1975, entered into force for Australia 10 March 1976. The following articles are of particular importance to this Inquiry: art 2(2) (right to non-discrimination); art 3 (non-discrimination on the grounds of sex); art 6(1) (right to work); art 10(1) (protection and assistance to families); art 10(2) (2) (right to paid maternity leave); art 12(1) (right to good physical and mental health); art 12(2)(a) (government responsibility for healthy development of children).

¹⁶ *Convention on the Rights of the Child*, opened for signature on 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), ratified by Australia 17 December 1990, entered into force for Australia 16 January 1991.

¹⁷ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, A/RES/61/106, signed by Australia on 30 March 2007 but not yet ratified. The following articles are of particular importance to this Inquiry: art 6 (women with disabilities); art 7 (children with disabilities) and art 27 (work and employment).

- a. *Maternity Protection Convention 2000 (No 183)* ('ILO Convention 183');
and
 - b. *Maternity Protection Recommendation* ('ILO Recommendation 191').¹⁸
42. Australia is a member of the International Labour Organisation ('ILO') and is an elected member of the ILO Governing Body. *ILO Convention 183* and *ILO Recommendation 191* were both adopted as international instruments at the 88th Session of the International Labour Conference in 2000. At the conference, the Australian Government representatives voted in favour of adoption of both instruments.¹⁹ However, Australia has yet to ratify *ILO Convention 183*. *ILO Recommendation 191* is a non-binding guideline for ILO member states and cannot be ratified.
43. The international human rights obligations and labour standards, set out above, include provisions which support the need for paid leave for parents, including paid maternity leave, supporting parent leave, and paid parental leave.
44. HREOC's work in this area has been particularly informed by the following international instruments:

Convention on the Elimination of All Forms of Discrimination Against Women

45. *CEDAW* has been ratified by Australia and is scheduled to the *SDA*.
46. Australia is bound by the terms of *CEDAW*, subject to any express reservations made at the time of its ratification. *CEDAW* is a key international instrument which places an obligation on State Parties to:

¹⁸ International Labour Organization *Maternity Protection Convention, 2000* (No 183) and *Maternity Protection Recommendation* International Labour Conference (88th: 2000: Geneva Switzerland).

¹⁹ See International Labour Organisation, *Final record of vote on the Maternity Protection Convention, 2000* at <<http://www.ilo.org/public/english/standards/relm/ilc/ilc88/pdf/v-matcon.pdf>> and International Labour Organisation, *Final record vote on the Maternity Protection Recommendation, 2000* at <http://www.ilo.org/public/english/standards/relm/ilc/ilc88/pdf/v-matrec.pdf>.

- a. ensure that women have an effective right to paid work;
 - b. prevent discrimination against women workers; and
 - c. provide for paid maternity leave.
47. The preamble to *CEDAW* recognises ‘...the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized ... [and] the social significance of maternity...’.²⁰
48. *CEDAW* places a general international obligation on the Australian Government to ‘... take all appropriate measures to eliminate discrimination against women in the field of employment’²¹ in order to ensure, *inter alia*, the ‘right to work as an inalienable right of all human beings.’²²
49. Article 11(2) provides that women should not be discriminated against on the ground of maternity.²³ It specifies the appropriate measures that States Parties should take to ensure non-discrimination.
50. Article 11(2)(a) prohibits dismissal on the grounds of pregnancy. The *SDA* gives effect to this obligation by prohibiting discrimination in employment on the grounds of pregnancy or potential pregnancy.²⁴
51. Article 11(2)(b) states that States Parties should also take appropriate measures to introduce paid maternity leave. It provides:

In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures... To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances ...

²⁰ Preamble to the *Convention on the Elimination of All Forms of Discrimination Against Women*.

²¹ *CEDAW*, art 11(1).

²² *CEDAW*, art 11(1)(a).

²³ *CEDAW*, art 11(2).

²⁴ *Sex Discrimination Act 1984* (Cth), s 7.

52. Under *CEDAW*, the provision of paid maternity leave is seen as a distinct international obligation, separate to the general provision of assistance to parents combining work and family responsibilities.²⁵
53. When Australia ratified *CEDAW*, it did so with the specific exclusion of art 11(2)(b), the provision concerning paid maternity leave. This reservation remains in place despite repeated criticism.²⁶ The CEDAW Committee has expressed concern that Australia has not introduced a system of paid maternity leave and retains its reservation under *CEDAW*. The CEDAW Committee has urged Australia to ‘take further appropriate measures to introduce maternity leave with pay or with comparable social benefits.’²⁷
54. The CEDAW Committee has also expressed concern over Australia’s non-ratification of *ILO Convention 183*, discussed further below.²⁸
55. HREOC notes and welcomes the Government’s recent commitment to progressing the protection and promotion of women’s rights by starting the process of consultation with the States and Territories on Australia becoming a party to the *Optional Protocol to the Convention for the Elimination of Discrimination against Women* (‘*Optional Protocol to CEDAW*’).²⁹ However, while the reservation against art 11(2)(b) of *CEDAW* continues to operate, working women in Australia

²⁵ Article 11(2)(c) deals specifically with assistance to parents for family responsibilities.

²⁶ See Committee on the Elimination of Discrimination against Women, *Report of the Committee on the Elimination of Discrimination against Women*, 16th and 17th Sessions, 12 August 1997 and Committee on the Elimination of Discrimination against Women, 34th Session, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Australia* 16 January - 3 February 2006.

²⁷ Committee on the Elimination of Discrimination against Women, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Australia*, , 34th Session, 16 January - 3 February 2006.

²⁸ Committee on the Elimination of Discrimination against Women, *Report of the Committee on the Elimination of Discrimination against Women*, 16th and 17th Sessions, 12 August 1997. The Committee references ILO 103, the 1952 Maternity Convention replaced by the revised Maternity Convention ILO 183 in 2000.

²⁹ The Hon Robert McClelland MP and the Hon Tanya Plibersek MP ‘Australia moves to protect women’s rights’ (Press release, 23 May 2008).

will not be able to make a complaint under the *Optional Protocol to CEDAW* regarding a denial of access to paid maternity leave.

56. It is important to note that Australia has also been a party to the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR') since 1976. Under art 10(2), the Government is under an obligation to provide special protection to

mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

ILO Convention 103, Convention 183 and Recommendation 191

57. *ILO Convention 103, ILO Convention 183 and ILO Recommendation 191* each contain provisions regarding paid maternity leave.
58. As noted above, Australia is a state party to *ILO Convention 103*. However, *ILO Convention 103* has been in place for over 50 years and was clearly in need of modernisation in light of contemporary conditions. In 2000, the ILO adopted *ILO Convention 183* to replace *ILO Convention 103*. As noted above, Australia voted in favour of adoption of the new *ILO Convention 183* but has yet to take steps towards its ratification.
59. Adopted in 1952, *ILO Convention 103* provides for a right to 12 weeks maternity leave,³⁰ during which women workers are entitled to receive 'cash and medical benefits'.³¹ The rate of cash is to be sufficient 'for the full and healthy maintenance of [the mother] and her child in accordance with a suitable standard of living'.³²

³⁰ Article 3(2) provides that '[t]he period of maternity leave shall be at least twelve weeks, and shall include a period of compulsory leave after confinement.

³¹ Article 4(1).

³² Article 4(2).

60. The new *ILO Convention 183* applies to all employed women and now provides a right to 14 weeks maternity leave.³³ During the maternity leave period, a woman worker is also entitled to cash benefits. The cash benefits must, at a minimum, 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’.³⁴ In addition, the cash benefits, ‘where...based on previous earnings...shall not be less than two-thirds of the woman’s previous earnings’³⁵ or, if calculated by some other method, ‘comparable to’³⁶ two-thirds of the woman’s previous earnings.
61. *ILO Recommendation 191*, as a non-binding guide, encourages ILO member states to extend the period of leave to 18 weeks.³⁷ It also provides that, ‘where practicable, and after consultation with the representatives organisations of employers and workers...cash benefits...should be raised to the full amount of the women’s previous earnings...taken into account for the purpose of computing benefits’.³⁸
62. *ILO Recommendation 191* also addresses paid parental leave, providing that ‘the employed mother or the employed father of the child should be entitled to parental leave during a period following the expiry of maternity leave,’³⁹ without specifying recommended duration, eligibility or payment levels.⁴⁰
63. The ILO’s long-held concern has been to ‘enable women to successfully combine their reproductive and productive roles, and to prevent unequal treatment in employment due to their reproductive role’.⁴¹

³³ Article 4.

³⁴ Article 6(2).

³⁵ Article 6(3).

³⁶ Article 6(4).

³⁷ Recommendation 1(1) *Maternity Protection Recommendation*.

³⁸ Recommendation 2.

³⁹ Recommendation 10(3).

⁴⁰ Recommendation 10(4).

⁴¹ Ida Oun and Gloria Pardo Trujillo, *Maternity At Work: A review of national legislation. Findings from the ILO’s conditions of work and employment database* (2005).

64. In a recent ILO study of 166 ILO member countries, Australia was identified as one of only five countries which does not provide paid maternity leave, along with Lesotho, Swaziland, Papua New Guinea and the United States.⁴²

Convention on the Rights of the Child

65. Australia has also ratified the *CRC*. The *CRC* has as one of its fundamental principles that ‘the best interests of the child shall be a primary consideration’ in all actions concerning children.⁴³ States Parties to the *CRC* shall take ‘all appropriate legislative and administrative measures’ to ensure protection of the best interests of the child.⁴⁴
66. *CRC* also obliges States Parties to ‘ensure to the maximum extent possible the survival and development of the child’.⁴⁵
67. *CRC* recognises that the health and wellbeing of children is inextricably bound up with the lives of their parents. It contains a number of obligations relevant to the provision of paid maternity leave and a broader system of paid leave for parents to assist both parents in the performance of their common responsibilities.
68. Under art 18, the Government must assist parents and legal guardians in ‘the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children’.⁴⁶ To this end, Australia must ‘take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible’.⁴⁷

⁴² Ida Oun and Gloria Pardo Trujillo, *Maternity At Work: A review of national legislation. Findings from the ILO’s conditions of work and employment database* (2005).

⁴³ Article 3(1).

⁴⁴ Article 3(2).

⁴⁵ Article 6(2).

⁴⁶ Article 18(2).

⁴⁷ Article 18(3).

69. Under art 24(2), Australia must ensure access to ‘basic knowledge of child health and nutrition, [and] the advantages of breastfeeding’.
70. In 1997, the Committee on the Rights of the Child expressed concern in relation to Australia’s compliance with its international obligations under the CRC, particularly arts 18 and 24:

The Committee is concerned that women working in the private sector are not systematically entitled to maternity leave, which could result in different treatment between children of State employees and those working in other sectors. ... The Committee encourages the State party to review its legislation and make paid maternity leave mandatory for employers in all sectors, in the light of the principle of the best interests of the child and articles 18 (3) and 24 (2) of the Convention.⁴⁸

71. As this section summarises, there is a substantial body of international human rights and labour law applicable to the current Inquiry. International human rights and labour law has also formed the framework for HREOC’s past work relevant to the Inquiry as well as its current submission. The following section summarises HREOC’s successive stages of work in promoting paid leave for parents.

⁴⁸ *Concluding observations of the Committee on the Rights of the Child: Australia* 10/10/97. CRC/C/15/Add.79.

HREOC's Past Work on Paid Maternity Leave, Supporting Parent Leave and Paid Parental Leave

72. HREOC has had a long standing record of promoting the introduction of paid maternity leave, supporting parent leave and paid parental leave.
73. In 1998, the Australian Government requested HREOC undertake its National Pregnancy and Work Inquiry. HREOC conducted the Inquiry and, in 1999, published *Pregnant and Productive* (1999), following extensive consultation and submissions.
74. In *Pregnant and Productive* (1999), HREOC urged the Government to stimulate debate and demonstrate leadership on the need for a paid maternity leave scheme with a view to the Government ratifying and implementing *ILO Convention 183*, upon its adoption by the ILO in 2000. It also recommended that the Government remove its reservation to art 11(2)(b) of *CEDAW*. HREOC recommended that the then Federal Minister for Employment, Workplace Relations and Small Business fund the Sex Discrimination Commissioner to undertake 'economic modelling and analysis to assess possible maternity leave options'.⁴⁹ However, these recommendations were not implemented.
75. As noted by the Productivity Commission in its Inquiry into Paid Maternity, Paternity and Parental Leave Issues Paper ('Issues Paper'), HREOC then undertook a significant examination into the need for a national paid maternity leave scheme.⁵⁰
76. Following extensive research, analysis and community consultation, in *A Time to Value* (2002), HREOC reported overwhelming public support for a national paid

⁴⁹ Human Rights and Equal Opportunity Commission, *Pregnant and Productive* (1999), 229.

⁵⁰ The Interim paper, *Valuing Parenthood: Options for Paid Maternity Leave* (2002), formed the basis of HREOC's community consultation

<http://www.humanrights.gov.au/sex_discrimination/paid_maternity/pml/index.html> at 23 May 2008.

maternity leave scheme. HREOC proposed a basic minimum standard: 14 weeks of paid maternity leave to be paid at the level of the Federal Minimum Wage and funded by the Government.⁵¹

77. Whilst HREOC's proposal in 2002 represented a minimum scheme in order to establish a basic entitlement for working women who have children, there was considerable public support for a more generous paid leave scheme and the extension of the scheme over time.
78. HREOC urges the Productivity Commission to give detailed examination to HREOC's findings in *A Time to Value* (2002). HREOC's submission to the current Inquiry builds on this substantial work, whilst adapting its findings to accommodate subsequent work and contemporary conditions.
79. Commencing in 2005, HREOC undertook a further stage of research into the issues faced by women and men in balancing their paid work and family responsibilities. In 2005, HREOC released its discussion paper, *Striking the Balance: Women, men, work and family* ('*Striking the Balance* (2005)'). Following public submissions, and over 40 public consultations and focus groups over a two-year period, HREOC released the project's Final Paper, *It's About Time* (2007).
80. In *It's About Time* (2007), HREOC reiterated the priority need for a national paid maternity leave scheme, drawing on extensive consultation with the Australian community on a broad range of issues in order to better support Australians balancing paid work and family life.
81. In *It's About Time* (2007), HREOC also argued for a broader approach to paid leave, including urging the Government to consider of a minimum of 2 weeks paid paternity leave, referred to as 'supporting parent leave' in this submission, and an additional 38 weeks of parental leave available to either parent.⁵²

⁵¹ Go to <http://www.humanrights.gov.au/sex_discrimination/paid_maternity/index.htm> at 23 May 2008.

