

INQUIRY INTO PAID MATERNITY, PATERNITY AND PARENTAL LEAVE IN AUSTRALIA.

**A submission by Ai Group to the
Productivity Commission. June 2008**



Inquiry into Paid Maternity, Paternity and Parental Leave in Australia

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Industry Group to the Productivity
Commission**



AUSTRALIAN INDUSTRY
GROUP

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1. PREAMBLE

The Australian Industry Group (Ai Group) welcomes the opportunity to contribute to the important and ongoing debate about paid maternity, paternity and parental in Australia.

There is a strong case for the introduction of a government-funded paid maternity leave scheme in Australia. A properly designed, publicly funded scheme would give rise to significant social and economic benefits.

However, a paid maternity leave scheme which is not properly designed risks an adverse reaction from employers which would undermine the effectiveness of the scheme.

Paid maternity leave is a community issue which should be funded by the Government. Any scheme which required direct funding by employers would create substantial risks of discrimination against women of child-bearing age. A levy-style scheme would effectively be a tax on employment and is equally unacceptable.

The scheme should provide appropriate safety net entitlements. It should remain open to individual employers to reach agreement with their employees at the enterprise level to provide benefits in excess of those provided in the proposed national scheme.

Ai Group believes that a paid maternity leave scheme in Australia should be consistent with the following principles:

- **Employment based** – It should be linked to employment, rather than be a universal payment to women. The scheme should exist alongside but separate to social welfare payments and other assistance targeting women and families more broadly;
- **Aligned with the existing return to work guarantee** - Since the scheme is about both previous and future workforce participation, it should be integrated with existing employment protections concerning return to work;
- **Not means tested** – All women in paid work face an opportunity cost associated with childbearing. The scheme is appropriately targeted at women in paid work, not women on lower incomes in paid work. Payments should be capped and taxed as income. This assists in addressing any equity concerns;

- ***Addressing the opportunity cost faced by women*** – The scheme should provide support to women in paid work, who face unique disadvantages (both short and longer term) due to their intrinsic childbearing role. This childbearing role presents issues for women's physical health and well-being, and often involves breastfeeding. The scheme is appropriately targeted at women and, to achieve the desired objectives, should be available only insofar as leave is actually taken from paid work;
- ***Fiscally responsible*** – Given that the proposed scheme is government-funded, fiscal responsibility is important. In conjunction with the introduction of a paid maternity leave scheme, relevant family assistance payments should be reviewed and streamlined where appropriate.

Ai Group is mindful that the introduction of a publicly funded paid maternity leave scheme is only part of the solution. The workforce participation of women, labour and skills shortages, and the ability for all workers to combine family and employment - are all complex issues. However, a properly designed paid maternity leave scheme would contribute to positive outcomes in each of these areas.

2. Ai GROUP

Ai Group is the largest individual industrial organisation of employers in Australia. Ai Group represents industries with around 440,000 businesses employing around 2.4 million people. Ai Group represents employers in manufacturing, construction, automotive, food, transport, information technology, telecommunications, call centres, labour hire, printing, defence, mining equipment and supplies, airlines and other industries.

Ai Group and its affiliates have approximately 60,000 members and employ in excess of 1.25 million employees. Ai Group itself provides services to approximately 10,000 companies employing around 750,000 employees.

In addition to representing industry, Ai Group provides a wide range of services to its member companies in the areas of: workplace relations; legal; human resource management; occupational health and safety; workers compensation; the environment; energy; international trade and export; economics; research; statistics; training courses; traineeships and apprenticeships; group training; career advice; seminars and conferences; publications; networking; equal employment opportunity and discrimination; taxation; superannuation; and immigration.

A large number of other Australian associations (48 in total) are affiliated in various ways with Ai Group. Also, Ai Group has close links and affiliations with 78 overseas organisations. These include, for example, the US National Association of Manufacturers (NAM), the US Chamber of Commerce, the Confederation of British Industry (CBI), the Engineering Employers Federation (EEF) in the UK, Business New Zealand, and the Confederation of Indian Industry.

Ai Group has offices in metropolitan and regional areas in New South Wales, Victoria and Queensland and maintains strong partnerships with the Engineering Employers Association of South Australia (EEASA) and the Chamber of Commerce and Industry in Western Australia (CCIWA).

3. DEMOGRAPHIC ISSUES AND ECONOMIC GROWTH

Like most developed countries, Australia is facing important demographic challenges. These challenges have implications for labour supply, economic growth and living standards.

Trends in labour supply were one of the key issues addressed in Ai Group's *"How Fast Can Australia Grow? Mark III"* report released in February 2008.

The report concludes that labour supply is expected to grow by only 1 ¼ per cent a year over the next decade. Only a spurt of immigration prevented the projected annual increase from falling below 1 per cent. No growth in the overall workforce participation rate is expected over the coming decade.

The downsizing in labour supply growth was attributed to:

- Lower rates of natural growth;
- Stabilisation of labour force participation, following a four decades-long trend of higher labour force participation;
- The dampening effect on participation from the ageing of the population;
- A continuing downward trend in hours of work.

Together with fractionally improved labour productivity, Australia will do well to post economic growth averaging 3 per cent a year over the decade to 2017.

The Federal Government has emphasised the significance of demographic trends through the release in April 2007 by Treasury of the second *Intergenerational Report*. The report emphasises the role for reforms in lifting population, participation and productivity to meet the demographic challenges. Some of the key statistics and predictions in the report are set out below:

- ***Population of Australia***

- Australia's resident population reached slightly over 20.6 million in June 2006 and is projected to rise by 38 per cent to 28.5 million by June 2047.
- The proportion of older people comprising Australia's population continues to increase. In June 2007, the proportion of those aged 65 and over is projected to reach 13.4%. This is a significant increase, from only 4% a century ago.
- By 2047, a little over 25% of Australia's population is expected to be aged 65 and over. The proportion of the population aged 65-84 is growing even faster, and is projected to rise from 1.7% in 2007 to 5.6% in 2047.
- The proportion of people of traditional working age (15-64 years) is projected to grow by over 20% by 2047. However, it is expected to fall as a proportion of the total population, from current highs of around 67.5% to be below 60% in 2047. This represents a drop of 8 percentage points.

