



PRODUCTIVITY COMMISSION

Paid Maternity, Paternity and Parental Leave Inquiry

ACCI SUBMISSION

June 2008



LEADING AUSTRALIAN BUSINESS

ACCI – LEADING AUSTRALIAN BUSINESS

ACCI has been the peak council of Australian business associations for 105 years and traces its heritage back to Australia's first chamber of commerce in 1826.

Our motto is "Leading Australian Business."

We are also the ongoing amalgamation of the nation's leading federal business organisations - Australian Chamber of Commerce, the Associated Chamber of Manufactures of Australia, the Australian Council of Employers Federations and the Confederation of Australian Industry.

Membership of ACCI is made up of the State and Territory Chambers of Commerce and Industry together with the major national industry associations.

Through our membership, ACCI represents over 350,000 businesses nationwide, including over 280,000 enterprises employing less than 20 people, over 55,000 enterprises employing between 20-100 people and the top 100 companies.

Our employer network employs over 4 million people which makes ACCI the largest and most representative business organisation in Australia.

Our Activities

ACCI takes a leading role in representing the views of Australian business to Government.

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

Our specific activities include:

- Representation and advocacy to Governments, parliaments, tribunals and policy makers both domestically and internationally.

- Business representation on a range of statutory and business boards, committees and other fora.
- Representing business in national and international fora including the Australian Fair Pay Commission, Australian Industrial Relations Commission, Australian Safety and Compensation Council, International Labour Organisation, International Organisation of Employers, International Chamber of Commerce, the Business and Industry Advisory Committee to the Organisation for Economic Co-operation and Development, the Confederation of Asia-Pacific Chambers of Commerce and Industry and the Confederation of Asia-Pacific Employers.
- Research and policy development on issues concerning Australian business.
- The publication of leading business surveys and other information products.
- Providing forums for collective discussion amongst businesses on matters of law and policy affecting commerce and industry.

Publications

A range of publications are available from ACCI, with details of our activities and policies including:

- The *ACCI Policy Review*; a analysis of major policy issues affecting the Australian economy and business.
- Issue papers commenting on business' views of contemporary policy issues.
- *Policies of the Australian Chamber of Commerce and Industry* – the annual bound compendium of ACCI's policy platforms.
- The *Westpac-ACCI Survey of Industrial Trends* - the longest, continuous running private sector survey in Australia. A leading barometer of economic activity and the most important survey of manufacturing industry in Australia.

- The *ACCI Survey of Investor Confidence* – which gives an analysis of the direction of investment by business in Australia.
- The *Commonwealth-ACCI Business Expectations Survey* - which aggregates individual surveys by ACCI member organisations and covers firms of all sizes in all States and Territories.
- The *ACCI Small Business Survey* – which is a survey of small business derived from the *Business Expectations Survey* data.
- Workplace relations reports and discussion papers, including the ACCI *Modern Workplace: Modern Future 2002-2010 Policy Blueprint* and *Functioning Federalism and the Case for a National Workplace Relations System*.
- Occupational health and safety guides and updates, including the *National OHS Strategy* and the *Modern Workplace: Safer Workplace Policy Blueprint*.
- Trade reports and discussion papers including the *Riding the Chinese Dragon: Opportunities and Challenges for Australia and the World Position Paper*.
- Education and training reports and discussion papers.
- The *ACCI Annual Report* providing a summary of major activities and achievements for the previous year.
- The ACCI Taxation Reform Blueprint: *A Strategy for the Australian Taxation System 2004–2014*.
- The ACCI Manufacturing Sector Position Paper: *The Future of Australia's Manufacturing Sector: A Blueprint for Success*.

Most of this information, as well as ACCI media releases, parliamentary submissions and reports, is available on our website – www.acci.asn.au.

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1. INTRODUCTION

INTRODUCTION

1. Australia has for many years been a world leader in supporting the capacity of parents to combine their working and family lives. A first and now second generation of employees has been able to maintain their work and their careers across periods of having children, and to spend an extended time away from the workplace with a guaranteed right to return to the positions they left. This has yielded real gains in maternal employment in Australia, and significantly improved overall female employment participation across the past 20 years.
2. This review provides an opportunity for Australia to remain at the forefront of world practice on balancing work and parenthood.
3. ACCI supports the Productivity Commission examining options for the introduction of a paid parental leave scheme in Australia. This submission seeks to assist the Productivity Commission in this process and to identify which models or schemes should be developed for further examination and input prior to consideration by government. Conversely, it identifies approaches which would not form the basis of a sustainable and beneficial approach to parental payments in Australia in future.
4. A great deal of work has already been done on this issue, and it is appropriate that the government seek the assistance of its expert industry policy body to scrutinize this work, and further critically investigate policy and implementation issues prior to further development of any government approaches or national schemes.
5. If Australia is to adopt a national paid parental leave scheme, it should adopt the best and most effective approach, properly geared to Australian circumstances; something the Productivity Commission is uniquely well placed to contribute to.
6. ACCI supports the Productivity Commission identifying potentially viable models for a national paid parental leave scheme during this first stage of its broader inquiry.

7. It is appropriate that the Productivity Commission move towards recommending a paid maternity leave scheme or schemes to government for further consideration, where it concludes that paid parental leave can be delivered viably, effectively, sustainably, and without undue impacts on employers, employees, parents, or the wider community.
8. Australia's employers identify some parameters within which we say the Productivity Commission's consideration of paid parental leave should occur:
 - a. Consistent with it being an overall responsibility of the Australian community, paid parental leave should be funded fully and solely by government.
 - b. Schemes based on mandatory or non-consensual employer payments will not be effective, will have negative consequences, and will risk Australia's capacity to deliver genuine policy change in this area.
 - c. Government making payments to users of paid parental leave. Employer pay obligations should be reactivated only when an employee recommences her or his position.
 - d. Payments under any paid leave scheme should be zero rated / consistently applied at a single level, and this should be at the level of the minimum wage (unless government determines that it has the capacity to fund some higher level of entitlement).
 - e. The number of weeks of payment is a matter for detailed scheme construction during the next stage of this process. However, 14 weeks appears the upper limit for any scheme (within a government funded framework as set out in (a)).
9. To the extent that particular proposals or models canvassed before the Productivity Commission fail to meet these standards, they would not meet the requirements for schemes which could viably be progressed by government consistent with the terms of reference. This includes schemes predicted on employer payment in whole or part, and schemes which will have the effect of increasing labour cost pressures on employers (including levies and HECS style schemes).

10. The merits of an approach in the terms employers outline above are widely recognised. A wide range of interests are advocating schemes based solely on government funding. In contrast, proposals for mandatory employer funded measures are not common, not widely supported, and do not properly take into account the matters government has expressly asked the Productivity Commission to consider.
11. ACCI has analysed various scheme considerations and approaches based on the parameters outlined above, and provided what we hope is useful input. This submission is intended to provide constructive assistance to the Productivity Commission in determining at this stage which measures or schemes should be further considered during the next stage of this process.
12. ACCI and its members stand ready to continue to work with the Productivity Commission towards options for a government funded, community based, universal scheme. We hope this submission assists the Productivity Commission in progressing its inquiry into this major national issue, and in Australia remaining a world leader in employment and employability for parents.

THIS SUBMISSION

13. ACCI welcomes the opportunity to make submissions on various issues raised by the Productivity Commission's inquiry into Paid Maternity, Paternity and Parental Leave (PPL).
14. This written submission follows ACCI's preliminary oral submissions in Melbourne on 13 May 2008 and builds upon various general issues raised at that hearing.
15. The Commission's inquiry follows a number of previous inquiries into work and family issues, including paid maternity leave, over the past decade.
16. Whilst not wishing to repeat verbatim what was said in Melbourne, ACCI considers the following introductory statement to be important to a proper recognition of employers' existing support for parents:

Employers support parenting through taxes, through providing a near unparalleled level of unpaid leave on a near universal basis, through carers leave, and through delivering day to day flexibilities and accommodations at the workplace level (some of which are formally agreed, most of which are not).

This inquiry should proceed with recognition that employers are already significantly supporting their employees parenting responsibilities and are already incurring additional costs for doing so.

ACCI SUPPORT FOR WORK AND FAMILY

17. ACCI continues to be actively involved with industry and industry organisations in work and family issues, at a promotional, policy making and representational level.
18. Our activities in this area reflect a recognition of the importance the balance of working and family life has in the contemporary workplace environment – both in dealings between employers and employees, and in pursuing national goals such as increasing workforce participation.
19. ACCI support for efforts to balance working and family life has included:
 - a. Partnership (since 1994) in the ACCI/BCA National Work and Family Awards. These awards are the pre-eminent national awards in Australia recognising excellence in work and family initiatives and outcomes in workplaces in all regions and of all sizes.
 - b. Development and adoption (in 2002/03) of the first formal policy statement on Work and Family by each of the employer and business organisations comprising the ACCI member network.
 - c. The development of employer initiatives (the 2003 ACCI Work+Family Solutions Package), and then lead representation of employers in the 2003/04 Family Provisions Case before the Australian Industrial Relations Commission. ACCI's role in this conciliation and arbitration proceeding included reaching a conciliated outcome on various significant matters (including agreement to extend the period of personal leave that can be used for family caring purposes).

- d. ACCI's participation in these proceeding followed earlier lead industry representation in the Family Provisions Case of the early 1990s, and the conciliated national agreement a few years later to extend parental leave to casual employees.
 - e. Publications and speeches examining work and family opportunities and challenges for Australian employers.
 - f. Representation of Australian employers in international debates on employment issues, including work and family, in the forums of the International Labour Organisation. This includes work on various key international instruments relating to gender and parenthood across many decades.
 - g. Liaison and working relationships with a wide range of other bodies and organisations engaged with these issues.
20. ACCI seeks to promote and build capacities for improved work/family balance in Australian businesses, and to work with employers to address issues at both a policy and operational level that hinder businesses from considering and implementing measures to assist employees in achieving better work and family balance.

RECENT ACCI ACTIVITIES IN W&F

21. ACCI and its member network continues to engage with a wide variety of stakeholders and government on work and family issues, both informally and formally. This includes for example:
22. Sex Discrimination Commissioner: The Federal Sex Discrimination Commissioner, Ms Elizabeth Broderick, recently met with ACCI's National Workplace Policy Committee (a meeting of the pre-eminent industrial relations representatives of Australian employers).
23. National Families Week: ACCI was an ambassador organisation for *National Families Week*. ACCI publicly urged all Australian businesses to get behind work family balance by highlighting the practical ways that different workplaces are making a positive contribution to the challenge of balancing work and family.
24. ACCI highlighted that many examples of flexible family friendly initiatives are not formal, are but nonetheless important and useful:

“For example, if one employee in each small business recorded or spoke publicly about how their employer has helped them balance work and family, then we would gather an excellent body of good ideas and practical solutions.