⁵² See Recommendations 13 and 14

<http://www.humanrights.gov.au/sex_discrimination/its_about_time/index.html> at 23 May 2008.

82. HREOC proposed this broader scheme of paid leave for consideration by the Government in recognition of the community desire to value the role of both parents in parenting, increasing opportunities for more men to be involved in caring for children in their early years, and providing greater support for workers with family responsibilities overall.
83. In September 2007, Elizabeth Broderick was appointed to HREOC as the new federal Sex Discrimination Commissioner. The Sex Discrimination Commissioner commenced her term with a national Listening Tour ('the Listening Tour'), involving consultations in every state and territory regarding key themes of gender equality for women and men in Australia. The Listening Tour, which involved over 100 facilitated events, was completed in April 2008 and the findings will be publicly available in July 2008.
84. Through the Listening Tour, HREOC has confirmed that there is a continuing high level of community support for a paid maternity leave scheme.⁵³
85. In addition, HREOC found strong interest among many groups, and young people in particular, for a broader scheme of paid parental leave in order for couples to be able to more equally share their paid work and family responsibilities.
86. Since at least 1999, HREOC has had a sustained focus on the need for a national paid leave scheme for parents who are in paid work.
87. HREOC's commitment to the establishment of a paid leave scheme for parents as a national priority is based on its assessment that paid leave is a necessary public policy initiative to promote human rights in Australia.
88. In HREOC's view, a well-designed national paid leave scheme would achieve a number of key national objectives which are grounded in the promotion of human rights. In particular, a national paid leave scheme would contribute to the following key national objectives:

⁵³ A report on the findings of the Listening Tour is currently being produced and is scheduled for release in July 2008. Information about the Listening Tour, including access to feedback provided through the Listening Tour's online consultation mechanisms, is available at <<http://hreocblog.com/>> at 23 May 2008.

- a. ensure the health and wellbeing of mothers, babies, fathers and families;
 - b. address women's workplace disadvantage as a result of their maternal role;
 - c. promote gender equality by fostering shared responsibility between men and women for the care of children;
 - d. deliver benefits to the economy and employers;
 - e. foster economic security for parents and children;
 - f. deliver social benefits for the Australian community as a whole; and
 - g. fulfil Australia's compliance with its international human rights obligations and international labour standards.
89. Australia is now one of only two remaining OECD countries to lack a national paid leave scheme. It is urgent that a scheme is developed. Australia has the advantage of drawing on the now extensive international comparative experience. However, due to the range of national objectives to be achieved, HREOC recognises that a national paid leave scheme is an important public policy initiative which needs to be implemented in a considered and sustainable manner.
90. A national scheme for Australia needs to be developed taking into account the domestic context, including current government payments, such as the Baby Bonus and Family Tax Benefit B, and work and family policies, such as those contained in the draft new National Employment Standards, and the provision of early childhood education and care services.
91. Accordingly, HREOC remains of the view that a minimum national paid maternity leave scheme of 14 weeks is an urgent priority, together with two weeks supporting parent leave as Stage One of implementation.
92. Based on its assessment of the current domestic context, informed by international comparative experience, HREOC has formed the view that a second stage of implementation after two years is also necessary, involving a broader scheme of paid parental leave.

93. In this submission, HREOC sets out its analysis of the merits of Stage One and Stage Two of its proposed National Paid Leave Scheme by reference to the key national objectives set out above.
94. The submission then provides further detail of the basis for key features of its proposed National Paid Leave Scheme, with particular reference to duration, eligibility and coverage, payment levels, funding source, and payment mechanisms.
95. The submission addresses the interaction of its proposed National Paid Leave Scheme with social security and other government payments, other work and family reconciliation policies and existing legislation.
96. Finally, the submission sets out its rationale for the Two Year Review, and the other institutional arrangements which are required to support the implementation, monitoring, review and continuous improvement of a national paid leave scheme.

National Objectives of a Paid Leave Scheme for Parents

97. In undertaking its examination of paid maternity leave in 2002, HREOC canvassed a wide range of possible objectives for a paid maternity leave scheme, along with consideration of broader systems of paid leave.
98. Drawing on these findings and later work undertaken by HREOC, the following objectives are those which HREOC considers appropriate for the design of an effective national paid leave scheme for parents.⁵⁴

Ensuring the Health and Wellbeing of Mothers, Babies and Their Families

99. HREOC considers that its proposed National Paid Leave Scheme, involving immediate introduction of 14 weeks paid maternity leave and two weeks supporting parent leave in Stage One, followed by introduction in Stage Two (subject to the Two Year Review) of paid parental leave to provide for a year of paid leave for parents, will positively contribute to ensuring the health and wellbeing of birth mothers, their babies, and the supporting parent.
100. The health and wellbeing of mothers and babies is a fundamental objective of a paid leave scheme.
101. A period of paid leave reserved for birth mothers – paid maternity leave – is biologically essential for women so that they can take time off from paid work prior to and immediately following childbirth in order to recover physically and emotionally from childbirth and must be considered a priority for the Inquiry.

⁵⁴ Further detail and reference material for each of these objectives can be found in HREOC's *A Time to Value: Proposal for National Maternity Leave Scheme* (2002).

102. The need for paid maternity leave is highlighted by the particular challenges that mothers with disability face due to the overall poor health of women with disability as a result of problems accessing health care.⁵⁵
103. Many women experience health problems as a consequence of childbirth, and even when these problems are mild, new mothers still require a period of adjustment.
104. The time required by mothers to fully recover from childbirth is dependent on a range of factors, but has been estimated to take up to 6 months or longer.⁵⁶ The variable recovery period for mothers supports HREOC's proposal for a minimum of 14 weeks reserved for the birth mother, for immediate introduction. Stage Two would then provide parents with the ability to choose who may take the paid parental leave entitlements for the balance of the one year of paid leave.
105. The health and wellbeing of a child is likely to be affected by the health of their mother.
106. A period of paid maternity leave is necessary for maternal bonding and attachment with significant health benefits for both mothers and infants.
107. The health benefits of breastfeeding for children and mothers are well-established. Paid maternity leave is essential for establishing and maintaining a breastfeeding routine. Breastfeeding promotes child health.
108. The World Health Organisation ('WHO') affirms the right of women to 'go safely through pregnancy and childbirth'. WHO recommends that infants be exclusively breastfed for up to 4 and if possible 6 months of age.⁵⁷ Mothers may also wish to

⁵⁵ Women With Disabilities Australia *'Lack of data means lack of action': A clinical examination of access to Health Services for women with disabilities*, Presentation to HREOC Forum: Access to Health Services for People with Disabilities (2004).

<http://www.humanrights.gov.au/disability_rights/health/wwda.doc> at 23 May 2008.

⁵⁶ Judith Galtry and Paul Callister, 'Assessing the Optimal Length of Parental Leave for Child and Parental Well-Being' (2005) 26(2) *Journal of Family Issues* 219, 225.

⁵⁷ Statement to the International Labour Conference, 2 June 2000 on the health aspects of maternity leave and maternity protection at <<http://www.who.int/reproductive->

continue breastfeeding for a longer period of time. A national paid leave scheme extended to a year will provide flexibility for mothers regarding their ability to sustain breastfeeding. Mothers may either remain on paid leave or introduce greater sharing of paid leave and paid work with the supporting parent in order to manage breastfeeding.

109. In addition to supporting the breastfeeding of a child, a national paid leave scheme extended progressively to a year will increase the ability of parents to provide personal care for their child. The OECD notes evidence that child development suffers when infants do not get full time personal care for the first 6-12 months of his or her life.⁵⁸
110. Child development research demonstrates that good nurturing and responsive care in the first years of life improve outcomes for children's learning, behaviour, and physical and mental health throughout life, providing multiple short and long term benefits for individuals and society.⁵⁹
111. The need for a national paid leave scheme is again highlighted by the considerable needs of a child with a disability. The health and wellbeing needs for children born with disability can be extensive, requiring additional parental leave.
112. For children with disabilities, a longer period of paid parental leave would provide the financial support and time for obtaining early intervention services. The early period of life is a crucial time in that the earlier a child is identified as having a developmental delay or disability the greater the likelihood that the child will benefit from intervention strategies.⁶⁰

health/publications/maternal_mortality_2000/Health_aspects_of_maternity_leave.en.html> at 24 May 2008.

⁵⁸ OECD, *Babies and Bosses: Reconciling Work and Family Life – A Synthesis of Findings for OECD Countries* (2007) 21.

⁵⁹ M.N McCain and J. F Mustard, *Reversing the Real Brain Drain. Early Years Study Final Report* (1999), cited in NSW Commission for Children and Queensland Young People and Commission for Children and Young People, *A Head Start for Australia: An early years framework* (2004).

⁶⁰ Anglicare Tasmania, *Forgotten Families: Raising children with disabilities in Tasmania* (2007)

<http://www.anglicare-tas.org.au/index.php?option=com_docman&task=doc_view&gid=155&Itemid=81> at 24 May 2008.

113. Parents of a child with disability also require additional time and support to cope emotionally, to seek support for the child and plan for the future.⁶¹ A longer paid leave scheme of a year's duration will assist in ensuring that parents are able to provide the intensive personal care required in the early stage of the life of a child with disability.
114. International and domestic child development experts argue that paid leave gives parents the opportunity to provide their children with an immediate loving, secure and responsive relationship in which they can grow and develop. The NSW Commission for Children and Young People, the Queensland Commission for Children and Young People and Child Guardian, and the National Investment for the Early Years organisation ('NIFTeY') note that paid maternity leave plays a key role in providing the time for this relationship to develop, and recommend introducing an initial period of paid maternity leave followed by an eventual increase to 12 months of paid maternity leave.⁶² HREOC proposes paid parental leave in Stage Two in order to enable parents to tailor their arrangements for personal care of the child in light of paid work commitments, which may include flexible work arrangements with both parents sharing personal care of the child.
115. The United Nations Children's Fund ('UNICEF') has noted that 'generous maternity and paternity leave and pay and 'family-sensitive' working conditions clearly meet the needs of both children and working parents'.⁶³
116. This evidence supports the case for a longer period of paid leave as well as highlighting the need for a coordinated response to children's health and development needs through access to good quality early childhood education and

⁶¹ Association for children with Disability & the Australian Association for Families of Children with a Disability, *Helping you and your family: Information, support and advocacy for parents of children with a disability in Victoria* (2007) <<http://www.acd.org.au/information/help.htm>> at 24 May 2008.

⁶² NSW Commission for Children and Young People, the Queensland Commission for Children and Young People and Child Guardian, and the National Investment for the Early Years, *What about the kids? Improving the experiences of infants and young children in a changing world* (2006).

⁶³ UNICEF, *Implementation Handbook for the Convention on the Rights of the Child* (revised ed, 2002) 253.

care, and an appropriate level of income support and service provision for disadvantaged families.

117. It is important to note that the health and wellbeing of families is directly related to their economic security. The contribution of a national paid leave scheme to supporting women's workforce participation and the economic security of families is discussed further below.
118. The emotional wellbeing of fathers is another important benefit of a national paid leave scheme. New fathers typically bear a greater proportion of financial responsibility for the family following the birth of a child and fathers of infants work very long hours.⁶⁴ A period of paid maternity leave eases the financial pressure following the birth of a child. Supporting parent leave for fathers promotes paternal bonding, assists fathers to adapt to fatherhood, and helps fathers to support their partners. This principle applies to any supporting partner, including those in same-sex relationships.
119. Close interaction and bonding between fathers and their children in the first few weeks after birth is recognised as beneficial for developing infants as well as for mothers and fathers.⁶⁵
120. The longer period of paid parental leave proposed in Stage Two will also enable fathers to have greater involvement in their child's life, by having the choice to share personal care for the first year. In addition, fathers will have four weeks of the paid parental leave reserved for them, even where the mother remains the primary carer of the child at home for the first year.
121. It is clear that children benefit emotionally and cognitively from sensitive, high quality father involvement in the early years.⁶⁶

⁶⁴ Jennifer Baxter, Matthew Gray, Michael Alexander, Lyndall Strazdins and Michael Bittman, *Social Policy Research Paper No. 30 Mothers and fathers with young children: paid employment, caring and wellbeing Report for the Australian Government Department of Families, Community Services and Indigenous Affairs* (2007) 14.

⁶⁵ Tony White and Graeme Russell, *First-time Father* (2005) 119-121.

122. HREOC considers that the specific provisions of leave available to fathers and other supporting parents in both its Stage One and Stage Two components would contribute positively to the health of fathers through greater supports for direct involvement in bonding, and early parenting during the critical first year of a child's life.

Addressing Women's Workplace Disadvantage

123. Addressing the workplace disadvantage that women experience as the result of maternity is an equally fundamental objective for a national paid leave scheme.
124. In 1996, the ILO noted that 'maternity is a condition which requires differential treatment to achieve genuine equality ... special maternity protection measures should be taken to enable women to fulfil their maternal role without being marginalized in the labour market'.⁶⁷
125. Women's unequal treatment in and access to employment due to their reproductive role is a problem that is yet to be resolved despite decades of progress in legislation, workplace structures, social attitudes and government support for working families.
126. Women continue to be marginalised in the workforce with lower participation rates than men, particularly in the case of mothers. Women constitute a higher proportion of casual workers, are more likely to work in low paid occupations and low skilled jobs, have low representation at senior and decision-making levels and continue to experience workplace discrimination on the basis of sex, pregnancy, potential pregnancy and family responsibilities.⁶⁸

⁶⁶ Michael E Lamb and Catherine S Tamis-LeMonda 'The Role of the Father: An introduction' in Michael E Lamb (ed), *The Role of the Father in Child Development* (4th ed, 2004) 1 and others in this collection.

