



Submission to the Productivity Commission Inquiry into Paid Maternity, Paternity and Parental Leave

**Submission Prepared by the Chamber of Commerce and
Industry of Western Australia**

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Knowledge Influence Support

**CHAMBER OF COMMERCE
AND INDUSTRY
WESTERN AUSTRALIA**

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Productivity Commission Inquiry into Paid Maternity, Paternity and Parental leave

CCI Submission



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CCI – Leading Business in Western Australia

About CCI

This submission is made on behalf of the Chamber of Commerce & Industry of WA (Inc) (CCI). CCI is Western Australia's largest business organisation with more than 5,000 employer members operating across all industries throughout the State.

Originally established in 1910 as the WA Employers Federation, CCI as it is today was formed in 1992 by an amalgamation of the Western Australian Chamber of Commerce and Industry and the State's then largest employer organisation, the Confederation of Western Australian Industry.

CCI is a non-profit organisation with membership open to businesses of any size.

CCI's members operate in all industries including mining, building, health, hospitality, services, manufacturing, engineering, wholesale and retail.

CCI has extensive involvement on behalf of its members in workplace relations matters across all of these industries.

CCI is the direct employer of over 900 apprentices across the State as part of a Group Training Scheme operated by Apprenticeships Western Australia Pty Ltd, a wholly owned subsidiary of CCI. These apprentices range from traditional trade apprentices in the resource sector, building and construction, metal and engineering fabrication through to trainees operating in the aged care sector.

This Submission

CCI is a foundation member of the Australian Chamber of Commerce and Industry (ACCI) and has been involved in the development of the comprehensive submission to the Productivity Commission made by ACCI which we endorse.

This submission is primarily focussed on the business environment in Western Australia.



Executive Summary

CCI promotes a workplace relations system whereby employers and employees are able to make agreements that suit them, free from the interference of other parties.

CCI believes that employers and employees should be able to voluntarily agree to arrangements for work and family balance, including arrangements for paid and unpaid parental leave.

The Government's pre-election commitment that it would not impose additional financial burdens or administrative complexity on small business is welcomed. CCI calls on the Government to extend these guarantees, as far as possible, to all businesses.

The benefits of paid parental leave to employers cannot be assumed to be universally applicable. The current evidence of the benefits is largely anecdotal and focuses mainly on large employers that have a better capacity to absorb the costs of paid and unpaid parental leave.

CCI believes that in the current WA labour market, where finding and keeping replacement employees during a period of parental leave is a very difficult task, the Government must assist small business to ensure that any scheme does not serve as a disincentive for the employment of women or to exacerbate the significant labour shortages that currently beset industry in WA.

CCI's submission to the Productivity Commission Inquiry into paid maternity, paternity and parental leave supports paid parental leave on the condition that it is fully government funded and administered.

CCI makes a number of recommendations to the Productivity Commission to ensure that any scheme that is introduced does not have any unintended consequences for employers.

Recommendation:

The inquiry's objective should be to determine the most efficacious means of assisting the promotion of the social good of having children. Paid parental leave may be one such means. Other mechanisms also need to be explored.

Recommendation:

That the Government reaffirms its pre-election commitment to not impose additional financial burdens or administrative complexity on small business or discourage employment of women in any paid parental leave scheme and extends the commitment to all businesses. Any scheme may also have a cost



impact on medium and large sized businesses. Such costs should be factored into consideration of the impact of models under examination.

Recommendation:

CCI would support a Government funded and administered scheme that is reflective of the ILO convention of 14weeks paid at the rate of the Federal Minimum Wage or an employee's previous earnings, whichever is less.

Recommendation:

There should be no mandatory obligation (legislative or arbitral) for employers to top up payments.

Recommendation:

The eligibility requirements of a paid parental leave scheme should reflect the current eligibility provisions of unpaid parental leave as contained in the *Workplace Relations Act 1996*.

Recommendation:

The return to work guarantee is already protected under the *Workplace Relations Act 1996*. Further regulation in this area is unnecessary.

Recommendation:

Any provisions relating to payment for a period of parental leave become an explicitly non-allowable award matter.

Recommendation:

That the Productivity Commission undertakes further research to analyse the impact of paid parental leave and in particular to determine the effect that any paid parental leave scheme would have on small business.



Background

The inquiry's terms of reference presuppose that providing paid maternity, paternity and parental leave has benefits that outweigh the costs and negative impacts. What is needed is a comprehensive examination of all mechanisms that might assist the promotion of the social good of having children.

Paid parental leave may be one model. Other models such as tax relief for childcare and sponsoring building childcare facilities may be others. They require further examination.