- ***Workforce Participation Rates***

- The labour force participation rate for people aged 15 and over has risen gradually from 60.7% in 1978-79 to 64.5 % in 2005-06. This was driven by greater female participation which rose from 43.5% to 57.2% in the same period.
- The ageing of the population is projected to lead to falling total participation rates over the next forty years, with labour force participation rates for people aged 15 and over expected to drop to 57.1% by 2046-47.
- However, participation rates for people of traditional working age (15-64 years) are projected to lift slightly from the current rate of 76.2% to 78.1% in forty years time 2046-47. This is primarily due to rising numbers of older workers and the increased participation of women of all ages in the workforce.
- Participation rates for mature men in the workforce have improved, in part because of stronger jobs growth, as well as people staying in the workforce for longer.

- **Labour productivity**

- Annual labour productivity growth has averaged 1.8% per year over the past 40 years, varying significantly from decade to decade. In the 2000s, labour productivity averaged 1.5% per year, following 2.1% in the 1990s.
- While the report notes that this indicator is difficult to forecast, the projection for the next forty years is that labour productivity will grow by 1.75% a year.

- **Fertility Rate**

- While Australia's fertility rate has been declining for the past forty years over the last five years, it has bottomed, and marginally upturned. However, it is still below replacement rate.

Workforce participation

Women now make up over 45% of the Australian workforce. The ability to attract and retain female workers will take on particular significance in the coming decades, as the ageing of the population affects the overall workforce participation rate and labour supply growth.

The participation rate of women in Australia is lower than in a number of comparison countries. Australian women also have a more marked dip in participation during their peak child bearing years (25-39) and where their youngest child is aged under six years.¹

Measures which aim to assist women to combine work and family, including by better accommodating the childbearing role of women, can play a role in encouraging women to maintain their attachment to the workforce during their childbearing years and boost the workforce participation rate.

Childbearing decisions and fertility

Like many OECD countries, Australia's total fertility rate is below the replacement rate of 2.1 births per woman.² Fertility has trended upwards since hitting a record low in 2001 of 1.73 babies per woman. The *Intergenerational Report* predicted that Australia's total fertility rate will fall to 1.7 by 2042.

¹ ABS, *Australian Social Trends*, 2007, 4102.0, 2007

² ABS, *Australian Social Trends*, 2007, 4102.0, 2007

Lower total fertility rates are associated with the tendency for women to have children at older ages. Over the ten years to 2005, the median age of all women who gave birth had risen more than 1.5 years – from 29.1 years to 30.7 years.³

These trends most likely reflect the increasing opportunity cost for women associated with choosing to have a child and interrupting their careers and family income as a result.

A paid maternity leave scheme may play a positive role in expanding childbearing choices. For example, there is research to indicate that the availability of paid maternity leave may elevate pregnancy rates for women, encouraging women to have children sooner rather than later.⁴ Starting families earlier may play some part in encouraging larger families as well as reducing the risk of childlessness.

Significant fertility changes are unlikely to come about as a result of a single policy measure. Nor will a short period of paid leave mitigate the long-term cost of choosing to have a child. However, paid maternity leave scheme can work with other measures to provide an environment more conducive to combining paid work with childbearing.

4. EXISTING PARENTAL LEAVE PROVISIONS

Unpaid parental leave

Unpaid maternity leave provisions were first introduced into awards in Australia following the *Maternity Leave Test Case* decision of 1979. The provisions were extended to mothers of adoptive children by the 1985 *Adoption Leave Test Case*. It was not until 1990 that they were extended to fathers, and in 2001, to eligible casuals.

Unpaid parental leave provisions only became a feature of Commonwealth industrial legislation (*Industrial Relations Act 1988*) in 1994. In 2002, the *Workplace Relations Act 1996* provisions were extended to eligible casuals. Entitlements under some State industrial legislation (Queensland and NSW) had been extended to casuals earlier.

The *Workplace Relations Act* now provides for unpaid parental leave as part of the Australia Fair Pay and Conditions Standard (“AFPC Standard”), introduced via the WorkChoices reforms. The entitlement is for up to 52 weeks of unpaid parental leave for permanent employees with 12 months’ continuous service with an employer, and for eligible casuals. Eligible casuals are those who have been

³ ABS, *Australian Social Trends*, 2007, 4102.0, 2007

⁴ *Maternity leave could be answer for greying nation*, 2 May 2007 (www.uq.edu.au)

engaged with 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 who, but for the birth, would have a reasonable expectation of ongoing employment.

Under s.316 of the Act, any period of unpaid parental leave does not count as service for determining any entitlements under the Act except for determining entitlement to a later period of unpaid parental leave.

Under the legislative provisions, maternity leave may start within 6 weeks before the expected date of birth, and must include a period of at least 6 weeks starting from the date of the birth.

Employees cannot take parental leave at the same time as their spouse, other than a period of one week at the time of the birth (or three weeks, for adoption). The 52 week period to which an employee is entitled is reduced by any period taken by their spouse. The 52 weeks includes any period taken as other leave (eg. annual leave, long service leave).

Parental leave must be taken as an unbroken continuous period, other than the period of one week at the time of the birth.

An employee who returns to work following a period of unpaid parental leave is entitled to the return to work guarantee provided in ss.280 and 296 of the Act. The employee must give 4 weeks' written notice of returning to work. The employee is entitled to return to the position held before the start of the leave (or the position held immediately before any transfer under the transfer to safe work provisions). If the 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 that position or the position nearest in status and pay.

Paid maternity leave

ABS data indicates that one-third (34%) of mothers employed while pregnant use paid maternity leave.⁵ Other ABS data indicates that 45% of female employees have access to paid maternity leave, compared with 35.5% of male employees having access to paid paternity leave.⁶

⁵ ABS, *Pregnancy and Employment Transitions, Australia, Nov 2005*, 4913.0, 2006

⁶ BS, *Employee Earnings, Benefits and Trade Union Membership*, 6310.0, August 2007, p48-49

Recent data suggests that the proportion of working women who had access to paid maternity leave dropped in the year to November 2007.⁷ However, there was still an increase in the number of women who had the entitlement during that period, and an increase from 44.8% to 45.4% over the three years to November 2007.

A number of observations can be made about the availability of paid maternity leave under existing arrangements:

1. ***The proportion of organisations offering paid maternity leave has risen significantly in recent years***

Equal Opportunity for Women in the Workplace Agency (EOWA) research indicates that the provision of paid maternity leave within organisations with more than 100 employees, has risen from 23.7% in 2001, to 48.9% in 2007.⁸ That is, this has more than doubled in six years.