We will make further progress on work and family issues if solutions proposed are practical and realistic. Bringing that message to the public will help governments frame workable policy, and give businesses an insight into what other employers are doing.”¹

ACCI’S GENERAL POLICY ON W&F ISSUES

25. ACCI’s general position on parental benefits is guided by a set of core policy principles / perspectives. ACCI believes that any future consideration of work and family, including PPL, should be driven by some fundamental considerations:
- a. Efforts should be multifaceted and strategic. Work and family policy issues involve consideration of a range of different policy questions, which intersect to determine the capacity of:
 - i) Families to balance paid work with their family responsibilities and lifestyle preferences;
 - ii) The capacity of employers to accommodate employee requests.
 - b. Policy should avoid an assumption that additional regulation is always the answer. Dialogue and consensual solutions will generally be a superior solution compared to the imposition of more externally-developed regulation by governments or other regulators.
 - c. Consistent with the above, all areas of policy, including any additional rules supporting PPL, should avoid an assumption that further regulation of employers is the answer to all work and family issues. Workplace regulation is in fact only a small part of the total range of considerations necessary to support work and family balance.

¹ ACCI Media Release, *Businesses Can Contribute to National Families Week*, 12 May 2008, www.acci.asn.au.

26. Consistent with the above, ACCI believes that policy development should include consideration of a range of issues, including (and not limited) to:
- a. Government transfers and income support policies.
 - b. Taxation arrangements and the level of taxation.
 - c. The provision of accessible, flexible and supportive childcare arrangements which meet demands from parents and maximise the capacities of Australian parents to combine working and family life.
 - d. The provision of essential family support services (e.g. maternal health centres, access to schools and hospitals).
 - e. Lifestyle preferences (often changing).
 - f. Housing policy, including the affordability of housing, and public infrastructure.
 - g. Employment and training policy.
27. Consideration of these issues therefore needs to be wide-ranging and holistic. Again, PPL can only ever be part of a wider suite of approaches.

AUSTRALIA'S LEADERSHIP ON PARENTING SUPPORT

28. There has been a great deal of focus in some debates on work and family on Australia's status as one of the few countries not providing PPL.
29. However, this must be put in proper perspective from the outset:
- a. Australia is a world leader in providing financial support and government services to mothers, children and families. This is supported for example by Australia's consistently high performance on the United Nations Human Development Index (HDI).

- b. Australia provides a near unparalleled entitlement to unpaid leave, which:
 - i) Is near universally available, and is widely enforced and widely understood in the community.
 - ii) Is set to effectively double with the pending creation of the proposed National Employment Standards (NES).
 - c. The full range of social and financial benefits supporting maternity in Australia reflects our status as a highly developed country, with a well established and robust social safety net and a strong community commitment to support mothers, children and families.
30. There are multiple dimensions to the maternity benefits provided by any country. This includes social security based benefits, medical benefits, and health benefits.
31. There can be no meaningful consideration of appropriate benefits for maternity without a consideration of the total benefits and parenting outcomes any society already provides. Care needs to be taken to not solely focus on PPL in considering measures to support parenting.
- a. Partial perspectives, unduly limited to any single policy approach (including an unduly narrow focus on PPL), are inherently unlikely to offer a sound and reliable basis to determine ongoing policy.
 - b. Another risk of any policy myopia in such a complex policy area approach is that we may overlook other solutions, including creative or “outside-of-the-box” thinking which may better support parenthood and combining parenthood and work.
 - c. In turn, any PPL scheme itself will be improved by wider thinking and integration with other social policy and parenting policy measures.
32. The previous federal Governments “baby bonus” has undoubtedly provided further substantial parenting benefits to complement Australia’s extensive and highly developed social welfare system.

33. PPL cannot be debated without assessing its interface with the very considerable existing payments to parents including working parents, and the extent to which any policy approaches can accord with/utilise existing rather than additional expenditures.
34. The nominal form or label of any entitlement or benefit cannot outweigh the need to balance wider considerations, including the most effective approach, and that which best meets the needs of society generally. Fundamental issues of individual and community responsibility arise in a broader debate about parenthood, rather than a simplistic focus on 'who should pay'.
35. In addition to reviewing existing maternity benefits, other practical policy options such as addressing unmet needs in the area of child care and retargeting some of the existing payment schemes should also be considered. ACCI understands access to affordable flexible childcare to be the foremost challenge for Australia's working parents.
36. ACCI would like this review to acknowledge Australia's proper place on the world stage. We have a world leading scheme for maternity leave, a very strong protection of the right to a return to work after a period of maternity leave, and we have substantial income transfers from the social security system to mothers and families. At issue in this review is whether there should be some recasting of existing income transfers by government to become a form of paid maternity benefit.

AGREED AND CONSENSUAL APPROACHES

37. Another point which should be noted in introduction is the success of employers and employees in delivering agreed and company provided approaches to PPL. A wide variety of both formally bargained and company provided schemes have emerged successfully through negotiation at the workplace level in Australia across more than a decade.
38. These successes demonstrate what can be achieved at the workplace level prior to the any universal government approach. They do not however provide any more general guidance on priorities or capacities in workplaces generally.

39. An issue for the future will be any impact of a government funded scheme on these extant agreed approaches to PPL. ACCI will respond to this issue as scheme design is canvassed in more detail.

CAPACITIES AND DEMAND

40. Additional introductory matters which the Commission should take into account are:
- a. The differing capacities of employers to support PPL, both between businesses of differing size and within size profiles. It cannot be assumed for example that businesses of a particular size will innately have capacity to fund PPL.
 - b. The differing priorities and preferences of employees. It cannot be assumed that PPL will be the key priority, or even work and family priority, in all or even most workplaces.
41. Such considerations favour this being addressed as a community issue for our government, rather than imposing an additional universal payment obligation upon employers (be it in relation to whole or part funding). This is further addressed throughout this submission.

TERMS OF REFERENCE

42. The Commission is tasked to *“refer strategies for improved support for parents with newborn children”* to the Government.
43. The scope of the inquiry (ie. paragraph’s 1 and 2 of the Terms of Reference) is quite broad and reflective of the potentially disparate objectives, models and impacts of any PPL scheme.
44. Whilst ACCI has attempted to address the issues paper and terms of reference directly, this submission is also more holistic and seeks to engage broader issues for employers and the macro economy.
45. Larger and medium sized businesses: ACCI would encourage the Commission to expand its consideration of *“the financial and regulatory costs and benefits on small and medium sized business”* to all businesses. Clearly, any scheme may still have a cost impact on a larger and medium sized businesses, and these enterprises should be factored into any consideration of the impact of models under further examination.

46. ACCI articulated this point to the Commission at the Melbourne hearings.²
47. ACCI also reiterates some key commitments announced by Ministers Gillard, Macklin and Pilibersk on 13 July 2007, that a Rudd Government would “*examine further reforms to support parents with new born children*”, but would not “*... support a system that imposes additional financial burdens or administrative complexity on small businesses or in any way acts as a discouragement to the employment of women*”.³
48. The same concern to avoid additional burdens, administrative complexity and potential dangers should be extended to all businesses, regardless of size. Therefore ACCI urges that no recommendation be made that would have such impact on medium to large businesses and indeed on business generally.

ISSUES PAPER

49. The Issues Paper indicates (at p.3) that for the purposes of this inquiry, paid parental leave is to cover paid maternity and parental leave provided to a parent around the time of birth and their child, and leave taken when adopting a child under two years of age.
50. ACCI agrees:
 - a. Generally, workplace relations laws at the federal level refers to a unified concept of parental leave, with maternity and paternity referring solely to the sex of the employee taking a more generic and gender neutral form of leave.
 - b. The parental leave concept also covers situations of adoption leave.
51. ACCI will generally refer to parental leave in this submission (PPL). In the context of a government funded, essentially zero-rated scheme, employees cannot see at this stage any basis to dis-aggregate the broader concept of parental leave in identifying models for further examination. If models are engaged with outside of our proposed approach – more limited approaches may need to be examined.

² Transcript, p.258 (13 May 2008 hearing, Melbourne).

³ www.alp.org.au

GOVERNMENT INITIATIVES

52. The Rudd Government has outlined in a number of pre-election policies, its support for improving work and family outcomes. The wider balance of initiatives the Government proposes in health promotion, maternity services, hospitals, welfare, housing, child care etc., that will have an impact on many of the issues raised by the Commission in the Issues Paper.
53. The wider impact of policy and services should also ultimately influence any recommendations made by this Commission. Not every aspiration need fall on the shoulders of any PPL model.
54. ACCI would like to briefly highlight some of the Government's commitments and how they should be considered by the Commission when progressing any PPL scheme(s). This is in addition to the tax cuts in the 2008/2009 Budget.
55. Maternity Services Review: On 10 May 2008, the Minister for Health and Ageing announced a Maternity Services Review, stating:
- “The Government's review will canvass a wide range of issues relevant to maternity services, including pregnancy, birthing, postnatal care, as well as care for parents who have lost babies ... The Rudd Government is consulting and constructing a long-term plan for improved, and comprehensive, maternity services”.⁴
56. Office of Work & Family: The Government is to establish within the Department of Prime Minister and Cabinet, an Office of Work and Family which will work with the States and Territories and child care providers to:⁵
- a. Publish local child care fees, vacancy data and parental reviews so parents are better informed about quality and price.
 - b. Publish breaches by child care providers of the quality and accreditation standards.
 - c. Require child care providers to give at least two months notice to parents of child care fee increases.

⁴ <http://www.alp.org.au/media/0508/msheag100.php>

⁵ <http://www.alp.org.au/media/0707/msfcsloo180.php>

- d. Examine options to improve child care affordability including increasing workplace-based child care so that parents can be closer to their children.
57. New Child Care Centres: In the recent 2008/2009 Budget Government has committed to providing 260 new child care centres across Australia by 2013-14, and increasing average pre-school hours to 15 per week for 40 weeks per year.
58. Child Care Tax Rebate: In the Budget, the Government announced that the Child Care Tax Rebate will increase from \$4,354 per child per annum to \$7,500 from 1 July 2008. Families will be able to recoup 50% of child care costs (up from 30%).
59. Baby Bonus: The Budget⁶ also implements the previous Government's intention to increase the Baby Bonus to \$5,000 per child from 1 July 2008. However, it will also be:
- a. Means tested (from 1 January 2009)
 - b. Indexed to the CPI on 1 July each year
 - c. Extended to families with newly adopted children aged from two years to 16 years, from 1 January 2009.
 - d. Payments paid over a fortnightly cycle (13 weeks).
60. Grants for Family Friendly Initiatives: The Government will invest \$12 million to encourage small businesses to pursue practices that help employees balance their family obligations as well as improve retention and productivity. From 1 July 2008 the Government will start to:
- a. Provide grants (between \$5,000 to \$15,000) to small business to meet the set up costs of family friendly measures including:
 - i) Establishing rosters based on school terms and alternative core hours, for example, 10 am to 3 pm;
 - ii) Developing workplace policies on unpaid leave for carers and workers who have children with disability or other special needs;

⁶ <http://www.budget.gov.au/2008-09/content/bp2/html/expense-29.htm>

- iii) Providing facilities for employees with young children such as family rooms; and setting up workplace mentoring.
 - b. Distribute business and industry specific information to support work-based family friendly practices; and
 - c. Ensure experts are available through Fair Work Australia offices to help small business develop new family friendly arrangements in their workplace.
61. Workplace Relations Changes: These will be dealt with in more detail later in this submission and across the review period, but the Government has already commenced drafting to further implement its *Forward with Fairness* workplace relations policy, which will have an impact on parental leave and general flexibility issues at the workplace.
62. Policy change may also impose additional costs on some employers in some instances (ie. jury leave pay, redundancy pay etc). These impending additional costs on employers need to be factored in when any PPL scheme (whether unpaid or paid) is considered.
63. Various Government initiatives appear to go some way to addressing the issues in the Commission's paper and will need to be factored in when recommending any PPL scheme.