⁶⁷ International Labour Office, *Equality in employment and occupation*, Report III (Part 4B) (1999) 42.

⁶⁸ See ABS, *Labour Force, Australia* Cat No 6202.0 April 2008 (2008), ABS *Forms of Employment, Australia* Cat No 6359.0 November 2007 (2008), Equal Opportunity for Women in the Workplace

127. Women's ongoing experiences of disadvantage in the labour market have been a key driver in HREOC's push for a national paid maternity leave scheme.
128. Women's labour market participation rate is 58.4 per cent.⁶⁹ Women's labour market participation has increased gradually over a number of decades, with the most recent increases due to increases in part time participation.
129. Forty-five per cent of women workers work part time,⁷⁰ many of them mothers working part time in order to balance their paid work and family responsibilities. Seventy-one per cent of all part time workers are women.⁷¹
130. By comparison, men's participation rate has remained steady at around 72 per cent over the past three years. 72.5 per cent of men are employed, 85 per cent of them full time.⁷²
131. While part time jobs are increasingly becoming permanent, many women continue to work in casual arrangements. Fifty-six per cent of casual workers are women, 85 per cent of whom work part time.⁷³ Whilst offering flexibility for employees with family responsibilities, casual work provides reduced job stability and benefits such as leave entitlements.⁷⁴
132. Employment rates also vary considerably between different groups of women, such as women with disability and Indigenous women.
133. Women with disability are less likely to be in the paid workforce than men with disability.⁷⁵ For men with disability, the decrease in full time employment

Agency, 2006 *EOWA Census of Women in Leadership* (2006), and HREOC, Annual Report 2006-2007 (2007) 75-77.

⁶⁹ ABS, *Labour Force, Australia* Cat No 6202.0 April 2008 (2008) 6..

⁷⁰ ABS, *Labour Force, Australia* Cat No 6202.0 April 2008 (2008) 6..

⁷¹ ABS, *Labour Force, Australia* Cat No 6202.0 April 2008 (2008) 6.

⁷² ABS, *Labour Force, Australia* Cat No 6202.0 April 2008 (2008) 6.

⁷³ ABS, *Employee Earnings, Benefits and Trade Union Membership* Cat No 6310.0 August 2007 (2008).

⁷⁴ See HREOC, *Striking the Balance: Women, men, work and family* (2005) 22-24.

⁷⁵ See HREOC, Issues paper 1 *Employment and Disability – the Statistics* (2005)

<http://www.humanrights.gov.au/disability_rights/employment_inquiry/papers/issues1.htm> at 24 May 2008. HREOC's 2005 National Inquiry into Employment and Disability found that workers with

accounts for most of the decrease in labour force participation. For women, disability has negative effects on both full time and part time employment.⁷⁶

134. Aboriginal and Torres Strait Islander people have a labour market participation rate of 56 per cent. The labour market participation rate for Indigenous men is 65 per cent, while for Indigenous women it is much lower at 48 per cent.⁷⁷
135. The employment rates for Australian women with children, particularly those where the youngest child is under six years of age, are low by comparison with other OECD countries. The employment rate of mothers with a youngest child under six years of age is 49.6 per cent, compared with the OECD average of 59.2 per cent.⁷⁸
136. At the heart of these issues are the historical structures of work that support the 'ideal worker' norm. The ideal worker norm refers to a traditional male breadwinner pattern of continuous full time work with no recognition of caring responsibilities.⁷⁹
137. This is not to say that women have not been able to enter the world of work and be remunerated accordingly, particularly in recent decades. However, despite women's increasing movement into the paid workforce, there has not been a corresponding recognition of the different needs of women workers with respect to their maternal role. Nor has there been any significant decrease in women's overall responsibility for the unpaid work of caring for family members.⁸⁰

disability experience significant barriers to participation in employment. People with disability have a comparatively lower labour force participation rate (53.2 per cent compared to 80.1 per cent) and a higher unemployment rate (8.6 per cent compared to 5 per cent) than those without a disability.

⁷⁶ R Wilkins 'The effects of disability on labour force status in Australia' (2004) *The Australian Economic Review* 37(4), 359-382.

⁷⁷ ABS, *Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians, Estimates from the Labour Force Survey, 2007* Cat No 6287.0 (2008).

⁷⁸ ABS, *Australian Social Trends, 2007* Cat No 4102.0 (2007).

⁷⁹ See Joan Williams *Unbending Gender: Why work and family conflict and what to do about it* (2000) 2. See also HREOC, *Striking the Balance: Women, men, work and family* (2005) 59 and *passim*.

⁸⁰ ABS, *How Australians Use Their Time, 2006* Cat No 4153.0 (2008).

138. In order for women to participate in the labour market on an equal basis as men, there must be sufficient measures to support the combination of motherhood with employment.
139. Paid maternity leave is not the only policy necessary to address women's workplace disadvantage, but it is an essential measure to recognise and support women's right to work and have a family.
140. In terms of Australian women's return to work, evidence from the *Parental Leave in Australia Survey (2006)* shows that currently women who give birth take an average of around ten months (40 weeks) combined paid and unpaid leave before returning to paid work. The survey found that, for mothers who were employed prior to the birth of their child and who took leave from employment, one-quarter returned to paid work within six months, around 60 per cent returned within 12 months, and 70 per cent returned within 15 months.⁸¹
141. HREOC notes that women may return to work after a certain period for a number of reasons, including financial reasons,⁸² the desire to maintain a career or profession, care preferences, health reasons, and reasons related to the nature of the various industries and occupations in which women work. Under Stage Two of HREOC's paid leave proposal, women are offered up to 48 weeks of paid leave. This proposal delivers a significant degree of choice with respect to women's return to paid work preferences.
142. Currently, as noted in the Inquiry's Issues Paper, access to paid maternity leave and paid paternity leave by Australian women and men is unevenly spread between different sectors and industries. For example, only 8 per cent of employed mothers working in elementary clerical, sales and service work access paid maternity leave.⁸³ It is therefore women on lower incomes, and thus those most likely to need paid maternity leave for financial reasons, who currently miss

⁸¹ Whitehouse, G., M. Baird and C. Diamond (2006) *Highlights from The Parental Leave in Australia Survey* <<http://www.polsis.uq.edu.au/index.html?page=55767>> at 26 May 2008.

⁸² 45 per cent of mothers in the *Parental Leave in Australia Survey* said they had returned earlier to work than they would have liked because of financial reasons.

⁸³ ABS, *Pregnancy and Work Transitions Australia* Cat No 4913.0 Nov (2005).

out under current arrangements. These women workers are those who most need paid maternity leave for financial reasons.

143. In recent months HREOC has spoken with many people who do not have access to any form of paid leave in country-wide focus groups and community as part of the Sex Discrimination Commissioner's national Listening Tour.
144. Women who do not have access to paid maternity leave have reported to HREOC that paid maternity leave would have greatly assisted them to reconcile their work and family responsibilities. Examples drawn from the Listening Tour are indicative of the responses HREOC received on this issue:

The fact that we don't have paid maternity leave is a disgrace. When my second child was born, my husband wasn't working, so I had to go back to work after a caesarean after two days. I had no choice. It would make a huge difference if we got 14 weeks to be able to physically recover.

145. Another woman spoke of having to work late into her pregnancy and then take annual leave:

I worked up until I was 38 weeks pregnant then took 2 weeks of annual leave because I didn't have access to paid maternity leave.

146. These examples represent the human face of what a lack of paid maternity leave means for women in Australia. Coupled with the stories that HREOC heard in 2002 during the paid maternity leave project, they lend weight and urgency to the Inquiry's task.
147. HREOC continues to be of the view that, in light of the ILO standards and HREOC's previous community consultation on this issue, a 14 week paid maternity leave scheme, to be paid at least at the level of the Federal Minimum Wage, is an urgent priority in order to address the particular disadvantages that women workers experience by reason of being mothers.
148. Throughout the Listening Tour and during the course of HREOC's work and family project, as documented in *It's About Time* (2007), HREOC has also heard

that men are increasingly wanting to take a greater role in family life yet face a number of barriers to doing so.

149. One of the major barriers for men that HREOC has identified is a lack of support within workplaces either in terms of lack of access to family-friendly policies such as paid paternity leave, or where there is access to paid leave, family-hostile workplace cultures preventing their take up.⁸⁴
150. In HREOC's view, a non-transferable period of two weeks' supporting parent leave for the supporting parent, including same-sex partners, to be taken either concurrently with the mother's paid maternity leave in the period following childbirth, or immediately after in order to facilitate the transition to alternative care arrangements, is an additional priority for implementation along with a scheme of paid maternity leave.⁸⁵
151. The specific purpose of supporting parent leave is to support the bonding between the supporting parent and the child, to help the supporting parent support the birth mother in the period following childbirth, and to assist in the transition to alternative care arrangements, encompassing the broader health and wellbeing objectives outlined above, and contributing to meeting the gender equality objectives outlined below.
152. Regarding a concurrent period of paid paternity leave for the supporting parent, no ILO standard exists for a minimum period of leave for the supporting parent.

⁸⁴ See HREOC, *It's About Time: Women, men, work and family* (2007).

⁸⁵ Current eligibility for unpaid parental leave excludes the same-sex partner of a woman giving birth and potentially both members of a male same-sex couple who may use a surrogate birth mother or enter an arrangement with a female friend to have a child through assisted reproductive technology. HREOC notes the announcement that legislation to remove same-sex discrimination from a range of Commonwealth laws will be introduced in mid-2008. This legislation should extend eligibility for unpaid parental leave to same-sex parents. The Hon Robert McClelland MP 'Rudd Government Moves on Same-Sex Discrimination' (Press Release, 30 April 2008). ,

However, a benchmark of two weeks from the time of birth has been set by comparable industrialised countries.⁸⁶

153. Further, in a recent review of 24 countries, 15 were found to have a period of paid leave for the supporting parent varying from two to ten days, usually paid on the same basis as paid maternity leave. Another two countries offered a longer period of paid leave for fathers while the Canadian province of Quebec offered three to five weeks, depending on the level of benefit taken.⁸⁷
154. In workplaces where paid paternity leave is already available in Australia, fathers currently take between one and two weeks. The majority of employed Australian fathers (74 per cent) currently take two weeks or less of paid leave of some form at the time of birth (although only 18 per cent of employed fathers access paid paternity leave).⁸⁸
155. Eighty-three per cent of businesses with 100 or more employees who currently provide paid paternity leave provide between one to two weeks of leave.⁸⁹
156. Given this, HREOC supports a two week period of supporting parent leave as a minimum for all supporting partners.
157. HREOC proposes in Stage One that supporting parent leave may be taken either concurrently during the period of paid maternity leave, or immediately at the end of the paid maternity leave period. HREOC recommends this flexibility to accommodate the varied support needs of mothers and preferred family arrangements. The option of the partner taking leave at the end of the maternity leave period is to give mothers the ability of receiving partner support where the

⁸⁶ Countries providing two weeks of paid paternity leave include Belgium, France, Spain, United Kingdom, Sweden, Norway, and Denmark: Department for Business, Enterprise and Regulatory Reform (UK), *International Review of Leave Policies and Related Research 2007* (2007).

⁸⁷ Department for Business, Enterprise and Regulatory Reform (UK), *International Review of Leave Policies and Related Research 2007* (2007) 53.

⁸⁸ ABS, *Pregnancy and Work Transitions Australia* Cat No 4913.0 Nov (2005).

⁸⁹ Thirty-two percent of EOWA's reporting organisations provide paid paternity leave, with 83 per cent providing 1-2 weeks of paid leave: *Equal Opportunity for Women in the Workplace Survey 2005: Paid paternity leave* (2006). Update with new stats if receive in time from EOWA – SS waiting on these

mother is returning to paid work. This can be a particularly stressful time for mothers, for example, if child care arrangements are to be introduced. This option provides a working mother with intensive partner support at home during this particular phase of transition.

158. In HREOC's view, its proposals for supporting parent leave in Stage One and its broader scheme of paid parental leave for mothers, fathers and supporting parents in Stage Two will increase the ability of families to implement shared care arrangements in relation to their family responsibilities. The greater the ability of fathers and supporting parents to take paid leave during the first year of their child's life, the more likely it will be that women will be able to stay engaged in paid work. Greater sharing of family responsibilities will reduce the disadvantage of women workers by reason of their role as mothers.

Gender Equality

159. Another fundamental objective for both paid maternity leave and a broader system of paid leave for mothers and fathers that contains periods reserved for supporting parents is as a means of achieving equality between men and women.

160. The preamble to *CEDAW* states 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 ...

161. The preamble recognises:

... the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children ...

[and that] ... a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women...⁹⁰

162. As noted above, one of the objectives of the *SDA* is to give effect to certain provisions of *CEDAW*, as well as ‘to promote recognition and acceptance within the community of the principle of the equality of men and women’.⁹¹

163. *ILO Convention 156* obliges Australia to take measures to take account of the needs of workers with family responsibilities in terms and conditions of employment, with a view to creating effective equality of opportunity for men and women workers.⁹²

164. *ILO Convention 156* has a dual purpose, to create:

[e]quality of opportunity...between men and women with family responsibilities, on the one hand, and between men and women with such responsibilities and workers without such responsibilities, on the other.⁹³

165. These international instruments recognise the need for broader social change so that full equality of opportunity and equal treatment can be achieved for women workers, given that women give birth and it is women who are currently more likely to be responsible for the unpaid work of caring for family members over the life cycle.