2. ***Coverage varies greatly between occupations***

For example, 64.7% of female professionals and 59.1% of female managers have access to paid maternity leave, compared with 21.7% of female sales workers.⁹

3. ***Paid maternity leave is least common in a number of industries which are highly feminised and in which incomes tend to be lower***

For example, 12.5% of female employees in accommodation and food services, and 23.9% in retail, have access to paid maternity leave.¹⁰

4. ***Full-time employees are more likely to have access to paid maternity leave than part-time employees*** (60.1% and 27.3% respectively)¹¹

5. ***Women on higher incomes have greater access to paid maternity leave***

This trend would appear to interact with others, including greater access by full-time employees. For example, 77.4% of women on weekly earnings of \$1,400 and under \$1,600 have access to paid maternity leave, compared to 17.8% who earn between \$200 and under \$300.¹²

⁷ ABS, *Forms of Employment*, November 2007, 6359.0, 2008

⁸ EOWA. *Paid maternity leave on the rise but too many miss out*, Media release Fact Sheet, 26 May 2008

⁹ ABS, *Employee Earnings, Benefits and Trade Union Membership*, 6310.0, August 2007, p49

¹⁰ ABS, *Employee Earnings, Benefits and Trade Union Membership*, 6310.0, August 2007, p49

¹¹ ABS, *Employee Earnings, Benefits and Trade Union Membership*, 6310.0, August 2007, p49

¹² ABS, *Employee Earnings, Benefits and Trade Union Membership*, 6310.0, August 2007, p49

6. ***Where paid maternity leave is provided, duration varies***

ABS data indicates that the average duration of paid maternity leave where it is taken is 11 weeks.¹³

EOWA research indicates that for organisations with more than 100 employees, the duration of leave offered has been increasing in recent years. In 2007, 39% of organisation provided 11 weeks or more, up from 28% in 2005. Nearly 90% offered 6 weeks or more in 2007.¹⁴

Other sources indicate that 19% of women employed while pregnant used 14 weeks or more paid maternity leave.¹⁵

7. ***Coverage is far higher in the public sector than the private sector.***

Nearly three-quarters of women in the public sector have access to paid maternity leave, compared with 36% in the private sector.¹⁶ In the public administration and safety industry, 79.4% of female employees have access to paid maternity leave.¹⁷

8. ***Within an organisation which provides paid maternity leave, often not all employees have access to the entitlement.***

EOWA research indicates that casuals are often excluded. Most organisations also have minimum service requirements.¹⁸

People employed under the *Public Service Act 1999* (Cth) are entitled to 12 weeks' paid maternity leave at full pay, after 12 months' service.¹⁹ Employees of the numerous bodies and persons prescribed under the Act have access to the same entitlements.

A number of collective agreements covering employees of Commonwealth Departments, agencies and statutory bodies incorporate the entitlement by reference and provide for an additional two weeks (ie. 14 weeks in total), eg. the *Productivity Commission Collective Agreement* and the *Human Rights and Equal Opportunity Commission Collective Agreement*. A Department of Employment and Workplace Relations (DEWR) report on collective agreement making in

¹³ ABS, *Pregnancy and Employment Transitions Survey*, 2005

¹⁴ EOWA, *Paid Maternity Leave on the Rise but too many miss out*, Media Release Fact Sheet, 26 May 2008

¹⁵ Human Rights and Equal Opportunity Commission, *It's Time to Value – Proposal for a National Paid Maternity Leave Scheme*, Sydney, 2002

¹⁶ ABS, *Employee Earnings, Benefits and Trade Union Membership*, 6310.0, August 2007, p49

¹⁷ ABS, *Employee Earnings, Benefits and Trade Union Membership*, 6310.0, August 2007, p49

¹⁸ EOWA, *Paid Maternity Leave on the Rise But too Many Miss out*, Media Release Fact Sheet, 26 May 2008

¹⁹ *Maternity Leave (Commonwealth Employees) Act 1973* (Cth).

2004-2006 shows that on average, certified agreements in government and defence provided an average of 10.9 days of paid maternity/primary carer's leave. (It is not clear exactly how many employees covered by such agreements would be entitled to the 12 weeks' paid maternity leave in the legislation, but no doubt a high proportion would be).²⁰

Although most employees of State and Territory Government appear to have some entitlement to paid maternity leave, duration varies.

Paid parental leave provisions in Australia have a variety of sources:

- Legislation (for employees of some Commonwealth, State and Territory Government employees);
- Federal or state award;
- Collective or individual agreement;
- Written contract;
- Written policy;
- Informal or ad hoc arrangement.

For collective and individual agreements, only a small proportion provide paid maternity leave and/or paid paternity leave, although there have been some increases in recent years. The Department of Employment and Workplace Relations (DEWR) report on agreement making in 2004-2006 shows that 15% of federal agreements provided paid maternity leave, up from 10% in 2002-2003.²¹ Paid paternity leave was offered in 11% of federal collective agreements, up from 7%. However, the number of women having access to paid maternity leave through federal collective agreements is higher than would otherwise appear due to variations between industries. The DEWR report states that paid maternity leave covered 49% of women in 2004-2006 (up from 41% in 2002-2004). The DEWR report also shows:

- There are wide variations between collective agreements in different industries. For maternity leave, the incidence ranged from 3% in some industries (eg. retail trade) to 70% in education;
- In 2004-2006, paid maternity leave covered 49% of female employees, compared with 41% in 2002-2003. For the same periods, paid paternity leave coverage increased from 15% (2002-2003) to 29% (2004-2006);
- The average length of paid maternity leave offered was 8.7 days. For paid paternity leave, it was 1.4 days;
- For AWAs in 2004-2006, 7% had paid maternity leave, 5% had paid paternity leave.

²⁰ Department of Employment and Workplace Relations, *Agreement-making in Australia under the Workplace Relations Act – 2004-2006*, 2007.

²¹ Department of Employment and Workplace Relations, *Agreement-making in Australia under the Workplace Relations Act, 2004-2006*, 2007.

The provision of paid maternity leave through awards is not high. Based on a survey of the top 100 federal awards in 2002, less than 10% included provisions for paid maternity leave.²² It was submitted as part of the Senate Committee Inquiry into the 2002 Democrats' paid maternity leave Bill that 87 awards (of 2169) provided for paid maternity leave.²³

None of the major awards in the manufacturing, construction or information and communications technology (ICT) industries provide paid maternity leave entitlements.

5. NATIONAL EMPLOYMENT STANDARDS

In February 2008, the Government released draft National Employment Standards (NES) which it proposes will apply to all employees and commence operation on 1 January 2010.