The establishment of a paid parental leave scheme is likely to have the effect of encouraging a greater number of women accessing a longer period of parental leave (and as such a longer period away from the workforce) than previously. The impact on small business will be significant because in the current WA labour market they will not be likely to find replacement employees.

In addition, the benefits of paid parental leave need to be ascertained. Currently from available data the benefits are not clear.

***Recommendation:** The inquiry's objective should be to determine the most efficacious means of assisting the promotion of the social good of having children. Paid parental leave may be one such means. Other mechanisms also need to be explored.*

Is this social policy or workplace relations policy?

As already outlined CCI argues that the debate on the social good of having children should look at all possibilities and not just paid parental leave.

Limiting the discussion to paid parental leave results in a flawed argument over one key issue. Is this an area of social policy or an area of workplace relations policy?

The Senate inquiry into the *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002* ("the 2002 Bill") also considered whether paid maternity benefits was a matter of social welfare policy or whether it was a workplace relations issue. The Senate employment, workplace relations and education legislation committee ("the committee") observed that while a case could be made that paid maternity



leave was a social welfare issue, or a workplace relations issue, it did not fall clearly into either category, describing it as work and family policy.¹

CCI believes that while there are elements of workplace relations policy in the debate, the key objectives of a paid parental leave scheme are embedded in social policy.

The 2002 Bill, which, with minor changes was proposed again in 2007, was presented as an amendment to the *Workplace Relations Act 1996* (“the Act”). CCI argues that a paid parental leave scheme must be introduced independently of the Act.

International Comparisons – Comparing like with like?

The most common argument in a debate about paid parental leave is that Australia is only one of two OECD countries that do not currently provide paid parental leave benefits.

This argument, however, must be approached with caution. There are entitlements, from both the industrial relations system and the welfare system, that are unique entitlements for Australians, such as long service leave and the baby bonus. In addition Australia provides a near unparalleled entitlement to unpaid parental leave which is almost universally available and is widely enforced and understood in the community. The creation of the National Employment Standards will see the 12month entitlement increased to a possible 24month with an employee’s right to request.

Further comparison of entitlements must be viewed within the total historic and cultural context of the countries being compared.

In developing its submission, CCI has evaluated two models for comparison, the New Zealand model and the UK model.

The New Zealand model, introduced in 2002, is a government funded scheme from general tax revenue. The current entitlement is 14 weeks paid at a maximum rate of \$391.28 per week before tax (or the gross weekly rate of pay if it is lower).

¹ Senate Employment, Workplace Relations and Education Legislation Committee, *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002*, September 2002, page 3.



To be eligible, the employee (or the self-employed) must have worked for the same employer for at least six months for an average of 10 hours per week.²

The UK model is a social security insurance scheme. Statutory Maternity Pay (SMP) is paid by employers to women who qualify. Pregnant employees who meet qualifying conditions based on their length of service and average earnings are entitled to receive from their employers up to 39 weeks' Statutory Maternity Pay (SMP).

The rate of SMP is 90% of the woman's average weekly earnings for the first six weeks and the lesser of £100 a week or 90% of her average weekly earnings for the remaining 20 weeks.

Employers are reimbursed 92% of the SMP they have paid out or 104.5% if their total National Insurance liability in the previous tax year was no more than £40,000 (£45,000 from 6 April 2004).



² Rt Hon Helen Clark, 'Paid parental leave – background information' (Press Release, 8 March 2008).

Objectives

The extent to which maternity benefits affect population levels in Australia is complex. CCI believes that population policy is a community rather than an employer responsibility and must be considered in the context of a wider national approach over the long term.

If the community determines there is a benefit from additional or revised parental leave entitlements it must be prepared to fund the benefits in the community interest.

Community opinion about approaches to support for work and family balance and the roles and responsibility of employers, employees, Government and the wider community is varied. Survey responses and studies completed are not conclusive and do not provide comprehensive information about the benefits of paid parental leave.

As different views and approaches exist in the community, so do approaches vary within business.

Many employers provide forms of salary or position protection and a range of leave benefits following the birth of a child. These are determined by affordability and mutually beneficial arrangements variable between employers.

It is essential that before any scheme is recommended to the Government, the employers' views, expectations and interests are taken into account.



Financing options

In the lead up to the 2007 election, the Labor party made a commitment to small business that:

Labor will not support a [paid parental leave] 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

Recommendation: *That the Government reaffirms its pre-election commitment to not impose additional financial burdens or administrative complexity on small business or discourage employment of women in any paid parental leave scheme and extends the commitment to all businesses. Any scheme may also have a cost impact on medium and large sized businesses. Such costs should be factored into consideration of the impact of models under examination. That the Government reaffirms its pre-election commitment to not impose additional financial burdens or administrative complexity on small business or discourage employment of women in any paid parental leave scheme.*

A paid parental leave scheme that provides benefits to the whole community should be funded by the whole community. The cost of paid parental leave should not directly fall on employers, the majority of whom do not operate with margins or reserves allowing them to pay significant additional remuneration for an extended period without reciprocal productivity gains.