OBJECTIVES OF ANY SCHEME

64. At page 5 of the Issues Paper, the Commission outlines a number of possible objectives for any scheme.

What ought to be the objectives of a paid parental leave scheme?

What are the implications of these objectives for the design of the scheme? (p.5)

EMPLOYER PERSPECTIVES / OBJECTIVES

65. Whilst ACCI supports examining approaches to better support work family balance, let us be clear that there is not a homogenous community or employer view as to what role or responsibility employers, employees, Government and the wider community should play, the extent of social and working benefits, and who should pay.

66. Community opinion of such issues is not 100% for or against PPL. Survey responses and particular submissions on work and family, including paid parental leave, do not provide a complete picture either. Lack of information or asymmetric information (such as knowledge of current Government social benefits), plays a key role in respondents' answers to such surveys. The utility of such surveys/data should only be considered as one part of the overall picture (and should always be appropriately rigorous and critical).
67. As different views and approaches exist in the community, they do so in business also.
68. There are a number of businesses and employers who voluntarily provide various forms of salary and/or job continuance, whilst a parent is on leave following the birth or adoption of a child. Even within this concept, there are a multitude of different models/schemes.
69. Generally, PPL which is currently provided by employers to employees on a mutually agreed basis, reflects what a business:
 - a. Considers an appropriate measure to balance work-family needs in that particular workplace.
 - b. Has agreed with an individual employee or groups of employees formally or informally.
 - c. Can afford, and accords with wider human resource strategies and priorities.
 - d. (and... reflects the priorities of employees in that workplace).
70. The above is also illustrated by various examples of PPL schemes operating in some large firms in Attachment A, Table 1 of the Issues Paper. This does not however in any way mean these schemes can be extrapolated to workplaces generally.
71. As part of the extensive national judging process for the ACCI/BCA National Work and Family Awards, which includes both major cities and regional towns across Australia, ACCI has had a unique opportunity to gain insights into diverse and unique approaches to balancing work and family. Interviews with both management and

staff, provide ACCI with a qualitative appreciation of work and family priorities for both employers and employees.

72. Year in, year out, the Work and Family Awards consistently show that many firms pursue a suite of work and family initiatives, some include PPL, others include flexibility work and family arrangements (ie. time off in lieu, job sharing etc). To simply concentrate on whether a firm provides or does not provide PPL is to ignore the complete picture, and adopt a simplistic and partial focus.
73. One thing in common between all firms under consideration for a work and family award, is that they take into account considerations of affordability, mutual agreement and suitability to a specific firm culture of all measures under consideration (recalling that not all firms are homogenous, some are not-for-profit, rely on public funding, range in size, have different economic/labour force pressures etc). Benefits, priorities, and employee preferences always guide best practice approaches in this area.
74. What may work in one firm, does not necessarily work in another. This is why homogeneous solutions, not tailored to the specific workplace environment, are not generally best practice and will not provide the best solutions to the actual needs of both employers and employees.
75. If the Commission's inquiry ultimately concludes that a form of PPL would provide benefits that meet certain defined goals/objectives, then employers are more than willing to discuss possible models/schemes. We stand ready to engage with any specific models which may be further canvassed – whether based on what we say are the proper parameters or not.
76. It is vitally important that before any scheme is recommended to Government, that employers' legitimate views, expectations and interests are taken into account as a detailed response to a detailed set of propositions. This is so, regardless of whether it is wholly or partially Government funded. Employers are potentially greatly affected by such decisions and wish to engage with both intended and unintended consequences of any scheme paid, or unpaid, under consideration.

SOCIAL AND POPULATION ISSUES

77. The extent to which maternity benefit levels can and could in future affect population levels in Australia is a complex one. What is clear is that population policy is a community rather than employer responsibility.
78. This must also be considered in the context of a wider national approach to population policy, and consideration of the most effective approaches to securing agreed population outcomes over the longer term.
79. If the wider community adjudges it will benefit from additional or revised maternity benefits, it must be prepared to fund such benefits in the community interest. However, society first has to be satisfied that wider social gains beyond the immediate family do exist, and are compelling.
80. Personal family planning has, and always will, require personal financial and life planning. Any maternity benefit cannot displace or replace the full range of considerations which women/couples must assess to the extent that they adopt reasoned choices in their maternity decisions.
81. The case for government funded social support for new parents rests on the unique needs of children and their mothers, and the broader benefits that child raising confers on any society. The case for any PPL scheme rests on that being adjudged the most appropriate mechanism, or one of the a broader package of measures which will advance societal and population concerns.

WHY ANY PPL MUST BE GOVERNMENT FUNDED

82. Employers Already Significantly Support Maternity: Australian employers already significantly support maternity and parenthood in our community. This includes:
 - a. The financial and operational costs of applying the established universal unpaid entitlement, which are more significant for many employers than is commonly understood.

- b. Ongoing and flexible support for parenthood throughout employees' life course.
 - c. Contributing to the social security and government services safety net through business taxation, and through the taxation of those earning incomes from enterprise more generally.
83. Moreover, the entitlements Australian employers provide are well in excess of international standards and/or employer obligations in most developed countries.
84. Government Funding Still Costs Employers: Any Government funded or community approach to this issue does not involve a crude, zero-sum choice between employers having to pay, or the government paying.
85. Any public scheme will affect the interests of employers, as with all other taxpayers. It is also relevant to the long standing policy engagement of Australian employers with the operation of or economy, economic spending and settings, and the impact of government spending.
86. Debate would be more accurately framed in terms of options which would see employers being asked to pay on one level, versus options which would see them pay on another level along with the rest of the rest of their society. To be clear, community funded/government funded schemes should be further considered by the Commission. Employer funded measures in whole or part are ultimately not appropriate for further consideration.
87. Employers Cannot Afford to Pay: Australian employers, and in particular (but not limited to), small business, simply cannot afford to fund an additional maternity leave benefit. This would represent a cost burden at least equivalent to all other forms of paid leave already payable, and would constitute a significant risk to the Australian economy and labour market.
- a. The majority of Australian businesses do not operate with margins or reserves which would allow them to pay significant additional remuneration for an extended period, without any

reciprocal productivity beyond payments already required under law (e. g. annual, sick, and long service leave).

- b. It is not simply profit or margins that would be threatened, but also business viability and the capacity of business to offer employment to both men and women. Businesses inherently lack the financial resources to make additional payments in this area.
 - c. Australian employers already have substantial employment obligations that do not necessarily or reliably return a productive dividend. It is not viable or in any way necessary to impose additional such obligations upon them.
 - d. An additional payment obligation would effectively double the costs of a single job to employers, as they would need to pay both the original staff member and her replacement. This would occur without any additional productivity (and probably with reduced productivity), nor any increase in employer capacity to pay. This would be manifestly unfair, unbalanced and in practice unsustainable. Secondly, there is a financial premium on the employer for a replacement employee because of the finite employment duration that would need to be compensated (ie. maximum is generally a 12 month contract so an employee would ask for more money to compensate benefits associated with permanent employment).
 - e. Any additional paid leave entitlement would disproportionately, but far from solely, negatively impact on smaller enterprises.
 - f. Such an approach (of employer payments) can in fact detract from the stated aims of any change to maternity benefit policy. There is a very real risk of female and parental employment being endangered.
88. It is Unfair For Employers to Pay: There are also important issues of principle here. It is far from clear on what basis employers through just one of the relationships in which any individual takes part (the employment relationship) could or should be asked to fund the complex and individual decision of women/couples to have children. It would also be unfair to force employers prioritising different areas into a focus on PPL.

89. Counterproductive Effects: An obligation on employers to fund additional maternity benefits would threaten female employment, particularly in years in which maternity is most likely (also thereby impacting on the capacity for employment, and for appropriate remuneration and career development throughout women's working lives).
90. Even with the protection of anti-discrimination law, a significant disparity between the cost of male and female employment to employers will influence the decisions of some employers to engage women. Some employers will not engage employees perceived to offer, the potential risk of multiple weeks of additional labour costs with no productive return. This is not overcome by an industry rated or insurance model which places additional costs on those focusing their efforts in other areas or seeking to value employees in different ways.
91. A Flexible Workplace Relations System: To the extent that work and family issues and employment based benefits for maternity are considered relevant by employers and employees in particular enterprises, the best way to progress this is through a flexible workplace relations system based on genuinely enterprise level bargaining (or HR practice, internal discussion etc).
- a. Bargaining is the substantial source of innovation in relation to employment conditions. This is borne out by an examination of provisions agreed by those employers and employees that have chosen to implement an additional paid entitlement by agreement, and those which have pursued other work and family oriented measures by agreement.
 - b. Bargaining generates enterprise geared and enterprise targeted measures. It is logical that approaches closest to employee and employer needs and preferences will be the most effective.
 - c. One size will not fit all in this area. Employers and employees should have the freedom to agree any maternity or other work and family benefit arrangements which best suit the needs of their enterprise. This is how our reformed industrial relations system is supposed to work.

- d. Impediments to simplified workplace agreement making – either between an employer and a group of employees, or an employer and an employee individually need to continue to be pursued. With fewer procedural impediments to agreement making, the prospect for more agreements with diverse and innovative characteristics addressing work, working hours and family issues is increased – particularly in businesses yet to formalise work practices or working arrangements in agreements under the workplace relations system.
92. Relevance of Existing Paid Entitlements: That a range of employers have negotiated paid benefits to overlay the existing unpaid entitlement does not of itself provide support for a change in the universal entitlement provided by society. What some employers can do does not indicate what all employers can or should do. There are intrinsically differing factors at play between the voluntary provision of a benefit and its compulsory imposition. A government funded or community scheme is fundamentally a community matter.
 93. There is a Very Real Prospect for Flow On: The unique Australian industrial relations system and the very real prospect for flow on must be properly taken into account. There have been numerous examples during the past two decades of supposed broad community wide solutions to issues merely serving as springboards for industry and sectoral “top up” industrial claims by trade unions (which are of course followed by claims for catch up to the high levels).
 94. These include issues such as: employee entitlements on insolvency, workers compensation, superannuation, standard working hours etc. Australian employers do not support being put in a position where there may be a government scheme of maternity benefits (partially funded by existing business taxation), only to find that the industrial system compulsorily imposes additional obligations on businesses. Any government approach to this issue should ensure such an outcome not be able to occur. If it were to occur, employers in Australia would face a position of disadvantage not reflected in other international jurisdictions. We invite the Commission to recommend:
 - a. Any scheme being supported by a prohibition on industrial award claims (federal and State awards). for any additional payment for parental leave.

