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3 June 2008

Parental Leave Inquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Sir / Madam

Inquiry into Paid Maternity, Paternity and Parental Leave — submission

The National Children's and Youth Law Centre thanks the Productivity Commission ("Commission") for the opportunity to contribute to its Inquiry both at the hearing in Sydney and through this written submission. We have considered the impact of parental leave on children and proposed a model of paid leave developed with particular regard for the best interests of children in Australia.

Our submission to the Inquiry is attached.

Yours sincerely

James McDougall
Director

1.0 National Children's and Youth Law Centre

The National Children's and Youth Law Centre ("the Centre") is a Community Legal Centre dedicated to the promotion and protection of the rights and interests of Australia's children and young people. It was established in 1993 with the support of the University of New South Wales, the University of Sydney, the Public Interest Advocacy Centre and the (then) Australian Youth Foundation. Since its inception in 1993, the Centre has made over 180 public submissions on a range of issues affecting children and young people and has responded to more than 150,000 enquiries by children and young people throughout Australia.

2.0 Overview of Our Submission

The Centre offers **a child rights analysis of the public policy arguments for paid parental leave**. A child rights analysis emphasises children's interests and their inherent value and places them centrally to the discussion on parental leave. It also highlights the wider community benefit in supporting a model of parental leave that not just acknowledges children as a public good but ultimately considers and values the rights and best interests of children as a primary objective. Our submission sets out the salient features of a rights-based approach and refers to relevant international treaties and principles.

- 2.1 Our submission, drawing on available research, considers the impact of paid leave on maternal and child health, child development and the wider community. A brief comparative analysis is provided of the models of parental leave in other countries with similar socio-political environments.
- 2.2 In summary, we conclude that a child rights analysis supports paid parental leave. Given that parental leave is designed to support the care of young babies and children our perspective seeks to give parents and carers the chance to provide the best possible care for their children. Our submission contends that for a model of paid parental leave to be in the 'best' interests of the child it must be as widely available as possible and for as long as possible. Universal and extended length paid parental leave values children and it values their parents and carers. We conclude our submission with a proposed model of parental leave that is universally available at a minimum wage for 12 months.
- 2.3 Noting the themes identified in the Commission's Issues Paper and the terms of reference for the Inquiry, the Centre's submission speaks primarily to the potential impact of paid parental leave models on "the development of young children, including the particular development needs of newborns in their first two years"¹ and the need to "...promote the early development of children and support families in balancing work and family responsibilities."² The Centre submits that a child rights approach should be the preferred framework for analysis of these issues.

¹ Productivity Commission, *Issues Paper "Inquiry into Paid Parental Leave"* at 2.

² *Issues Paper*, note 1 at 31 (Attachment B: Terms of Reference).

3.0 Rights Based Approach

In order to address children's needs in conjunction with the needs of other groups in society a framework is required by which to assess the effectiveness of current laws and policies. The Centre submits that universally accepted human rights standards provide a clear normative framework against which one can best assess existing national laws and policies with respect to children.³

- 3.1 The core international standards for children are explicitly set out in the United Nations Convention on the Rights of the Child ("the Convention"), which is the touchstone of the Centre. The Convention has particular significance as it has been adopted and ratified by Australia (in 1990) and now represents the most widely ratified international instrument. It therefore can be said to provide a universally accepted rights-based framework for addressing the needs of children including in the context of the public policy discussion as to the provision of parental leave.

Support for and benefit of a rights-based approach

- 3.2 Assessing existing policies and law that affect children from a rights-based perspective is not a novel idea.⁴ The mainstreaming of human rights considerations in legislative and policy evaluation processes is increasingly common since the former UN Secretary General Kofi Annan's directive in 1997.⁵
- 3.3 The Centre submits that a child rights based approach to parental leave is beneficial because:
- it ensures the integration and inclusion of an otherwise marginalised group (children) in policy-making and evaluation;
 - it provides a perspective that *enhances* the existing dialogue in support of paid parental leave that predominantly focuses on the rights of parents and employees;
 - it highlights the interconnectedness of the rights of children, parents and the wider community;
 - it creates a principles-based approach that can empower and support parents and public policy makers to make the best possible choices for children in the broad community context and in each particular family situation.