Employers already bear significant costs relevant to this area, including:

- The replacement costs during a period of unpaid parental leave;
- The difficulty of recruiting replacement employees;
- The multiple forms of paid leave that employee's receive (annual, personal leave (leave for illness or injury and carer's leave), long service, leave loading and bereavement leave); and
- Through personal and direct taxation.

³ Australian Labor Party, 'ALP Ministers Joint Media Statement' (Press Release, 13 July 2007).



A government funded scheme is generally considered the only workable model. The 2002 HREOC report, *A Time to Value – proposal for a national paid maternity leave scheme* (“The 2002 HREOC Report”)⁴, found that the scheme favoured overwhelmingly by those who supported the introduction of paid maternity leave was government funded. It found that there was widespread agreement that a direct impost on employers would be untenable, given employer resistance and the tight profit margins of many businesses.

The Democrats 2002 Bill also proposed a government funded scheme. The explanatory memorandum to the 2002 Bill stated that the Bill did not adopt an employer-funded scheme for two reasons:

Firstly, the cost should be shared on simple equity grounds. All who benefit should contribute. Employers alone should not pay. Employees alone should not pay, since their employers and the whole society benefit from women’s labour and reproduction.

*Secondly, a system that leaves all provision at the level of the individual employer will result in an unfair burden on feminised workplaces and industries. This in turn will result in discriminatory behaviour by employers, some of whom will chose not to employ women of childbearing age. The unlawful fact of such behaviour may not prevent it. While a levy on all employers is also an option and would share the cost fairly between employers it adds a layer of administrative complexity, and does not fairly share the burden more broadly.*⁵

Interaction with the baby bonus

The Baby Bonus is currently the key parenting payment available at the time of birth, but is available to all persons (whether employed or otherwise).

It is currently a lump sum payment of \$4133 for each eligible child (set to increase to \$5,000, from 1 July 2008). The payment is tax free and is currently not income/asset tested (it will be income tested from the 1 July 2008 and indexed to CPI from 1 July each year). CCI believes that the baby bonus should be abolished and those funds absorbed into the costs of a paid parental leave scheme.

⁴ Human Rights and Equal Opportunity Commission, *A Time to Value – proposal for a national paid maternity leave scheme*, 2002.

⁵ Explanatory Memorandum, *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002*, page 6.



When the Democrats introduced the *Workplace Relations (Guaranteeing Paid Maternity Leave) Amendment Bill 2007* they estimated that the costs for the first year of operation would be in the vicinity of \$591.6 million not including offsets from Family Tax Benefit A and B and childcare.⁶

Recommendation: CCI would support a Government funded and administered scheme.

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⁶ Second reading speech, *Workplace Relations (Guaranteeing Paid Maternity Leave) Amendment Bill 2007*, page 3.

Impacts on employers & the broader labour market

CCI believes that employers and employees should be able to voluntarily agree to arrangements for work and family balance, including arrangements for paid and unpaid parental leave.

Many employers, particularly medium to large employers pursue a suite of work and family initiatives including paid parental leave and other benefits such as flexible working arrangements. Attachment 1 illustrates the types of paid parental leave arrangements currently being provided by employers.

Incidence of paid parental leave

The *Equal Opportunity for Women in the Workplace Act 1999 (Cth)* requires private-sector companies, community organisations, non-government schools, trade unions and group training organisations with 100 or more employees to provide an annual report on the equal opportunity programs within their workplaces.

Recent figures released by the Equal Opportunity for Women in the Workplace Agency (EOWA) reveal that the provision of paid maternity leave has increased to 48.9% among medium to large employers.⁷

Another measure of coverage by the Australian Bureau of Statistics (ABS) shows that 45 percent of Australian female employees, and 40.9% of Western Australian female employees currently receive a paid maternity leave benefit.⁸

This coverage is made up of mainly large enterprises as analysis by the Office of Women in 2007 revealed that only 19% of small to medium enterprises provided a paid maternity leave benefit.⁹

These figures demonstrate that many employers are already supporting parents who wish to take time away from paid work around the time of the birth of a child.

The key issues of paid parental leave that impact employers are:

⁷ Equal Opportunity for Women in the Workplace Agency, 'Paid maternity leave on the rise but too many miss out' (*Press release*, 26 May 2008).