166. The ILO notes that the required social change includes ‘a more equitable sharing of family responsibilities and that the excessive burden of family and household tasks still borne by women workers constitute one of the most important reasons for their continuing inequality in employment and occupation...’.⁹⁴

⁹⁰ Preamble to the *Convention on the Elimination of All Forms of Discrimination Against Women*.

⁹¹ *Sex Discrimination Act 1984* (Cth), s 39(a)(d).

⁹² Art 4(b). See also the Preamble and arts 3(1) and 6.

⁹³ International Labour Organization General Survey, *Workers with Family Responsibilities* International Labour Conference 80th session Geneva Report III Part 4B (1993) 25.

⁹⁴ *Ibid*, p 25.

167. In *It's About Time* (2007), HREOC reported on the impacts of the imbalance of paid work and family responsibilities for Australian families. HREOC found that impacts for women include difficulty in continuing with employment due to their family responsibilities, carrying a disproportionate share of unpaid work including child care, housework and elder care, and experiencing less economic security over the life cycle.
168. As well as affecting their ability to participate in the labour market, research shows that women are more likely than men to experience time pressures resulting from their high paid and unpaid workloads, with attendant health and wellbeing effects.⁹⁵
169. While women in paid work experience the additional pressure of managing family life, HREOC has found that men in full time work also express concern about lack of access to family life.⁹⁶ This lack of access to family life is due in large part to workplace barriers and historical and cultural stereotypes, despite a growing interest by men in sharing the hands-on care of their children,⁹⁷ and attitudinal research that shows that 90 per cent of Australian men and women believe in sharing parental care.⁹⁸
170. Without a better sharing of family responsibilities, it is unlikely that women will be able to participate more fully in public life, while men will be unlikely to participate more fully in family life.
171. As the OECD notes in reviewing the lessons to be learned from its cross-country comparisons of work and family reconciliation policies:

⁹⁵ See research cited in HREOC, *Striking the Balance: Women, men, work and family* (2005) 58-59.

⁹⁶ This point was made repeatedly in HREOC consultations and focus groups – see HREOC, *It's About Time: Women, men, work and family* (2007) Chapter 5 in particular. See also *Striking the Balance: Women, men, work and family* (2005) 52-55 and 57.

⁹⁷ See discussion in HREOC, *It's About Time: Women, men, work and family* (2007), in particular Chapter 4 and Chapter 5.

⁹⁸ Ann Evans and Edith Gray, 'What makes an Australian family?' in Shaun Wilson, Gabrielle Meagher, Rachel Gibson, David Denemark and Mark Western (eds), *Australian Social Attitudes: The first report* (2005) 12, 27.

As long as women rather than men take time off to provide care, employers will still see women as less career-oriented than men, and do less to invest in their career opportunities ... if fathers were also to take leave to care for children on a comprehensive basis ... gender inequity in employment would likely disappear.⁹⁹

172. In addition to a paid maternity leave scheme and a supporting parent leave scheme around the time of birth, a broader scheme including paid parental leave, coupled with a suite of other work and family reconciliation policies, would allow families a greater choice in how they divide their paid work and family responsibilities.
173. In a recent international review of optimal periods of leave for child and parental wellbeing, the authors suggest that, in order to facilitate shared responsibility for children by both parents, an optimal leave arrangement is 12 months, as this allows for shared care and parental choice without taking away from a potential 6 months of maternal care where needed or desired.¹⁰⁰
174. Given that up to 6 months of paid leave is considered optimal in terms of maternal health and wellbeing, a longer period of leave would allow for a balance between the mother's potential input in the early months (particularly if breastfeeding), while ensuring there is time for fathers and other supporting parents to have the opportunity to spend time with their child in the early stages of life.¹⁰¹
175. Furthermore, a dedicated period of paid parental leave reserved for fathers would increase opportunities for men to be involved in care during their children's early years. Research shows that the earlier men are involved in the care of their

⁹⁹ Willem Adema, 'Babies and Bosses: What lessons for governments?' *OECD Observer* No 264/265, (December 2007-January 2008).

¹⁰⁰ Judith Galtry and Paul Callister, 'Assessing the Optimal Length of Parental Leave for Child and Parental Well-Being' (2005) 26(2) *Journal of Family Issues* 219, 236-238.

¹⁰¹ This point is made in the New Zealand Department of Labour, *Parental Leave in New Zealand 2005/2006 Evaluation* < <http://www.dol.govt.nz/PDFs/research-parental-leave-evaluation2005-06.pdf> > at 23 May 2008.

children, the more likely they are to continue this involvement through their children's lives.¹⁰²

176. There is evidence which demonstrates that the impact of fathers taking parental leave is felt well beyond the period of leave itself, with studies showing that men who take ninety days or more of parental leave show increased time spent in child care over the long term.¹⁰³
177. A broad range of international evidence highlights the importance of paid leave entitlements in encouraging fathers to take parental leave.¹⁰⁴ Periods of paid leave reserved for fathers have been in place in a number of Scandinavian countries for many years. In Norway, Iceland, Denmark and Sweden where paid leave quotas have been introduced for fathers on a 'use it or lose it' basis, leave taking by fathers has more than doubled in recent years.¹⁰⁵
178. The 'use it or lose it' Scandinavian models share underlying principles in common but differ on a country by country basis.

¹⁰² M.E. Lamb, S.S Chuang and C.P Hwang,, 'Internal reliability, temporal stability, and correlates of individual differences in paternal involvement: a 15 –year longitudinal study' (2004) in R.D. Day and M.E. Lamb (eds), *Re-conceptualizing and measuring father involvement* and Michael E Lamb and Catherine S Tamis-Lemonda, 'The Role of the Father: An introduction' in Michael E Lamb (ed), *The Role of the Father in Child Development* (4th ed, 2004) 1-3.

¹⁰³ Linda Haas and C Philip Hwang, 'The Impact of Taking Parental Leave on Fathers' Participation in Childcare and Ties with Children: Lessons from Sweden' (Paper presented at the First International Conference on Community, Work and Family, Manchester UK, 16-18 March 2005).

¹⁰⁴ See, for example, Michael Thompson, Louise Vinter and Viv Young, *Dads and Their Babies: Leave arrangements in the first year* (Working Paper No 37, Equal Opportunities Commission, UK, 2005); John Ekberg, Rickard Eriksson and Guido Friebe, *Sharing Responsibility? Short and long-term effects of Sweden's "Daddy-Month" reform* (Working Paper No 3, Swedish Institute for Social Research Swedish Institute for Social Research Stockholm, 2004); Berit Brandth and Elim Kvande, 'Reflexive Fathers: Negotiating parental leave and working life gender' (2002) *Gender, Work and Organization* 9 (2) 186; and Thorgerdur Einarsdóttir and Gyda Margrét Pétursdóttir, 'Iceland Country Notes on Parental Leave Policy and Research' in Peter Moss and Margaret O'Brien, *International Review of Leave Policies and Related Research* 2006 (Employment Relations Research Series No 57, Department of Trade and Industry, UK, 2006) 144, 150.

¹⁰⁵ Ibid.

179. In Norway, the two week paternity leave after childbirth that is taken in conjunction with the mother's maternity leave is taken by more than two-thirds of fathers, while the one month quota of parental leave is taken by 90 per cent of fathers.¹⁰⁶
180. In Norway, where parental leave policies encourage gender equality in the workplace as well as the home, fathers make a substantial contribution to caring and household work.¹⁰⁷ The success of the policy has been attributed to its lack of choice in that this reduces pressures on workplace and domestic negotiation.¹⁰⁸
181. Another key to its success is that Norwegian parental leave policies are situated within Norwegian family policy, which is closely tied to its gender equality policy of facilitating men's and women's participation in the paid workforce on an equal basis while also equally sharing caring and housework.¹⁰⁹
182. In Sweden, as the Inquiry's Issues Paper notes, the primary carer's partner is entitled to 60 days of paid leave in addition to a parental benefit that can be shared. The paternity quota policy in Sweden is designed to develop men's interest in child rearing, and is backed up by extensive government promotion and

¹⁰⁶ Johanna Lammi-Taskula, 'Nordic men on parental leave: can the welfare state change gender relations?' in Anne Lise Elingsæter and Arnlaug Leira (eds), *Politicising Parenthood in Scandinavia: Gender relations in welfare states* (2006) 79, 82. When the quota was introduced in 1993 the share of fathers taking leave grew from 4 per cent to more than half of eligible fathers, and by 2003 this had grown to 90 per cent.

¹⁰⁷ Adrienne Burgess and Graeme Russell, 'Fatherhood and Public Policy' in *Supporting Fathers: Contributions from the International Fatherhood Summit 2003* (2004) 109, 132.

¹⁰⁸ B Brandth and E Kvande, 'Flexible work and flexible fathers' (2004) 15(2) *Work, Employment and Society* 251, cited in Margaret O'Brien, *Shared Caring: Bringing fathers into the frame* (Working Paper No 18, Equal Opportunities Commission, UK, 2005) 30.

¹⁰⁹ The Clearinghouse on International Developments in Child, Youth, and Family Policies at Columbia University *Norway Country Summary* <www.childpolicyintl.org/> at 26 May 2008 and Ministry of Children and Family Affairs (Norway) 'Gender Equality in Norway' <odin.dep.no/bfd/engelsk/gendereq/bn.html> at 26 May 2008.

a national history of commitment to gender equality in the home as well as public life.¹¹⁰

183. The Swedish paid leave scheme is grounded in the objective of gender equality both in the labour market and the home, as well as the acceptance of shared power and responsibility for children by both parents.¹¹¹
184. The impact of the paternity quota in Sweden on men's share of leave-taking has not been as dramatic as in Norway, at least in part due to the fact that the leave can be taken up over a long period until the child is eight years old.
185. When the quota was introduced in Sweden in 1993, around one in four parents taking parental leave were fathers. However, by 2001, the share of fathers taking leave grew to almost 40 per cent. Half of eligible fathers take some parental leave on a yearly basis, while over a five year period only one in four has not taken any leave.¹¹²
186. Other mechanisms such as the Italian system in which the total length of parental leave is extended if the father also takes parental leave can also act as encouragement to men to spend more time with their children.¹¹³
187. It is important to note that work and family policies in Scandinavian countries, of which paid parental leave is a central part, support a 'dual-earner/dual-carer' policy model which encourages both parents to share the responsibilities for paid

¹¹⁰ Linda L Haas and Philip Hwang, 'Programs and Policies Promoting Women's economic Equality and Men's Sharing of Child Care in Sweden' in Linda L Haas, Philip Hwang and Graeme Russell (eds), *Organizational Change and Gender Equity: International Perspectives on Fathers and Mothers at the Workplace* (2000), 133.

¹¹¹ Judith Galtry and Paul Callister, 'Assessing the Optimal Length of Parental Leave for Child and Parental Well-Being' (2005) 26(2) *Journal of Family Issues* 219, 235.

¹¹² Johanna Lammi-Taskula, 'Nordic men on parental leave: can the welfare state change gender relations?' in Anne Lise Elingsæter and Arnlaug Leira (eds), *Politicising Parenthood in Scandinavia: Gender relations in welfare states* (2006) 79, 83-4.

¹¹³ Peter Moss and Margaret O'Brien, *International Review of Leave Policies and Related Research 2006* (Employment Relations Research Series No 57, Department of Trade and Industry, UK, 2006) 157.

work and family responsibilities.¹¹⁴ In order to promote gender equality, this is a model that HREOC has supported in *It's About Time* (2007) where HREOC proposed adoption of the broad concept of 'shared work-valued care' as a guiding principle for policy responses to the reconciliation of work and family life.¹¹⁵

188. It is important to assess the efficacy of paid leave schemes with periods reserved for fathers in the context of other economic, social and attitudinal factors. HREOC urges the Inquiry to analyse these factors in detail in order to draw from them the features that could be adapted to an Australian context. In Sweden, for example, one researcher writes that 'when women earn less than men and men are seen as indispensable at the workplace, it seems inevitable that the couple will "choose" the traditional alternative of mothers taking all or most of the leave'.¹¹⁶
189. HREOC has found that the gender pay gap has a similar effect on the decisions couples make about their current work and care arrangements, despite parental preferences.¹¹⁷
190. While it appears that a period of paid parental leave reserved for fathers does not function in isolation as a fully effective policy for increasing gender equality in the areas of paid work and family responsibilities, it does mean that men are encouraged and able to take ownership of caring and associated household tasks, including those tasks that most affect workforce participation.¹¹⁸

¹¹⁴ For a discussion of this concept see Organisation for Economic Co-operation and Development, *Extending Opportunities: How active social policy can benefit us all* (2005) 88-89 and also Organisation for Economic Co-operation and Development, *Babies and Bosses: Reconciling Work and Family Life* Volume 4 (2005).

¹¹⁵ HREOC, *It's About Time: Women, men, work and family* (2007), 41-43.

¹¹⁶ Linda L Haas and Philip Hwang, 'Programs and Policies Promoting Women's economic Equality and Men's Sharing of Child Care in Sweden' in Linda L Haas, Philip Hwang and Graeme Russell (eds), *Organizational Change and Gender Equity: International Perspectives on Fathers and Mothers at the Workplace* (2000) 133, 146.

¹¹⁷ HREOC, *It's About Time: Women, men, work and family* (2007) 79-70.

¹¹⁸ See HREOC, *It's About Time: Women, men, work and family* (2007) 109-111 and also discussion throughout Chapter 4. See also HREOC, *Striking the Balance: Women, men, work and family* (2005) 29-33, where HREOC canvassed the ABS statistics on time use, which show that it is not only the amounts

191. A period of paid parental leave reserved for fathers sends a strong symbolic message that fathers are carers as well as breadwinners. In HREOC's view, this would help break down the restrictive norm of the ideal worker by normalising the practice of men taking leave from work to care for children.¹¹⁹
192. A legislated period of paid parental leave reserved specifically for fathers would legitimise men's role as carers within the workplace context, and would help break down the view in workplaces that working fathers are less committed to their careers if they take leave from work for family reasons.¹²⁰
193. HREOC has also heard support for a broader paid parental leave scheme within the community, as reflected in *It's About Time* (2007) and in focus groups conducted as part of the Sex Discrimination Commissioner's national Listening Tour.
194. For these reasons, HREOC supports the incremental introduction in Stage Two of a broader scheme of paid parental leave, with a non-transferable period of leave for the supporting partner within the first year of a child's life.
195. Like Stage One of HREOC's paid leave scheme, this provision should be subject to comprehensive and ongoing review and evaluation in order to measure its impacts over time with a view to improving the scheme as necessary.