³ J Tobin "Beyond the Supermarket Shelf: Using a Rights Based Approach to Address Children's Health Needs" (2006) 14 *The International Journal of Children's Rights* 275 at 279.

⁴ See for example Tobin, note 3.

⁵ Secretary-General's "A Programme for Reform" (14 July 1997); See also Vienna Declaration on Human Rights and Program of Action A/CONF.157/23 (12 July 1993).

Application of the Convention to the Issue of Parental Leave

- 3.4 A rights based approach recognises the *interdependent* and *indivisible* nature of all the rights to which children are entitled. An infant's right to be cared for by their parents can be seen as the central proposition that grounds a rights-based discussion of this issue. But it should be seen as part of a holistic framework for the promotion and protection of children's rights and interests.
- 3.5 Viewed from this perspective, promoting and understanding this right involves considering, *inter alia*:
- The right of a child to be cared for by his or her parents (article 7)⁶;
 - a State's obligation to render appropriate assistance to parents in the performance of their child-rearing responsibilities (article 18);
 - the right to non-discrimination (article 2);
 - the right of a child to have their best interests considered (article 3);
 - the right to the highest attainable standard of health (article 24).
- To achieve the outcome set out in article 24, we also note that States shall:
- diminish infant and child mortality (article 24(2)(a));
 - ensure appropriate pre and post-natal health care for mothers (article 24(2)(d));
 - promote the advantages of breastfeeding (article 24(2)(e)).
- 3.6 A rights based approach requires that we all are *accountable* for respecting, protecting and promoting children's rights. The Convention promotes the rights of children in a holistic manner which requires the active involvement and participation in the child's life by parents and guardians and the wider community. In particular article 4 requires the State to take all appropriate measures, to the maximum extent of their resources, to recognise the rights in the Convention.
- 3.7 In summary, the rights in the Convention, including the right of children to be cared for by their parents (or by appropriate substitute care provided by guardians, the wider family, the community or the State) and the right to the highest attainable standard of health, apply to all children. The Centre submits that the absence of a legislatively mandated paid parental leave may compromise the realisation of these rights.

Other Relevant International Treaties and Recommendations

- 3.8 There are also a number of other international treaties and instruments that support the rights in the Convention. Whilst they also may not create binding obligations recognised by domestic law in Australia, they are relevant in providing an international perspective on paid parental leave. These include the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"); the International Covenant on Economic, Social and Cultural Rights ("ICESCR"); International Labour Organisation ("ILO") guidelines and World Health Organisation ("WHO") guidelines.

⁶ See Appendix A (below) for the full text of the Convention articles cited in this submission.

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- 3.9 CEDAW Article 11(2)(b) provides that States shall “introduce maternity leave with pay or with comparable social benefits....”.⁷ ICESCR Article 10(2) recognises special protection for women before and after childbirth and that leave should be provided with pay or social security benefits.⁸ The NGO Submission to the UN Committee on Economic, Social and Cultural Rights, made in April this year, notes Australia’s continued failure to legislatively mandate for paid parental leave despite previous recommendations by the Committee.⁹
- 3.10 The ILO C183 Maternity Protection Convention 2000 stipulates 14 weeks paid leave and expressly acknowledges protecting the health of both mother and child.¹⁰ WHO recommends exclusive breastfeeding for the first 6 months of a child’s life and complementary breastfeeding up to the first 2 years and beyond.¹¹ WHO propose paid maternity leave to facilitate breastfeeding.¹²
- 3.11 Collectively these international instruments indicate the global importance and recognition accorded to paid parental leave. As discussed below, they also provide useful benchmarks against which to measure Australia’s current legislative framework and provide a potential framework or background against which to construct a new system of parental leave that better provides for the rights of children and their parents.

⁷ Convention on the Elimination of All Forms of Discrimination Against Women (1979) available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (last accessed 13 May 2008). Whilst Australia has a current reservation against article 11(2) it can be argued that it evidences the level of international support for paid parental leave and its fundamental importance as a basic right owed to all women.