⁸ Australian Bureau of Statistics, *Forms of Employment*, Australia, Cat: 6359.0, Nov 2007. Australian Bureau of Statistics, *Unpublished data – Employee Earnings, Benefits and Trade Union Membership*, 2007.

⁹ Office of Women, *Better Conditions, Better Business – A report on carer and family friendly provisions in Australian small and medium enterprises*, 2007.



- Whether there are benefits to employers in providing paid parental leave?
- Whether paid parental leave helps or hinders the labour market shortage felt particularly strongly in Western Australia?
- How current employer-funded schemes would interact with a government-funded scheme?

Benefits to employers

The benefits of paid parental leave to employers cannot be assumed to be universally applicable. The current evidence is largely anecdotal and focuses mainly on large employers.

That is not to say that there are not benefits for employers in providing paid parental leave schemes. In the current labour market, good employees are hard to find and many employers are willing to provide more generous conditions to attract and retain valued employees.

The 2002 HREOC report found that there was evidence that employers who introduced paid maternity leave increased the loyalty of their workforce and dramatically increased the return to work rates of women who took maternity leave.¹⁰

The 2003 EOWA survey found that organisations with paid maternity leave had a higher average retention rate (67%) than organisations without paid maternity (56%).¹¹

As the following case studies show, there is evidence that the labour force attachment is increased by paid maternity leave:¹²

- Westpac Banking Corporation introduced six weeks paid maternity leave in 1995. The proportion of women returning to work from maternity leave increased from 32 per cent in 1995 to 53 per cent in 1997.
- AMP reported an increase in retention rates from 52 per cent in 1992 to 90 per cent in 1997, following the introduction of paid parental leave.
- Hewlett Packard reported a greater than 90 per cent return rate from paid maternity leave.
- SC Johnson recorded 100 per cent return rates since introducing paid maternity leave.

¹⁰ HREOC, above n 4, page 69.

¹¹ EOWA, *Factsheet – paid maternity leave*, 15 May 2008.

¹² HREOC, above n 4, page 70 & EOWA, *Paid maternity leave - the business case to attract and retain talented staff*, 03 June 2008.



- NRMA was able to increase their parental leave return from 32% to 85%.

Large financial institutions, Westpac and National Australia Bank (NAB), both believe that paid maternity leave benefited their business. Detailed analysis by Westpac demonstrated that the business cost of attrition and rehiring far outweighed the cost of maternity benefits¹³ and Helen Ormond, Head of Organisational Capability at NAB stated that “while this is a substantial investment in our people, we have done sufficient cost-analysis to know that we reap the dividends in terms of employee productivity, job satisfaction and retention,”¹⁴

This evidence does illustrate that for some employers there is a strong business case argument for providing paid maternity leave. However, there is no conclusive data that supports the assumption that paid parental leave will result in a higher rate of return to work for women. The available evidence does not substantiate that the benefits to employers of introducing paid parental leave are universal.

This is supported by the HREOC who stated that “for others, particularly small business and those on narrow profit margins, paid maternity leave may not be sufficiently affordable to justify the benefits.”¹⁵

Added burdens to be faced by Employers

The industrial relations landscape is undergoing major change. The introduction of the National Employment Standards (NES), to operate from 1 January 2010, will result in a further regulatory burden for employers. Among changes that will be introduced by the NES will be:

- A right for the employee to request an additional 12months of unpaid parental leave (effectively increasing the period of unpaid parental leave to 24 months).
- A right for the employee to request flexible working arrangements until a child reached school age.

The consequences of these extra entitlements must be considered when evaluating the viability of paid parental leave.

¹³ Sharon Kemp, ‘Firms ‘dragging Feet’ on Maternity Leave’, *The Age* (Melbourne), 8 March 2002, 1.

¹⁴ EOWA, ‘1 in 4 Employers recognise Working Mothers’ (Press Release, 18 April 2002).

¹⁵ HREOC, above n 4, page 96.



Affect of paid parental leave on Small Business

There is limited information on the experience of paid parental leave by small business.

The EOWA only reports on businesses with more than 100 employees and when the Office of Women report surveyed 1800 SMEs they found that only 19% of these businesses provided a paid maternity leave benefit.¹⁶

On the basis of feedback CCI has received from members, the cost of a replacement employee during a period of unpaid parental leave ranged from 20% – 35% above the normal cost of the role. This cost includes recruitment costs (with costs increasing if a business engages a recruitment agency), training for the new employee and loading for casuals/contractors.¹⁷

It is true that a government-funded scheme of paid parental leave would not add any direct costs to business that didn't already exist. However, feedback from small business members is that they are already struggling to cope with the costs of replacing an employee during a period of unpaid leave. It is reasonable to assume that by introducing a paid parental leave scheme, more women are likely to access the entitlement and accordingly the costs and replacement burden will correspondingly increase.