- b. Against any adjustment to the proposed NES for employer funded or top up PPL.
 - c. Precluding the accrual of any non-parental paid leave beyond where it currently accrues in relation to unpaid parental leave.
95. This is a fundamental issue in policy debate, given the very real prospect for inappropriate policy in this area to detrimentally effect the employment of women, and damage business interests. It underscores the need for policy caution and intellectual rigour in proceeding with consideration of any revised policy approaches.
96. We say such an approach will see PPL models further considered in the terms we commend to you, and other approaches not further considered.

INTERNATIONAL LEGAL OBLIGATIONS

97. ACCI is concerned that there is something of an undue emphasis on international instruments in the debate on maternity benefits, particularly when, the international instruments cited to do not have legal application to Australia, and are predicated on social security and contributory approaches which are not relevant in Australia:
- a. Australia has a specific reservation from Article 11(2)(b) of the CEDAW.
 - b. Australia has not ratified ILO C183, and C103.
98. ACCI rejects any notion that Australia is a somehow deficient international citizen on the basis that it does not meet the strictures of, and has not therefore ratified, particular international instruments.
99. ACCI particularly strongly rejects any suggestion that countries at the opposite end of the developmental scale to Australia, with poorly developed social security systems and services to support maternity, and in some cases poor records in compliance with their international obligations, could be said to out perform Australia in any area of social protection.

100. Criticisms of such a limited basis for comparison can be summed up as follows:
- a. Developmental differences: e.g. Australia vs developing countries.
 - b. Historical differences in the development of social security: e.g. Australia vs France or Italy.
 - c. Different taxation and financial systems: e.g. Australia vs China or Vietnam.
 - d. Different levels of minimum wages: Australia vs USA or UK.
101. It is also relevant to the note that the extent to which any country can implement any benefit is a function of its national, industrial relations, taxation and social security history and culture. It is impossible for example to seek to separate the Swedish contributory and taxation model from that country's history and culture. Assumed transplantability of measures, models and schemes is often a very dangerous approach to public policy generally.
102. Therefore any examination of international schemes/laws must be done in its proper context.
103. Australia's obligations are those we have signed up to, and not those that have not entered into force under international law for Australia. Consideration of international issues should not outweigh domestic considerations. The key question remains what is in the best interests of Australia's economy, labour market and society.
104. Comparing Like With Like: International comparisons will offer only limited assistance in this debate unless they properly compare like with like, and take due account of differences between national systems.
105. It is also important to fully comprehend how international systems actually operate in practice, rather than to merely look at the superficial/reported legal system or nominal/aspirational ratifications. There are significant dangers in simplistic assumptions on the transplant-ability of labour relations law based on the form of statute or ratification of international instruments alone.

106. A simplistic and uncritical first glance at a league table comparing international PPL provisions might make Australia seem rather backward in comparison to other countries.
107. However, when the full range of leave entitlements and transfers to parents is taken into account – including both direct tax benefits and benefit payments and indirect transfers through spending on health and education, for example – then Australia’s support for children and families is both relatively generous and more efficiently and equitably targeted than in almost all other countries.
108. ACCI is particularly concerned at the idea or claim that Australia lags behind developing world countries and unstable states often with high informal employment, little or no enforcement, and often hostile and violent conditions for women.
109. It is Not A Yes/No Proposition: Linked to the above, whether a particular country, system, or community appropriately supports maternity is not a simple yes/no, or tick a box proposition. ACCI can see little use, or legitimacy in simplistic international league tables which appear to illustrate that Australia or any other country is or is not providing an appropriate entitlement without regard to the full range of benefits payable, services provided, nor to the level of income transfer provided to mothers/families.

BALANCING CRITERIA

In assessing different schemes that have different effectiveness in achieving such multiple objectives, what weight should be given to each of the various objectives?

How should the various objectives be traded-off against one another if they conflict?

110. The Commission should approach this by an on balance consideration of each objective. A driving consideration should be about effectiveness, impact and outcomes.
111. ACCI does not consider there to be an overriding and clear objective/goal in the terms of reference. The Government has asked the Commission to consider a range of issues and ACCI has attempted to address each of those various objectives in a constructive manner as far as possible.

What assessment criteria should be used to assess the merits of different models of paid parental leave? Are there existing studies that provide lessons on how to undertake rigorous assessment of options in this area?

112. Again, the Commission should consider effectiveness, impact and outcomes. Assessment should be based on a cost/benefit basis.
113. Assessment should also be Australian based, and properly take into account Australia's unique industrial relations system, and particular approaches to social and benefit policies.
114. At this stage, the Commission should exclude employer funded models because they could not satisfy a proper test/assessment based on such considerations.

For each objective, can you foresee any possible unintended consequences from the introduction of a paid parental leave scheme?

115. ACCI articulates throughout this submission the possible and foreseeable consequences if a PPL scheme is introduced, particularly noting the negative consequences if employers are forced to fund (partly or wholly) such a scheme.
116. ACCI would welcome the Commission conducting modelling to ensure that unintended consequences on employers, the labour market and the economy are avoided in any proposed PPL scheme.

What could be done to avoid or reduce the impact of any unintended consequences?

117. Any PPL scheme recommended should be government funded, administered, targeted, and fiscally responsible. ACCI's recommendations throughout this submission indicate a holistic approach to considering family and work issues, not just PPL. Any PPL should be recommended only after a considered and cautious review of possible consequences on the community. The Commission should consider a suite of recommendations, not just PPL.
118. Any recommended PPL should also come with a corollary recommendation that it be monitored over time to ensure that it meets its intended objectives/goals. Any negative impact on

employers, the labour market of the economy should quickly be examined and addressed.

119. The above measures will assist in reducing the impact of any unintended consequences of a PPL scheme.

2. IMPACT ON EMPLOYERS

COSTS TO EMPLOYERS

120. Australian employers already bear significant employment and other costs relevant to this area, including (but not limited) to:
- a. Providing at least 52 weeks unpaid parental leave with the right to return to their pre-leave position or equivalent.
 - b. Paying leave to a pregnant employee if an employer cannot find a safe alternative job within the workplace.
 - c. Incurring additional costs (inductions, retraining, recruitment, labour hire firms etc.) with respect to replacement employees during parental leave.
 - d. Providing multiple forms of paid leave (ie. annual leave, sick leave, carers leave, compassionate leave long service leave).
 - e. Providing superannuation.
 - f. Helping to fund (through business taxes) social welfare payments to individuals and families.
121. Moreover, as alluded to earlier in this submission, the Rudd Government has planned to build on these existing entitlements and obligations, by requiring (generally from 1 January 2010):
- a. Employers providing employees the right to request an additional 12 months of unpaid parental leave.
 - b. Employers to consult with employees during their unpaid parental leave on significant issues affecting their job.
 - c. Providing employees or persons with the responsibility of a child under school age the right to request flexible working arrangements.
 - d. Unpaid community service leave for employees who undertake voluntary community service activities.

- e. Paid jury service leave for employees who are required to partake in the jury process (which will require employers to top up their pay).
 - f. Paid redundancy pay for employees who work for businesses with more than 15 employees.
122. Considering the existing body of employment costs generally and directly linked to parenthood, and given the further impending changes employers will not, and cannot accept an additional responsibility to finance a general entitlement across the workforce for paid maternity leave.
123. Any discussion should proceed on the basis of government funding as the viable option for PPL in Australia. Any models for further consideration should be restricted to those which do not impose or compel employer funding in whole or part.

EXISTING ARRANGEMENTS

124. Australia and most other developed economies provide additional employment and funding entitlements for parents. In Australia's case some of these are more generous than is typically allowed in most other countries. Qualifying Australian mothers have a right to up to 12 months' unpaid maternity leave, compared to the typical maximum entitlements of 6-13 weeks in most OECD countries.
125. Existing maternity benefits are however far from without cost to employers, including:
- a. The operational and replacement costs of unpaid leave prior to commencing maternity leave.
 - b. The costs of recruiting and training replacement employees.
 - c. Associated human resource and administrative costs of maternity leave administration and the employment of replacement employees (who often do not complete their contracted period, leaving for ongoing jobs, and requiring employers to incur a second round of replacement costs for a second replacement employee).

- d. Human resource costs of properly communicating with staff on maternity leave (which can often be difficult and time consuming).
- e. The costs of retaining and re-skilling staff members upon returning to work.
- f. Additional labour costs from agreeing to part time work arrangements, including potentially the costs of a second recruitment, selection and induction.

PAID LEAVE VS PAYMENTS

- 126. ACCI believes that there are essentially two dimensions to this issue – minimum leave and any payment. As leave is and should be dealt with through the workplace relations system, the issues both really focus on payment during leave (ie. how much per week for how many weeks).
- 127. It is to be clearly established whether there necessarily need be a specific government payment solely for women in paid work, which is not available to women who do not undertake paid employment or who are self employed, proprietors etc. This is a matter requiring further consideration across the inquiry period.
- 128. There is no inherent reason why any additional maternity benefit (if justified) need operate as an employment related rather than community wide entitlement.
- 129. To the extent that an additional maternity benefit were justifiable, options for the modification of existing entitlements, including social security, certainly appear to offer the best approach. As we have strongly indicated further employer funding, in whole or part, would not be.
- 130. It is however important to also recognise the impact of additional taxation imposts (and of changes in government service priorities) upon employers, the economy as a whole, and individuals. All Australian employers already support maternity through both the provision of unpaid leave, and through their contributions to Australia's tax base. Impact on the budget and service delivery needs to be taken into account.

131. Rights to time off, and to a return to one's former position are clearly employment matters. Issues of maternity payments are however separate considerations, and there is no necessary conceptual link to employment and employers. Leave and payment are separate and differ in their links to the employment relationship.
132. Australian employers cannot be expected to pay, under compulsion, another entitlement to employees without counterproductive impacts and where the conceptual basis is and merits for such an approach do not exist. The cost of such an entitlement will be to the detriment of almost all business, including (but not limited to) small and medium business. As already discussed employers already have a number of considerable additional costs when an employee takes maternity leave (recruitment, on-costs, training and retraining costs).
133. ACCI strongly believes that compulsory employer funded additional maternity benefits (and indeed any scheme funded by employers) have the prospect for such negative and counterproductive outcomes.