⁸ The International Covenant on Economic, Social and Cultural Rights (1966) available at http://www.unhcr.ch/html/menu3/b/a_ceschr.htm (last accessed 13 May 2008).

⁹ *Freedom Respect Equality Dignity: Action* NGO Submission to the UN Committee on Economic, Social and Cultural Rights Australia (Australia: April 2008) at 79.

¹⁰ Available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C183> see Article 4(1) (last accessed 13 May 2008). Note also the R191 Maternity Protection Recommendation, 2000 which promotes extension of maternity leave to at least 18 weeks where possible, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R191> (last accessed 19 May 2008).

¹¹ http://www.who.int/child_adolescent_health/topics/prevention_care/child/nutrition/breastfeeding/en/ (last accessed 13 May 2008). See also World Health Organisation, *Global Strategy for Infant and Young Child Feeding* (2003) at 7-8. Available at <http://whqlibdoc.who.int/publications/2003/9241562218.pdf> (last accessed 13 May 2008).

¹² *Global Strategy for Infant and Young Child Feeding*, note 11 at 8.

4.0 Public Policy Objectives to Support Paid Parental Leave

Maternal and Child Health

- 4.1 Paid parental leave, through the provision of a financially supported period of time following the birth of a child, allows a new mother sufficient time to recover from the pregnancy and birth.
- 4.2 The Human Rights and Equal Opportunity Commission ("HREOC") in *A Time To Value*, note that "[i]t is generally agreed that the physical and emotional demands of childbirth require a period of recovery and adaptation."¹³ Maternal health issues include fatigue¹⁴, functionality problems¹⁵, caesarean recovery¹⁶ and mental health.¹⁷ Paid parental leave can provide both a sufficient period of time for maternal recovery following pregnancy and birth and it can alleviate some of the financial pressures associated with lost income and the additional costs of a new child.
- 4.3 Of particular salience to a child rights analysis is the relationship between maternal and child health. It could be argued that improvements to maternal health consequentially improve child health and development outcomes by increasing maternal capacity to provide adequate care and also by helping to create an optimum environment in which to foster bonding and attachment.
- 4.4 The most significant and direct benefit to a child's health, from paid parental leave, may derive from the expected increase in breastfeeding initiation rates and the overall duration that a child is breastfed. As noted above, WHO promotes exclusive breastfeeding for six months with continued complementary feeding to two years and beyond to ensure optimum child health.¹⁸ The benefits of breastfeeding, both with respect to infant health and the subsequent public health savings, appear widely acknowledged by both government and non-government organisations.¹⁹
- 4.5 According to the Australian Breastfeeding Association, breastfeeding²⁰:
- protects the baby from illness and infection;
 - provides appropriate nutrition for a growing baby;
 - aids the development of the baby's eyesight, speech and intelligence; and
 - promotes the important intimate bond between mother and baby.

¹³ Human Rights and Equal Opportunity Commission, *A Time To Value – Proposal for a National Paid Maternity Leave Scheme* (2002) at 52.

¹⁴ *A Time To Value*, note 13 at 54.

¹⁵ *A Time To Value*, note 13 at 55.

¹⁶ *A Time To Value*, note 13 at 55.

¹⁷ *A Time To Value*, note 13 at 56.

¹⁸ See notes 11 and 12 above.

¹⁹ See for example the World Health Organization; the Australian Breastfeeding Association; and the NSW Health Breastfeeding Project.

²⁰ Sourced from <http://www.breastfeeding.asn.au/bfinfo/general.html> (last accessed 13 May 2008). The description of the benefits as they appear above are marginally abbreviated as compared to the original.