In addition, WA's tight labour market means small business employers will find it almost impossible to find replacement staff.

The feedback CCI has received from its members is largely anecdotal but highlights the fact that for small business, in particular, there is a gap in the research. Further work needs to be completed to ascertain the full impact, including costs and benefits of paid parental leave, on business with a particular emphasis on small business. CCI is prepared to assist the Productivity Commission in seeking the views of business in this respect.

Recommendation: *That the Productivity Commission undertakes further research to determine the effect that any paid parental leave scheme would have on small business.*

¹⁶ Office of Women, above n 9, page 35.

¹⁷ Feedback from CCI small business member, 13 May 2008.



Possibilities for assisting small business

CCI believes that in the current WA labour market, where finding and keeping replacement employees during a period of parental leave is a very difficult task, the Government must assist small business to ensure that any scheme does not serve as a disincentive for the employment of women.

In considering a paid parental scheme it is worthwhile considering that the UK model of paid parental leave, which is administered by employers, provides small businesses a reimbursement of 104.5% of the statutory maternity pay to cover the additional costs of replacement.

The government could also consider extending the *Fresh Ideas for Work Family program*¹⁸, which will provide grants to small business of up to \$15,000, to assist small business with the provision of paid parental leave.

WA Labour Market

The interaction between the current labour market and paid parental leave can be viewed as both positive and negative influences.

Labour market conditions have never been tighter in Western Australia. Unemployment is at historic lows, employment growth is strong, participation rates are high, but job vacancies are also at record high levels.

According to the latest Commonwealth Bank-CCI Survey of Business Expectations, a record 76 per cent of all businesses surveyed reported labour as scarce. The scarcity of labour is evident across all industry sectors, all business sizes, and all occupation groups.

It is expected that Western Australia's current economic expansion could continue for a number of years, which will require a substantial increase in the workforce to facilitate such growth. CCI estimates that if economic growth can be maintained at the average rate of growth experienced over the past six years, then it is to be expected that an additional 400,000 workers will be required in the WA economy over the next 10 years.¹⁹

A key characteristic of the labour market in Australia has been the increased female labour force, underpinned by both strong population growth and increased participation. While female participation in the labour force has been on the rise

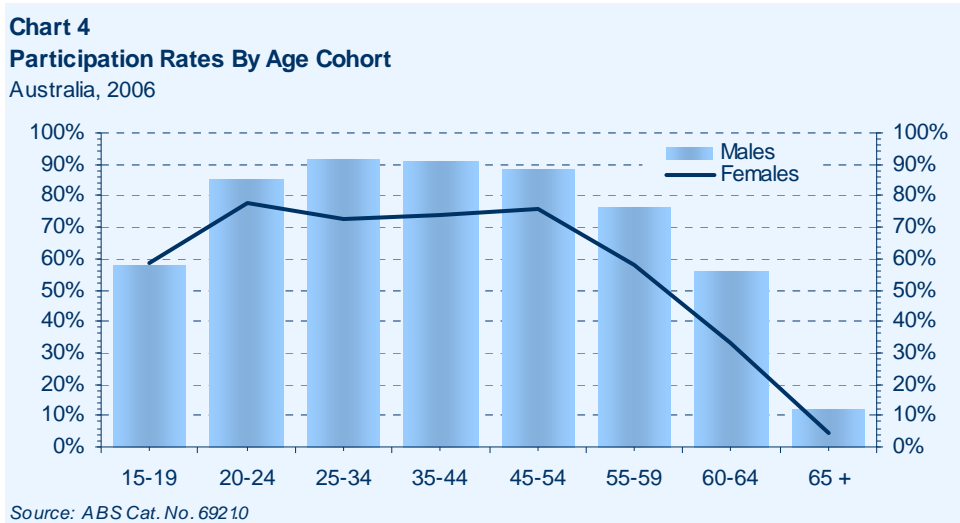
¹⁸ Julia Gillard, *Fresh Ideas for Work and Family* (Press Release, 13 May 2008).

¹⁹ CCI, *Building Human Capital*, November 2007.



over the past two decades, it still stands considerably lower than for men. In 2006, the male participation rate stood at 76 per cent in WA, and 72.1 per cent nationally.²⁰

A key trend in the participation rate for women is the downturn which occurs between 25 and 34 years of age. This downturn reflects a significant proportion of women exiting the labour force as they reach the primary childbearing years. In 2006, the participation rate for women in this age cohort was 72.7 per cent, which is significantly lower than the peak of 77.9 per cent for females aged between 20 and 24 years of age.