BENEFITS DIFFER FOR DIFFERENT EMPLOYERS

134. ACCI wishes to comment on the assumption from some quarters that the benefits of PPL for employers are a given and are universal.
135. As ACCI stated in the Melbourne hearing, there is not a common benefit to all employers on this issue:
 - a. Benefits may differ by the size of the business (as the capacity to fund additional entitlements may also inherently vary).
 - b. Benefits may differ by the industry of the employer.
 - c. Benefits may differ by the occupation/position of the employee, including a costs/benefit analysis of retaining investments in training and experience.
 - d. Any benefits (and they are not universal) may be outweighed by the costs in particular circumstances.
 - e. Employers have differing employment imperatives as do their employees. PPL is a priority in some areas, but challenges and priorities will differ from workplace to workplace.

ATTRACTION/RETENTION ARGUMENTS

136. There are undoubtedly some (mainly larger operations in higher skilled areas of industry) employers for whom these benefits are relevant, and for whom this can justify some employer funded PPL on a cost-benefit analysis. This would include those employers who have introduced paid schemes by agreement, or company policy and those which may do so in the future.
137. However, imperatives will differ for other employers, and for different employment. The value of staff attraction and retention may also differ from industry to industry, and workplace to workplace particularly where there is already high staff turnover.
138. Various staff replacement costs are incurred by employers in replacing staff, including any exiting staff exiting because of maternity.
139. However:
- a. Not all of the costs listed are relevant to all employers. Many employers, including in smaller enterprises, do not necessarily incur all the human resource and administrative costs cited.
 - b. Mutual and reciprocal considerations should not be ignored. Employees are entirely free to leave employers, including by choice when they start a family. Many industries have inherently high levels of labour turnover, which render them largely unable to avoid or minimise these obligations. No form of PPL can change that.
 - c. The capacity of employers to accommodate separation on a cost benefit basis will differ between industries and occupations. Jobs differ in their investment in skills, and in the inter-changeability of employees, and thereby in the value which any additional maternity benefit would return.
 - d. It should also be recalled that all employers have return to work obligations under the existing universal unpaid entitlement. The costs cited only become relevant when an employee chooses based on a personal financial, familial, experiential etc assessment to leave their employment.

- e. When these considerations are assessed, any assumptions towards a paid scheme based on un-assessed or assessed employer benefit breakdown.

LESSEN COST IMPACT FOR EMPLOYERS

140. There are number of ways costs could be reduced on employers:

- a. ACCI believes that any PPL scheme should be 100% government funded and administered. Therefore, there should be no need to canvass options for reducing costs on employers, as they should not be directly funding PPL in whole or part.
 - i) However, any scheme imposing costs on employers would need at the very minimum, to have a qualifying period for entitlement to any parental benefits.
 - ii) At least 12 months service would appear the least amount of time which would need to be served prior to becoming entitled to any additional employer derived benefit.
 - iii) There may also need to be some consideration of obligations on the part of the employee to return to work after paid leave. This is an important point. Any employer funding to date has often been conditional in whole or part on an employee return to work (i.e. a second tranche of pay conditional upon employee return to work).
- b. Any quantum of weeks would need to be balanced and moderate. That the ILO or any other organisation has identified a specific number of weeks in an instrument to which Australia is not party, cannot remove the imperative to properly consider a quantum of weeks for a government funded entitlement. If employer funding comes into play, consideration becomes even more important / requires rigorous consideration from scratch.
- c. Existing government maternity, parental and family benefits should be restructured for this purpose. It appears logical and equitable that income transfers be well targeted, and be at a largely standard or capped level, and perhaps be subject to means testing to focus them on the persons in the most need.

- d. Any general government funded benefits that were introduced would need to be moderate and standard in level, and be affordable and responsible in budgetary terms.
 - e. Any general government funded benefits that were introduced should in no way alter the existing unpaid entitlement, which it may overlay and use to determine access to payments.
 - f. Any general benefit that were considered should wholly exclude the potential for any mandatory employer funded top-up through the industrial relations system.
141. In summary, there may be benefits from a PPL scheme for some employers, however:
- a. The best way, in an employment context, to recognise and provide for these situations is through a flexible workplace relations system and a genuine capacity to bargain on the issue of additional PPL.
 - b. There are costs as well as benefits in parental benefits. It cannot simply be assumed that there will be net benefits to all or even most employers. It will not be in the interest of some employers to implement additional maternity benefits, either directly, or through a social security system.
 - c. Mandatory employer funded benefits would have negative outcomes for employers, employees, society and the economy. Such approaches may be negative for maternal employment.
 - d. A government funded social security PPL scheme offers the best measures to achieve some of the Commission's objectives with the least cost impost on employers.

3. FAMILY INCOME AND EMPLOYMENT

COST OF CHILDREN

142. Financial commitments to children are clearly decades long, and extend in financial and time terms well beyond any options for additional maternal benefits.
143. It is not clear that a PPL scheme alone could provide the best approach to supporting decisions on childbirth. Other longer run options, such as providing superior societal support for childcare may be more effective. Ongoing retraining and re-skilling may also be relevant.

BENEFITS TO SOCIETY QUESTION

144. Whilst some forms of PPL may provide general benefits to our society/community as whole, there is no equity, employment or utility basis for employers to compulsorily fund (directly/indirectly) the childbearing choices of employees or national population policy.
145. The choices of women and families to have children are personal ones, for which there is no inherent conceptual link to employment or employers. The community as a whole, via government support, is the appropriate forum for broader financial support for maternity and parenting in our society. It is government and the community which needs to consider this issue, consider general costs and benefits and assume responsibility for funding and the operation of any new initiatives.

ECONOMIC GROWTH

146. ACCI agrees that ongoing labour force participation by women, as with all Australians should be an ongoing national imperative. This is a key consideration in employers' commitment to providing a return to work following periods of parental leave.
147. Human capital, a skilled workforce, and an appropriate future taxation base are major national issues, and are ongoing matters for policy attention.

- a. Whether any additional maternity entitlement will actually affect the decisions which determine female labour force participation on an ongoing basis remains to be seen.
148. The economic benefits of any scheme will be determined by a balance of costs against other impacts. For example, an employer funded scheme would have the unintended effect of discouraging employers from hiring women, then the macroeconomic benefits cited would not be realised. Such approaches can therefore be excluded at this stage.
149. Other macro-economic considerations include the effect of additional costs to employers on investment, an increase in taxes to fund additional social security, and the impact of any changes in government spending at a microeconomic level.

RETURN TO GOVERNMENT

150. Returns to Government may offer scope for further consideration of a government funded approach.
151. Means testing and capping would be important considerations. Were there a policy justification for a PPL scheme, then ACCI would only consider supporting a scheme which was properly targeted and the best use of Government expenditures in this area.
152. ACCI rejects any suggestion that any additional government funded support for maternity would subsidise business in any way. There is no sense in which business is responsible for the decisions of individuals to have, or not have children. It is also not in any way established, as appears to have been assumed, that employers have a particular responsibility to support the private familial decisions of employees.
153. Any scheme funded wholly by government would purely subsidise the decisions of individuals to have children and would simply be a further government support of maternity whether it was only extended to those in employment or more broadly based.

POPULATION

154. The link between the fertility rate, population policy, Australia's future tax base and ageing population is an interesting and relevant one, and

is a major issue for national discussion. Assumptions made linking payment for maternity to fertility rates need to be clearly tested.

155. However, once again it is unclear whether any additional maternity benefit:
 - a. Will impact on these considerations.
 - b. Would constitute the best policy approach to further population policy in Australia.
156. Whether or not fertility rates are directly impacted by government payments is a moot point. It is clear that some modelling can be done on the fertility rates and the recent impact of the baby bonus. Whether other factors such as overall economic confidence and the availability of child care will be equally or more important remains to be seen.
157. Nonetheless, the promotion by society of families and maternity is a good thing. This is a factor underpinning ACCI's support of:
 - a. Reviewing existing maternity benefits under the Australian system.
 - b. Supporting Government considering options for a PPL scheme, provided it is government funded, and properly protects the interest of employers.
 - c. An identification of additional options for child-care as a key measure to allow employees to better return to work, and to co-manage their work and child caring.
 - d. A workplace relations system that allows for a flexible approach to work and family measures.
 - e. The promotion of best practice in agreement making in work and family measures.
 - f. The ACCI National Work and Family Awards (for more than a decade).

4. HEALTH AND WELLBEING

CAUTIOUS APPROACH

158. The Issues Paper states that *“the effects on paid parental leave on infant and parental welfare is complex and sometimes inconsistent”* (p.9).
159. ACCI would urge the Commission to be cautious when it makes conclusions or recommendations based on evidence it receives concerning health and wellbeing of child, mother, father or others (siblings, grandparents etc).
160. The Commission will undoubtedly receive submissions stating best practice measures and contemporary medical recommendations, and whilst there may be benefits in a mother breastfeeding for x months, the conclusion shouldn't necessarily be to mandate employers or the Government to provide paid leave of x months.
161. In this context, one part of an equation will undoubtedly be the health and wellbeing of a parent and child, but the other is how this should be (if at all) addressed by employers, the medical system, or by the community (through tax and transfer system) and to what extent.
162. In some cases, the issue may be addressed at the general State/Territory level, with Governments providing early child care facilities, maternal health clinics/services etc.
163. Whilst PPL may be one part of the equation, it can not be treated as a panacea, nor shoulder sole / undue responsibility.
164. ACCI is not an expert body on maternal health issues and could not assist the Commission in the detail on the health and wellbeing of the mother or child.
165. However, employers are cognizant of health and wellbeing of their employees as they attempt to fulfil their wider legal obligations such as common law duties, contract, OHS, workers compensation and anti-discrimination.

EMPLOYER'S LEGAL OBLIGATIONS

166. It must also not be forgotten that employers have continuing associated legal obligations concerning all employees, and these intersect with parental issues.
167. For example, employers have responsibilities under the various State and federal anti-discrimination laws to ensure that mothers and fathers are not discriminated against in their employment.
168. The *Workplace Relations Act 1996* also makes it unlawful to terminate an employee's employment on the grounds of sex, family responsibilities, pregnancy or absence from work during maternity leave or other parental leave. There are also unfair dismissal remedies at both State and federal levels.
169. Any discussion about paid parental leave should take current legal obligations into account, which will continue to exist and influence normative behaviour in the workplace:
 - a. Occupational Health and Safety (OHS)/Workers' Compensation laws.
 - b. Anti-discrimination legislation.
 - c. Leave rights and obligations under workplace relations laws.
 - d. Unlawful/unfair termination provisions.
 - e. Common law/contractual obligations.
170. Under federal legislation, all employees in Australia are entitled to 12 months unpaid parental leave, subject to notice requirements and qualifying periods of employment (generally, 12 months continuous service with the employer).
171. Whilst the federal legislation provides minimum conditions on parental leave for all employees (regardless of whether they are in the federal system or not) more beneficial benefits can be provided on top of this.