- 4.6 Early maternal employment has been negatively associated with breastfeeding (initiation and duration).²¹ A recent Australian study highlighted the negative effects of *both* full time and part time work on breastfeeding rates.²² Whilst the finding for full time work was expected, based on the findings from previously comparable overseas studies, the finding for part-time work indicates a trend unique to Australia.²³
- 4.7 Without paid leave a significant proportion of mothers are financially compelled to return to work earlier than is desirable.²⁴ Even where this return to work can be negotiated on a part-time or reduced hours basis²⁵ it is still likely to impact on the mother's capacity to continue or even initiate breastfeeding. It appears a reasonable expectation that paid parental leave will enable more children to be breastfed and that the longer the duration of paid leave the increased likelihood that breastfeeding duration will also increase. This would enable more children to realise the direct health benefits of breast milk and potentially also create subsequent public health savings.
- 4.8 At the most extreme, in terms of consequences for child health, is infant and child mortality. As noted in the Issues Paper, in a study across 18 OECD countries Tanaka found that "the extension of weeks of job-protected paid leave has significant effects on decreasing infant mortality rates."²⁶ Clearly, any reduction in infant and child mortality is a desirable policy or legislative outcome.

Childhood development

- 4.9 Paid parental leave also helps ensure optimum child development by providing families with the genuine choice and opportunity for one parent to remain at home with their child during the first formative months of life. The Issues Paper acknowledges that "shorter periods away from work reduce the opportunity for a parent to bond with a newborn."²⁷ Supporting parents to make the choice to stay at home can be argued as promotion of positive attachment and bonding with the new baby by both providing the necessary time to be at home and through reduction of financial stress.

²¹ See for example Berger L et al, "Maternity Leave, Early Maternal Employment and Child Health and Development in the US" (2005) 115 *Economic Journal* F29-F47 at F42.

²² Nader C, "Part-time work cuts breastfeeding, too" *Sydney Morning Herald* (28 April 2008). Cooklin A R et al, "Maternal employment and breastfeeding: results from the longitudinal study of Australian children" (2008) 97 *Acta Paediatrica* 620-623.

²³ Cooklin, note 22 at 622.

²⁴ See Whitehouse et al, *The Parental Leave in Australia Survey: November 2006 Report* available at <http://www.uq.edu.au/polsis/parental-leave/levell-report.pdf> 46% of mothers who returned to work within the first 15 months would have taken longer leave if some or more paid leave was available (at 16) and 45% returned earlier than they wanted to because they needed the money (at 16).

²⁵ This potentially affects a significant proportion of new mothers. Using data from *The Parental Leave in Australia Survey*, note 24, "almost 70 per cent of those who were employed full-time prior to the birth returned to work part-time..." at 18.

²⁶ Tanaka S, "Parental Leave and Child Health Across OECD Countries" (2005) 115 *Economic Journal* F7-F28 at F26. Furthermore, Tanaka's finding in relation to non-paid leave having "no significant effect" still supports the positive impact of paid leave (at F26). Paid leave, in contrast to non-paid leave, creates a reduction rather than a stasis in rates of infant/ child mortality.

²⁷ Issues Paper, note 1 at 6.

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- 4.10 As noted in a forum earlier this year on paid parental leave “[s]cientific knowledge about babies in their first few months of life should also be driving Australian policy in this critical area...”²⁸ For young infants, in particular, positive parent-infant attachment, attunement²⁹ and emotional regulation³⁰ provide the foundations for healthy physical, emotional and neurological development.
- 4.11 Attachment theory refers to the importance of an infant forming a secure attachment to their primary carer. Development of secure attachment requires a primary carer that is sensitive and responsive to the infant’s cues and needs. The consequences for poor attachment can be long term and risk negatively affecting children’s behaviour and later learning capacity.³¹
- 4.12 For parents experiencing additional problems such as post-natal depression, the alleviation of financial stress and the additional time and opportunity to bond with the new baby would appear particularly important and may help consequently ameliorate some of the behavioural problems in children affected by parental depression.³²
- 4.13 A 1997 study, that considered the interactions between mothers and their four month old infants, found that “[l]ength of maternity leave is significantly correlated only with the ‘negative’ mother and infant PCERA scales, that is, shorter leave is associated with more negative interactions.”³³ Early return to work has also been correlated with later externalising behavioural problems in children at age four.³⁴ Furthermore, it has been suggested that the trend towards longer and increasingly atypical working hours only magnifies the negative effects of parental employment on “[y]ounger children and those from lower socio-economic backgrounds.”³⁵

²⁸ Speech given by Brennan D, *Families that Work: A New Agenda for Parental Leave and Child Care in Australia* (Sydney: Social Policy Research Centre, March 2008) available at http://www.apo.org.au/webboard/comment_results.shtml?filename_num=200391

²⁹ Manne A, “Love and Money: The Family and the Free Market” (2008) 29 *Quarterly Essay* at 45.