While the female participation rate rebounds to 74 per cent between the ages of 35 and 44, it still remains below the level for 20 to 24 year old women. This trend indicates that many women choose not to return to work after their primary child bearing years.

This analysis illustrates the serious constraints facing Western Australian employers. The data also shows that there is an opportunity to engage with a proportion of the population that has a lower participation rate – women between 25 and 34 years of age.

CCI is currently working on a project with its members to consider how to increase the participation rate of this section of the workforce. The first stage of the process is to analyse the current trends in the female labour market. The second stage is an employee perception survey of CCI members who are willing to

²⁰ ABS data quoted in *CCI Draft Paper, Women in the Workforce*, March 2008.



engage in the study. CCI would be happy to share the findings of the study with the Productivity Commission once it is available.

Paid parental leave may be one such option. As already discussed, many employers currently offer paid parental leave as an incentive for employees. However, the introduction of a universal scheme in itself will not solve the labour shortage as a level playing field will be introduced. Only businesses that are able to offer additional paid parental leave over a government scheme will have a competitive edge and feedback from our members is that small business in particular, cannot compete.

Employer-funded schemes

With the introduction of a government-funded scheme consideration must be given to how such an entitlement would interact with the current entitlements to paid maternity leave.

It is non-sensical that an employee would be able to access two entitlements of the same leave.

It is also unlikely that employers who already provide a paid parental leave benefit will remove the entitlement if a government funded scheme is introduced.

One possible solution is to allow employees the choice of which scheme they apply for and offering employers the choice to administer a government funded paid parental leave entitlement to allow them to top up payments be reimbursed the difference.

The 2002 HREOC report made a similar recommendation²¹:

Recommendation 8

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

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

²¹ HREOC, above n 4, page xviii.



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

Such a scheme would be similar to the treatment of jury service in Western Australia whereby the employer can choose whether to continue to pay the employee and be reimbursed by the Sheriff's Office or they do not pay the employee and the employee is directly reimbursed by the Sheriff's Office.

However, there should not be any mandatory requirement for the employer to make top up payments. If such a requirement was imposed it may serve as a disincentive to employ women.

Recommendation: *There should be no mandatory obligation (legislative or arbitral) for employers to top up payments.*



Duration and generosity of benefits

The Maternity Protection Convention (“the Convention”) provides the standard for both the duration and the generosity of a paid parental leave scheme. While the Convention is concerned with the provision of paid maternity leave scheme, CCI believes it is appropriate for any scheme to be available to the primary caregiver of a child who could be the mother or the father.

Article 4 of the Convention provides that an entitlement under the Convention should not be less than 14 weeks. CCI in principle supports this amount of leave provided that it is fully government funded.

The HREOC report considered a number of different proposals for an appropriate payment level; including a social security level payment; average weekly earnings; full wage replacement or the federal minimum wage (FMW).²² The HREOC report found that the FMW was the appropriate payment level and CCI agrees with this assessment.

Article 6 of the Convention provides:²³

1. *Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leave referred to in Articles 4 or 5.*
2. *Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.*
3. *Where, under national law or practice, cash benefits paid with respect to leave referred to in Article 4 are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman’s previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.*
4. *Where, under national law or practice, other methods are used to determine the cash benefits paid with respect to leave referred to in Article 4, the amount of such benefits shall be comparable to the amount resulting on average from the application of the preceding paragraph.*

A key principle identified under the Convention is the adequacy of payments to ensure the standard of living for a woman and her child.

²² HREOC, above n 5, page 193.

²³ International Labour Organisation, *C183 – Maternity Protection Convention*, 2000.



The Maternity Protection Convention sets out an appropriate minimum standard for maternity leave payments via two payment systems. Article 6(3) provides that where the maternity leave payment is based on a woman's previous earnings, the amount of such payment must not be less than two-thirds of that woman's previous earnings or the portion of those earnings taken into account for the purpose of calculating that payment.

Article 6(4) provides that where the maternity leave payment is calculated by methods other than a simple percentage of previous earnings, the amount of such payment must be "comparable" on average to the payments made if the two-thirds rate has been applied to all protected persons. The intention of this provision is to ensure equivalent protection despite differences in payment systems.

Payments in the United Kingdom and New Zealand are of similar value to the payment of the FMW.

The statutory maternity pay scheme provides an eligible woman with 90 per cent of her average weekly earnings for the first six weeks of leave (or at the flat rate of £100 if this is higher), and then for the remainder of leave (up to 20 weeks), the lesser of the flat-rate weekly payment (£100) or 90 per cent of her average weekly earnings, calculated as an average of the woman's weekly earnings within a particular eight week period.