Benefits to the National Economy and Employers

196. A paid leave scheme which enables women and parents generally to maintain their labour force attachment will deliver benefits the national economy, and to individual employers.

of unpaid work that men and women do which differ, but also the kinds of tasks they undertake that impact upon their ability to balance paid work and family responsibilities.

¹¹⁹ See paragraph 136 for discussion of the ideal worker norm.

¹²⁰ G Russell, L Barclay, G Edgecombe, J Donovan, G Habib, H Callaghan and Q Pawson, *Fitting Fathers into Families: Men and the fatherhood role in contemporary Australia* (1999) 39.

197. Australia is currently facing a skills shortage, and the ability of women to engage in paid work is a crucial factor in meeting labour force demands. In 2007, women made up 64 per cent of bachelor degree commencements,¹²¹ and 47.5 per cent of students in the public vocational education and training sector.¹²² Paid maternity, leave which enables skilled women workers to retain labour force attachment, will maximise Australia's significant investment in women's education and training.
198. In these respects, paid leave would contribute to the maintenance of an acceptable aged dependency ratio to support the ageing Australian population. As the Productivity Commission has noted, one of the implications of population ageing is the contraction of the workforce and economic growth at the same time as increasing demands on health and aged care systems.¹²³ In order to avoid the large fiscal gaps that will emerge, there is a need to boost labour force participation among various demographic groups, including parents.
199. There are broader economic benefits that a national scheme paid leave would contribute to as part of a stronger investment in the early years of children's development.¹²⁴ Nobel prize winning economist James Heckman has pointed out that not only does investment in young children promote fairness and social justice, it also offers economic benefits: increasing productivity, raising earnings and promoting social attachment, with returns to dollars invested estimated to be as high as 15-17 per cent.¹²⁵

¹²¹ ABS, *Education and Work* (May 2007).

¹²² National Centre for Vocational Education Research, *Australian vocational education and training: Students and courses 2006 – Summary* (2007).

¹²³ Productivity Commission, *Economic Implications of an Ageing Australia*, (2005).

¹²⁴ Social benefits are discussed further at paragraphs 217-226.

¹²⁵ James J Heckman, 'The Economics of Investing in Early Childhood' (Address to the NIFTeY Conference *Prevention: Invest now or pay later Reducing the risk of poorer life outcomes by intervention in the early years*, University of NSW Sydney, 8 February 2006).

200. Benefits of a national scheme of paid leave for individual employers include savings on the costs of recruiting and retraining new staff, reducing staff turnover costs and increasing return to work rates of women who take paid leave.¹²⁶
201. For example, retention rates for some companies such as Monash University, GM Holden and other ‘Employer of Choice for Women’ companies are around 90 per cent.¹²⁷ For businesses employing highly skilled knowledge workers, this means a significant cost saving.
202. Small and medium sized businesses report a number of benefits of paid maternity leave along with other family-friendly provisions, including lower staff turnover, increased productivity and higher levels of business performance, particularly in sales and profitability, compared with businesses that do not offer any such employee provisions.¹²⁸
203. HREOC also notes that small business representatives have recently pointed out the benefits of (government-funded) paid maternity leave in terms of the attraction and retention of staff in small businesses.¹²⁹ A government-funded scheme would ensure that women working in this sector are not precluded from at least a baseline entitlement.

Economic Security for Women and Families

204. In addition to delivering broad national economic benefits, a package of paid maternity leave, supporting parents leave and paid parental leave would directly contribute to increasing the economic security of individual families by providing

¹²⁶ Equal Opportunity for Women in the Workplace Agency, *Paid Maternity Leave – The Business Case* <http://www.eowa.gov.au/Developing_a_Workplace_Program/Employment_Matter_Resources/EM_5_Resources/EOWA_Paid_Mat_Leave_Info/The_Business_Case.htm> at 26 May 2008

¹²⁷ Ibid

¹²⁸ Sensis/Office for Women, *Better Conditions, Better Business* (2007).

¹²⁹ Evidence to Productivity Commission Inquiry Into Paid Maternity, Paternity and Parental Leave, Hobart, 12 May 2008, 107 (Mr Tony Steven, Council of Small Business of Australia).

a guaranteed source of income upon the birth of a child. This is an important objective for a paid leave scheme.

205. In particular, paid maternity leave would provide a level of 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. Under current arrangements, the majority of women must forego income from paid work as a result of giving birth.
206. 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, women who are not in paid work at the time of birth are not faced with the same reduction in income as a result of childbirth.
207. It is also important to note that facilitating paid work for both parents is positive for children's wellbeing from the perspective of poverty alleviation. From a global perspective, children in households without a parent in paid work are three times more likely to grow up in poverty than children in one-earner households, who are in turn three times more likely to grow up in poverty than children of dual-earner couples.¹³⁰ Paid leave would ensure that families do not face a major drop in their pre-birth income level at exactly the time that they are faced with the additional costs incurred at the time of the birth of a child.
208. In addition to general ongoing financial costs associated with having children, financial burdens for parents with disability and for parents of children with disability around the time of birth may be more onerous. This may include covering costs associated with appointments with specialist practitioners and support services, purchasing special equipment or modifying equipment.¹³¹ A

¹³⁰ Willem Adema, 'Babies and Bosses: What lessons for governments?' (December 2007-January 2008) 264/265 *OECD Observer*, 2.

¹³¹ Anglicare Tasmania, *Forgotten Families: Raising children with disabilities in Tasmania* (2007) <http://www.anglicare-tas.org.au/index.php?option=com_docman&task=doc_view&gid=155&Itemid=81> at 26 May 2008; Yooralla, *Parents with Disability Community Project. Parents with a disability: parenting strategies and specialised equipment: babies* <<http://home.vicnet.net.au/~parentwd/d-EQP.htm>> at 26 May 2008 and

longer period of paid leave would provide particular financial support to these groups of parents.

209. While there is no doubt that the cost of raising children is more than offset for most parents by the rewards of parenthood, paid leave is an important means of retaining an income level, especially with costs incurred at the time of the birth.
210. In addition to experiencing disadvantage due to losing short term income at the time of birth, a woman's lifetime earning capacity is also severely reduced as a result of leaving the workforce to bear and raise children. This can often mean that women are more likely to live in poverty across the life cycle.
211. Australian women have substantially poorer retirement incomes than men, with recent figures showing that half of all women aged 45-59 have \$8 000 or less in superannuation, while 70 per cent have \$25 000 or less. In contrast, half of all men aged 45-59 have \$31 000 or less in superannuation, while 70 per cent have \$80 000 or less.¹³²
212. This is due, in part, to women's more limited time in the workforce as a result of their child bearing responsibilities, as well as pay inequities, systemic discrimination in access to job opportunities and historical forms of sex discrimination which prevented them from contributing to superannuation funds.
213. HREOC heard a great deal of concern from the Australian community on this issue while undertaking the Sex Discrimination Commissioner's national Listening Tour, and considers low retirement income to be one of the most pressing aspects of systemic discrimination against women.
214. While paid leave on its own may have only a limited impact on the reduced lifetime earnings of women as a result of their ongoing commitment to family

Yooralla, Parents with Disability Community Project *Money matters*

<<http://home.vicnet.net.au/~parentwd/d-MON.htm>> at 26 May 2008

¹³² Simon Kelly, 'Entering Retirement: The financial aspects' in Peter Kriesler, Michael Johnson and John Lodewijks (eds), *Essays in Heterodox Economics* Proceedings and Refereed papers Fifth Australian Society of Heterodox Economics Conference 11-12 December 2006, University of New South Wales Sydney, 285-297.

responsibilities, a paid leave scheme which improves the ability of women to maintain their labour force attachment and makes it easier for women to combine paid work and family life will help to address the disadvantage experienced by women in their earning capacity and ability to save across their lifetime. To the extent that a paid leave scheme for parents will increase the ability of women to remain attached to paid work following birth of a child, it will have longer term benefits for women by improving their lifetime earnings and increasing their superannuation savings.

215. HREOC proposes that paid leave entitlements under the scheme should therefore include a compulsory superannuation contribution, provided that it is funded on a basis that will not act as a disincentive to business employing women.
216. HREOC would like to see the Inquiry model the costs and effects of a superannuation component on paid maternity leave, supporting parent leave and a broader scheme of parental leave so that it may be considered by the community.

Broader Social Benefits

217. Social benefits such as encouraging and providing assistance for parents to raise their children represent an important objective for a paid leave scheme. Paid leave is one among a number of policy mechanisms which addresses this social need to support the rearing of the next generation of citizens and workers.
218. To the extent that paid 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.
219. A national scheme of paid maternity, supporting parent and paid parental leave can be seen as recognition by society and the Government of the importance and value of motherhood, parenting and children.
220. Society not only benefits immediately from a next generation, its continuance depends upon there being future citizens and economic producers. This point was

acknowledged by many members of the Australian community in both HREOC's 2002 consultations and its consultations undertaken in preparation for *It's About Time* (2007).¹³³

221. In short, while children have emotional value for their parents, they also have social value to the broader society.
222. The entire community – including business – receives benefits which flow from the costs borne by parents raising children and it is only fair that the community, including governments and employers, share some of the costs of this care. Providing a package of paid leave is one way that the costs of raising children can be shared.
223. As noted above, it is also important to value the dual role of women and men as both workers and carers. Women are an invaluable part of the Australian labour force; paid maternity leave provides the social recognition that many women perform a dual role, as employees and mothers.
224. Supporting parent leave for fathers at the time of childbirth would provide recognition that they are an integral part of family life in a hands-on way. An additional broader paid parental leave scheme that could be shared between both parents, but with a component reserved for supporting parents, would provide an even greater recognition of parents' dual roles.
225. It is also likely that offering paid leave as a workplace entitlement would encourage a change in workplace culture. Workforce structures and cultures need to change to accommodate the lives of employees with family responsibilities. In keeping with the principles enshrined by *ILO Convention 156*, making workplace structures more family-friendly by mandating paid leave for parents would promote equality and remove systemic discrimination, to the benefit of women, their families and society.

¹³³ This point is also acknowledged by many economists including Nancy Folbre, *The Invisible Heart: Economics and Family Values* (2001).

226. When combined with other family-friendly workplace policies such as a right to request flexible work arrangements, an improvement in the quality of part time work and reasonable working hours, a paid leave scheme would strengthen the acceptance by employers that employees should be supported in balancing work and family. It may also mean that more women and men feel supported to access existing work and family policies that may be available in their workplaces. The likely combined effect would be to make workplace cultures more supportive of workers with family responsibilities.

Complying with Australia's International Human Rights Obligations and International Labour Standards

227. HREOC considers that fulfilment of Australia's international human rights obligations and compliance with international labour standards is an important objective of a national paid leave scheme.
228. The introduction of Stage One of HREOC's proposal would comply with *CEDAW*. Australia should finally remove its reservation under *CEDAW* regarding provision of paid maternity leave, and avoid further criticism of Australia by the CEDAW Committee.
229. Adoption of Stage One would also prevent additional human rights-based criticism from other international human rights bodies, such as the Committee on the Rights of the Child.
230. HREOC's proposal would also comply with the maternity leave provisions of *ILO Convention 183*. Australia should take steps towards ratification of this Convention, as recommended by HREOC in *Pregnant and Productive* (1999), and ensure compliance with other provisions of that Convention.

Recommendations

231. HREOC recommends: That, as part of a first stage of a National Paid Leave Scheme, a non-transferable national scheme of 14 weeks paid maternity leave be introduced, principally to ensure the health and wellbeing of mothers and babies, to address the workplace disadvantage that women experience as the result of maternity, and to contribute to women's ability to participate on equal terms with men in all aspects of life (**Recommendation 1**).
232. HREOC recommends: That, as part of a first stage of a National Paid Leave Scheme, a non-transferable, separate entitlement of two weeks supporting parent leave be introduced and made available either at the time of birth for the supporting parent to take concurrently with the birth mother's paid maternity leave, or immediately after that period of paid leave, principally to support the bonding between that parent and their child, as an important support for the mother and/or as a way of transitioning to alternative care arrangements following the mother's return to paid work (**Recommendation 2**).
233. HREOC recommends: That following an independent review after two years, any necessary modifications and improvements to the National Paid Leave Scheme are made and that Australia implement a second stage of measures. This would provide in total:
- 38 weeks of paid parental leave, of which 4 weeks may only be taken by the supporting parent, in addition to;
 - 14 weeks paid maternity leave; and
 - 2 weeks paid supporting partner leave to be taken concurrently at the time of birth.

HREOC urges the modelling and analysis of each stage of the scheme by the Productivity Commission during the course of the current Inquiry so that the best

funding model for stage two can be determined and so that community views on the suitability of models can be canvassed (**Recommendation 3**).

234. HREOC recommends: That the Government remove its reservation to Article 11(2)(b) of the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* (**Recommendation 4**).
235. HREOC recommends: That the Government take steps towards ratification of the *Maternity Protection Convention 2000 (No 183) (ILO Convention 183)*, and ensure compliance with other provisions of that Convention (**Recommendation 5**).