³⁰ Manne, note 29 at 46.

³¹ Ainsworth M D S “Infant-Mother Attachment” in Craig W (ed), *Childhood Social Development: The Essential Readings* (Malden: Blackwell, 2000) 13-24 at 21-22.

³² Luecken L J and Lemery K S “Early caregiving and physiological stress responses” (2004) 24 *Clinical Psychology Review* 171-191 at 177 citing the literature in support of the links between parental depression and later behavioural problems in children.

³³ Clark R et al, “Length of maternity leave and quality of mother-infant interactions” (1997) 68 *Child Development* 364-383 at 372. PCERA scales refer to Parent-Child Early Relational Assessment and it “was developed to assess the affective and behavioural characteristics that mother and infant each bring to the interaction.” (at 368)

³⁴ Berger et al, note 21 at F42

³⁵ Manne, note 29 at 23.

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- 4.14 Studies of children in child care settings tend to indicate, *inter alia*, higher cortisol (stress hormone) levels³⁶, a greater tendency towards aggressive behaviour³⁷ and problems with mother-infant interactions.³⁸ These effects are particularly evident or profound the younger the child and the longer the hours spent in care.³⁹
- 4.15 Paid parental leave is just one of many policies that can contribute to healthy child development. Whilst outside the immediate ambit of this Inquiry, the Centre also supports those policies that help to ensure high quality child care for those who need or want to use this option. Paid parental leave is, however, an opportunity to support families at the outset by strengthening parental capacity and support and financially enabling those who want to care for their own children to do so.
- 4.16 Prevention is preferable to intervention. *The National Public Health Strategic Framework for Children 2005-2008* "emphasis[es] primary prevention and the importance of maternal health and the early years of life on future child and adult health."⁴⁰ This commitment to and recognition of the importance of prevention to effectively address child health issues is also demonstrated amply by The Australian Research Alliance for Children and Youth and the Telethon Institute for Child Health Research.⁴¹ Paid parental leave can fairly be considered a policy that supports prevention by providing assistance to parents and families from the outset.

Wider Community

- 4.17 The potential wider benefits to the community from paid parental leave can be described as increased gender equality; greater paternal involvement in family life; public health savings and the expected inter-generational benefits as children develop into healthy and contributing adult members of the community. These benefits both directly and indirectly create a more positive community environment for children.
- 4.18 Australian parents also evince a strong desire to stay at home to care for their children.⁴² This is further supported by the low usage rates of child-care particularly for young infants.⁴³ An extended and universal model of paid leave can be one that values and supports children as well as their parents and the wider community and can reasonably be expected to meet the desire of many parents to care for their own children.

³⁶ Manne, note 29 at 50. See also Sherry C "Care and Education of Preschool Children" in Monahan G and Young L (eds), *Children and the Law in Australia* (Sydney: Butterworths, 2008) 276-301 at 297-298.

³⁷ Manne, note 29 at 52 and Sherry, note 38 at 296-297.

³⁸ Manne, note 29 at 52.

³⁹ Manne, note 29 at 53-54. and Sherry, note 39 at 299.

⁴⁰ *Healthy Children – Strengthening Promotion and Prevention Across Australia* available at <http://www.nphp.gov.au/workprog/chip/documents/CHIPFramework14Sept05web.pdf> (last accessed 6 May 2008) at 21.

⁴¹ ARACY www.aracy.org.au/ and the Telethon Institute for Child Health Research <http://www.ichr.uwa.edu.au/>

⁴² Manne, note 29 at 41.