The draft NES contains a number of new parental-related entitlements for employees, including the following:

- Parents and those with responsibility for a child under school age will have the right to request flexible work arrangements to assist them. An employer may only refuse the request on reasonable business grounds;
- Parents who are eligible employees will be able to take a total of 12 months' unpaid parental leave each for the birth of a child, rather than a combined total of 12 months;
- An employee who takes 12 months' unpaid parental leave will have a right to request an additional 12 months' unpaid parental leave, subject to an employer's right to refuse on reasonable business grounds;
- Eligible employees who are parents of a child will be able to take up to three weeks of unpaid parental leave concurrently around the time of birth of the child.

In April 2008, Ai Group made a substantial submission to the Government which highlighted a number of concerns about the draft NES and made several recommendations. Some relevant points extracted from Ai Group's submission are set out below.

²² Human Rights and Equal Opportunity Commission, *Valuing Parenthood*, 2002, p 10.

²³ Joint Departments' Submission to Senate Employment, Workplace Relations and Education Committee inquiry into the Workplace Relations Amendment (Paid Maternity Leave) Bill 2002, July 2002 (http://www.aph.gov.au/senate/committee/eet_ctte/completed_inquiries/2002-04/wrpaidmatl02/submissions/sub020.doc)

- ***General principles***

Legislated employment standards apply to all industries and to everyone who works in them. The Standards, therefore, need to be flexible and cater for the extremely wide variety of working arrangements within businesses across the Australian economy. The Standards need to contain the necessary flexibilities and rules to enable them to operate fairly and effectively for all employees covered by them, including award-covered and award-free employees. It is vital that the implementation of the NES reduce the regulatory burden upon industry, not increase it.

- ***Relationship between the NES and other instruments***

The interaction between the NES and awards, workplace agreements and common law contracts needs careful consideration. In general, Ai Group regards the proposed rules relating to the interaction between awards and the NES as workable. However, Ai Group is very concerned about the proposed interaction rules relating to the NES and workplace agreements. As presently drafted, each and every specific provision within the NES must be complied with and cannot be varied by a workplace agreement other than by the employer offering a more generous provision. Such an approach is excessively inflexible and problematic given the nature of the entitlements in the NES.

- ***Requests for flexible working arrangements***

The right to request flexible work arrangements enshrined within the NES is too broad. Eligibility criteria need to be included to provide a more balanced approach. The right should only apply once an employee has a period of 12 months' continuous service, it should not apply to casuals, and it should only apply to the mother, father, step mother, step father, grandfather, grandmother or legal guardian of the child. Also, if an employee has requested a particular change in working arrangements and such change has been reasonably refused by the employer, the employee should not have the right to make a similar request for a reasonable period, say 6 months. It is noteworthy that the UK "right to request" legislation contains eligibility criteria dealing with similar issues to those set out above. Ai Group supports the educative approach enshrined within the draft NES whereby Fair Work Australia would not have the power to impose any requested work arrangements upon employers. Such an approach is more likely to achieve positive outcomes than a heavy-handed prescriptive approach.

- **Parental leave**

Ai Group has proposed the following amendments to the parental leave provisions of the NES:

- The longstanding “primary caregiver” concept should be retained in the parental leave provisions of the NES.
- The Standards should deal with the issue of requests to extend or shorten the period of parental leave, to ensure the entitlements and obligations of both parties are clear.
- Parental leave provisions in Australia have always required that evidence of pregnancy and of incapacity to work due to a pregnancy-related illness take the form of a medical certificate from a medical practitioner and this should be retained given the extent of the rights associated with parental leave (eg. 12 months’ unpaid leave with an ability to extend, and paid leave for up to nine months if a safe job is not able to be provided).
- The “no safe job leave” provisions, as drafted, would operate unfairly for employers and Ai Group has proposed a number of important changes.
- During the conciliation stage in the AIRC’s *Family Provisions Case*, Ai Group reached agreement with the ACTU on the introduction of consultation provisions during periods of parental leave creating obligations for both employers and employees. These balanced provisions should be adopted in lieu of the one-sided consultation requirements in the NES.
- Employees should be required to provide 4 weeks’ notice of return to work in order to take advantage of the return to work guarantee.

The Government has not yet announced the outcomes of the public consultation process regarding the draft National Employment Standards.

Regardless of the final wording of the NES, Ai Group strongly submits that the Standards are not an appropriate vehicle to deal with the topic of paid parental leave. The NES sets out various payments that an employer must make to an employee for various purposes, but paid parental leave is an entitlement that employers should not be forced to pay for. Paid maternity leave is a community issue which should be funded by the Government. Any scheme which required direct funding by employers would create substantial risks of discrimination against women of child-bearing age.

It should remain open to individual employers to reach agreement with their employees at the enterprise level to provide benefits in excess of those provided in the proposed national scheme but it is inappropriate for the NES (which are a safety net) to have any role in facilitating this.

6. AWARDS AND AWARD MODERNISATION

Common federal award provisions

Most federal awards contain parental leave provisions consistent with the outcomes of the relevant Australian Industrial Relations Commission (AIRC) test cases over the years, commencing with the *Maternity Leave Test Case* decision of 1979.

The standard entitlement is for up to 52 weeks of unpaid parental leave for permanent employees with 12 months' continuous service with an employer, and for eligible casuals. Eligible casuals are those who have been engaged with 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 who, but for the birth, would have a reasonable expectation of ongoing employment.

In its *Family Provisions Case* decision in 2005, the AIRC adopted an award clause giving employees the right to request that their employer allow them to:

- extend the existing one year period of unpaid parental leave by a further period not exceeding one year;
- return to work on a part-time basis following parental leave; or
- extend the existing period of unpaid parental leave which both parents can take simultaneously (one week in most awards) up to a maximum of eight weeks.

Under the test case clause, an employer was given the right to refuse an employee's request if reasonable in the circumstances. The grounds for reasonable refusal include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

Many federal awards have been varied to reflect the *Family Provisions Case* decision.

Existing relationship between the parental leave provisions in awards and the *Workplace Relations Act*

Under the *Workplace Relations Act*, parental leave provisions in awards are deemed to be "**preserved award terms**". If an employee's entitlement under the parental leave provisions of the relevant award are "**more generous**" than under the corresponding provisions in the AFPC Standard, then the preserved award term applies and the term in the AFPC Standard is excluded.

