



**amnesty international australia**

Submission to the

**Paid Maternity, Paternity and Parental Leave  
Productivity Commission Inquiry**

Submitted by

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## 1. Introduction

Amnesty International is a worldwide movement of more than 2.2 million people across 150 countries. Our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of these rights.

Amnesty International is independent of any government, political ideology, economic interest or religion. It does not support or oppose any government or political system, nor does it support or oppose the views of victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights.

Amnesty International has been at the forefront of work on the development and fulfilment of human rights standards for over 45 years. In addition to its work on specific abuses of human rights, Amnesty International urges all governments to ratify and implement human rights standards and works to create a human rights culture throughout society. As part of its global campaign to Stop Violence against Women, Amnesty International is campaigning for all governments to respect, protect and fulfil women's human rights. Governments must actively work to eliminate gender discrimination to fulfil women's human rights.

Amnesty International supports the urgent introduction of a national paid maternity leave scheme. The right to paid maternity leave can be found in an increasing number of international human rights instruments. Paid maternity leave is required to address gender inequality and discrimination and to recognise the importance of parenting. In some circumstances, paid maternity leave may allow women economic independence to leave a violent relationship. It is the responsibility of the Federal Government to ensure that human rights obligations are met. Amnesty International supports a model of paid maternity leave which:

- is universally available
- meets international recommendations in regards to duration
- is paid at the rate of income replacement or minimum wage (whichever is higher)
- does not replace welfare benefits designed to ameliorate the costs of children

## 2. Paid maternity leave and international human rights standards

Paid maternity leave is one of the rights which ensure equality between men and women and protects women's right to be free from discrimination.

The right to paid maternity leave is recognised and protected by a number of international human rights instruments including the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and International Labour Organisation Standards (ILO).

### 2.1 Provisions for paid maternity leave in the Convention on the Elimination of All Forms of Discrimination against Women

CEDAW has been described as an *"international bill of rights for women"*<sup>1</sup>. It defines the various forms of discrimination faced by women and proposes measures for action by States to put an end to such discrimination. Australia has signed and ratified CEDAW.<sup>2</sup>

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<sup>1</sup> Convention on the Elimination of All Forms of Discrimination Against Women, Overview of the Convention, [www.un.org/womenwatch/daw/cedaw/](http://www.un.org/womenwatch/daw/cedaw/)

<sup>2</sup> CEDAW was signed in 1980 and ratified in 1983.

Under Article 11 of CEDAW, State Parties have an obligation to “take all appropriate measures to eliminate discrimination against women in the field of employment.” Article 11(2)(b) specifies that in order to prevent discrimination against women on the grounds of maternity, States Parties must take measures to “*introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.*”<sup>3</sup>

At the ratification of CEDAW Australia appended a reservation to the convention, excluding themselves from this particular article.

## 2.2 Provisions for paid maternity leave in International Labour Organisation instruments

The ILO has long recommended women be entitled to a period of paid maternity leave.<sup>4</sup>

The ILO adopted the Maternity Protection Convention (ILO Convention No. 183) and the Maternity Protection Recommendation (ILO Recommendation No. 191). The ILO Convention no. 183 entitles all women to a period of maternity leave of no less than 14 weeks.<sup>5</sup> ILO Recommendation No. 191 suggests “*members should endeavour to extend the period of maternity leave to at least 18 weeks.*” These standards are made with the objective of “*further promoting equality of all women in the workforce...the health and safety of the mother and child...and the development of the protection of maternity in national law and practice.*”<sup>6</sup> While these are recommended minimums, many countries, particularly those with the wealth to do so, provide maternity leave in excess of these minimums.

Australia is a member of the ILO but has not ratified the ILO Convention No. 183.

## 3. Current access to paid maternity leave in Australia

The right to paid maternity leave is not currently universally recognised or protected in Australian legislation. Australia is one of two OECD countries who have not legislated for a system of minimum paid maternity leave across the workforce<sup>7</sup>. Research suggests that approximately 60 percent of Australian women do not have access to paid maternity leave.<sup>8</sup>

The *Maternity Leave (Australian Government Employees Act) 1973* is the only Federal legislation to provide paid maternity leave, providing 12 weeks to Federal Government employees. The entitlement of State Public Sector employees is inequitably less, and inconsistent, varying from 12 weeks in Victoria, Tasmania and the Northern Territory, to 4 weeks in South Australia<sup>9</sup>.