EMPLOYMENT LAW LINKS WITH PPL

172. ACCI strongly argues that PPL should not form part of minimum employment laws or conditions.
173. Whilst the two may work side-by-side (and may even refer to one another), they should be considered as separate issues and separate regulatory spheres. The Government has recently held an inquiry into its proposed National Employment Standards, including parental leave provisions in the federal *Workplace Relations Act 1996* and clearly on the basis that parental leave should continue to be unpaid.⁷

BREASTFEEDING

174. Employers continue to accommodate employees who need to breastfeed their child under a range of different ways, including time away from work, setting up a dedicated area within the workplace for feeding/expressing milk, or allowing the mother time off. Indeed, there are legal obligations in this area.⁸
175. Such work and family matters in a smaller business are generally informal, with many larger organisations having formalised policies in the workplace.⁹
176. The recent Budget announcement of the *Fresh Ideas for Work and Family* programme¹⁰ may well lead to more smaller businesses better accommodating a range of parenting requirements, including breastfeeding.

⁷ See DEEWR website on the NES inquiry:

<http://www.workplace.gov.au/workplace/Publications/News/CallforpublicconsultationonNationalEmploymentStandardsnowclosed.htm>. The Government has indicated that the NES will come into force by 1 January 2010.

⁸ Some legislation specifically makes it unlawful to discriminate on the basis of “breastfeeding” whilst all legislation contains prohibitions on “pregnancy”, “sex”, and family responsibilities”. The federal Sex Discrimination Act 1984 explicitly makes clear that breastfeeding (including the act of expressing milk) is a characteristic that appertains generally to women.

⁹ See also examples of companies at workplace.gov.au (maintained by Department of Education, Employment and Workplace Relations):

<http://www.workplace.gov.au/workplace/Programmes/WorkFamily/Breastfeedingintheworkplace.htm>

¹⁰ <http://mediacentre.dewr.gov.au/mediacentre/Gillard/Releases/FreshIdeasforWorkandFamily.htm>

WORLD HEALTH ORGANISATION RECOMMENDATION

177. ACCI understands that some proponents of paid parental leave are basing their support on issues of quantum/duration on international health recommendations.
178. Whilst the World Health Organisation (WHO) recommends breastfeeding exclusively for 6 months, there are a number of women who:
- a. Physically cannot breastfeed; or
 - b. Chose not to breastfeed their child.
179. These two vital facts must be considered before recommending a PPL model based on contemporary research/data in this single area.
180. Moreover, any generalised conclusions about health risks or otherwise of a mother in the context of international standards needs to be closely looked at in the context of a country's individual workplaces, industries and occupations.
181. Such international studies often look at developing nations and various industries or occupations. They should not be generalised to a particular country in the absence of robust research in that country.
182. In addition, such arguments underscore that this should be a community/government funded responsibility. When such extended periods of weeks comes into play employers role is even further disqualified.

TWO DIFFERENT ISSUES

183. ACCI urges the Commission to closely look at research and policy outcomes together, but to formulate appropriate proposed regulatory responses only after considering the totality of issues and government's capacity to pay.
184. For example: whilst the WHO has recommended that mothers breastfeed exclusively for 6 months following birth of a child, that should not *ipso facto*, lead to a conclusion that a mother in employment should automatically have 6 months off on paid leave. The existing

- unpaid entitlement would provide support here and would spring into play. An intersection of paid and unpaid leave could bridge 6 months.
185. It has been reported that some unions and community groups, are pushing for 26 – 28 weeks PPL because of the WHO recommendation.
186. ACCI wishes to make the following points/questions on such proposals:
- a. Such claims attempt to conflate two different issues into one - one issue concerns the health/wellbeing effects generally on a mother and child (regardless of employment status) and the other is about leave benefits.
 - b. There may be a variety of domestic and international research presented to the Commission, but that should not necessarily translate into one particular policy response (ie. PPL at 6 months at someone's expense).
 - c. Even if there are particular health and wellbeing benefits in breastfeeding, how is this balanced against other interests and costs? We are fortified in this view by the Commission having a wide ranging set of considerations, and raising a wide range of considerations.
187. As with all research, results and findings are subject to change based on a multitude of different variables. For example, a 1991 joint WHO/UNICIF meeting (resulting in the *Innocenti Declaration*) recommended breastfeeding for a period of between 4 – 6 months.¹¹ This appears to have changed to 6 months exclusively in other research.
188. The WHO (and UNICIF) have also recommended that a child should continue to be breastfeed up until (and beyond) 2 years of age.¹²
189. Research and data are vitally important in informing policy decisions, but policy makers need to be cautious not to draw too long a bow in recommending particular regulatory responses/measures based on such data.

¹¹ WHO/UNICEF. *The Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding*. Geneva: WHO/UNICEF, 1990.

¹² http://www.who.int/nutrition/topics/exclusive_breastfeeding/en/index.html

5. MODEL EVALUATION

IS A PPL MODEL WARRANTED?

190. ACCI has positively identified in this submission a range of supportive measures that business already provide in balancing work and family – both formally and informally. ACCI has also constructively engaged with issues such as identifying why an employer funded scheme is not feasible nor warranted, and how ACCI engages in evaluating the pros and cons of a community funded scheme.
191. As ACCI has urged earlier in this submission, the Commission should consider all possible interactions and measures, such as the tax transfer system, social welfare system, child care affordability/accessibility etc., before concluding that a PPL scheme should be recommended (and in considering what form(s) of PPL to progress).
192. As such, a primary threshold issue is whether the Commission should consider whether it is necessary to recommend a PPL scheme/model.
193. ACCI understands that the Commission should be inclined to recommend / further progress a PPL scheme if:
 - a. The existing social benefits could work more efficiently, equitably or could address any additional issues identified by the Commission as important for parents and their children.
 - b. Despite the success or utility of existing benefits, there is still some benefit to critical aspects of pregnancy, child care or other issues, which could be delivered by some additional measure labelled “Paid Parental Leave”.
194. ACCI maintains that all issues should be looked at (either now or in time) holistically, regardless of whether a PPL scheme is ultimately recommended, further we maintain that a proper examination should lead to only Government funded approaches being considered.

CONSIDERATIONS

195. Consistent with the general position in this submission, employers and employees should be free at the enterprise level to agree on the work and family measures that best suit them. In some enterprises this has

extended to an additional parental leave entitlement, in others, this may be restricted to an additional maternity leave entitlement, in others completely different measures are provided.

196. ACCI does not agree that an employment focus is appropriate. There is no inherent reason why maternity transfers must occur through or based on employment mechanisms or the contract of employment. The questions of what appropriate work related entitlements should be, and how they should be set, are separate to the question of how best any society can support maternity.
197. Clearly the ongoing role, level, form and relevance of social security and other government income transfers for child rearing are central issues to any resolution of such considerations.

ON GOING REVIEW

198. If any government funded PPL scheme is recommended, it should be subject to ongoing review of its effectiveness and operation.

LEVEL OF PAYMENT

199. Whether a scheme is designed to supplement financial support while absent from the workplace, or to replace income is a fundamental issue to be determined prior to being able to further consider the level of any payment.
200. Community funded schemes must have primary regard to budgetary affordability, effectiveness and the appropriate role of government in this area, given all of the other priorities the community places on governments.
201. It is also far from clear why debate on this issue is necessarily framed in terms of wage payments either at the minimum wage, or at some other amount. The issue is one of an appropriate government funded income transfer to women with children, and this is essentially a discussion of the quantum of payment rather than the duration upon which it is calculated. Again, form should not outweigh function in this area.

202. The first approach seems the more appropriate basis for government policy and expenditure. Equity and budgetary considerations would appear to discard full pre-maternity earnings, and mitigate in favour of some form of targeted single rate approach, with capping and/or means testing.
203. ACCI considers any scheme should in all likelihood be zero rated, with only one rate or up to one rate applying only. This should be set at the level of the Federal Minimum Wage.

FUNDING

204. ACCI categorically refutes any contention that the preferred approach should be for an employer payment or for employers to top up government payments. This ignores the very real scope for detriment to employment, employability, the economy and labour market stressed throughout this submission.
205. In this submission ACCI has argued that the Commonwealth should examine and consider restructuring existing government funded maternity, parenting and family payments made via the Australian social welfare system, into a PPL model/scheme.
206. This is based on a clear recognition that mandatory employer funding is not appropriate. It cleans and leaves behind a predictable and manageable first hurdle.
207. A levy or additional mandatory component (whether it be wages, superannuation etc) and individual funding would have the same prejudicial and detrimental effect upon employers, and thereby on female employees, the economy and wider society. To be clear, levies or HECS style (loan) scheme still impose additional costs on employers and they will not be capable of forming models which should be further developed.
208. There are also significant conceptual and practical difficulties with a levy which dictate that it also not be further considered (discussed further below).

SCOPE

209. ACCI invites consideration of three areas for possible payments / parenting support:
- a. Employees in paid employment.
 - b. Non-employees in work (owner managers, contractors) etc.
 - c. Parents outside the paid workforce.

OPTIONS IN PAPER/OTHER SUBMISSIONS – PRELIMINARY COMMENTS

Government Funded – Employer Pays Scheme:

210. Any payment should not be employment based. Maternity is a societal not an employment issue. There is a distinction between the unpaid entitlement which relies upon employers to implement a return to work, and an income transfer which has, to date, been payable by government.
211. A government payment appears inherently superior to any other payment option and would reduce disincentives to the employment of women that may arise if employers were required to directly fund paid maternity leave. Even if somehow nominally linked to employment, it is a government funded approach that should be considered.
212. Any government payment would need to be accompanied by changes to law which quarantine the issue as outside of the mandatory powers of the industrial relations system. Put simply this should cease to be a matter that could be addressed under awards, and awards should not be able to impose additional or top up obligations in this area.
213. Government payments should be paid by the government. Employers are not a substitute for Centrelink for the payment of government benefits. Employers have a clear preference to only return employees to their payroll when they return to work. There are also significant concerns regarding administrative and financial costs associated with payroll tax, superannuation, workers compensation, and payroll costs (see below).

214. Payments would also conceivably interfere with the smooth operation of existing workplace relations entitlements under awards, agreements and contracts of employment and policies, including issues surrounding accumulation of other forms of leave (e.g. sick leave, annual leave, long service leave) , and existing PPL schemes operating.
215. There is also scope for considerable confusion in the administration, taxation etc of any payments by employers on behalf of government, and major bureaucratic and transfer costs.
216. The issue should be the level of payment that is warranted based on the social policy rationale for the scheme that the payment should come from government should be clear.