The *Workplace Relations Regulations* define the term “more generous”, for the purposes of determining whether a preserved award term applies in lieu of the corresponding elements of the AFPC Standard. In determining whether a preserved award term is “more generous” the following principles apply:

- The entitlements are to be compared on the basis of their effect on individual employees, not on employees generally;
- If the total quantum of parental leave under a preserved award term is **greater than** the total quantum of parental leave under the AFPC Standard, then the award entitlement is taken to be “more generous” and the award provision applies;
- If the total quantum of parental leave under a preserved award term is **less than or equal to** the quantum under the AFPC Standard, then the provisions of the AFPC Standard apply.

Once it has been determined in accordance with the above principles whether the entitlement under the AFPC Standard or the preserved award term applies, the administrative and other arrangements relating to that entitlement set out in the AFPC Standard or the award (as the case may be) have effect.

The Explanatory Memorandum which accompanies the WorkChoices legislation makes it clear that an award provision which provides an entitlement to unpaid parental leave with a right to request an additional period of leave (ie. an award which has been varied to reflect the *Family Provisions Case* decision) is regarded as “more generous” than the corresponding provision in the AFPC Standard.

Award modernisation process and the relationship between modern awards and the NES

Under amendments to the *Workplace Relations Act* in March 2008, the AIRC has the function of creating a set of “modern awards” from the thousands of existing federal awards and former state awards. The AIRC is required to modernise awards in line with an “Award Modernisation Request” which has been issued by Deputy Prime Minister Julia Gillard. Modern awards are to operate from 1 January 2010 – the same date that the NES become operational.

As currently drafted the relationship between the NES and modern awards is as follows:

- Awards operate in conjunction with the NES and together comprise the safety net of minimum conditions for employees;
- As set out in paragraph 30 of the Award Modernisation Request - “a modern award may build on entitlements in the proposed NES where the

Commission considers it ***necessary*** to do so to ensure the maintenance of a fair minimum safety net for employees covered by the modern award, ***having regard to existing award entitlements*** for those employees” (Emphasis added);

- In certain areas the NES expressly permit awards to deal with certain matters pertaining to particular entitlements; and
- Except as outlined above, awards are not permitted to contain provisions which are inconsistent with the NES.

The wording in paragraph 30 of the Award Modernisation Request, as reproduced above is critical. Ai Group is very concerned at the potential for unions to use the award modernisation process to pursue widespread improvements in existing minimum standards (given the ability for modern awards to “build on” NES entitlements). This would increase inflationary pressures and decrease the competitiveness of Australian industry.

Given the importance of this issue in respect of a very wide range of award and legislative entitlements, Ai Group submits that it would be inappropriate and unproductive for the Productivity Commission to recommend any changes to the relationship between awards and the NES in the current inquiry into paid parental leave.

Further, the award modernisation process has an extremely tight timeframe and clearly defined objectives.

Interaction of a paid maternity leave scheme with existing award provisions

The interaction of any paid maternity leave scheme with existing paid maternity leave arrangements in awards is appropriately dealt with via the award modernisation process.

As set out above, modern awards will only be able to “build on” the parental leave entitlements in the NES “where the Commission considers it necessary to do so to ensure the maintenance of a fair minimum safety net for employees covered by the modern award, having regard to existing award entitlements for those employees”. Whether or not it is necessary to continue to include paid maternity leave provisions in a particular award will depend the particular award provisions, the industry concerned, and other relevant factors. These issues are best left to the AIRC to deal with after any paid maternity leave scheme is implemented.

7. CURRENT FEDERAL GOVERNMENT ASSISTANCE

The following is a summary of parental-related family assistance payments currently available:²⁴

- The **Baby Bonus** is a payment to help with the extra costs of a new child born on or after 1 July 2004. It is also available for a child adopted within 26 weeks of the child coming into the adopting parents' care. The payment was \$3,000 when introduced in 2004 (replacing the Maternity Allowance and the Baby Bonus tax rebate). It is currently \$4,258. It is usually paid as a one-off lump sum and is not means-tested. It is not taxable and not considered for family assistance or social security purposes.
- **Maternity Immunisation Allowance** is a one-off payment of \$236.70 for children aged 18-24 months who have been fully immunised or have an exemption. It is not income-tested.
- **Child Care Benefit** is a payment to families who use approved and registered child care. There is no income test for registered care, but there is an income test for approved care. It can be paid as reduced fees or a lump sum. The maximum rate applies to families with annual income of \$35,478 or less, which is \$3.37 per hour (or slightly more if more children are in care). There is an income limit (which varies according to the number of children in care) and families at or above this limit can only receive a minimum rate (a maximum of \$28.20 per week).
- **Child Care Tax Rebate** provides additional assistance with child care costs for working families. It covers 30% of out-of-pocket child care expenses, or up to \$4,354 per child per year. It is made as a payment to families after the end of the financial year. It is not subject to an income test.
- **Family Tax Benefit A** helps families with the cost of raising children under 21, and children who are full-time students aged 21-24. The amount payable depends on the family's annual income, the number of children and their ages. It can be paid fortnightly, as a lump sum or as reduced tax. A supplement is paid at the end of the financial year. The maximum rate is \$5,595.45 per year, for each child aged between 13-15 years, for family income up to \$41,318 per year. Income limits apply at which it stops being paid. Income limits depend on the number of children and their ages. For example, the income limit for one child aged 0-17 years is \$97,845.

²⁴ Source: Centrelink and Family Assistance Office websites

- **Family Tax Benefit B** gives assistance to families with one main income, including sole parents, whose youngest child is aged 15 or under, or 15-18 and a full-time student. For two parent families, the parent earning the higher amount is not taken into account and the partner with the lesser amount is subject to an income test. An income limit also applies to the partner earning the lesser amount. Sole parents can get the maximum amount regardless of income. It can be paid fortnightly, as a lump sum or as reduced tax. A supplement is payable after the end of the financial year. The maximum payment is \$3,584.30 per year for a youngest child aged under 5 years, for a secondary earner in a partnered relationship earning up to \$4,380 per year.
- Additional assistance is also available as part of the Family Tax Benefit in certain circumstances, including the **Large Family Supplement** (for three or more children), the **Multiple Birth Allowance** and the **Double Orphan Pension**.
- **Parenting Payment** provides assistance for primary carers of a child aged under 6 (partnered parents) or under 8 (sole parents). When the youngest qualifying child is aged 6 or over, the parent is subject to part-time participation requirements. For single parents, the maximum rate is \$546.80 per fortnight, and for partnered parents, \$394.40 per fortnight. Income and assets tests apply.