Amnesty International Australia is concerned at the inequity of access to paid maternity leave. Only 0.4 percent of women in casual employment have access to paid maternity leave.<sup>10</sup> ABS data also suggests that women in skilled occupations use paid maternity leave at almost double the rate of women in unskilled occupations such as sales and services.<sup>11</sup>

3 Text of the Convention at [www.un.org/womenwatch/daw/cedaw/text/econvention.htm](http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm)

4 Baird, M, Paid Maternity leave: The good, the bad, the ugly (2003), *Australian Bulletin of Labour*, Vol 29, Iss. 1, p.97

5 Article 4(1), International Labour Organisation, Maternity Protection Convention 2000 (No.183), [www.ilo.org/ilolex/cgi-lex/convde.pl?C183](http://www.ilo.org/ilolex/cgi-lex/convde.pl?C183)

6 International Labour Organization, Recommendation Concerning the Maternity Protection Recommendation 2000 (No.191), <http://www.ilo.org/ilolex/english/reportforms/pdf/22e183.pdf>

7 O'Neill, S, Paid Maternity Leave, *Australian Parliament House E-Brief*, 11 August 2004, [www.aph.gov.au/library/intguide/ECON/maternity\\_leave.htm](http://www.aph.gov.au/library/intguide/ECON/maternity_leave.htm)

8 CF Baird, op cit, Australian Bureau of Statistics 2003 and 2005, *Employee Earnings Benefits and Trade Union Membership, 2003 and 2005*, cat. no. 6310.0, ABS, Canberra.

9 Baird, op cit,

10 ABS 6361.0 *Survey of Employment Arrangements and Superannuation* April - June 2000 unpublished data.

11 ABS 4102.0 *Australian Social Trend: Maternity leave arrangements* (2007).

#### 4. Discrimination and Gender Inequality in the Workforce

There is an important relationship between providing maternity compensation and reducing other forms of discrimination faced by female workers, such as gender inequality in opportunity, pay and participation. The implementation of universal paid maternity leave would empower women through the support of a wide range of their civil, economic and social rights. This in turn would strengthen Australian economy and society.

While some progress has been made, inequality in the Australian workforce and in the economy remains pronounced. In Australia, women:

- Earn, on average, 66 percent of male total earnings<sup>12</sup>
- Are under-represented in senior management in the Australian Public Service<sup>13</sup> as well as the private sector<sup>14</sup> and hold only 10 percent of private sector board positions,<sup>15</sup>
- Are participating more in paid work, but still undertake most unpaid domestic work,<sup>16</sup>
- Are outnumbered in managerial and administrative jobs by more than three to one;<sup>17</sup>
- Are considerably under-represented in senior positions, and
- Are much more likely to work either part-time or on a casual basis<sup>18</sup>.

Economic policy analyst, Steve O'Neill has suggested that paid maternity leave "*would go some way to addressing the male/female wage disadvantage and compensate for the period of childbirth and time shortly after when women take time off work or reduce their labour force activity.*"<sup>19</sup> Redressing inequality in the workforce requires a consistent, multi-faceted strategy from Government addressing gender inequality in the broader community. Paid maternity leave should be one instrument in that operation.

#### 5. Violence Against Women & Economic Independence

United Nations Commission of Human Rights Elimination of Violence against Women Resolution 2003/45, s.14(c) recognises the importance of women's economic independence in eliminating violence against women. States have a duty to:

*take all measures to empower women and strengthen their economic independence and to protect and promote the full enjoyment of all human rights and fundamental freedoms in order to allow women and girls to protect themselves better against violence and, in this regard, to give priority to education, training, economic opportunity and political participation of women.*

Violence against women occurs at alarming rates in Australia. In 2004, the Australian Institute of Criminology found 57 percent of Australian women reported experiencing at least one incident of

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12 Calculated from a comparison of male and female total ordinary time earnings in Table 1, Average Weekly Earnings Trend Cat 6302.2 November 2007

13 From Measures of Australia's Progress 2006, Australian Bureau of Statistics Cat.No. 1370.0, p. 185, available at [www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/47132EE72AC3581DCA25717F0004ACE8/\\$File/13700\\_2006.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/47132EE72AC3581DCA25717F0004ACE8/$File/13700_2006.pdf) (as at 29/02/08).

