



Australian  
Human Rights  
Commission

*everyone, everywhere, everyday*

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Submission of the  
Australian Human Rights Commission  
to the  
Productivity Commission  
on the  
Inquiry into Paid Maternity, Paternity and Parental  
Leave  
24 November 2008

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## **1 Introduction**

1. The Australian Human Rights Commission ('the Commission')<sup>1</sup> makes this submission to the Productivity Commission in its Inquiry into Paid Maternity, Paternity and Parental Leave ('the Inquiry').
2. The Commission is Australia's national human rights institution.<sup>2</sup>
3. The Commission has a long-standing commitment to achieving a national scheme of paid maternity leave, and more recently, to achieving a more comprehensive scheme of paid leave for parents.<sup>3</sup>
4. The Commission made a submission to the Inquiry in June 2008. This first submission contained the Commission's proposal for a National Paid Leave Scheme for Parents. The Commission's proposal draws on Australia's international human rights obligations and labour standards, the Commission's previous work in this area, a range of national policy objectives, and national and international research.<sup>4</sup>
5. The Commission welcomes the Inquiry's Draft Report, *Paid Parental Leave: Support for Parents with Newborn Children* ('Draft Report'), which sets out a robust proposal for a national scheme of paid leave for mothers, fathers and supporting parents.
6. A national, statutory scheme of paid leave for parents is well overdue.
7. In an uncertain global financial environment a national scheme of paid leave for parents is essential for maintaining productivity and building a strong and sustainable economy.
8. The Commission notes the Prime Minister's commitment to introducing a scheme<sup>5</sup> and looks forward to seeing its implementation following the Productivity Commission's final report in February.
9. In this second submission, the Commission's comments will be limited to key aspects of the Inquiry's proposed model, specific issues which the Inquiry has asked for feedback on, including advantages and disadvantages of the proposed model, and aspects of the Commission's previous proposal that would enhance the Inquiry's model.
10. The submission makes a number of recommendations for improving the Inquiry's proposed model.

## **2 Summary**

11. This submission welcomes the Productivity Commission's Draft Report as an important milestone towards implementing a national scheme of paid leave for parents.
12. A national scheme of paid leave for parents is an urgent policy priority.
13. The Commission endorses the Draft Report's proposed model of paid parental leave as a sound first stage of achieving a world class scheme of paid leave entitlements for parents in Australia.
14. However, the Commission considers that the model needs to be improved in a number of specific areas. In particular:

- **Legislated independent review:** The model should include a legislated independent review after two years of operation in order to make any necessary improvements to the model, with a view to extending the scheme
  - **Research, monitoring and evaluation:** The model must include a comprehensive program of research, monitoring, and evaluation in order to track the impacts of the model in its first phase, with a view to improving and building on the model to improve its effectiveness
  - **Education and awareness-raising campaign:** The model needs to include provision for a well-funded, comprehensive, accessible education and awareness-raising campaign for both employees and employers, including targeted assistance for particular groups, in order to ensure that the model contributes positively to the national public policy objectives and
  - **Funding for the Commission:** There is a need to make provision for increased funding to the Commission. Increased funding would be needed for the Commission to play a leadership role in the updating of pregnancy discrimination guidelines under the *Sex Discrimination Act 1984* (Cth) ('the SDA') which take into account the model, and for the Commission to lead public, employer and employee based education strategies to prevent an increase in pregnancy-related discrimination. Increased funding would also be needed to respond to likely increases in pregnancy and sex discrimination enquiries from both employers and employees, and complaints under the SDA.
15. Subject to the above improvements, the Commission recommends that the Australian Government adopt the Inquiry's proposed model for implementation within the next 12 months.

### 3 Recommendations

16. **Recommendation 1:** That 'paternity leave' be called 'supporting parent leave' in order to be inclusive of diverse family structures, including same-sex families.
17. **Recommendation 2:** That the federal government remove its reservation to Article 11(2)(b) of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW).
18. **Recommendation 3:** That the federal government take steps towards ratification of the *Maternity Protection Convention 2000 (No 183)* (ILO Convention 183), and ensure compliance with other provisions of that Convention.
19. **Recommendation 4:** That the Inquiry consider measures that would provide financial and practical support to small employers to assist them to implement the proposed paid leave scheme, and make a recommendation in this area in their Final Report to the federal government.
20. **Recommendation 5:** That subject to further modification and improvement undertaken in the Final Report, the federal government implement the Inquiry's proposed paid leave scheme within the next 12 months.

21. **Recommendation 6:** That the federal government implement the Inquiry's proposal for a Maternity Allowance to provide income support for those ineligible for the proposed paid leave scheme.
22. **Recommendation 7:** That following implementation of the proposed paid leave scheme an independent review be carried out two years into its operation in order to make any necessary modifications and improvements and so that a second stage of paid leave measures be introduced so that in total the scheme provides for:
  - 34 weeks of additional paid parental leave, of which 4 weeks may only be taken by the supporting parent, in addition to
  - 18 weeks paid parental leave, to be initially paid to the mother and
  - 2 weeks supporting parent leave to be taken concurrently at the time of birth.
23. **Recommendation 8:** That the Minister for Education, Employment and Workplace Relations should have ministerial responsibility for the proposed paid leave scheme and that a policy unit should be established within the Department of Education, Employment and Workplace Relations to coordinate implementation, promotion, education, monitoring and review of the scheme over time.
24. **Recommendation 9:** That the federal government commit to investing in a solid evidence base to inform ongoing monitoring, review and continuous improvement of the proposed paid leave scheme over time, including providing funding to repeat the Parental Leave in Australia Survey.
25. **Recommendation 10:** That the federal government provide adequate funding to the Australian Human Rights Commission so that it can continue to provide an effective and efficient complaint service in the context of a predicted rise in complaints as a result of the initial implementation of the proposed paid leave scheme.
26. **Recommendation 11:** That the federal government provide funding to the Australian Human Rights Commission to produce updated pregnancy and family responsibility guidelines as part of a broader education and awareness campaign for employers and employees.
27. **Recommendation 12:** That the implementation of the proposed paid leave scheme be accompanied by a comprehensive education community awareness campaign that meets the diverse communication needs of the community and which includes targeted education strategies for groups less likely to have information about the new entitlements.
28. **Recommendation 13:** That as part of a broader education and awareness campaign the federal government provides targeted education and practical support to employers, with a particular focus on small and medium sized employers as part of the implementation of the proposed paid leave scheme.