⁴³ Manne, note 29 at 41 and Sherry, note 38 at 284 citing ABS Statistics (2005).

5.0 Global Trends

Australia and the United States stand alone as the only OECD countries still failing to provide paid parental leave.⁴⁴ A brief analysis of the leave available to mothers and parents in other comparable countries provides a richer framework against which to construct a model for Australia.

- 5.1 As acknowledged in the Issues Paper, the duration, compensation, funding mechanisms and eligibility criteria vary quite widely.⁴⁵ We note, in particular the preference in the United Kingdom, Canada and Europe for models of parental leave that enable parents to receive a parental allowance for periods of up to a year (and sometimes longer) to stay at home and the conjunctive promotion of flexible work practices and policies.
- 5.2 It is relevant to reiterate the preference for and viability of longer lengths of leave in countries such as the United Kingdom and Canada with comparable socio-political backgrounds. The United Kingdom currently provides 39 weeks of maternity leave (with an intention to increase the length to 52 weeks by 2010) whilst Canada provides 52 weeks of leave (55 weeks in Quebec).
- 5.3 Countries such as Sweden and Finland stand apart for their generous models of parental leave, 15 months and potentially up to 3 years (on a subsidised stay at home allowance), respectively. Furthermore these policies are supported by subsidised and quality child care and flexible work policies to provide ongoing support to parents past the first few months or years.

6.0 The Current Situation in Australia

In light of the above discussion it becomes apparent that the current legislative and public policy framework for parental leave in Australia, which provides 12 months of unpaid leave for those parents who meet the requisite employment criteria, falls significantly short of the global expectation for parental leave. It is also not a policy that is meeting the needs of children, their parents and the wider Australian community.

- 6.1 The apparent policy objective of unpaid leave is the retention of a place in the workforce. The Centre submits that the rights of infants and children to the highest attainable standard of health should be the primary consideration and policy objective when considering parental leave.
- 6.2 We note the thorough and comprehensive HREOC inquiry in 2002.⁴⁶ The in-depth research and breadth of public submissions in support of paid leave in 2002 has so far failed to produce the necessary change. In 2008 the continued absence of paid parental leave in Australia is both a global embarrassment and a domestic shame. Children and their families have a right to better recognition and support.

⁴⁴ As noted in the *Issues Paper*, note 1 at 27.

⁴⁵ *Issues Paper*, note 1 at 27.

⁴⁶ *A Time To Value*, note 13.

7.0 The Centre's Proposal

There should be a legislative scheme that provides for a universal parenting allowance, payable fortnightly at the federal minimum wage level to all parents upon the birth (or adoption) of a child for 12 months duration.

This should include appropriate guarantees of job retention where applicable.

There should be a presumption that the first 14 weeks will be paid as maternity leave and that the remaining 38 weeks will be parenting leave.

This payment could be supported by a simultaneous payment for the first 2 weeks of co-parenting leave.

Objectives

- 7.1 The Centre supports a model of paid parental leave that acknowledges the rights of children as a primary policy objective. The Centre promotes a model that gives maximum flexibility to allow families to better make a choice to suit their particular situation.

Entitlement

- 7.2 All children have rights. The employment status or employment history of a child's parent(s) should not determine their entitlement to parental care and financial support. Accordingly, the Centre supports a universally available parental allowance to replace the current Baby Bonus scheme.
- 7.3 It may be desirable to have the entitlement conditional on fulfilling basic criteria such as ensuring a child's regular attendance at an appropriate health clinic for necessary health checks and that parents receive information and support from appropriate health care and parental support services.
- 7.4 Any such conditionality that is attached to receipt of a payment by parents or carers on behalf of their child should also be informed by the principle of non-discrimination. Given that our proposed model is for a universal payment, the conditions should also be prima facie imposed on all recipients. This policy initiative must be developed in a manner that holds the relevant governments to the responsibility that provision of the necessary health services are practically and universally available to all children in Australia. This will also require the provision of such services to be culturally appropriate.