14 In 2004, 10% (174) of executive managers of ASX200 companies were women, compared with 8% (113) in 2002." 47% (82) ASX200 companies did not have any female board directors in 2004.Op. cit. pp184.-5.

15 HREOC's Valuing Parenthood: Options for paid maternity leave – Interim Paper 2002, HREOC Paid Maternity Leave Submission, July 2002, [www.hreoc.gov.au/sex\\_discrimination/paid\\_maternity/pml/report/index.html](http://www.hreoc.gov.au/sex_discrimination/paid_maternity/pml/report/index.html)

16 See for example paper "Post-Familial Families and the Domestic Division of Labor: A View From Australia " by Janeen Baxter, Belinda Hewitt and Mark Western, Melbourne Institute 2003, available at: <http://www.melbourneinstitute.com/hilda/Biblio/wp/hwp2003n01.pdf> (as at 27/02/08) p.20

17 HREOC's Valuing Parenthood: Options for paid maternity leave – Interim Paper 2002, HREOC Paid Maternity Leave Submission, July 2002, [www.hreoc.gov.au/sex\\_discrimination/paid\\_maternity/pml/report/index.html](http://www.hreoc.gov.au/sex_discrimination/paid_maternity/pml/report/index.html)

18 HREOC's Valuing Parenthood: Options for paid maternity leave – Interim Paper 2002, HREOC Paid Maternity Leave Submission, July 2002, [www.hreoc.gov.au/sex\\_discrimination/paid\\_maternity/pml/report/index.html](http://www.hreoc.gov.au/sex_discrimination/paid_maternity/pml/report/index.html)

19 O'Neill, S, *Op cit*

physical or sexual violence by a man over their lifetime. Over one third of women (34 percent) who have been in a relationship report experiencing at least one form of violence from an intimate male partner during their lifetime.<sup>20</sup>

Particularly relevant is the number of Australian women experiencing violence during pregnancy and motherhood. According to the Australian Bureau of Statistics:

- 59 percent (667 900) of women interviewed who experienced violence by a previous partner were pregnant at some time during the relationship,
- 36 percent (239 800) of these women reported that violence occurred during a pregnancy, and
- 17 percent (112 000) experienced violence for the first time when they were pregnant.<sup>21</sup>

Researchers have found that the risk of violence appears to be greatest after giving birth.<sup>22</sup> It is imperative that pregnant women and women with new babies are given every opportunity to realise their right to live free from violence. While there are numerous and complex reasons why women may stay in a violent relationship, economic vulnerability and the prospect of homelessness may be some of them.

Women experiencing violence are at an increased risk of unemployment and poverty and domestic violence is the major cause of homelessness for women.<sup>23</sup> In the absence of paid maternity leave provisions, a woman's economic independence can be severely diminished or even eliminated during the later stages of pregnancy and in the early stages of child-rearing.

In order to protect the safety, well being and freedom of women and children in such situations, legislated systems of paid maternity leave must be made universally available to all female employees. This would ensure the greatest possible level of economic autonomy for women during vulnerable periods of pregnancy and in the early stages of child-rearing. This would provide the freedom to make informed decisions to escape violent relationships.

States must exercise 'due diligence' to eliminate violence against women. This includes safeguarding women against economic discrimination that would leave them vulnerable to economic dependence.

## **6. Recommendation**

Maternity leave may be paid by the government, employer or a combination of both. International human rights instruments have not indicated who should pay for maternity leave. However, the protection and implementation of international human rights obligations is a responsibility of the Federal Government.

Amnesty International Australia therefore recommends:

### **Universal Paid Maternity Leave**

Paid maternity leave is a universal right. Amnesty International Australia supports a system of paid maternity leave that is available to all women. The system should include casual or part-time workers, self employed, students and women seeking employment.