#### **4 The Commission's work in this area**

29. The Commission has undertaken substantial work over an extended period of time on the need for a national scheme of paid leave entitlements for parents,

including paid maternity leave, paid paternity leave (described as ‘supporting parent leave’ in this submission), and paid parental leave (collectively described in this submission as ‘paid leave’).<sup>6</sup>

30. The Commission set out a detailed proposal for a national scheme of paid leave for parents in its first submission to the Inquiry in June 2008.<sup>7</sup>
31. The Commission is pleased to see that the Inquiry’s draft report reflects significant aspects of the Commission’s previous submission, including acknowledgement of relevant international human rights obligations and labour standards, acceptance of key policy objectives outlined by the Commission, and similarities in design features such as payment source, duration, payment level, payment mechanism, and eligibility.

## **5 Summary of advantages and disadvantages of the proposed model**

32. The Productivity Commission seeks views about the advantages and disadvantages of the proposed model set out in the Draft Report.
33. This section summarises the Commission’s views. Further details about the points set out below are discussed in the remainder of this submission.

### ***5.1 Key advantages of the proposed model***

#### *(a) Objectives of the model*

34. The proposed model meets key national public policy objectives including meeting Australia’s international human rights obligations, enhancing maternal and child health and development, facilitating workforce participation by addressing women’s disadvantage in the workforce, and promoting gender equity and work/family balance.

#### *(b) Compliance with international standards*

35. Adoption of the proposed model would allow Australia to meet its international human rights obligations and relevant international labour standards, particularly in relation to duration and in terms of making the payment initially to mothers.

#### *(c) Inclusion of paternity (supporting parent) leave*

36. The two weeks of paid paternity leave (called ‘supporting parent leave’ by the Commission), which is also available to same-sex supporting partners, is an advantage of the model. It provides recognition of the role of fathers, will help partners to support mothers, and provide health and wellbeing benefits to infants and the family as a whole. Paid supporting parent leave also operates as a signalling device that supports male workers with family responsibilities within the workplace and broader society.
37. Signalling that fathers are important in their role as carers will help break down family-hostile workplace structures and cultures. It will also contribute to

greater gender equality in workplace and the home by encouraging the sharing of family responsibilities between men and women.

*(d) Broad coverage*

38. The proposed model of paid leave provides for broad coverage, taking into account the reality of women's working lives, including women's overrepresentation in part time and casual work, and multiple job holdings.

*(e) Government funding for the model*

39. The model's funding source – largely government funding – is appropriate given the national benefits of the scheme, the absence of social insurance infrastructure that would provide another payment mechanism, and the limited capacity of many businesses to pay for a scheme, particularly small and medium sized enterprises.

*(f) Affordability*

40. A particular advantage of the model is that, in absorbing current government outlays on family payments, the model is relatively inexpensive compared to current expenditure, noting also the likely and potential returns identified in the Draft Report.
41. Given that the proposed model would represent only a 2% increase in existing family assistance outlays by government, there is no doubt that paid leave is an affordable policy.

*(g) Inclusion of superannuation*

42. The Commission welcomes the inclusion of superannuation as part of the payments under the scheme. The Commission is concerned to ensure that paid leave for parents is treated as a workplace entitlement, and that it contributes to closing the gender gap in retirement savings between women and men.
43. The Commission notes that the Productivity Commission recommends that employers contribute the cost of the superannuation component. The Commission does not express a view on this recommendation, recognising the expertise of the Productivity Commission in undertaking the assessment about the appropriate funding model for the scheme. The Commission emphasises that it is essential that the model does not operate as a disincentive to the employment and retention of women.

*(h) Employers to administer payment of the scheme*

44. It is appropriate, within defined parameters as specified by the Inquiry, for business to act as "paymasters" for the scheme as this recognises that paid leave is a workforce entitlement similar to other forms of leave.
45. The Commission recognises that some business groups have expressed concern about the impact of the proposed model on employers. These concerns could be addressed by the provision of financial/administrative



support, for example, to small business and other employers with limited capacity to pay, which may also address concerns about a possible increase in discrimination against women of child bearing age. The Commission notes that the Draft Report recommends introducing regulatory and information measures to assist business as part of the scheme's implementation.

*(i) Fostering of 'top up' arrangements*

46. Another advantage of the scheme is that it encourages employers to continue existing provisions for paid leave in addition to the new statutory paid leave entitlement, including the ability to extend the duration of leave or top up the statutory leave to replacement wage level. It would be useful for the final report to clarify how these arrangements would work given there has been some confusion in the community due to the wording of the Draft Report.

***5.2 Key disadvantages of the proposed model***

47. As noted above, the Commission endorses the proposed model, subject to the improvements set out in this submission.
48. The Commission identifies a number of limits to the proposed model, and encourages the Productivity Commission to consider its recommendations for improvement.