Duration and Quantity

- 7.5 The allowance should be set at the level of the minimum wage and the entitlement should arise on the birth (or adoption) of a child for a period of twelve months.

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- 7.6 It may be appropriate to set a presumption that for the initial 14 week period the allowance will be payable to the birth mother to provide optimum support for maternal health and breastfeeding objectives.
- 7.7 To ensure non-discrimination to a child's family status and situation and to promote paternal involvement, (each of which are identifiable child rights objectives), the leave should otherwise be available as 'parental leave'. This may be achieved by providing the birth mother with the discretion to transfer the leave entitlement to her partner.⁴⁷
- 7.8 The conjunctive payment for the initial 2 weeks after birth or adoption will support bonding with the second parent and allow support for the recovery of the birth mother.
- 7.9 An underlying publicly-funded scheme may be the most obvious funding option to achieve the necessary universality and ensure coverage for those children whose parents are not in conventional employment. We note the schemes operating internationally that rely on a combination of employer, employee and government contributions as an alternative to an entirely government funded model.
- 7.10 We support the suggestion in other submissions that employers could either concurrently or subsequently be encouraged to develop the scheme to move from minimum wage entitlement towards income replacement.

Review

- 7.11 A review, similar to that proposed by HREOC⁴⁸, within two years of the introduction of paid parental leave, potentially provides a valuable opportunity for reflection and assessment. We would submit that the incorporation of a child rights analysis into any review process is the preferred framework for considering the impact on children. Whilst our model differs in several aspects to that proposed by HREOC (in particular our preference is for 12 months of leave from the outset) a review is *prima facie* a positive part of the process. We acknowledge, however, that indicators of success may be both problematic to identify and to quantifiably measure.

⁴⁷ The New Zealand parental leave legislation utilises this type of mechanism.

⁴⁸ http://www.hreoc.gov.au/legal/submissions/2008/paid_maternity_leave_20080520.html (last accessed 27 May 2008).

8.0 Wider Policy Context

- 8.1 Any policy discussion concerning parental leave and children would be deficient if it did not acknowledge the continued and particular disadvantage experienced by Indigenous children in Australia.⁴⁹ The final model of parental leave that is adopted should seek to both acknowledge and include measures to address this disadvantage. A failure to do so both ignores the rights of Indigenous children and risks further entrenching the disadvantage currently experienced.
- 8.2 Parental leave is one of many policies that impact directly on children's health and well being. Whilst outside the immediate scope of this Inquiry, closely related policies that could significantly support and enhance paid parental leave include those concerning child health and prevention programs, child care and education, breastfeeding and child-friendly workplace policies.
- 8.3 The Centre notes the continued absence of a national policy framework for children. The former government's promise to deliver an Agenda for Early Childhood has not, to date, been realised. Children are a critically important policy consideration. There is a very real need for a rights-oriented, consistent framework to prompt consideration of children's rights in all public policy. As noted above, any such policy framework must specifically address the particular needs of Indigenous children, as well as other particularly disadvantaged or vulnerable children.
- 8.4 The Centre also notes the relative lack of information and data (including reliable economic projections) to reliably inform policy-making for children. The Centre supports the call by ARACY, earlier this year, for a Report Card to track the well being and progress of young Australians across a range of different areas.⁵⁰
- 8.5 We acknowledge that a child rights analysis does not dictate a particular policy response. Policy development is driven by a number of factors and can still be an arbitrary process. Our proposed model is an attempt to align the key objectives of a child rights framework with the current political and economic environment. Until children's rights are a mainstream consideration in policy-making, it will be matter of grasping the opportunities to influence public policy debate. Review and experience will build better models. We hope that this submission can make a contribution to the current debate.

⁴⁹ See in particular the comments made by the UN Committee on the Rights of the Child available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.268.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.268.En?OpenDocument) (last accessed 19 May 2008).

⁵⁰ See http://www.aracy.org.au/AM/Common/pdf/newsletter/ARACYnewsletter_20080331.pdf (last accessed 18 May 2008).

Appendix A – Convention on the Rights of the Child (text for articles cited in submission)

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.