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20 Mouzos, J., and T. Makkai (2004) Women's Experiences of Male Violence: Findings from the Australian Component of the International Violence Against Women Survey (IVAWS). Canberra: Australian Institute of Criminology, Research and Public Policy Series, No. 56.

21 ABS (Australian Bureau of Statistics) (2006) Personal Safety Survey Australia. Canberra: Australian Bureau of Statistics (Cat. 4906.0).

22 Gielen AC, O'Campo PJ, Faden RR, Kass NE, Xue X. Interpersonal conflict and physical violence during the childbearing year. *Soc Sci Med* 1994;39:781-7.

23 Australian Institute of Health and Welfare, Homeless People in SAAP: SAAP National Data Collection Annual Report 2005-06, [www.aihw.gov.au/publications/hou/saapndcar05-06/saapndcar05-06-c05.pdf](http://www.aihw.gov.au/publications/hou/saapndcar05-06/saapndcar05-06-c05.pdf)

### **International Recommendations Regarding Length of Paid Maternity Leave**

HREOC has proposed an incremental, 2-stage system of implementation providing 14 weeks leave in the first phase. After a period of 2 years this scheme would be independently reviewed. The second phase would then see the introduction of an additional 38 weeks of paid parental leave, of which 4 weeks would be reserved for the supporting parent.<sup>24</sup> Amnesty International Australia supports this proposal with the suggestion that the ILO recommended minimum of 18 weeks be used as the starting point for the initial phase.<sup>25</sup>

### **Income Replacement Rate**

To advance equality and eliminate discrimination, maternity leave should be paid at income replacement rates for working women for at least 18 weeks. Minimum wage should be the minimum amount women receive during this period but no woman should have a reduced income during this period.

### **Independence from other parenting payments**

Paid maternity leave is a payment designed to ameliorate sex discrimination and advance equality. It is not a welfare payment to cover costs of children. Those payments are also important for families but should not be effected by the introduction of paid maternity leave. The 'baby bonus' for example was introduced in recognition of "the extra costs associated with the birth or adoption of a baby."<sup>26</sup>

## **7. Conclusion**

The right of women to access paid maternity leave is universally protected by various International documents, many of which have been either ratified or endorsed by Australian Governments. Yet despite this, Australia remains one of only two developed countries that has not ensured this right is secured.

The denial of paid maternity leave enables inequality and discrimination to proliferate. Paid maternity leave is vital to achieving equality and eliminating discrimination in economic, employment and social spheres. Paid maternity leave is not a luxury that should be subject to questions of productivity, it is a basic human right.

Redressing inequality in the workforce requires a consistent, multi-faceted strategy from Government addressing gender inequality in the broader community. Measures beyond paid maternity leave are required to address financial and workplace inequality. Greater measures have been taken by other governments and are recommended in international law. Amnesty International Australia encourages the Productivity Commission to recommend further measures including flexible return to work policies (including the right to return part-time), greater protection of casual workers and stronger measures to advance pay equity.

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<sup>24</sup> Oral evidence provided by Sex Discrimination Commissioner Elizabeth Broderick to the Productivity Commission Inquiry into Paid Maternity, Paternity and Parental Leave Public Hearing, 20 May 2008, available at [www.hreoc.gov.au/legal/submissions/2008/paid\\_maternity\\_leave\\_20080520.html](http://www.hreoc.gov.au/legal/submissions/2008/paid_maternity_leave_20080520.html)

<sup>25</sup> Australia is in a position to provide a generous system of maternity leave beyond the minimum 18 weeks recommended by the ILO. The legislated provision of 12 months unpaid maternity leave provides an indication of the anticipated length of leave required before women return to work. There is a growing movement, internationally and within Australia, to extend the entitlement to unpaid maternity leave. World Health Organisation promotes breast feeding until 2 years which would make return to work after 12 months difficult without a range of

<sup>26</sup> Family Assistance Office, Baby Bonus - Eligibility and Guidelines, available at:

[http://www.familyassist.gov.au/internet/fao/fao1.nsf/content/publications-factsheets-maternity\\_payment\\_eligibility.htm#9](http://www.familyassist.gov.au/internet/fao/fao1.nsf/content/publications-factsheets-maternity_payment_eligibility.htm#9)