The following changes were announced as part of the 2008-2009 Federal Budget:²⁵

- The **Baby Bonus** – will increase to \$5,000 from 1 July 2008. From 1 January 2009, it will not be available where family income exceeds \$150,000 per year (\$75,000 in the 6 months from the birth) and be paid in fortnightly instalments over 6 months;
- **Maternity Immunisation Allowance** – from 1 January 2009, will be paid in two instalments to encourage the recommended vaccinations for 4 year olds. The first payment is at 18-24 months and the second is before the child reaches 5 years of age;
- **Child Care Benefit** – from 1 July 2008, higher income families will no longer receive the minimum rate CCB for approved care;
- **Child Care Tax Rebate** – 50% of out-of-pocket expenses will be covered, or up to \$7,500 per child, and payments will be made quarterly;

²⁵ Australian Government, *Budget Overview*, 13 May 2008 (<http://www.budget.gov.au/2008-09/content/overview/html/index.htm>)

- **Family Tax Benefit B** – from 1 July 2008, will only be payable where the income of the principal earner does not exceed \$150,000;
- **Education Tax Refund** – from 1 July 2008, a 50% refund on eligible education expenses for school children (a maximum per child of \$375 for primary school, \$750 for secondary school).

8. BENEFITS OF A PAID MATERNITY LEAVE SCHEME

There are many benefits to the community of a paid maternity leave scheme.

Potential benefits to the **community in general** flow from:

- Improved workforce productivity;
- Improved workforce participation rates;
- Improved returns on investment in education and training.

The above benefits assist in providing positive conditions for economic growth and improvements in living standards.

Potential benefits for **employers** include:

- Greater staff retention following maternity leave;
- Lower recruitment, selection and training costs;
- Preservation of skills;
- Lower training and developments costs;
- Greater staff loyalty;
- Improved morale;
- Higher productivity;
- Reduced absenteeism.

The EOWA has reported that organisations which provide paid maternity leave have an average retention rate 11% higher than organisations which do not provide any paid maternity leave.²⁶

Potential benefits to **employees** include:

- Improved health and wellbeing of mothers and babies;
- Improved rates of breastfeeding initiation and maintenance, which are associated with improved health outcomes for mother and babies;
- Reduced financial pressure around the time of the birth;

²⁶ EOWA, *EOWA Survey 2005 - Paid Parental Leave*, February 2006

- Reduced need to use other forms of paid leave to take time off around the time of the birth (eg. annual leave and long service leave) and hence retention of leave for recreation and recuperation at a later date.

9. FUNDING OF A PAID MATERNITY LEAVE SCHEME

Government funded models

The most efficient and effective method of funding is from general Government revenue.

Any scheme which required direct funding by employers would create substantial risks of discrimination against women of child-bearing age.

Also, direct funding by employers would increase business costs and would have a consequent negative impact upon employment and competitiveness.

Paid maternity leave is a community issue which is appropriately and legitimately funded publicly.

In its 2002 report arising from its inquiry into paid maternity leave, the Human Rights and Equal Opportunity Commission (HREOC) recommended that Australia's paid maternity leave scheme be Government funded and found the greatest level of support for this funding option²⁷.

Employer funded models

There are a number of employer funded models, including:

- An individual employer funded payment;
- An employer levy based on total salaries paid by the organisation.

Ai Group opposes any compulsory employer funded paid maternity leave scheme.

It is likely that any direct payment scheme would adversely impact upon employment opportunities for women, both in terms of gaining employment and maintaining employment. It would make employing women of child-bearing age potentially more expensive than other employees. It also has the potential to

²⁷ Human Rights and Equal Opportunity Commission, *A Time to Value: Proposal for a National Scheme of Paid Maternity Leave*, 2002

affect decisions about pay for women of child bearing age, where the level of paid maternity leave is linked to actual pay.

Despite the potential advantages of paid maternity leave schemes to employers, many employers are not in a position to provide such benefits. Many businesses operate with low profit margins and some are enduring losses. In such circumstances, there is no capacity to provide paid maternity leave benefits – despite the longer term benefits which might arise if they did. It should also be borne in mind that the potential benefits are greater in some businesses than in others, and for some employees than for others.

The potential costs vary markedly from one business to another within the same industry, and from one industry to another. Some industries employ a high proportion of women of child-bearing age whereas others employ a very small proportion (eg. construction). The impact would be felt by businesses of all sizes.

It would be inequitable for the cost to be borne by employers, due to the wider social benefits of the scheme. Arguments that employers should fund the scheme due to the benefits they derive is simplistic and fails to take into account the myriad of issues involved.

If employers were forced to fund a paid maternity leave scheme the costs would likely lead to lower employment levels and decreased competitiveness.

Similar to directly funded models, a levy-style system is problematic and would be inappropriate. It would essentially amount to a tax on employment and would have a consequent negative impact upon employment levels and competitiveness.

While Australia's paid maternity leave scheme should be wholly Government funded, it should remain open to individual employers to reach agreement with their employees at the enterprise level to provide more generous benefits than those provided by the safety net scheme, eg. full top up pay.

Social insurance models / trust funds

These models typically involve payments being made into a fund by employers, employees and government/s (or a combination).

They suffer from the same deficiencies as employer funded models. They impose a cost on business, with a consequent negative impact upon employment and competitiveness.

Even if contributions were made by employees, it is generally accepted that employers would ultimately bear the cost of those contributions.

Social insurance / trust fund models pose particular problems. These include administrative costs and complexities, compliance and enforcement issues, and difficulties with meeting funding requirements particularly in the initial phase.

Apart from these practical concerns, Ai Group is fundamentally opposed to these models for other reasons. Once such a scheme is established, it would inevitably lead to demands by unions and other interest groups to broaden the scheme's purpose and eligibility rules. This is a particular concern where large groups of employees may not derive any direct benefit from the pool of funds (eg. women not of child-bearing age and men). The existence of the scheme could easily lead to demands within workplaces or industries for the pool to be used to fund any number of entitlements, such as long service leave and redundancy entitlements.

The experiences associated with the long service leave and severance schemes in the construction industry (together with the manufacturing unions' failed Manusafe proposal) highlight the flaws in this approach. Employer representatives in the construction industry, such as Ai Group, fight an ongoing battle to stop the unions expanding the coverage of these scheme into new industries and different categories of entitlements, plus to stop the quantum of the benefits provided by the schemes being increased. Despite Ai Group's efforts, the benefits have substantially improved over time due to industrial pressure being placed upon employers by unions.

The introduction of a social insurance / trust fund model in Australia is inappropriate and could potentially have a widespread destabilising influence on existing arrangements.