Employer Funded Scheme:

217. As set out throughout this submission, ACCI does not support any form of mandatory employer funding, which would risk fundamentally compromising any supposed gains from introducing PPL.
218. It is also difficult to reconcile basing payment on previous earnings with any general notion of equity or supporting the meeting of parenting costs. A single rate (zero rated), and capped approach would appear more appropriate (and government funded).
219. Any mandatory employer top up is also not appropriate. There would be large transaction and administration costs inherent in any composite funding scheme in Australia. To be clear – a composite or mandatory top up scheme would carry the same negative concerns for employers and employees as a solely based employer funded scheme.
220. The claimed advantages of an employer funded scheme appear spurious, and outweighed by the clear risks and negative impacts. In contrast the disadvantages reflect valid and completely foreseeable concerns and probable outcomes. PPL can and does deliver benefits but they are enterprise contingent, and often based on bargaining and workplace priorities.

221. Additional on costs in the form of increased superannuation contributions, workers compensation etc would also be highly unfair and would potentially prejudice women's employment.

Government Funded – Universal Scheme:

222. This avenue would appear to yield the best of the options for further consideration, although it would need to be accompanied by the various qualifications outlined in this submission.
223. Such schemes have the advantage of allowing a single payer (the government) to use existing administrative and payment processes to pay an additional entitlement. They do not require any administrative role for employers, nor do they create the confusion inherent in employers continuing to pay "wages" or some quasi wage-like payment on behalf of government to employees who are no longer working for them in a daily or active employment relationship.
224. A government funded scheme could also apply to not only "employees" but also other workers such as contractors and sole proprietors. A government funded payment could also be paid generally to those persons who are not workers (which is how the baby bonus operates – see above). Government funding also offers scope for universal coverage and consistent outcomes. It avoids any unexpected operation of differing schemes (ie. avoiding employees resigning to get more pay).
225. Whether the payment is taxed (ie treated as a wage), means tested, subject to qualifying periods etc., would then be mostly a matter of Government budget constraints and more specific modelling.

Social Insurance / Levy Scheme / Superannuation:

226. Such approaches should not be progressed to the next stage of consideration. The cost of superannuation to employers in Australia is already high (for a number of employers, on 1 July 2008, they will have to pay more as a result of changes to the nominal earnings base), and the creation of what in effect would be a new tax will be a cost on employment.

227. There are significant potential administrative, funding and equity problems based on the marrying of funding to individuals seeking to access benefits on a contributory basis. It is far from clear how such a scheme could become sufficiently funded. We maintain a levy based scheme will inevitably lead to top up claims against employers.
228. Once there is recognition that superannuation could be used for this purpose, there may well be a never-ending series of claims for access to superannuation for a variety of purposes. Why not study or travel claims? If government allows individuals to use their superannuation for non-retirement purposes, there will be no end to claims.
- a. Retirement incomes may be compromised.
 - b. The end result of course would be a rise in the superannuation contributions required of employers to somehow compensate for a superannuation base eroded by an unduly stretched series of draw down options.
229. It is unclear whether there would be access to payment for those who do not have children and at what point in life.
230. A levy scheme is also not supported. Levies cost employers, both directly and in their administration. As an additional labour on cost – they directly detract from the capacity of employers to create jobs. They thereby cost the community.
231. Any levy would also come on top of existing labour on-costs such as superannuation, payroll tax, workers compensation, and FBT. The true cost of employment would increase from its already high level.
232. A levy would be a new tax, paid by all employers. It is thereby a tax on employment, which is a bankrupt concept.
233. Other disadvantages of a levy are also valid, including inherent administrative cost and complication.
234. The proposed approach also implies the creation of an additional administrative bureaucracy. In contrast, a government funded approach could be implemented solely from revenue, and using existing agencies and infrastructure.

235. It is instructive that there do not appear to be any specific advantages to a levy above any other potentially viable proposal.
236. There are also fundamental equity issues if other employees are forced to contribute to a PPL scheme where they have no intention of starting a family. They will rapidly ask why all employees are not being additionally levied to support their personal commitments and priorities.

OTHER MATTERS

237. There are some other concerns which the Productivity Commission may wish to note in considering schemes at this stage:
- a. Superannuation: Whatever approach is taken, a consideration will be whether PPL payments attract the 9% superannuation contributions from employers (and any additional superannuation which may have been agreed to). Specifically, will they become earnings for the purposes of SGA superannuation? Might this apply even if the government funds and delivers PPL?
 - b. Paid Leave Accrual: Whatever approach is taken, a consideration will be whether other forms of leave will accrue during a period of paid leave. For example, if there were a 14 week period of paid leave, will annual leave and long service leave accrue during this time, and will additional parental leave accrue during this time (recalling that there is presently no such accrual during periods of unpaid parental leave).
238. Under such considerations, employers would potentially pay additional costs even under a government funded and government administered scheme. ACCI would take the following from such concerns:
- a. There may need to some communication later in this process with the Minister for Employment and Workplace Relations identifying additional or flow on costs and identifying options to amend the new NES to ensure employers are not required to accrue entitlements (in particular) for weeks of a government funded scheme.

- b. There should be no assumption that particular models or approaches can be taken without any detriment or impact on employers and their capacity to employ.

6. SCHEME DESIGN CONSIDERATIONS

GENERAL COMMENTS

239. Consistent with the major themes in this submission, if a PPL scheme is ultimately recommended (or is to be further examined) by the Commission, ACCI would say that it should only be progressed on the basis that:
- a. It is wholly funded, and paid to the employee by the Government.
 - b. It is administered wholly (and solely) by Government agencies.
 - c. It does not expose employers to any mandatory obligation (legislative or arbitral) or to top up claims, or to incur additional on-costs.
 - d. It sees parental leave, and specifically any payment for periods of parental leave become an explicitly non-allowable award matter in the industrial relations system.
 - e. It does not have any unintended consequences for employers, or their capacity or propensity to employ parents.
240. To do anything less than the above will be prejudicial to employers and deliver a flawed and sub-optimal scheme. It would expose employers to additional costs and exposure. It would also have an effect on the employment of women / parents.
241. ACCI's support for any form of PPL being further considered would be predicated on such considerations.

INTERNATIONAL COMPARISONS

242. As stated at the outset of this submission, ACCI considers proper and sustainable international comparisons based on like-with-like as an appropriate starting place to develop any possible models/schemes for Australia.

243. It is a resource intense exercise to undertake a meta-analysis of country specific schemes and how they may translate into the Australian context. Therefore, ACCI can only make an approximate and pragmatic conclusion on the utility of such a scheme based on employer considerations and expectations.
244. Generally, countries whose culture, society and legal structure are more closely related to our own will provide a better indication of how models can be implemented/adapted in the Australian context.
245. It would appear from the issues paper that common law nations (ie. UK and NZ etc), as opposed to European/Asian nations would provide a better starting point when considering models *“that could be used in the Australian context”*.
246. This is not to say that other nation’s approaches do not have any validity or possible utility, but that the terms of reference more naturally gravitate towards models from comparable nations. It will also be an unduly complicated inquiry for every single possible model to be scrutinised in the time available – some discrimination needs to be exercised at this stage.
247. New Zealand has a very similar legal culture, social welfare system and societal culture to Australia as compared to other countries. Whilst the NZ Government only recently introduced PPL, and there may not be enough evidence to date as to its cost and effectiveness, it does provides fertile ground for considering the utility of approaches for Australia.

INTERNATIONAL PRACTICE - NZ

248. The issues paper canvasses a number of different international models, which are diverse in many aspects.
249. The New Zealand model (introduced in 2002) appears, prima facie, to most proximate to a model which could be considered for Australia. Generally speaking, the NZ model is:
- a. 100% funded by the Government.
 - b. Eligible for birth mother or adoptive parent after working for same employer for a qualifying period.

- c. Paid at the rate of the employee's ordinary weekly pay or average weekly earnings (whichever is greater), up to a maximum payment (currently \$391.28 per week before tax). This represents approximately 82% of NZ's minimum wage.¹³
- d. Paid up to 14 weeks from the start of the employee's leave and ends upon the employee returning to work, resigns or comes to the end of their fixed term contract. The payments also end if the employee is dismissed, made redundant, pregnancy ended other than by the delivery of a child, no longer cares for the child, or upon the death of the employee or child.

NATIONAL PPL MODEL – ACCI'S VIEWS

250. Any assent by ACCI for a form of national PPL scheme would have to contain at least the following types of checks, balances and considerations:

- a. It should be wholly and solely Government funded and operating on a national basis somewhere between 10-14 weeks after birth (or adoption) at federal minimum wage or proportion thereof (as per the NZ scheme).
- b. Government PPL should be funded by revision of the current baby bonus and paid wholly from Government revenue.
- c. There might be three broad streams of Government funded payments as follows:
 - i) PPL for those in employment (Part A).
 - ii) PPL for those working but not in formal employment, ie. independent contractors (Part B).
 - iii) A form of general maternity allowance/support for all other non-working persons (Part C).
- d. Generally, there should be no scope for double dipping between Part A, B and C.

¹³ Based on \$12 per hour or \$480 per week. <http://www.ers.dol.govt.nz/pay/previous.html>

- e. (At this stage it appears) Part A stream should be to a maximum of 14 weeks (as determined by the Commission in this first stage of the inquiry and pending further input. ACCI would also seek further modelling of impacts if any scheme was to be extended to 28 weeks (perhaps at half payment).
- f. Stream A payments could cease/end upon a number of circumstances, for example, and not limited to:¹⁴
 - i) An employee returning to work before the maximum end of the PPL period.
 - ii) Upon an employee resigning.
 - iii) Or upon a fixed-term agreement that expires during the PPL period.
- g. The payments for part timers and casuals could be proportionate to hours worked in a given period.
- h. Any scheme should not expose employers to top-up claims of any mandatory nature (as previously outlined). Federal and State industrial awards should have no the capacity to build on a universal scheme in any way, or to mandate payments from employers.
- i. Paid parental leave should expressly not form part of NES.
- j. The only industrial relations interface with the proposed payments would be (a) through voluntary agreement making and (b) possibly linking entitlement to PPL to qualification for unpaid parental leave under the *Workplace Relations Act 1996* (ie. the requirement to serve 12 months and other the threshold requirements).
- k. Employers should not be exposed to extra claims for contributions (whether directly/indirectly) through any central fund that employers' make contributions into or otherwise (perhaps through levies, surcharges etc).

¹⁴ These are based on the NZ scheme.

- l. Employers should not have to pay on-costs such as superannuation, workers compensation, payroll tax, etc on any PPL stream (whether paid by government or employers) or accrue other forms of paid leave across any period of PPL.
 - m. Any PPL scheme should be wholly administered by Government not employers. There should be zero additional cost to employers in the administration of the scheme, with the only linkage to employers being that Part A benefits are payments by the Government conditional upon employee being in employment. (Any documentation required of the employer should be minimal and minimised).
 - n. Any PPL scheme should be administered by Government agencies, with administrative obligations falling on employees only to the extent possible.
251. It needs to be amplified, because of the significant prejudicial risk to employers in the future from additional claims, that employers' expectations of any PPL scheme specifically on the interaction with industrial relations laws are as follows:
- a. The NES should not include any further minimum condition which would require an employer to top up any payments (akin to jury payments proposed by in draft NES).
 - b. The AIRC (or the Government's proposed Fair Work Australia which will succeed it) should not be able to arbitrate or inquire into top up payments in modern awards/NES.
 - c. Employers should not have to pay additional on-costs with any PPL scheme (such as superannuation etc).
 - d. Employers should not be subjected to complex and time consuming administrative burdens on business to administer the default tax payer paid parental leave scheme and any top up obligations.
 - e. Employers should not be exposed to discrimination claims on the basis of any PPL scheme (such exposure could arise, for example, if there were requirements on employers to provide an employee

with statements in writing in order to be eligible for government payments which could subsequently be used in other legal proceedings).