Under the New Zealand scheme parents receive either their previous earnings or NZ\$325 per week, whichever is the lesser amount.

Recommendation: CCI would support a Government funded and administered scheme that is reflective of the ILO convention of 14 weeks paid at the rate of the Federal Minimum Wage or an employee's previous earnings, whichever is less.



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Interaction with the *Workplace Relations Act 1996*

The *Workplace Relations Act 1996* (“the Act”) already provides sufficient regulation on the treatment of eligibility and return to work in the provision of unpaid parental leave.

While an entitlement to paid parental leave should be separate from the Act, a period of paid parental leave must form part of the total of 52 weeks leave that is available to the employee. It should not be an entitlement on top of the current 52 weeks leave.

Furthermore, because an entitlement should be separate from the Act, any payment for periods of parental leave should become an explicitly non-allowable award matter.

Recommendation: Any provisions relating to payment for a period of parental leave become an explicitly non-allowable award matter.

Whether it is for a period of paid or unpaid parental leave, the treatment of eligibility and the return to work guarantee should remain the same.

Eligibility

CCI proposes that a paid parental leave scheme should reflect the current eligibility requirements contained in the Act.

To be eligible for parental leave under the Act an employee must be a permanent employee or an eligible casual employee with 12 months continuous service. An eligible casual employee is defined in section 264 of the Act as a casual employee:

(a) who has been engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months; and

(b) who, but for an expected birth or an expected placement of a child, would have a reasonable expectation of continuing engagement by the employer on a regular and systematic basis.

The introduction of a paid parental leave scheme necessitates a direct link to a workplace and therefore the most appropriate eligibility requirement is that already recognised under the Act.

Further, a paid parental leave entitlement should only be available to the primary care giver of the child which could take the form of the mother or the father of the



child and would also include adoptive parents but would exclude foster parents and grandparents.

Recommendation: *The eligibility requirements of a paid parental leave scheme should reflect that current eligibility provisions of unpaid parental leave as contained in the Workplace Relations Act 1996.*

Return to Work Guarantee

CCI supports the current requirements for return to work that exist under the Act. Section 280 of the Act provides that an employee is entitled to return to work:

(a) to the position she held immediately before the start of the maternity-related leave period; or

(b) if she was promoted or voluntarily transferred to a new position (other than to a safe job under paragraph 268(2)(a)) during the maternity-related leave period—to the new position; or

(c) if paragraph (b) does not apply, and she began working part-time because of her pregnancy—to the position she held immediately before starting to work part-time.

Further, section 280 (5) states that:

If the position (the former position) no longer exists, and the employee is qualified and able to work for her employer in another position, the employee is entitled to return to:

(a) that position; or

(b) if there are 2 or more such positions—whichever position is nearest in status and remuneration to the former position.

Recommendation: *The return to work guarantee is already protected under the Workplace Relations Act 1996. Further regulation in this area is unnecessary.*



Attachment 1 – Examples of paid parental leave benefits provided by companies

Industry	PPL Entitlement	Payment & Extras
Retail	18months service – 8 weeks 3-4years service – 10 weeks 4-5years service – 12 weeks 5years+ service – 14 weeks	At full pay. Able to double leave if taken at half pay. 2 weeks paid leave to partners (including same-sex partners).
Retail	18months service - 6 weeks	Can be taken in one of three ways – lump sum payment when parental leave commences; in line with existing payroll; half rate over 12 weeks.
Retail	12months service – 14 weeks	At half pay
Retail	2 years service – 12 weeks	At half pay 2 week paid paternity leave
Financial	13 weeks	At full pay
Financial	Irrespective of service - 12 weeks	At full pay
Health and Community Services	12 months service-6 consecutive weeks	At full pay
Health and Community Services	12 months service-6 consecutive weeks	Full-pay or half pay over 12 weeks
Health and Community Services	4 weeks currently but re-negotiating for more	At full pay
Resources and Mining	12months service – 12 weeks	At full pay (24 weeks can be taken at half pay).
Legal Firm	12months service – 8 weeks 4 weeks on commencement; 4 weeks 3months after they have returned	At full pay
Health and Community Services	3 years service – 2 weeks 4 years service – 4 weeks 5 years + - 6 weeks	At full pay
Financial	6 months service – 12 weeks	At full pay (24 weeks can be taken at half pay). Non-primary care givers - 3 weeks paid leave.