*(a) Limits on pre-birth paid leave for mothers*

49. A disadvantage of the proposed model is that it does not allow women to take any of the paid parental leave just prior to birth.
50. The Inquiry notes the current entitlement to unpaid leave up to six weeks prior to the birth date and the legal obligation of employers to transfer a pregnant woman worker, if necessary, to a safe job in the prenatal period or to be paid a 'no safe job' leave where this is not possible.
51. The Inquiry also asserts that there would be poor 'additionality' (benefits that are additional to those that would arise through private decisions) as a result of allowing flexibility in the commencement of paid leave.
52. The Commission does not accept poor additionality as a good reason for limiting options for women to begin taking paid leave earlier and recommends that paid leave be available to women to take immediately prior to birth. This issue is discussed further in section 7.1.

*(b) Need for legislated independent review*

53. Another disadvantage of the proposed model is that there is no intent to extend the scheme over time.
54. As stated in our first submission to the Inquiry, the Commission would like to see the initial scheme of paid leave independently reviewed after two years in order to make any improvements and to implement a more comprehensive scheme of paid leave for parents.

55. The two processes recommended by the Inquiry – an evaluation of the administrative aspects of the scheme two years into its operation and a comprehensive evaluation of the scheme's impacts five years into its operation – would provide scope for progressively realising a world class scheme of leave that would provide for one year of parental care. However, reviews should be included as part of the legislative framework of the scheme, given the importance of this element of the model.

*(c) Framework to build on and extend the model*

56. In its first submission to the Inquiry the Commission recommended that, subject to the outcome of an independent review, the government introduce of further component of 38 weeks paid parental leave, with four weeks of that period being reserved for the supporting parent on a 'use it or lose it' basis (unless the mother is a sole parent in which case she is entitled to the full additional 38 weeks). The balance of the leave could then be taken by either parent.
57. In light of the proposal for a period of 18 weeks paid leave, the Commission has amended this recommendation to provide for a further component of 34 weeks.
58. The Inquiry estimates that 50% of women could achieve nine months' leave or more on the basis of accessing privately negotiated forms of paid leave and other forms of leave.<sup>8</sup> However the remainder of women, particularly low skilled, low paid and/or casual workers, would be unable to achieve a longer period of paid leave.
59. While this aspect of the proposed model provides a way of recognising the privately negotiated arrangements that have developed in Australia in the absence of a scheme, the drawback is that without committing to achieving a longer period of leave, over time the lack of equity among women workers may become entrenched, and the most disadvantaged women in the workforce will be disproportionately affected.
60. A longer scheme of leave would meet child health and development objectives, encourage greater gender equality by encouraging shared care, and provide greater choice for parents with a preference for parental care in the early months of their children's lives.

*(d) Need for research, monitoring and evaluation*

61. There needs to be greater consideration of the implementation of the scheme, including the capacity to monitor the scheme over time, in order to inform a review process, and the establishment of a dedicated policy unit, as previously recommended by the Commission in its earlier submission.
62. Also absent from the proposal is provision for a comprehensive longitudinal research program to inform ongoing monitoring and evaluation of the scheme. There is a particular need for the resourcing of research in this area.

*(e) Need for education and community awareness campaign*

63. Another disadvantage of the scheme is that while there is provision for guidance for employers there is no provision for a comprehensive education and community awareness campaign, including targeted education strategies for groups of employees less likely to have information about the new entitlements.
64. It is unlikely that the scheme will meet its policy objectives, particularly gender equality objectives, without an accompanying education campaign that is well resourced and comprehensive in scope.
65. Education materials, including tools and support for business, are particularly important and would be one way of ensuring that there is not an increase in discrimination as a result of the introduction of the scheme.

*(f) Funding for the Commission*

66. Funding the Commission to produce updated guidelines in this area along with adequate resourcing of the Commission so that it can continue to provide a complaints handling service that is effective and efficient is a necessary component of the scheme's implementation.
67. The Commission is well placed to play a leadership role in education strategies with the public, employers and employees to help prevent pregnancy and sex discrimination. Updated guidelines which are accessible and widely disseminated through a positive education strategy would be an essential support for implementing the new scheme by helping to ensure there is not an increase in discrimination against women of child bearing age.
68. However, even with a properly funded and targeted education campaign and updated pregnancy discrimination guidelines under the SDA, the Commission anticipates an increase in discrimination complaints as a result of the scheme's implementation. The Commission has already experienced a trending upwards of complaints in the areas of pregnancy and sex discrimination, including return to work issues. The Commission should be adequately funded to respond to enquires from both employers and employees and to handle increases in discrimination complaints.
69. The above summarises the key advantages and disadvantages of the proposed model. The rest of this submission expands on those key points and sets out the Commission's recommendations for improving the Productivity Commission's model.

## **6 Objectives of the proposed paid parental leave scheme**

70. The Commission welcomes the Productivity Commission's Draft Report as an important step in achieving a world class national scheme of paid leave for parents.
71. The Commission is pleased to see that the proposal model is built around meeting three objectives that were among those identified by the Commission in its first submission to the Inquiry.
72. The three objectives identified by the Inquiry as either:

singly or together ... likely to support a case for paid parental leave, whether by addressing inherent market failures or difficulties in realising social norms, are:

- enhancing maternal and child health and development
- facilitating workforce participation
- promoting gender equity and work/family balance.