Key Features of HREOC's Proposal

236. HREOC has set out the key features of its proposed National Paid Leave Scheme for parents in the Table set out in the Summary of this submission, above.
237. In *A Time to Value* (2002), HREOC provided the rationale for a number of the key features of the paid maternity leave component of its proposed scheme, to be introduced in Stage One and retained in Stage Two. *A Time to Value* (2002) deals with the duration of paid maternity leave, together with coverage, eligibility, payment level, funding sources, payment mechanisms, and return to work arrangements. HREOC adopts the content of *A Time to Value* (2002) in relation to its proposed paid maternity leave scheme.
238. HREOC considers it essential that any paid leave scheme does not further disadvantage the ability of women to engage in the paid work force. It is aware that any proposed scheme should not disproportionately impact on the willingness of businesses to employ women, nor should any scheme disproportionately burden small business. In order to proceed with a paid leave scheme, economic modelling is essential.
239. In 2002, HREOC funded its own economic modelling of the paid maternity leave component.
240. However, HREOC has not undertaken further economic modelling since 2002. In light of HREOC's limited resources, and the expertise available to the Productivity Commission in the context of the current Inquiry, HREOC requests that the Productivity Commission undertake the economic modelling of HREOC's proposed paid maternity leave scheme, including the separate modelling of Stages One and Two, in light of the contemporary conditions in 2008.
241. Following any economic modelling which may be undertaken by the Productivity Commission and published in its draft report in September 2008, HREOC will then review its proposal, and may make further submissions to the Inquiry, in light of the Commission's initial findings.

242. In this section, HREOC provides additional submissions in relation to key features of its proposed scheme for consideration by the Inquiry, particularly in relation to duration, eligibility, payment levels and funding sources, and payment mechanisms, in order that economic modelling may be undertaken.
243. Whilst HREOC considers that Stage One of its proposal should be introduced immediately, HREOC may wish to adjust key features of its proposed Stage Two in light of costing issues that may be identified arising out of economic modelling conducted by the Productivity Commission at this time.

Duration

244. As noted above, HREOC recommends a national scheme of paid maternity leave which provides for a minimum of 14 weeks, to be taken immediately prior to and/or following the birth of a child.
245. The paid maternity leave should be taken as continuous block. A woman may elect to take less than the full 14 weeks of paid maternity leave, but should only receive the payment for the weeks taken as maternity leave.
246. During HREOC's 2002 paid maternity leave examination, while many submissions from the community noted that comparable countries have or were in the process of extending their paid leave, most expressed a preference to advocate for an acceptable, achievable minimum standard. Proposals in submissions received by HREOC ranged from six weeks to five years.
247. As noted above, *ILO Convention 183*, adopted in 2000, also provides for a right to no less than 14 weeks of paid maternity leave. Fourteen weeks paid maternity leave is a minimum standard.
248. HREOC continues to support the extension of this period of leave over time. However, it proposes that the extension of paid leave should be achieved through a broader scheme of paid parental leave that can be shared between both parents. Under Stage Two, mothers would be entitled to up to 48 weeks of paid leave, by

mutual agreement between couples (being 14 weeks paid maternity leave plus up to a maximum of 34 weeks paid parental leave).

249. HREOC considers that the provision of a minimum of paid maternity leave of 14 weeks, reserved for the birth mother, with flexibility as to which parent takes additional leave beyond this period would respond to the desire for couples to have greater choices regarding which parent is to have primary responsibility for paid work and care of children, including through the use of shared care arrangements.
250. HREOC also proposes the introduction in Stage One of an accompanying period of two weeks paid leave for the supporting parent, as supporting parent leave. HREOC proposes a period of two weeks in light of industry standards, and current practices by fathers and other supporting parents to take leave immediately following the birth of a child.
251. The supporting parent leave is to be taken concurrently with the paid maternity leave, or, alternatively, immediately following the paid maternity leave period, if the couple prefer that the supporting parent be able to provide intensive home-based care during the early period of a mother's return to paid work. In Stage Two, the supporting parent leave component may only be taken concurrently with the paid maternity leave component, due to the introduction of a further component of paid parental leave
252. In Stage Two, HREOC proposes that, subject to the Two Year Review, the Government introduce of further component of 38 weeks paid parental leave, with four weeks of that period being reserved for the supporting parent on a 'use it or lose it' basis (unless the mother is a sole parent in which case she is entitled to the full additional 38 weeks). The balance of the leave may be taken by either parent.
253. The parents may share access to the additional paid parental leave to which either one of them is entitled (i.e. 34 weeks), for example, on a shared care arrangement, with each one remaining in flexible paid work arrangements. However, only one parent can be on paid parental leave at any given time.

254. HREOC's proposal to progressively introduce a paid leave scheme which results in the ability of at least one parent to be providing personal care to the child for a full year (being 14 weeks of paid maternity leave plus 38 weeks of paid parental leave) is linked to research in child development which considers that one year is the optimal period for ensuring personal care for a child in its early years, as well as the desire to support shared care arrangements between parents from the earliest stages of parenting.

Recommendations

255. HREOC recommends: That a National Paid Leave Scheme provide for:

- an entitlement to up to 14 weeks to be taken immediately prior to and/or following the birth of the child to 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;
- an entitlement to up to two weeks paid supporting parent leave to be taken concurrently with the paid maternity leave period, or, under stage one only, immediately after the paid maternity leave period as a continuous block; and
- under Stage Two, subject to the findings of the Two Year Review, an additional 38 weeks of paid parental leave, to be taken following the paid maternity leave period within the first year of the child's birth, but with 4 weeks of this leave reserved for the supporting parent. Both parents may share 34 weeks of paid parental leave at alternate times, including in a shared care arrangement with both parents working part time and sharing the paid leave on alternate days (**Recommendation 6**).

Eligibility and Coverage

256. HREOC considered the issue of eligibility in relation to paid maternity leave in *A Time to Value* (2002) by drawing on policy objectives, international standards and practices, submissions from the community and consideration of the Australian labour market and women's patterns of work.
257. Under HREOC's 2002 proposal, it was argued that a paid leave scheme available to women in paid work would need to establish a standard or definition for paid work. In doing so, HREOC considered that eligibility criteria should aim to ensure as many women in paid work as possible are covered and that the criteria should be simple to administer. HREOC also considered that it is important for the eligibility standard to have public support and be seen as legitimate.
258. HREOC continues to hold the view that requiring women to have undertaken a certain length of employment in order to be eligible for paid maternity leave is reasonable. In 2002, HREOC found a considerable level of support for the principle that there should be a minimum qualifying period of employment in order to be eligible for paid maternity leave. A mother should be able to demonstrate substantial labour force attachment.
259. A number of submissions received by HREOC in 2002 supported the concept of portability between employers and to also permit short breaks in women's employment history. HREOC's proposed eligibility criteria reflect the reality of women's employment, including those in intermittent or casual working relationships, contract workers and the self-employed.
260. HREOC recommended in 2002 that, in order to be eligible for paid maternity leave a woman must have been in paid work for 40 weeks of the past 52 weeks with any number of employers and/or in any number of positions, and that access to this payment should not be means tested. HREOC continues to hold this view. Employment should include part time, casual employment, contract work and self-employment, employment which is pro rata or subsidised, and be inclusive of both open employment and employment in Business Services.

261. Forty weeks is a longer period than the usual gestation of between 37 and 40 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, it is important to note that this principle was one which was important to employer groups that HREOC consulted with in 2002.
262. The other benefit of a 40 week within 52 weeks qualifying period is that it provides 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, would still receive the 14 weeks of government funded maternity leave payments under this proposal regardless of other remedies which may be available to her. 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 discrimination complaint, has not been able to prove a complaint, or where a complaint has not yet been decided.
263. In considering funding sources other than General Revenue for a national scheme of paid leave in Stage Two of HREOC's proposal, this aspect of eligibility would need to be considered in light of the additional obligations it would put on employers. This is because a government funded scheme is based on labour force attachment rather than a relationship with a single employer.
264. The Inquiry's Issues Paper poses questions in relation to other primary carers, such as grandparents, foster carers and adoptive parents.
265. HREOC is of the view that paid maternity leave should be reserved for mothers, with the entitlement transferable to a woman's partner or another caregiver only in exceptional circumstances (such as death or incapacity of the mother).

266. An exception to this rule is adoptive parents, or parents from a surrogacy arrangement where, due to the fact that the non-birth parents do not give birth to their children, the primary caregiver of the child is eligible for paid leave at the time of placement of the child with his or her family irrespective of the age of the child.
267. Adoptive parents or parents from a surrogacy arrangement should be eligible for paid maternity leave to ensure equity with biological parents, in recognition of the different health and wellbeing issues, government requirements that one adoptive parent remain at home for a period after placement, and the disadvantages faced by older adopted children in having to adjust to a new family and often cultural environment.
268. In adoption or surrogacy arrangements, the birth mother should also be entitled to a reasonable period of paid leave in order to recover physically and emotionally from the birth of the child, and its relinquishment to other parents.
269. There are State/Territory government foster care payments available for foster parents. In HREOC's view foster carers should not be eligible for paid maternity leave.
270. While recognising the important role that grandparents play in supporting parents to care for their children, HREOC does not consider that grandparents should be eligible for paid maternity leave scheme or a broader paid leave scheme other than in exceptional circumstances such as the death or incapacity of the mother where the grandparent becomes the primary carer of the child.
271. In relation to 2 weeks of supporting parent leave, HREOC is of the view that the same eligibility test with regard to employment should apply.
272. Eligibility for any period of supporting parent leave should not discriminate against same-sex couples. Non-birth parents in same-sex relationships should receive the same treatment as fathers in opposite-sex relationships.
273. Financial support for parents not in paid work at the time of the birth of a child is considered separately below.

274. HREOC considers that it would be appropriate to review the eligibility criteria of its proposed scheme as part of the Two Year Review, described further below. 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. The review should also consider impacts on particular groups such as parents with disability to ensure that the scheme does not discriminate against people with disability and others who may be more likely to be in precarious employment arrangements.
275. Where a person is eligible for paid maternity leave and is a sole parent, that person should be entitled to take the benefit of the supporting parent's paid leave entitlements (except where the entitlement would have been taken concurrently). In Stage One, a sole parent would therefore be entitled to 16 weeks paid leave. In Stage Two, the sole parent would be entitled to an additional 38 weeks of paid leave.

Recommendations

276. HREOC recommends: That in order to be eligible for paid maternity leave and supporting parent 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, and that access to this payment should not be means tested; and
 - a supporting parent 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, and that access to this payment should not be means tested (**Recommendation 7**).

Payment Level, Funding Sources and Payment Mechanism

277. 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. Providing some level of income replacement is an important feature for a paid leave scheme to achieve its national objectives.
278. A key principle identified under both *ILO Convention 103* and *ILO Convention 183* is the adequacy of payments to ensure the standard of living for a woman and her child. Article 6 of the latter convention provides that:
- 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.¹³⁴
279. In addition, *ILO Convention 183* 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.¹³⁵

¹³⁴ Article 6(2)

¹³⁵ International Labour Office, *Report IV (2a). Maternity Protection at Work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)* International Labour Conference 88th Session, Geneva, 2000, 76
<www.ilo.org/public/english/standards/relm/ilc/ilc88/pdf/rep-iv2a.pdf> at 26 May 2008.

280. Under *ILO Recommendation 191*, member states are also encouraged to aspire to a system of paid maternity leave that provides full wage replacement.¹³⁶
281. HREOC's 2002 proposal supported a variable rate of payment (as opposed to a flat rate) for paid maternity leave, consistent with the concept of income replacement, that is, that paid maternity leave should replace income that a woman has to forego due to maternity.
282. HREOC's 2002 proposed payment level for paid maternity leave involved a two tiered system. The scheme proposed that the payment level be at either the Federal Minimum Wage, or based on the average of the woman's previous earnings from all jobs, whichever is the lesser amount. Previous weekly earnings would 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 of employment over the previous 12 months. This scheme of leave would form a baseline minimum that could be topped up by employers through standard bargaining mechanisms.
283. Given that women on higher levels of income are more likely to already receive negotiated employer-funded paid maternity leave, the lower level of coverage offered to these women would be offset by their employer-funded leave. Considered together, the two tier payment system would provide significant coverage for women to be provided with two-thirds of their income. They would also deliver the greatest proportional benefit to lower income women, who are those least likely to be able to bargain with their employer to gain paid maternity leave.
284. This proposal combines a capped amount of the Federal Minimum Wage as a safety net providing a reasonable standard of living, with an earnings-related component.
285. HREOC continues to be of the view that the ideal level of payment for paid maternity leave should be 100 per cent of a woman's previous earnings, given this is the standard to which *ILO Recommendation 191* provides member states should

¹³⁶ *ILO Recommendation 191*, r 2.

aspire.¹³⁷ HREOC proposes that an incremental development of the paid leave scheme should foster an increase in payment level towards at least a minimum of two-thirds of full income replacement in Stage Two, following the Two Year Review.