What type of eligibility tests should be established? Who should be eligible?

Should the eligibility test be designed to encourage ongoing workforce attachment? How could this be done?

Should other prime carers, such as grandparents, foster and adoptive parents, also be covered?

Should any support of a similar nature be extended to non-working parents?

Should all employees be covered and if not, why not?

What implications do different levels of coverage have for the effective administration of the scheme, the behaviour of employers and employees, and its impacts generally?

Should there be a qualifying period — a minimum time spent in the workforce — before an employee becomes eligible for paid leave? If so, how long should that period be?

Why? Should there be an eligibility period based on time with the employee's current employer?

252. ACCI has attempted to address the above questions in paras [250] to [251]. We would also be happy to respond into any particular PPL schemes the Commission may canvass in its draft report (the next stage of this process).

WHO GETS PAYMENTS?

253. Generally speaking, any government funded PPL scheme should focus on those in work. However, ACCI also believes that other (compatible) benefits should also flow to those parents not in work. Whether you still call it PPL or something else is moot and ACCI isn't concerned with labels, but with policy fundamentals.

254. If the Commission recommends that PPL should be extended to other persons such as carers, grandparents, live-in nannies etc., then federal budgetary constraints should be considered. Employers obviously have

a view on where tax is spent, as does the wider community, but that would be the focus.

255. As stated right at the outset of this submission, ACCI generally believes that the issue on paid parental leave should remain within the domain of mothers, fathers and adoptive parents.
256. Recalling that ACCI supports a whole range of areas investigated to ensure work and family issues are encouraged, not just resting on a PPL scheme.

PPL GOVERNMENT FUNDED MODEL

257. A primary submission from employers is that any PPL should be government funded and administered.
258. ACCI is not opposed to current social parental benefits being restructured and for the Commission to look at three streams of edibility broadly within the concept of PPL.
259. For those persons in work, their qualification to PPL would be either stream A (employees) or B (independent contractors, sole proprietors etc).
260. We also support a third stream (C) which is not, strictly speaking, a form of PPL, but rather a re-packaging of the existing social benefits (ie. baby bonus, family tax benefit A or B etc) into a maternity benefit. This would assist in not distorting employment and labour affects.
261. ACCI generally considers that a universal PPL scheme, for those in and out of work, is likely to be the best approach. Modelling would have to be undertaken to determine the extent of means testing and how any scheme would interact with labour market effects.

Qualifying Period/Quantum

262. FMW: The Federal Minimum Wage (FMW) was originally set by the former Government in the *Workplace Relations Act 1996* and has been adjusted by the Australian Fair Pay Commission (AFPC) since 2006 on an annual basis.

263. It represents a wages safety net for persons in employment at the federal level. It is currently \$522.12 per week (statutorily, it is based on a per hour basis).¹⁵
264. There are also sub-minimum wages for juniors, trainees, apprentices, and persons with a disability that are below the FMW.
265. The Government intends for federal minimum wages to be fixed in the future (1 January 2010) by a new body, called Fair Work Australia.
266. ACCI would not be opposed to the level of PPL quantum being set at the FMW by reference to that rate in legislation. It could be maintained by either indexing or by the rate adjusted by the AFPC (or Fair Work Australia). We do reiterate however the observation that NZ's payments are approximately 80% of their minimum wage – which is therefore based on the FMW, but not on full payment.
267. Obviously there are issues about payment level for persons that are:
- a. Trainees/Apprentices/Juniors/Disability workers: Do they get FMW or a part of it?
 - b. Part-timers/Casual employees: Do they get a pro-rated quantum of the FMW?
268. ACCI doesn't have any concluded views on these issues, which the Commission would need to model for labour market impacts. We look forward to looking further at such issues in the context of particular scheme proposals.
269. There are labour market impacts that need to be considered.
- a. For example, the Commission would need to consider the possibilities of a female employee leaving her employment because the benefits (ie. higher quantum/periodicity of payments) in stream C are better than stream A.
 - b. Conversely, the opposite may happen (ie. attract more employees into employment) if stream A is better than stream C. Whilst prima facie this could be a positive consequence, it would be

¹⁵ See www.fairpay.gov.au for more information.

negative if workers join the labour force, for a short time only so they be eligible for higher government payments.

- 270. Qualifying Period: Related to the above points, any qualifying period should be a condition on accessing a social welfare benefit.
- 271. Any qualifying period to access payments, should generally be closely aligned to employment law (for stream A at least).
- 272. As to stream B and C, there would need to be modelling on how this may interact and whether this would affect labour force participation.

DURATION AND GENEROSITY OF BENEFITS

- 273. ACCI does not oppose the Commission considering a scheme which is Government funded, with payments commencing either just before birth or following of birth, for a period of between 10 to 14 weeks. ACCI understands that 14 weeks is claimed to be the most approximate international norm.
- 274. Obviously, more sensitive analysis would need to be conducted if payments started before birth, because of the impact it may have on employees wanting to leave earlier than usual.
- 275. ACCI would recommend that the Commission be mindful of the objectives and goals that any PPL scheme is trying to address.
- 276. It is possible that the Government could pay any social PPL benefits in a number of ways:
 - a. Lump sum.
 - b. On a cycle (ie. fortnightly, monthly etc).
 - c. At reduced payment level for double the time (ie. 50% of FMW level at 26 weeks) – although if employers are to accrue other benefits this may become a concern.
- 277. Concurrent Leave: Once again, there would have to be modelling to assess whether both parents could access PPL payments. Under federal legislation, concurrent leave is limited to 1 week. The Government intends (at this stage) for this to be raised to 3 weeks as part of its

National Employment Standards (scheduled to commence on 1 January 2010).

278. Adoption Leave: Similar considerations would apply to eligibility for social security payments for adoptive parents. Eligibility could be linked to the eligibility under the federal workplace relations laws, or it could be set upon another basis. Eligibility rules established would impact upon Commonwealth budgeting.

RETURN TO WORK

279. Don't Disturb Existing Framework: Any existing workplace relations obligations, including return to work obligations should remain part of the workplace relations system. They are longstanding and widely understood by both employers and employees.
280. This process should not disturb those existing rights and obligations.
281. ACCI would need to provide further submissions to the Commission, if there was any recommendation that existing legal employment rights and obligations be amended in any minor or significant way.
282. As stated earlier, the Government has already conducted an exposure draft review of its National Employment Standards (including provisions governing rights to return), and therefore, would urge this Commission be cautious on making recommendation on such issues.
283. It would be equally concerning to ACCI if recommendations were made to vary other laws (for example, anti-discrimination laws) concerning parenting, in some fundamental way. ACCI believes that this is not the appropriate forum to have such a debate, nor that such changes could be required or merited.

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ST LEONARDS NSW 2065
Telephone: 02 8425 9600
Facsimile: 02 8425 9699
Website: www.anf.net.au

Australian Paint Manufacturers' Federation Inc

Suite 1201, Level 12
275 Alfred Street
NORTH SYDNEY NSW 2060
Telephone: 02 9922 3955
Facsimile: 02 9929 9743
Email: office@apmf.asn.au
Website: www.apmf.asn.au

Australian Retailers' Association

Level 2
104 Franklin Street
MELBOURNE VIC 3000
Telephone: 03 9321 5000
Facsimile: 03 9321 5001
Email: info@vic.ara.com.au
Website: www.ara.com.au

Live Performance Australia

Level 1 - 15-17 Queen Street
MELBOURNE VIC 3000
Telephone: 03 9614 1111
Facsimile: 03 9614 1166
Email: info@liveperformance.com.au
Website: www.liveperformance.com.au

Master Builders Australia Inc.

16 Bentham Street
YARRALUMLA ACT 2600
Telephone: 02 6202 8888
Facsimile: 02 6202 8877
Email: enquiries@masterbuilders.com.au
Website: www.masterbuilders.com.au

Master Plumbers' and Mechanical Services Association Australia (The)

525 King Street
WEST MELBOURNE VIC 3003
Telephone: 03 9329 9622
Facsimile: 03 9329 5060
Email: info@mpmsaa.org.au
Website: www.plumber.com.au

National Baking Industry Association

Bread House, 49 Gregory Terrace
SPRING HILL QLD 4000
Telephone: 1300 557 022
Email: nbia@nbia.org.au
Website: www.nbia.org.au

National Electrical and Communications Association

Level 4
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ST LEONARDS NSW 2065
Telephone: 02 9439 8523
Facsimile: 02 9439 8525
Email: necanat@neca.asn.au
Website: www.neca.asn.au

National Fire Industry Association

PO Box 6825
ST KILDA CENTRAL VIC 8008
Telephone: 03 9865 8611
Facsimile: 03 9865 8615
Website: www.nfia.com.au

National Retail Association Ltd

PO Box 91
FORTITUDE VALLEY QLD 4006
Telephone: 07 3251 3000
Facsimile: 07 3251 3030
Email: info@nationalretailassociation.com.au
Website: www.nationalretailassociation.com.au

Oil Industry Industrial Association

c/- Shell Australia
GPO Box 872K
MELBOURNE VIC 3001
Telephone: 03 9666 5444
Facsimile: 03 9666 5008

Pharmacy Guild of Australia

PO Box 7036
CANBERRA BC ACT 2610
Telephone: 02 6270 1888
Facsimile: 02 6270 1800
Email: guild.nat@guild.org.au
Website: www.guild.org.au

Plastics and Chemicals Industries Association Inc

Level 1
651 Victoria Street
ABBOTSFORD VIC 3067
Telephone: 03 9429 0670
Facsimile: 03 9429 0690
Email: info@pacia.org.au
Website: www.pacia.org.au

Printing Industries Association of Australia

25 South Parade
AUBURN NSW 2144
Telephone: 02 8789 7300
Facsimile: 02 8789 7387
Email: info@printnet.com.au
Website: www.printnet.com.au

Restaurant & Catering Australia

Suite 17
401 Pacific Highway
ARTARMON NSW 2604
Telephone: 02 9966 0055
Facsimile: 02 9966 9915
Email: restncat@restaurantcater.asn.au
Website: www.restaurantcater.asn.au

Standards Australia Limited

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Website: www.standards.org.au

Victorian Automobile Chamber of Commerce

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MELBOURNE VIC 3000
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