### ***6.1 Enhancing maternal and child health and development***

73. The Commission agrees that ensuring the health and wellbeing of mothers and babies is a key objective for a scheme of paid leave for parents, particularly in relation to mothers' physical and emotional recovery from child birth, maternal bonding and attachment, and breastfeeding.
74. Any scheme of paid parental leave must recognise and support birth mothers to take out of the workforce to fulfil these biologically essential tasks, and the Commission is pleased to see the Inquiry's recognition of 'the unique capacity of the mother to breastfeed her baby, with the health and other benefits this has for the mother and baby'.<sup>9</sup>
75. In this context the Commission welcomes the Inquiry's proposal to pay paid parental leave initially to mothers, who may then, if they choose, transfer paid parental leave rights to fathers or supporting parents.
76. While the Commission would prefer to see this part of the proposed leave scheme called 'paid maternity leave' in recognition of the unique status of maternity and women's workforce disadvantage as a result of their maternal role, making paid parental leave available only to eligible mothers in the first instance meets the purpose of this first objective in a practical sense.
77. The Commission also considers that the emotional wellbeing of fathers and supporting parents is important and notes that close interaction and bonding between fathers and infants in the first few weeks after birth has been shown to have a positive effect on infants' cognitive functioning, and that periods of both maternity and paternity/supporting parent leave support all members of the family – mothers, fathers and babies.<sup>10</sup>
78. In this respect, the Commission welcomes the two week period of paid paternity leave, reserved for fathers or same-sex supporting parents, as recommended by both the Inquiry and the Commission as part of Stage One of our proposal. However, the Commission proposes that the leave be described as 'supporting parent leave', rather than paternity leave, recognising the diversity of family structures, including same-sex families.
79. **Recommendation 1:** That 'paternity leave' be called 'supporting parent leave' in order to be inclusive of diverse family structures, including same-sex families.

### ***6.2 Facilitating workforce participation***

80. Facilitating workforce participation is another objective identified by the Inquiry that the Commission strongly supports as a policy objective underpinning a scheme of paid leave for parents.

81. Facilitating the workforce participation of mothers is important for both economic and equity reasons.
82. Women continue to be marginalised in the workforce relative to men, with lower participation rates among mothers in particular. Women constitute a higher proportion of casual workers, are more likely to work in low paid occupations and low skilled jobs, have low representation at senior and decision-making levels and continue to experience workplace discrimination on the basis of sex, pregnancy, potential pregnancy and family responsibilities.<sup>11</sup>
83. These ongoing experiences of disadvantage in the labour market often stem from women's unequal treatment in and access to employment as a result of their reproductive role. Women's disadvantage in the workforce has been a key driver in Commission's advocacy for a national paid maternity leave scheme over a number of years.
84. Paid leave assists women to maintain their labour market attachment following childbirth, and as the Inquiry has noted, is likely to promote employment prior to childbirth.<sup>12</sup>
85. As the Inquiry has also found, paid leave will increase the average Australian woman's lifetime employment by around half a year.<sup>13</sup>
86. Increasing women's lifetime employment is of great benefit to women, particularly those at the lower end of labour market who are least likely to be able to access employer-funded schemes of leave. Providing income replacement around the time of childbirth helps ensure women maintain attachment over the life course, increasing their capacity to contribute to superannuation. This is particularly important for Australian women's economic security given that they have substantially poorer retirement incomes than men.<sup>14</sup>
87. Paid leave also benefits employers. Retaining women workers following a period of leave after childbirth benefits employers, who save on the costs of recruiting and retraining new staff, reducing turnover costs and increasing return to work rates.
88. Paid leave also benefits the economy more broadly by boosting workforce participation prior to childbirth and assisting skilled women workers to maintain their workforce attachment, maximising Australia's significant investment in women's education and training.
89. In their recent economic survey of Australia the OECD has recommended that efforts to increase women's labour market participation continue, noting the potential benefits of a national paid parental leave scheme.<sup>15</sup>
90. A World Economic Forum report on the status of women globally has placed Australia first in the world in educational attainment, ahead of every other nation. However, Australia falls behind on the level of women's labour market participation, ranking 41st in the world, behind similar countries such as the United Kingdom, New Zealand and Canada.<sup>16</sup>
91. By increasing women's participation in the labour market, paid leave will help strengthen labour supply among this group.

### **6.3 Promoting gender equity and work/family balance**

92. The third objective identified by the Inquiry is one that the Commission strongly endorses having argued for it in its earlier submission and in oral evidence presented before the Inquiry.<sup>17</sup>
93. As the Commission argued in its first submission, paid maternity leave helps address the disadvantage women experience in the workplace due to childbirth.
94. Providing a level of income replacement for women who are currently required to forego their income as a result of taking time out of the workforce to give birth helps redress the disadvantage that women workers experience in the workforce relative to other workers.
95. Australia has a range of international human rights obligations in this area, as outlined by the Commission in its previous submission.
96. These human rights obligations include, but are not limited to, the right to work and achieving equality by addressing women's marginalisation in employment.<sup>18</sup>
97. The preamble to the *Convention on the Elimination of All Forms of Discrimination Against Women* ('CEDAW')<sup>19</sup> encourages governments to provide the necessary supporting social services to enable parents to combine family obligations with work responsibilities, and recognises that 'the upbringing of children requires a sharing of responsibility between men and women and society as a whole...'.<sup>20</sup>
98. The preamble to CEDAW also recognises:

... the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children ...

[and that] ... a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women ...<sup>21</sup>
99. International instruments such as CEDAW and *Convention (No 156) Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities* ('ILO Convention 156')<sup>22</sup> recognise the need for broader social change so that full equality of opportunity and equal treatment can be achieved for women workers, given that it is women give birth and it is women who are currently more likely to be responsible for the unpaid work of caring for family members.
100. In couple households, women working both full and part time remain responsible for a much greater share of child care and associated domestic tasks than their partners.<sup>23</sup> While social attitudes and expectations of equality and fairness for men and women in public and private life are common, in practice actual patterns of paid and unpaid work do not match these beliefs, despite women's increased workforce participation in recent decades.
101. This is one of the reasons why, in addition to other work and family reconciliation policies, a scheme of paid leave is important for women. Paid

leave helps women meet their current level of responsibility for care while providing symbolic recognition of the value of child rearing as an unpaid form of work that contributes to the greater social and economic good.