286. The payment levels for other forms of paid leave, such as the supporting parent leave and paid parental leave should be set at the same level as paid maternity leave. This is essential in ensuring that the paid leave scheme does not discriminate between parents, fosters gender equality, and promotes the ability to share paid work and the care of children. HREOC notes that uptake of paid parental leave by men is higher in European countries where the rates of salary compensation are high.¹³⁸ In keeping with the gender equality objectives for paid leave schemes, the level of income replacement is a key factor for consideration if men are to be encouraged to take up portions of the paid leave.
287. HREOC proposes that Stage One of its scheme be funded by the Government out of General Revenue. In relation to Stage Two, HREOC would like the Productivity Commission to model funding from both General Revenue, and alternative arrangements, based on both payment level set at the Federal Minimum Wage, and at two thirds of full income replacement. HREOC is concerned to ensure that funding source arrangements do not operate as a disincentive to the employment of women, nor disproportionately burden small business.
288. HREOC's forward estimates of the cost of the paid maternity leave component of Stage One, calculated as at 2002, may still be a useful guide for approximating the cost of a minimal paid leave scheme funded by government.
289. For 2006-07, estimates produced for HREOC showed the gross cost of paid maternity leave of 14 weeks' duration at the Federal Minimum Wage to be \$526 million per year, with a net cost of \$219 million. HREOC also notes the indicative

¹³⁷ ILO *Maternity Protection Recommendation 191*

¹³⁸ Margaret O'Brien, 'Shared Caring: Bringing fathers into the frame' (Working Paper No 18, Equal Opportunities Commission, UK, 2005) iv.

figure of \$591.6 million provided by Senator Stott-Despoja's recent legislative proposal, which is similar to HREOC's 2002 model.¹³⁹

290. HREOC acknowledges that, if the payment level is to be increased beyond the Federal Minimum Wage in Stage Two, funding from General Revenue may not be sustainable over the longer term. This is due in part to the regressive nature of such a scheme (i.e. that proportionally more tax revenue from people on lower incomes would be re-distributed to cover those on higher incomes).
291. In light of these concerns, HREOC would be interested to see other ways of modelling a national paid leave scheme that allow for two-thirds income replacement at a minimum, and notes that the Inquiry has received submissions in support of a pooled funding system that draws funds from general revenue, employers and employees via a levy system.¹⁴⁰
292. In 2002 HREOC received some submissions in support of a joint model of funding for paid maternity leave by employers and government. However, there were significant concerns raised by employer groups in terms of cost and the complexity of administration.
293. Notwithstanding these concerns, HREOC considers that the current Inquiry offers opportunities for modelling and re-considering a range of financing options for both paid maternity leave and the broader scheme of leave that HREOC is recommending, including canvassing the level of community support that they may or may not enjoy.
294. HREOC urges the Inquiry to consider both HREOC's 2002 model as a basis for an updated costing of a minimal general revenue-funded, Federal Minimum Wage based scheme of paid maternity and paid supporting parent leave, as well as other models which rely on joint contributions from employers/employees and government, particularly in Stage Two.

¹³⁹ Workplace Relations (Guaranteeing Paid Maternity Leave) Amendment Bill 2007 (Cth).

¹⁴⁰ See submission 8 to Productivity Commission Inquiry Into Paid Maternity, Paternity and Parental Leave (Julia Perry) and Evidence to Productivity Commission Inquiry Into Paid Maternity, Paternity and Parental Leave, Canberra, 7 May 2008, 7-9 (National Foundation for Australian Women).

295. HREOC proposes that the payment mechanism for delivery of the paid leave payments be dependent upon whether the employee has been in employment with the one employer only for the required eligibility period.
296. Where the employee has been in continuous employment with the same employer, HREOC proposes that the employer be responsible for delivering payment to the employee, with reimbursement by the Government out of General Revenue to cover the full costs of the payment, including a reasonable administrative cost. This payment mechanism is to support the workplace attachment with that employer, and to avoid administrative complexities for employers who may introduce ‘top up’ payments of paid leave beyond the minimum required payment level.
297. Where the employee has been with more than one employer during the eligibility period, an individual would elect to receive the payment as either a fortnightly payment from government to the individual or a payment from the employer to the individual with the employer reimbursed by the Government (subject to the employer agreeing to this option).

Recommendations

298. HREOC recommends:

- That under Stage One, paid maternity leave and supporting parent leave be paid at the rate of the Federal Minimum Wage, or the parent’s previous weekly earnings from all jobs, whichever is the lesser amount. Previous weekly earnings would 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 of employment over the previous 12 months. Payment is to be paid as taxable income, including superannuation, on a pro rata basis.
- That, subject to further modelling and consideration, under Stage Two the payment level for each element of HREOC’s scheme may increase beyond stage one to at least two-thirds of the average previous earnings

(with weekly earnings calculated on the same basis as Stage One) in order to meet the key objectives of a national scheme of paid leave.

(Recommendation 8).

299. HREOC recommends: That under stage one of HREOC's proposal, paid maternity leave and supporting parent leave be funded by the federal Government. Under Stage Two, following the Two Year Review, if the payment level is determined to increase to two-thirds of the parent's previous weekly earnings or more the review should confirm the most effective funding model which will continue to meet the objectives of a national paid leave scheme
(Recommendation 9).

300. HREOC recommends: That in relation to the payment mechanism:

- under Stage One of HREOC's proposal, paid maternity and supporting parent leave are to be paid as fortnightly payments during the period of leave. For parents who have been in employment with the same employer for the 40 weeks of the past 52 weeks, payment is to be made by that employer. For parents who have been with more than one employer during the same period of eligibility, they may elect to receive the payment as either a fortnightly payment from Government to the individual or a payment from the employer to the individual, with the employer reimbursed by the Government as above (subject to the employer agreeing to this option); and
- under Stage Two of HREOC's proposal, the payment mechanism for paid maternity and supporting parent leave will be dependent on the funding source as determined by the outcome of the Two Year Review
(Recommendation 10).

Interaction with Social Security and Other Government Payments

301. HREOC is of the view that the Government should ensure that all women have adequate financial support at the time of childbirth.
302. This view is underpinned by Australia's obligations under ICESCR to recognise the right of families to an adequate standard of living.¹⁴¹
303. As the Issues Paper notes, there are a range of family assistance and income support measures currently provided by the Australian Government.
304. HREOC proposes that, at least in Stage One, a person's entitlement to social security and family assistance payments, such as the Baby Bonus, during any period of paid leave should be assessed in accordance with existing eligibility criteria.
305. Modelling the interaction between a national scheme of paid leave and these payments is an important part of the Inquiry's task.
306. It is important that family assistance and other payments do not operate as a disincentive to women's labour market participation.
307. The interaction between paid leave and child care subsidies is particularly important given the intuitive expectation that paid leave would reduce the number of young children in child care.
308. The interaction of a paid leave scheme with the Baby Bonus is another significant area for analysis given that this payment was widely regarded at the time of its introduction as the Government's response to HREOC's 2002 proposal for a paid

¹⁴¹ Article 11, *International Covenant on Economic, Social and Cultural Rights*, opened for signature December 1966, 999 UNTS 3 (entered into force 3 January 1976), ratified by Australia 10 December 1975, entered into force for Australia 10 March 1976. .

maternity leave scheme and the community support which accompanied its publication.

309. The Baby Bonus, as a universal welfare payment designed to assist families with financial costs around the time of birth,¹⁴² does not meet most of the objectives HREOC has outlined for a paid maternity leave scheme. However, the payment does provide a means of support at a time when family budgets may be stretched due to the costs of a new baby.
310. HREOC notes the recent changes made by the Government to make the Baby Bonus available only on a fortnightly basis and subject to means-testing.
311. While the Government may wish to continue providing the Baby Bonus as a means of supporting families financially at the time of the birth of a child, the payment does not meet the aims of a paid leave scheme.
312. The Baby Bonus does not meet the labour market attachment objectives of a paid leave scheme, however it would meet health and wellbeing objectives and create a level of equity among mothers in ensuring that all women would be supported in their maternal role and retain an adequate standard of living.
313. As long as the Baby Bonus or other family allowance payments ensure an adequate standard of income for parents and their children following birth, and as long as payments do not operate as a disincentive to women's labour market participation, HREOC supports the retention of appropriate transfer payments associated with the additional costs of a new child. As with different financing and payment options, HREOC would like to see the interaction of such payments with its proposed paid leave scheme modelled as a concrete proposal.
314. This type of scheme could structurally mirror the paid leave scheme in the United Kingdom, which provides both statutory Maternity Pay for women employees

¹⁴² See Family Assistance Office *Family Assistance The What, Why and How* (2007). The current Baby Bonus lump sum of \$4,258 represents around 8 weeks of the current Federal Minimum Wage, or around 9 and a half weeks of the Federal Minimum Wage once the payment increases to \$5,000 as scheduled for July 2008.

paid by the government via employers and a Maternity Allowance paid via the social security system for women with a lesser attachment to the labour market.¹⁴³

Recommendations

315. HREOC recommends: That a person who receives paid leave entitlements under HREOC's proposal will continue to be entitled to applicable social security and family assistance payments, including the Baby Bonus, in accordance with existing eligibility criteria (**Recommendation 11**).

Interaction with Other Work and Family Reconciliation Policies

316. In designing possible schemes of paid leave, it is important to analyse the interaction with, and potential impacts on, other policy supports that assist men and women to combine their paid work with their family responsibilities.
317. These include the right to request flexible working arrangements, and the unpaid maternity leave entitlements including the additional parental leave standard contained in the proposed National Employment Standards.
318. HREOC has previously recommended a number of changes to the draft National Employment Standards, including broadening the right to request flexible working arrangements. HREOC has proposed that the standard be extended in relation to the coverage of employees with family responsibilities, employees with caring responsibilities, and employees with a disability.¹⁴⁴ HREOC has urged the

¹⁴³ Summary information on the operation of the United Kingdom's scheme is available on the Department for Business Enterprise and Regulatory Reform's website
<<http://www.berr.gov.uk/employment/employment-legislation/employment-guidance/page34244.html>>
at 26 May 2008.

¹⁴⁴ Submission 58 to the Australian Government Department of Education, Employment and Workplace Relations on Discussion Paper, National Employment Standards Exposure Draft (HREOC)

Government to consider broadening the right to request by not limiting this right to parents of children under school age only and making it available to:

- employees with all forms of family and caring responsibilities; and
- employees with disability who may need flexibility as part of reasonable accommodation in the workplace.

319. HREOC also recommended that both the proposed right to request standard and the additional (unpaid) parental leave (and related entitlements) standard explicitly set out a list of non-exhaustive factors to be taken into consideration by the employer when considering each request and determining what constitutes 'reasonable business grounds'.
320. In addition, HREOC has recommended that the right to request standard and the additional parental leave standard (and related entitlements) contain a dispute settlement mechanism allowing an employee to refer unresolved disputes around the Flexible Working Arrangements National Employment Standard to Fair Work Australia or some other form of conciliatory body for procedural review.
321. HREOC also notes the Government's committed and mooted reforms to the provision of early childhood education and care services.¹⁴⁵ Paid leave must be considered as part of a suite of measures such as these to enable Australians to meet their paid work and family responsibilities.
322. This suite of measures should include a range of education and awareness raising activities, access to appropriate parenting services, targeted measures to assist disadvantaged groups of parents, incentives to assist business to play a stronger role in supporting workers with family responsibilities and a greater effort across a

<<http://www.workplace.gov.au/workplace/Publications/WorkplaceRelations/DiscussionpaperonNationalEmploymentStandards.htm>> at 26 May 2008.

¹⁴⁵ Australian Government, Statement 1: Budget Overview in *Budget Paper No.1: Budget Strategy and Outlook 2008-09* 11, 17 and 18, and Press Conference of the Prime Minister of Australia, the Hon Kevin Rudd MP and Parliamentary Secretary for Early Childhood Education and Childcare, The Hon Maxine McKew MP (Sydney, 17 April 2008)

<http://www.pm.gov.au/media/Interview/2008/interview_0204.cfm> at 26 May 2008.

range of gender equality areas of policy, as contained within the recommendations of *It's About Time* (2007).

323. As noted previously, the gender pay gap continues to have an influence on the choices that men and women make about how to balance their paid work and care responsibilities. Women's disproportionate responsibility for the care of children and other unpaid work means that women in paid work continue to face a "double shift" across their working lives.
324. The pressures that women face in reconciling their work and family lives are not experienced in isolation from the lives of their partners. As noted in *It's About Time* (2007), HREOC heard from men who wanted to take a greater role in caring for their children but were unable to find flexible work, that they faced barriers to taking up flexible work (such as the questioning of their commitment to their jobs), and that they faced difficulties accessing parenting services and cultural and attitudinal barriers.
325. In HREOC's view, progress in these areas will be assisted by the introduction of a national paid leave scheme. However, the responsibility for a more holistic, integrated response to fairly distributing the costs and benefits of care is shared between governments, employers, communities and the families to which we each belong.
326. HREOC considers that the ongoing review of the effectiveness of a national paid leave scheme for parents against its key national objectives, including during the Two Year Review, detailed further below, should take into account the interrelationship on the combination of the range of policies in place to support parents to better balance paid work and family responsibilities across the life-cycle. For example, whilst paid maternity leave may contribute to enhancing the ability of women to retain labour force attachment following the birth of a child, their ability to stay engaged with paid work will be directly impacted by the availability of flexible work practices over the longer term. The availability of flexible work for fathers and other supporting parents will also directly impact on their ability to have a greater role in shared care arrangement, directly affecting progress in achieving greater gender equality.

Recommendations

327. HREOC recommends: That in modelling of the first and second stages of HREOC's proposal the Inquiry take into account likely impacts on different groups of employees, particularly those who are disadvantaged in the labour market, employers, and interaction with other government payments, work and family reconciliation policies and the provision of early childhood education and care (**Recommendation 12**).

Interaction with Existing Legislation

328. In keeping with the return to work guarantee that applies under the unpaid parental leave provisions of the *Workplace Relations Act 1996*, under the first stage of HREOC's proposal all employees taking paid leave who are eligible under these provisions would be accorded the right to return to their previous job.
329. In considering the second stage of broader paid leave provisions under HREOC's proposal, further consideration of the interaction between unpaid parental leave would be needed assuming the eligibility for the broader scheme of paid leave remains the same as the initial stage.
330. HREOC also considers that there is scope for reviewing the unpaid maternity leave provisions given that, as the Issues Paper notes, currently 27 per cent of recent mothers and 35 per cent of recent fathers who have been working were not eligible for unpaid maternity or paternity leave. While some of these employed mothers and fathers are self-employed, it is important to note that 17 per cent of mothers are ineligible because they have not worked for the same employer continuously for 12 months. As noted above, HREOC proposes a more expansive eligibility for paid leave, beyond employees in full-time employment. HREOC proposes that the unpaid leave entitlements should ideally match paid leave standards, or at least be coherent with the scheme.