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Industry	PPL Entitlement	Payment & Extras
Services	8 weeks - 4 weeks on commencement; 4 weeks 3months after they have returned	At full pay
Services	12 months service – 12 weeks	At full pay
Legal	2 years service – 8 weeks	On return must complete 2 days a week for a year (otherwise must be repaid).
Education	12 months service – 14 weeks	Full pay Return to work bonus – 1 – 5 years service – 12 weeks full pay 5 + years service - 22 weeks full pay
Health and Community Services	2 years service - 9 weeks (6 weeks paid upfront; 3weeks paid 6 months after return to work)	Female employees give birth to about 40 -100 babies per year.
Retail	12 months service – 8 weeks 2 years service – 12 weeks 5 + years service – 16 weeks	At full pay
Western Australian Public Service	12 months service - 14 weeks	At full pay (available for extended period at half pay).
Services	12 weeks	At full pay
Retail	2 years service – 12 weeks	At full pay
Services	16 weeks	At full pay
Mining and Resources	6 weeks	1 week paid paternity
Housing Development	12 months service – 12 weeks	At full pay
Education	12 months service-26 weeks	Full Pay OR 52 weeks half-pay
Education	26 weeks	At full pay
Education	2 months service-1 week up to a Max. 14 weeks Adoption: 4 weeks	Full Pay 1 week paid paternity leave
Health and Community Services	12 weeks	1 week paid paternity leave at the time of birth
Health and Community Services	12 month service-4 weeks 2 years -6 weeks 3 years -8 weeks	At full pay

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Industry	PPL Entitlement	Payment & Extras
Health and Community Services	15 years- 13 weeks 7.5 years- 6.5 weeks	At full pay
Health and Community Services	12 weeks currently,	Increasing to 14 weeks from 1 July 2008
Health and Community Services	6 weeks	At full pay
Health and Community Services	12 month service-3 weeks	1 week paid paternity leave
Health and Community Services	2 year service-8 weeks	Ordinary rate based on average hours worked during previous 2 years
Health and Community Services	12 month service-8 weeks	Commencement of leave OR 4 salary payments over 8 weeks 1 week paid paternity leave
Car manufacturer	3 yrs and over-14 weeks 1 yr-3yrs -10 weeks	Paid in 2 parts: upon commencement of leave and one week after return from leave.
Financial	14 weeks	At full pay
Car manufacturer	12 month service- 6 weeks 2 years -14 weeks	At full pay
Car manufacturer	2 year service-14 weeks	At full pay
Fast food	Paid parental leave, but does not state how many weeks(can be found inside their policy)	At full pay
Financial	12 weeks	Lump sum of 12 weeks OR Fortnightly payment OR Fortnightly pay at 50% of normal for the first twenty-four (24) weeks
Health and Community Services	8 weeks	1 week paid paternity leave
Manufacturing	6 weeks plus 6 weeks (full-pay) allowance upon return	Can be taken over 12 weeks at half pay 1 week paid paternity leave
Services	14 weeks	At full pay
Financial	12 weeks	At full pay
Retail	12 months service- 8 weeks	Split over 2 months OR Paid at half-pay for the first 16 weeks
Services	12 month service-14 weeks	At full pay

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Industry	PPL Entitlement	Payment & Extras
Services	12 months service-14 weeks	Full pay or 28 weeks half pay 10 days paid paternity leave at full pay
Services	14 weeks 3 or 14 weeks adoption leave (depending on child's age)	1 week paid paternity leave
Car manufacturing	12 weeks	1 week paid paternity leave
Services	8 weeks at the moment, might be increased to 14 weeks (negotiations in place)	At full pay

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Attachment 2 - Terms of Reference

1. Identify the economic, productivity and social costs and benefits of providing paid maternity, paternity and parental leave
2. Explore the extent of current employer provision of paid maternity, paternity and parental leave in Australia.
 - a. Identify paid maternity, paternity and parental leave models that could be used in the Australian context.
 - b. Assess those models for their potential impact on:
 - i. the financial and regulatory cost and benefits on small and medium sized business;
 - ii. the employment of women, women's workforce participation and earnings and the workforce participation of both parents more generally;
 - iii. work/family preferences of both parents in the first two years after the child's birth;
 - iv. the post-birth health of the mother;
 - v. the development of young children, including the particular development needs of newborns in their first 2 years; and relieving the financial pressures on families.
 - c. Assess the cost effectiveness of these models.
 - d. Assess the interaction of these models with the Social Security and Family Assistance Systems.
 - e. Assess the impacts and applicability of these models across the full range of employment forms (e.g. including for the self-employed, farmers, shift workers, etc).

Assess the efficiency and effectiveness of Government policies that would facilitate the provision and take-up of these models.



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