102. In sharing some of the costs of child rearing, a government-funded scheme of paid leave provides for greater equality between workers with family responsibilities and workers without family responsibilities. As the Inquiry has argued, as a paid leave entitlement paid parental leave 'normalises' efforts to balance work and family life through 'the recognition and acceptance of dual roles of people as parents and as workers'.<sup>24</sup>
103. However, it is equally important that a scheme of paid leave promotes gender equality by fostering shared responsibility between men and women for the care of children in the home.
104. While it is necessary to provide a period of leave for women that recognises their unique maternal role and their current disproportionate responsibility for child rearing, a dedicated period of non-transferable paid leave for men which signals their importance as "hands-on" parents –in addition to a more traditional role as a breadwinner – is equally important in terms of broader gender equality outcomes.
105. Signalling men's dual roles as both workers and carers through a designated period of paid leave is important as a social endorsement of fatherhood. It also sends a strong symbolic message to employers in particular that fathers are carers as well as workers, helping to break down workplace cultures which are unsympathetic to the practice of men taking leave to care for children.
106. This is why the Commission recommended, in Stage One of our initial proposal, to create two weeks of paid supporting parent leave, leave that is commonly referred to as paid paternity leave, in addition to a minimum of 14 weeks paid maternity leave for women on health and wellbeing grounds, not transferable except under exceptional circumstances (such as the death or incapacity of the mother).
107. The Commission welcomes the Inquiry's recommendation of a non-transferable period of leave for fathers and supporting parents and is pleased to see its evidence used in the Draft Report.
108. While it is not clear to what degree men will utilise the 'Daddy fortnight' as described and recommended by the Inquiry, as the Draft Report notes it will encourage and equip men to take ownership of caring and associated household tasks. Developing an education campaign to accompany the scheme's introduction would increase the likelihood of take up, while ongoing monitoring and a comprehensive evaluation of the scheme after its introduction would provide tools for improving the scheme. These points are discussed further in sections 8 and 9.
109. The Commission would like to see the paid paternity leave element of the Inquiry's proposal developed further over time, moving toward four weeks of 'use it or lose it' leave for supporting parents coupled with a much longer period of transferable paid parental leave that can be shared flexibly between couples according to preference and care needs. These periods of leave are

outlined in detail in Stage Two of the Commission's proposal contained in its earlier submission to the Inquiry and as outlined in section 5.2 (c).

110. Under the Stage Two reform, the Commission also proposed a transferable period of paid leave to begin *after* an initial period of leave reserved for mothers, given that men are unlikely to take paid leave if it is conditional on taking it away from mothers. In New Zealand, for example, only 1% of mothers transfer their parental leave entitlement to fathers at any point during the leave.<sup>25</sup>
111. A paid leave scheme that mixes non-transferable, individual leave entitlements for women and men provides clear recognition of and support for gender equality principles while a longer period of additional, transferable parental leave provides flexibility and support for couples that wish to share care more equally.
112. Following a comprehensive review, implementation of a second stage of reform to introduce a period of leave available to either parent would provide for more equal access to and utilisation of paid leave for those who wish to share care without undermining key health and wellbeing objectives for women and children met under the initial stage of reform.

#### **6.4 Additional objectives**

113. The Commission notes that the Inquiry has considered a range of other objectives raised during the consultation process.
114. While the Inquiry has picked up on much of what the Commission previously argued as important in devising the objectives of a paid parental leave scheme, we emphasise that a number of other national interest objectives will be positively affected by the introduction of a scheme of paid leave.

##### *(a) Meeting Australia's international human rights obligations*

115. Addressing the workplace disadvantage that women experience as a result of maternity is a fundamental objective for a national paid leave scheme given Australia's international human rights obligations in this area.<sup>26</sup>
116. Complying with Australia's international human rights obligations and labour standards is an important national objective for a paid leave scheme.
117. The introduction of the proposed model would comply with CEDAW and allow Australia to remove its long-held reservation under CEDAW regarding the provision of paid maternity leave, and avoid further criticism of Australia by the CEDAW Committee.<sup>27</sup>
118. Adoption of the proposed model would also prevent additional human rights-based criticism from other human rights bodies, such as the Committee on the Rights of the Child.<sup>28</sup>
119. The proposed model would also comply with the maternity leave provisions of the International Labour Organisation ('ILO') *Maternity Protection Convention 2000 (No 183)* ('ILO Convention 183'), which provides a right to 14 weeks paid maternity leave.<sup>29</sup>



120. The proposed model would also comply with the ILO's *Maternity Protection Recommendation* ('ILO Recommendation 191'),<sup>30</sup> which is a non-binding guide accompanying ILO Convention 183 which encourages member states to extend the period of leave to 18 weeks.
121. ILO Recommendation 191 also addresses paid parental leave for employed mothers or employed fathers following the expiry of maternity leave but without specifying duration, eligibility or payment levels.<sup>31</sup>
122. Following implementation of a paid leave scheme the federal government should take steps towards ratification of ILO Convention 183, as previously recommended by the Commission.<sup>32</sup>
123. **Recommendation 2:** That the federal government remove its reservation to Article 11(2)(b) of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW).
124. **Recommendation 3:** That the federal government take steps towards ratification of the *Maternity Protection Convention 2000 (No 183)* (ILO Convention 183), and ensure compliance with other provisions of that Convention.