10. Ai GROUP'S PROPOSED MODEL

Outline of scheme

Ai Group proposes a scheme with the following elements:

- Entirely Government funded;
- Available to women in paid work;
- Available to permanent employees with 12 months' service with an employer, and casuals, subject to the same criteria as apply under unpaid parental leave provisions;
- The payment would be taxable as income;

- 14 weeks' duration, or less if an employee returns to work earlier;
- Payments at the level of the Federal Minimum Wage (currently \$522.12), or the employee's actual wage if she is a part-time worker who earns less;
- Payments to be made directly by the Government or, by agreement between the employer and employee - by the Government through the employer;

These factors are discussed in more detail below.

Funding

The scheme should be funded through the social security system, from general Government revenue.

The payment should be employment based, rather than a universal payment.

It should not be means tested. This would effectively penalise women in higher paying occupations, who generally face higher opportunity costs and greater reduction in family income. It should also be noted that not all Government payments are means tested (eg. the Child Care Rebate).

The provision of a Government funded scheme would enable all employers to access the benefits of paid maternity leave while providing significant benefits to employees and the Australian community as a whole.

Community benefits also include improved returns on public investment in education and training as well as improved health and welfare of mothers and newborn children, leading to a more stable and productive workforce (both in present and future generations).

Options to offset the fiscal impact of a government-funded model should be explored.

Ai Group's preferred approach is for the Baby Bonus to be abolished. However, it is equitable to provide social welfare assistance to those who would be unable to access the scheme. Existing social security and family assistance payments should be reviewed to ensure women and families are provided with adequate support around the time of childbirth.

Maternity allowances for births have taken a number of shapes in Australia. The first form of Maternity Allowance was introduced in 1912 as a modest universal,

non-means tested payment.²⁸ It was equivalent to about 2 weeks' wages at the level of the basic wage for an unskilled worker. It was abolished in 1978 by which time other child payments had been introduced. In 1996, the Labor Government introduced a Maternity Allowance of around \$800, or 6 weeks of the then Parenting Allowance. The payment was tax-free and available to families who met the eligibility criteria for the Basic Family Payment (similar to Family Tax Benefit A). It was not until 2004 that a Maternity Payment was set at a more substantial rate (initially \$3,000). Historically, the payment has been made as a lump sum.

The amount and eligibility criteria for the payment would need to be carefully considered, as would its interaction with the proposed scheme.

Duration

The 14 week minimum set by the International Labour Organisation (ILO) in its *Maternity Protection Convention 2000* has gained increasing prominence in the public debate, moving up from the 12 week standard which had been in place since the earlier convention in 1952.

In Ai Group's view, a maximum period of 14 weeks paid maternity leave is the appropriate safety net entitlement.

If the employee returns to work earlier, then maternity leave payments should only apply for the period of leave.

Level of benefit

Ai Group considers that the Federal Minimum Wage (currently \$522.12) or the employee's actual wage if she is a part-time worker who earns less, strikes the right balance and ensures:

- That a substantial proportion of women receiving full or a significant level of wage replacement;
- That appropriate fiscal restraint is exercised.

It is equitable that the same maximum benefit apply to all employees.

Schemes under which payments are based upon a proportion of the employee's income (say, two-thirds) would provide a relatively higher benefit to higher-paid

²⁸ Dale Daniels, *Social Security Payments for People Caring for Children, 1912 to 2006*, 2006<www.aph.gov.au/Library/pubs/online/children_parta.htm>

employees. The fairest approach is for the same maximum amount to apply to all employees.

In its 2002 paid maternity leave report, HREOC recommended the same level of benefit as is proposed by Ai Group²⁹. The report noted that:

- 14 weeks is the ILO standard and received the greatest level of support during HREOC's consultations;
- The Federal Minimum Wage "represents an appropriate minimum entitlement. It provides a safety net of fair minimum wages, is regarded by many in the community as providing a reasonable standard of living, is set annually by an independent organisation and has a reasonable level of community support";
- It is appropriate that the payment level incorporate a capped amount and a wage-related component, due to the objectives and role of the scheme.

Implications of proposed level of benefit

Women who meet the eligibility criteria and whose previous weekly wage is at or below the Federal Minimum Wage would receive full income replacement.

Accordingly, under Ai Group's proposed model:

- A significant proportion of women would receive full income replacement; and
- A significant proportion of the remaining women would receive a substantial proportion of income replacement for the period.

Estimates of income replacement under Ai Group's proposed scheme

A woman on the average female total weekly earnings (\$695.70) would receive 75% income replacement for 14 weeks.³⁰ Average female total weekly earnings reflects the extent of part-time employment of women and may be considered more representative than wages based on average full time earnings.

The average female part-time employee, who receives \$413.10, would receive full income replacement.³¹

A woman on average weekly full-time adult ordinary time earnings (\$1,003.60) would receive over 50% income replacement.

In total, over 66% of women in paid work would receive between two-thirds and full income replacement under the proposed scheme:

²⁹ HREOC, *A Time to Value: Proposal for a National Scheme of Paid Maternity Leave*, 2002

³⁰ ABS *Average Weekly Earnings*, 6302.0, 15 May 2008.

³¹ ABS, *Employee Earnings and Hours*, 6306.0, May 2006 (reissue April 2007)

At least 36% of all employed women earn at or below the Federal Minimum Wage and would receive full income replacement.³²

A further 30% would receive two-thirds income replacement.³³

As the above figures illustrate, it is not necessary to compel employers to make “top up” payments in order to achieve significant income replacement for the large majority of women in paid employment.

The proportion of income replacement which women receive under the scheme will obviously decrease as the woman’s weekly earnings increase. However, women on higher incomes are more likely to receive paid maternity leave under workplace arrangements. Going forward, this may well mean that many such women will receive payments above the minimum set out in the scheme. Women on higher incomes are more likely to represent a business case for the voluntary payment by employers of paid maternity leave, due to the skill and experience reflected by their higher earnings. However, it is vital that employers retain the discretion as to whether or not to offer such payments, depending on the particular circumstances of the business and their employees.

Payment mechanism

Ai Group supports the payment being made directly to employees, by Government, other than where the employer and employee agree that the payment be made by Government through the employer.

The option for payment through the employer would facilitate “top up” payments. It could be expected that many employers would be willing to agree to this payment mechanism where they have structured their arrangements to integrate with the Government funded payment.

However, it would not be appropriate to compel an employer to be the intermediary for transferring Government payments where it does not wish to do so (NB. there is potential for administrative costs and inefficiencies to be imposed upon employers), or where the employee does not support this payment mechanism.