331. There is evidence that where employees are eligible for existing unpaid leave entitlements, some employers disregard the unpaid parental leave standard, particularly in terms of a guaranteed return to the job held before the employee went on leave.¹⁴⁶
332. HREOC receives many enquiries from women who have difficulties returning to work following a period of maternity leave, including accessing part time work on return from unpaid leave.
333. HREOC has previously heard that some women who do have access to unpaid parental leave do not know they have the right to return to work after taking this leave or were not encouraged to use it. For example, some women leave work rather than experience the ‘guilt’ of inconveniencing their employers. Other women experience difficulties in returning to work in the position they held prior to taking leave or to a comparable position if her original job has ceased to exist.¹⁴⁷
334. On the Sex Discrimination Commissioner’s recent national Listening Tour, HREOC heard some support for a proposal to change eligibility for the unpaid parental leave entitlement to cover those who had worked for the same employer continuously for 6 months.¹⁴⁸ Underlying this proposal is the recognition that the current standard excludes many women – in 2006, 24 per cent of all working women and 44 per cent of all casual women workers had less than 12 months continuous service with the same employer.¹⁴⁹
335. HREOC proposes that the Productivity Commission consider reviewing the unpaid parental leave provisions as part of assessing HREOC’s proposal for a national paid leave scheme.

¹⁴⁶ Sara Charlesworth and Fiona Macdonald, *Hard Labour? Pregnancy, Discrimination and Workplace Rights* (2007).

¹⁴⁷ HREOC, *A Time to Value: Proposal for National Maternity Leave Scheme* (2002) 109.

¹⁴⁸ Sara Charlesworth and Fiona Macdonald, ‘The Unpaid Parental Leave Standard: What Standard?’ (Paper presented at the 21st Conference of the Association of Industrial Relations Academics of Australian and New Zealand, Melbourne, 2-8 February 2008).

¹⁴⁹ Sara Charlesworth, ‘An “old” right and a “new” right for working women’ (Speech delivered at the ACTU IWD 2008 Summit – Progress for Women in the Next Decade, Melbourne, 7 March 2008).

336. Part time work following a period of paid and/or unpaid leave is the preferred option for many women in order to balance their work and family responsibilities, particularly while their children are young. In this respect, HREOC notes the importance of the right to request flexible working arrangements, as outlined in the Government's recent National Employment Standards exposure draft.
337. There is a convincing argument that further education is needed to inform employees and employers of women's right to return to work following unpaid leave as well as the need for stronger legislative protection in the area of pregnancy discrimination.¹⁵⁰
338. The introduction of any national scheme of paid leave would also require widespread education and awareness-raising around the new entitlements so that they will be fully functional.

Recommendations

339. HREOC recommends: That the Inquiry consider the interaction between HREOC's proposal and the current unpaid parental leave provisions in order to establish a coherent set of paid and unpaid leave entitlements (**Recommendation 13**).

Independent Review of a Paid Leave Scheme for Parents and Other Institutional Arrangements

340. HREOC considers that it is essential that the introduction of a paid leave scheme for parents should be reviewed on a regular basis to monitor the impact of the scheme against its key national objectives.

¹⁵⁰ In *Pregnant and Productive: It's a right not a privilege to work while pregnant* (1999), HREOC recommended amending the Sex Discrimination Act to empower HREOC to publish enforceable standards in relation to pregnancy and potential pregnancy in order to strengthen legislative protection for women in this area, including return to work issues.

341. HREOC proposes that the Government legislate to mandate a formal, independent review of the scheme two years after introduction. The Two Year Review should be conducted by an independent body, informed by a solid evidence base, and incorporating input from key stakeholders, including government, business, academia and civil society groups.
342. HREOC proposes that the Two Year Review would assess the effectiveness of the implementation of Stage One of the national paid leave scheme, and inform the design of Stage Two, prior to its implementation, including duration, eligibility, payment leave, funding sources, and payment mechanisms.
343. HREOC proposes that the Minister for Employment and Workplace Relations should hold ministerial responsibility for the national paid leave scheme, including the Two Year Review.
344. A policy unit should be established within the Department of Education, Employment and Workplace Relations, and adequately resourced to coordinate implementation, monitoring and review of the scheme over time.
345. The Department should be responsible for coordinating the required education and awareness strategy to promote the rights and responsibilities under the scheme. The strategy should meet the diverse communication needs of the community, and be tailored for, and targeted towards, groups less likely to have information about the new entitlements. All information should be culturally appropriate and available in an accessible format.
346. Implementation of the national paid leave scheme should include adequate funding for the commissioning of longitudinal research to monitor the impact of the scheme against the key national objectives. The commitment to research and monitoring should generate solid evidence to ensure that the paid leave scheme, interacting with other paid work and family reconciliation policies, continues to positively contribute to the key national objectives over time.
347. HREOC has identified that there is currently only minimal Australian research to underpin assessment of the likely success of a paid leave scheme. For example, it is essential that the impact of the scheme is monitored over time in conjunction

with early childhood education and child care policies to assess effectiveness in improving early childhood development, leading to improved chances for Australia's future generations.

348. HREOC urges the Government to invest in generating a strong evidence base for informing over-arching policy frameworks of gender equality, work and family, and early childhood education and care. The introduction of a national paid leave scheme provides an exciting opportunity to establish a solid evaluation framework which ensures that, over the longer term, government and other stakeholders are able to continuously improve the laws and policies aimed at progressing a range of key national objectives.

Recommendations

349. HREOC recommends: That following implementation of Stage One of HREOC's proposal, the scheme be independently reviewed after 2 years in order to measure the impacts of the first phase, including determining how well it is meeting its objectives, impacts on business, interactions with existing government payments, and other work and family policy measures, and to make any necessary improvements in order to implement a second stage of a more substantial paid leave entitlements (**Recommendation 14**).
350. HREOC recommends: That under HREOC's proposal the Minister for Employment and Workplace Relations should have ministerial responsibility for the paid leave scheme and that a policy unit should be established within the Department of Education, Employment and Workplace Relations to coordinate implementation, promotion, education, monitoring and review of the scheme over time (**Recommendation 15**).
351. HREOC recommends: That the implementation of any scheme of paid leave be accompanied by a comprehensive community awareness and education campaign around the new entitlements and that this campaign meets the diverse communication needs of the community and which includes targeted education strategies for groups less likely to have information about the new entitlements,

including culturally appropriate information available in an accessible format
(**Recommendation 16**).

352. HREOC recommends: That the Government invest in generating a solid evidence base to inform ongoing monitoring, review, and continuous improvement of the new paid leave scheme, including its interaction with other work and family reconciliation policies and early childhood education and care services, in order to continually improve the effectiveness of these measures in the longer term
(**Recommendation 17**).

Conclusion

353. HREOC welcomes the opportunity to make this submission to the Inquiry, presenting as it does an exciting opportunity to progress implementation of a national paid leave scheme for parents, long overdue in the Australian context.
354. HREOC looks forward to reviewing the draft Report of the Productivity Commission in September 2008. Depending on the content of that draft Report, HREOC may make further submissions to the Inquiry, which may involve modification of its proposed national paid leave scheme for parents, or addressing issues which the Productivity Commission may raise relevant to HREOC's mandate of promoting human rights in Australia.
355. In HREOC's view, paid maternity leave is an urgent priority. HREOC also considers that a national paid leave scheme for parents is an essential component for promoting gender equality in Australia. It is also an opportunity to positively contribute to a range of key national objectives.
356. A well-designed national paid leave scheme will benefit mothers, fathers and other supporting parents, their children, the national economy, employers, and our future generations, all of whom are linked to our social and economic sustainability as a nation.

Appendices

List of All Recommendations

357. HREOC recommends: That, as part of a first stage of a National Paid Leave Scheme, a non-transferable national scheme of 14 weeks paid maternity leave be introduced, principally to ensure the health and wellbeing of mothers and babies, to address the workplace disadvantage that women experience as the result of maternity, and to contribute to women's ability to participate on equal terms with men in all aspects of life (**Recommendation 1**).
358. HREOC recommends: That, as part of a first stage of a National Paid Leave Scheme, a non-transferable, separate entitlement of two weeks supporting parent leave be introduced and made available either at the time of birth for the supporting parent to take concurrently with the birth mother's paid maternity leave, or immediately after that period of paid leave, principally to support the bonding between that parent and their child, as an important support for the mother and/or as a way of transitioning to alternative care arrangements following the mother's return to paid work (**Recommendation 2**).
359. HREOC recommends: That following an independent review after two years, any necessary modifications and improvements to the National Paid Leave Scheme are made and that Australia implement a second stage of measures. This would provide in total:
- 38 weeks of paid parental leave, of which 4 weeks may only be taken by the supporting parent, in addition to;
 - 14 weeks paid maternity leave; and
 - 2 weeks paid supporting partner leave to be taken concurrently at the time of birth.

HREOC urges the modelling and analysis of each stage of the scheme by the Productivity Commission during the course of the current Inquiry so that the best funding model for stage two can be determined and so that community views on the suitability of models can be canvassed (**Recommendation 3**).

360. HREOC recommends: That the Government remove its reservation to Article 11(2)(b) of the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* (**Recommendation 4**).
361. HREOC recommends: That the Government take steps towards ratification of the *Maternity Protection Convention 2000 (No 183) (ILO Convention 183)*, and ensure compliance with other provisions of that Convention (**Recommendation 5**).
362. HREOC recommends: That a National Paid Leave Scheme provide for:
- an entitlement to up to 14 weeks to be taken immediately prior to and/or following the birth of the child to 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;
 - an entitlement to up to two weeks paid supporting parent leave to be taken concurrently with the paid maternity leave period, or, under stage one only, immediately after the paid maternity leave period as a continuous block; and
 - under Stage Two, subject to the findings of the Two Year Review, an additional 38 weeks of paid parental leave, to be taken following the paid maternity leave period within the first year of the child's birth, but with 4 weeks of this leave reserved for the supporting parent. Both parents may share 34 weeks of paid parental leave at alternate times, including in a shared care arrangement with both parents working part time and sharing the paid leave on alternate days (**Recommendation 6**).

363. HREOC recommends: That in order to be eligible for paid maternity leave and supporting parent 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, and that access to this payment should not be means tested; and
- a supporting parent 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, and that access to this payment should not be means tested (**Recommendation 7**).

364. HREOC recommends:

- That under Stage One, paid maternity leave and supporting parent leave be paid at the rate of the Federal Minimum Wage, or the parent's previous weekly earnings from all jobs, whichever is the lesser amount. Previous weekly earnings would 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 of employment over the previous 12 months. Payment is to be paid as taxable income, including superannuation, on a pro rata basis.
- That, subject to further modelling and consideration, under Stage Two the payment level for each element of HREOC's scheme may increase beyond stage one to at least two-thirds of the average previous earnings (with weekly earnings calculated on the same basis as Stage One) in order to meet the key objectives of a national scheme of paid leave. (**Recommendation 8**).

365. HREOC recommends: That under stage one of HREOC's proposal, paid maternity leave and supporting parent leave be funded by the federal Government. Under Stage Two, following the Two Year Review, if the payment level is determined to increase to two-thirds of the parent's previous weekly earnings or

more the review should confirm the most effective funding model which will continue to meet the objectives of a national paid leave scheme
(Recommendation 9).

366. HREOC recommends: That in relation to the payment mechanism:

- under Stage One of HREOC's proposal, paid maternity and supporting parent leave are to be paid as fortnightly payments during the period of leave. For parents who have been in employment with the same employer for the 40 weeks of the past 52 weeks, payment is to be made by that employer. For parents who have been with more than one employer during the same period of eligibility, they may elect to receive the payment as either a fortnightly payment from Government to the individual or a payment from the employer to the individual, with the employer reimbursed by the Government as above (subject to the employer agreeing to this option); and
- under Stage Two of HREOC's proposal, the payment mechanism for paid maternity and supporting parent leave will be dependent on the funding source as determined by the outcome of the Two Year Review
(Recommendation 10).

367. HREOC recommends: That a person who receives paid leave entitlements under HREOC's proposal will continue to be entitled to applicable social security and family assistance payments, including the Baby Bonus, in accordance with existing eligibility criteria **(Recommendation 11).**

368. HREOC recommends: That in modelling of the first and second stages of HREOC's proposal the Inquiry take into account likely impacts on different groups of employees, particularly those who are disadvantaged in the labour market, employers, and interaction with other government payments, work and family reconciliation policies and the provision of early childhood education and care **(Recommendation 12).**

369. HREOC recommends: That the Inquiry consider the interaction between HREOC's proposal and the current unpaid parental leave provisions in order to

establish a coherent set of paid and unpaid leave entitlements (**Recommendation 13**).

370. HREOC recommends: That following implementation of Stage One of HREOC's proposal, the scheme be independently reviewed after 2 years in order to measure the impacts of the first phase, including determining how well it is meeting its objectives, impacts on business, interactions with existing government payments, and other work and family policy measures, and to make any necessary improvements in order to implement a second stage of a more substantial paid leave entitlements (**Recommendation 14**).

371. HREOC recommends: That under HREOC's proposal the Minister for Employment and Workplace Relations should have ministerial responsibility for the paid leave scheme and that a policy unit should be established within the Department of Education, Employment and Workplace Relations to coordinate implementation, promotion, education, monitoring and review of the scheme over time (**Recommendation 15**).

372. HREOC recommends: That the implementation of any scheme of paid leave be accompanied by a comprehensive community awareness and education campaign around the new entitlements and that this campaign meets the diverse communication needs of the community and which includes targeted education strategies for groups less likely to have information about the new entitlements, including culturally appropriate information available in an accessible format (**Recommendation 16**).

373. HREOC recommends: That the Government invest in generating a solid evidence base to inform ongoing monitoring, review, and continuous improvement of the new paid leave scheme, including its interaction with other work and family reconciliation policies and early childhood education and care services, in order to continually improve the effectiveness of these measures in the longer term (**Recommendation 17**).

HREOC's 2002 Proposal for a National Paid Maternity Leave Scheme

1. *A Time to Value: Proposal for a National Paid Maternity Leave Scheme* can be viewed in full at
http://www.humanrights.gov.au/sex_discrimination/paid_maternity/pml2/index.html
2. A hard copy of this publication will be provided the Inquiry.