*(b) Broader social benefits*

125. A paid leave scheme for parents also delivers social benefits such as encouraging and providing assistance for parents to raise their children. Paid leave is one among a number of policy mechanisms which addresses the social need to support the rearing of the next generation of citizens and workers.
126. To the extent that paid leave directly assists people to combine work and family responsibilities, it may also have flow-on benefits for the fertility rate, community life and social cohesion.
127. A national scheme of paid maternity, supporting parent and paid parental leave can be seen as recognition by society and the Government of the importance and value of motherhood, parenting and children.
128. As noted by the Inquiry under its third objective, it is important to value the dual role of women and men as both workers and carers. Women are an invaluable part of the Australian labour force; paid maternity leave provides the social recognition that many women perform a dual role, as employees and mothers.
129. Supporting parent leave for fathers at the time of childbirth provides recognition that they are an integral part of family life in a hands-on way. An additional broader paid parental leave scheme that could be shared between both parents, but with a component reserved for supporting parents, would provide an even greater recognition of parents' dual roles, particularly when combined with other family-friendly workplace policies.
130. While these social benefits may be difficult to quantify – as acknowledged in the Draft Report – the Commission considers that the introduction of a paid leave scheme would deliver significant social benefits, including more family-friendly workplace cultures and benefits for business and the economy in

terms of supporting the production of a new generation of workers and consumers.

*(c) Economic security for women and families*

131. Paid leave would directly contribute to increasing the economic security of individual families by providing a guaranteed source of income upon the birth of a child. While the current Baby Bonus and other family payments provide a level of financial support, economic security is also an important objective for a paid leave scheme.
132. In particular, paid maternity leave would provide a level of income replacement for those women in employment who are currently required to forego their regular income as a result of taking time out of the workforce to give birth. Under current arrangements, the majority of women must forego income from paid work as a result of giving birth.
133. Foregoing income is a particular issue for women in paid work. While ensuring women who are not in paid work are adequately supported at the time of childbirth is a significant concern, and one that is addressed under the proposed model (discussed further in section 7.4), women who are not in paid work at the time of birth are not faced with the same reduction in income as a result of childbirth.
134. It is also important to note that facilitating paid work for both parents is positive for children's wellbeing from the perspective of poverty alleviation. From a global perspective, children in households without a parent in paid work are three times more likely to grow up in poverty than children in one-earner households, who are in turn three times more likely to grow up in poverty than children of dual-earner couples.<sup>33</sup> Paid leave would ensure that families do not face a major drop in their pre-birth income level at exactly the time that they are faced with the additional costs incurred at the time of the birth of a child.
135. Paid leave is also important, as noted under the Inquiry's second objective, for addressing women's lifetime earning capacity. The severe reduction of a woman's income as a result of leaving the workforce to bear and raise children can mean that women are more likely to live in poverty across the life cycle.

## **7 Key features of the proposed paid parental leave scheme**

136. The Commission's comments on particular features of the scheme draw on our particular areas of expertise rather than engaging with the technical aspects of the operation of the scheme.
137. In the following section the Commission also addresses specific questions posed by the Inquiry in the Draft Report.

### **7.1 Duration**

138. As discussed above, the Commission welcomes the Inquiry's 18 week paid parental leave proposal, noting that it goes beyond the baseline 14 week

minimum recommended in ILO Convention 183 by establishing an 18 week period as recommended in the Convention's accompanying ILO Recommendation 191.<sup>34</sup>

139. By providing 18 weeks of paid leave to the mother, the proposed model also supports the World Health Organisation (WHO) recommendation that infants be exclusively breastfed for up to 4 and if possible 6 months of age.<sup>35</sup>
140. As noted above, a disadvantage of the proposed model is that it does not allow women to take any of the paid parental leave just prior to birth.
141. While noting the current unpaid leave and other entitlements in this area, and the Inquiry's concern with additionality, the Commission does not support limiting options for women to begin taking paid leave earlier and recommends that paid leave be available to women to take immediately prior to birth.
142. Flexibility in the commencement of paid leave is particularly important for low income women workers, especially casual workers, who are less likely to have sufficient accrued paid leave to cover the prenatal period.
143. Further, with second and subsequent births, many women will have already drawn on their own paid leave entitlements in order to have time away from work to care for a sick child, for example, or to cover school holiday periods.
144. In order to strike a good balance on this issue it may be appropriate to limit the period of paid leave available prior to the birth to four to six weeks to ensure that a period of paid leave is available following the birth. However, the Commission is in agreement with the Inquiry in that it would not support a compulsory period of leave being mandated for women either before or after the birth of a child.
145. The 2 weeks of paid leave for fathers/supporting partners is an important part of the proposal and is the same period recommended by the Commission in our earlier submission.
146. While there is no ILO standard on the minimum length of this type of leave, the Commission considers that 2 weeks is an appropriate period given that it takes into account industry standards and current practices by fathers and other supporting parents, as well as a benchmark set by comparable industrialised countries.<sup>36</sup>

***Inquiry question:*** 'Accordingly, the Commission has not recommended provision for part-time paid parental leave. However, we seek feedback from participants on its practicality, costs and merit.'

147. In the interest of ensuring that the health and wellbeing objectives of paid leave can be met it would be appropriate for the first 14 weeks to be taken as a continuous block.
148. Allowing for the remaining 4 weeks to be taken part time or shared would provide a degree of flexibility and help facilitate shared care for couples who wish to share caring responsibilities.
149. As well as meeting health and wellbeing objectives this approach would be less disruptive to workplaces, particularly small and medium sized businesses, which may assist in the practical implementation of the scheme.

150. This aspect of the scheme could be reviewed after two years as part of a larger review process that the Commission is recommending in order to evaluate and improve upon the scheme over time.
151. If the government were to introduce a longer period of leave, such as a progressively realised scheme advocated by the Commission (see section 5.2 (c)), parents should be able to share access to additional paid parental leave to which either one of them is entitled (i.e. 34 weeks). For example, on a shared care arrangement, each parent could combine days of leave with a flexible work arrangement. Like the Inquiry's proposed model, under the Commission's proposal only one parent could be on paid parental leave at any given time. This aspect of the scheme would also need to operate in conjunction with the right to request flexible working arrangements National Employment Standard.