³² This is based on the proportion of women with total weekly earnings under \$500. Source: ABS, *Employee Earnings and Hours*, May 2006 (Reissue April 2007). The current Federal Minimum Wage is \$522.12 and it may be noted that a lower FMW was applicable to the source data.

³³ This is based on the proportion of women for whom the current FMW would represent two-thirds of total weekly earnings. Source: ABS, *Employee Earnings and Hours*, May 2006 (Reissue April 2007).

Eligibility and requirement for 12 months' service with single employer

Ai Group considers that the eligibility criteria for paid maternity leave and unpaid parental leave should be aligned, to ensure that a woman who has access to the payments also has access to leave and the protection of returning to her previous position.

It is important that the eligibility for: (1) the taking of leave, (2) the payment for leave; and (3) the return to work guarantee be aligned because:

- It is not logical to provide a payment for leave in circumstances where an employee is not entitled to take leave;
- If an employee is entitled to take leave and be paid for that leave in circumstances where they are not entitled to the return to work guarantee (say, if eligibility under the paid maternity leave scheme was set at six months, rather than 12 months) there would be a risk that some women would not be offered their job back at the conclusion of the leave.

The importance of a paid maternity leave scheme interacting with employment protection has often been overlooked in the debate.

It may be noted in this context that as part of the 2000 *Maternity Protection Convention*, the obligation to introduce paid maternity leave is squarely centred on not merely the availability of a payment but the ability to take leave and return to the previous position.

Article 11 states:

*“(2) In Order to prevent discrimination against women on the grounds of marriage or maternity and **to ensure their effective return to work**, State Parties shall take appropriate measures:*

...

*(b) To introduce maternity leave with pay or with comparable social benefits **without loss of former employment**, seniority or social allowances.*

(Emphasis added).

The scheme needs to be properly integrated with existing employment protections to work effectively in practice.

It is not proposed that the Government funded payments be tied to any actual requirement to return to work.

A requirement for 12 months' service with the same employer offers the best opportunity for integration with employer arrangements over and above the Government funded payment. Virtually all existing public and private paid maternity leave schemes in Australia (including the scheme applicable to most Commonwealth Government employees) require a minimum of 12 months' service. The Australian Catholic University's scheme, often cited as a generous scheme in Australia, is based on a minimum service requirement of two years.

It is unlikely that many employers would agree to voluntarily "top up" the safety net scheme for an employee with less than 12 months' service. The existence of different service requirements for access to the Government scheme and any "top ups" or more generous arrangements introduced or retained would result in complexity and confusion for both employers and employees.

Data on the coverage of the proposed scheme can be gleaned from a number of sources, indicating that a significant majority of women in paid work would be eligible under the proposed scheme:

1. The ABS *Career Experience* report in November 1998 found that of female employees, 82% of full time permanent employees, 83.9% of part time permanent employees, 58.4% of full time casuals and 61.3% of part time casuals had at least 12 months' service with their current employer.³⁴
2. An ABS survey in 2005 found that 83% of women employed while pregnant had been with their employer for at least 12 months.³⁵

Fathers

Ai Group proposes the introduction of a paid maternity leave scheme. Women in paid work face unique disadvantages (both short and longer term) due to their intrinsic childbearing role. This childbearing role presents issues for women's physical health and well-being, and often involves breastfeeding.

That said, Ai Group recognises the important role of fathers in childrearing as well as providing support to the mother around the time of childbirth.

The availability of financial assistance for mothers under the scheme may ease some of the financial pressures on families around the time of birth, and may encourage more fathers to take a period of leave at that time.

³⁴ Cited in HREOC, *Valuing Parenthood: Options for Paid Maternity Leave – Interim Paper*, 2002, Appendix A

³⁵ ABS, *Pregnancy and Employment Transitions Survey*, 2006.

Paid paternity leave should be left to be negotiated at the enterprise level. It is likely that, with the introduction of a Government funded paid maternity leave scheme, more organisations will consider offering paid paternity leave (or providing longer periods) to be “an employer of choice”.

Superannuation

Payments under Ai Group’s proposed model are Government funded. Unless agreed otherwise between the employer and employee, the payments would be made directly from the Government to the employee. With such a model it is not appropriate that employers be required to make superannuation contributions on the Government payments. This would impose additional costs on employers during the period of paid maternity leave, above the costs of accommodating the employee’s absence and potentially funding a replacement. It would also be administratively burdensome for employers because they would not readily have the details of the timing or quantum of the payments

Under the standard unpaid maternity leave provisions in federal and state awards, superannuation contributions are not payable, and annual leave, long service leave and personal/carer’s leave do not accrue during periods of maternity leave. This arrangement is equitable for both employers and employees.

Maternity leave payments are currently excluded from the definition of “ordinary time earnings” under the Superannuation Guarantee Legislation (*Ref. Superannuation Guarantee Ruling 94/4*). This is appropriate.

Additional benefits negotiated at the enterprise level

It would be open for employers to reach agreement at the workplace level to provide, for example:

- “Top up” payments for 14 weeks or less;
- Paid leave of a longer duration;
- Paid leave to employees not eligible under the scheme.

The scheme should not provide any rules or restrictions around the type of arrangements which can be developed at the enterprise level.

Many employers which currently provide paid maternity leave can be expected to review their arrangements and consider how they might be restructured in light of the proposed scheme.

Many employers provide paid maternity leave to be an “employer of choice”. The introduction of a Government funded scheme is unlikely to be viewed by employers as an opportunity for cost savings. Indeed, it is likely to be approached as a means to fund more innovative family friendly arrangements in the workplace.

Organisations with 100 or more employees are required to report annually on their initiatives to the EOWA. It can be expected that many reporting organisations would cover in their reports the decisions behind any changes in current arrangements flowing from the introduction of the new scheme.

Proposed review of the scheme

The scheme should be reviewed after a sufficient period of operation to examine its effectiveness. A suitable period would be two years.

Government employees

To limit the fiscal impact of the scheme, it should not include Government employees already entitled to paid maternity leave through other schemes or legislation. Where Government employees cannot access a comparable benefit to the proposed scheme, the relevant Government should enhance its scheme.

11. CONCLUSION

In conclusion, there is a strong case for the introduction of a publicly funded paid maternity leave scheme in Australia, consistent with the model proposed by Ai Group.

However, the introduction of any compulsory paid maternity leave scheme which is wholly or partially funded by employers would not be in the public interest and would be harmful to both employers and employees.



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