***Inquiry question:*** 'Nevertheless, the Commission seeks feedback on whether (and if so, practically how) our proposed scheme could provide fathers with more equal access to paid parental leave without risks of unintended consequences.'

152. The Commission considers that a dedicated period of paid leave for mothers is a gender equality measure given that it seeks to redress the disadvantage that women workers experience relative to male workers due to their maternal role.
153. The 18 week period proposed by the Inquiry recognises health and wellbeing objectives that are biologically specific to women. As the ILO notes: 'maternity is a condition which requires differential treatment to achieve genuine equality ... special maternity protection measures should be taken to enable women to fulfil their maternal role without being marginalized in the labour market'.<sup>37</sup>
154. Women's unequal treatment in and access to employment due to their reproductive role is a problem that is yet to be resolved despite decades of progress in legislation, workplace structures, social attitudes and government support for working families. Paid maternity leave provides a form of redress for this inequality.
155. There may be times when it may be necessary or desirable to transfer all or part of this period of leave (such as the death or incapacity of the mother). The Commission notes that the Inquiry's proposed model provides for this option.
156. It is also important to note that there is no reason why additional periods of leave beyond the initial post parturition period would need to be limited to birth mothers. This is one of the reasons why the Commission has advocated for the staged introduction of a longer period of paid parental leave that can be shared between parents, including a dedicated period of 'use it or lose it' month of leave for the supporting parent.
157. The advantage of a longer scheme of leave, as recommended by the Commission, is that it encourages the sharing of parental care for children without taking away from the needs of the mother and infant in the first few weeks. A better sharing of care responsibilities has a range of benefits including facilitating greater gender equality in the workplace and the home by

recognising both women and men's dual roles as workers and as parents. This point is also discussed in section 6.3.

158. In short, the Inquiry's proposed scheme could provide for greater access by fathers by being extended over time.

***Inquiry question:*** 'However, we seek feedback from employers on likely disruption burdens associated with longer periods of leave taken by employees.'

159. The Commission does not express a view on this question.

## ***7.2 Payment level, funding sources and payment mechanism***

160. As discussed in section 5.1, the Commission sees the payment level, funding sources and payment mechanism as appropriate given that they closely mirror that which we proposed in our earlier submission to the Inquiry.
161. The Commission is particularly pleased to see that, in paying a flat rate of the adult minimum wage regardless of pre-birth income, the proposed model will ensure that low income women employees will be better off on a paid parental leave scheme than they would be on family assistance payments.
162. The Commission also notes that this will ensure that the scheme does not operate as a disincentive to women's workforce participation, thereby meeting the Inquiry's second policy objective of facilitating workforce participation.
163. A paid leave scheme which improves the ability of women to maintain their labour force attachment and makes it easier for women to combine paid work and family life will help to address the disadvantage experienced by women in their earning capacity and ability to save across their lifetime.
164. In this respect the Commission also welcomes the provision of superannuation in the proposed model.
165. Women's superannuation savings are well below those of their male counterparts and women have a much greater chance of living in poverty in their later years as a result, often due to extended periods out of the workforce to provide care for dependents. Compulsory superannuation contributions for women while they are receiving paid leave will contribute to greater parity between men's and women's retirement incomes.
166. The Commission is pleased to see that the Inquiry has costed a superannuation component as part of the proposed model.

***Inquiry question:*** 'However, further feedback is sought from participants on the costs involved in mandating the provision of (capped) employer superannuation contributions while an employee is on paid parental leave.'

167. In its first submission, the Commission recommended that paid leave should include a superannuation component. The Commission reiterates this recommendation. Inclusion of superannuation ensures that paid parental leave is treated as a workplace entitlement.
168. Further, given that women typically to take more leave from paid work as a result of child bearing, it is vital that paid leave includes superannuation in

order to contribute to closing the gender gap in retirement savings between women and men.

169. The Inquiry proposes that the superannuation component of 9% be paid by employers, rather than be government funded. Further, the Commission understands that 9% is the minimum that employers are compelled to provide rather than a 'capped' amount as noted in the Draft Report, thus providing for employees who have entitlements beyond that amount to continue to receive them.
170. The Commission does not express a view about whether the superannuation component should be funded by government or employers.
171. The Commission recognises the expertise of the Productivity Commission in formulating the appropriate funding model for the scheme in order to achieve the objectives of the scheme and the need for the Australian Government to consider the recommendations of the Inquiry in light of the funding implications for both government and business.
172. The Commission also notes that one of the key objectives of the scheme is to promote gender equity and work/family balance in Australia. As such, it is essential that the funding model for the scheme that is ultimately adopted by the Australian Government does not operate as a disincentive to the employment of women.
173. The Inquiry estimates that for businesses employing less than 20 people, the chance of an employee taking paid leave in any given year is less than 1.1% and that many small employers would not face any costs from the proposed scheme in any given year.<sup>38</sup>
174. Notwithstanding this point, the Commission notes that since the publication of the proposed model there have been concerns expressed about the capacity of business, particularly small business, to administer the scheme, and that discrimination against women of childbearing age may be the result of the implementation of the proposed scheme.
175. In order to reduce any possible disincentives to business employing women as a result of the proposed scheme the Commission proposes that an accompanying measure be introduced which provides small employers (e.g. businesses with 25 staff or under) with support for administering the scheme.
176. One option, as proposed by the National Foundation for Australian Women, would be to provide a lump sum payment to assist small employers with the cost of the scheme.<sup>39</sup>
177. Another option would be to follow the example of the United Kingdom by paying small employers an extra 4.5% (or similar) of the cost of the paid leave scheme for each employee on leave.<sup>40</sup>
178. Providing tools for employers such as the evidence-based guidelines suggested by the Inquiry<sup>41</sup> would also assist employers of all sizes.
179. A broader education campaign (discussed further in section 9) would also assist employers to adapt to the new system and minimise disruption burdens, and must be part of the implementation of any national scheme of paid leave for parents.

180. ***Inquiry question:*** ‘Accordingly, further feedback is sought from participants on whether other leave entitlements, such as sick, recreation and long service leave, should accrue during the period of paid parental leave, having regard to its costs and appropriateness.’
181. The Commission does not hold a strong view on this issue.
182. The Commission notes that the new National Employment Standards will make employer paid leave absences count as service for the purposes of accrued sick and annual leave and that periods of unpaid leave are excluded from the definition of service.
183. The Inquiry points out that under their proposal an employee would legally be on unpaid leave from the employer during a parental leave absence and that while it recognises the value of paid parental leave being seen as like other leave that subject to further feedback and consideration it does not consider the accrual of other leave entitlements to be practical.
184. The Commission does not have a particular view on this issue, recognising that there is, as the Draft Report notes, ‘no single set of commercial and legislative requirements for entitlements to current forms of leave’.<sup>42</sup>
185. The Commission also recognises that there would be significant financial and ongoing compliance costs for employers associated with the accrual of other entitlements. These costs would occur at a time when businesses are adjusting to administering a new paid leave scheme.
186. One option is to revisit this issue at the time the scheme is evaluated, either in two years after the implementation of the scheme, as recommended by the Inquiry and previously by the Commission, or at a later stage.
187. **Recommendation 4:** That the Inquiry consider measures that would provide financial and practical support to small employers to assist them to implement the proposed paid leave scheme, and make a recommendation in this area in their Final Report to the federal government.

### **7.3 Eligibility**

188. As noted in section 5.1, the Inquiry’s proposed model provides for broad coverage, taking into account the reality of women’s working lives, including women’s overrepresentation in part time and casual forms of work, multiple job holdings and self-employment.
189. The Commission previously recommended that the eligibility for paid leave include casual employment, contract work and self-employment in addition to other forms of full and part time work, limited to those who have been in paid work for 40 weeks out of the past 52 weeks with any number of employers or in any number of positions.
190. The Commission is pleased to see that the proposed model provides coverage for the self-employed, contractors and casual workers.
191. The proposed model is less broad in its coverage than the Commission’s previous proposal in that it requires continuous employment for the 12 months prior to the date of expected birth, and it specifies an average period of 10 hours per week of work.

192. While the Commission did not specify minimum average hours of work, the 10 hours a week test seems sufficient to demonstrate significant workforce attachment.
193. The Commission notes that the New Zealand paid parental leave scheme has a 10 hour work test and that an evaluation of that scheme did not find meeting the weekly hours test to be an impediment to meeting the eligibility criteria.<sup>43</sup>
194. The Commission notes that the Australian Bureau of Statistics data used by the Inquiry shows that very few employed people would be excluded from the proposed scheme due to a 10 hour work test.
195. The Commission would, however, be interested in why the Inquiry settled on 10 hours of work test (as opposed to 8 hours, for example, this being closer to a standard working day), and the demographic characteristics of those employees who would miss out on the scheme as a result of this criteria.
196. In the absence of that information, and noting that the newly configured Baby Bonus – the Maternity Payment – would be available for those women workers with more precarious attachment to the workforce, the Commission considers that the proposed eligibility criteria is reasonable.
197. The Commission would, however, like to see the eligibility test covered in any review of the scheme after its implementation to evaluate any adverse effects for certain groups of employees and parents with particular socio-demographic characteristics.
198. ***Inquiry question:*** ‘The Commission seeks feedback from participants on an effective arrangement that would deal with both the definition of the self-employed/contractors and that would ensure appropriate compliance.’
199. The Commission does not have a view on this issue, but notes the Inquiry's concern about the need for clarity in definition of self-employed and contractors and the need for a process to ensure the reasonable probity of arrangements for these workers.
200. **Recommendation 5:** That subject to further modification and improvement undertaken in the Final Report, the federal government implement the Inquiry's proposed paid leave scheme within the next 12 months.

#### ***7.4 Interaction with social security and other government payments***

201. The Commission is of the view that the government should ensure that all women have adequate financial support at the time of the birth of a child.
202. This view is underpinned by Australia's obligations under the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR') to recognise the right of families to an adequate standard of living.<sup>44</sup>
203. However in accordance with the policy objectives of a paid leave scheme the Commission recognises that paid leave is primarily a workplace entitlement to income replacement conditional on taking leave from paid employment, not an income supplementation measure for low income families.



204. It is imperative that family assistance measures designed to provide financial assistance to families at the time of childbirth do not operate as a disincentive to women's labour market participation – one of the key objectives of the proposed scheme.
205. The Inquiry's proposal to provide a new non-income tested Maternity Allowance equivalent to the current Baby Bonus of \$5,000 (plus other family assistance transfers), which is less than the maximum gross taxable paid leave entitlement per family of \$11,544, is sufficient to provide financial support for families at the time of childbirth while not operating as a disincentive for women's workforce participation. It is a welcome part of an overall package of support for parents with newborn children.
206. The Commission also welcomes the Inquiry's recommendation that where a parent takes a shortened period of paid parental leave whose value is less than the maternity allowance, the parent would be entitled to a payment equal to the difference.
207. The Commission also welcomes the supplementary provision of the Maternity Payment for multiple births, in recognition of the increased costs borne by these families.
208. **Recommendation 6:** That the federal government implement the Inquiry's proposal for a Maternity Allowance to provide income support for those ineligible for the proposed paid leave scheme.

### ***7.5 Interaction with other work and family reconciliation policies***

209. The Commission welcomes the Inquiry's attention to complementary policies that would improve support for parents of newborn children.
210. The Commission supports the recommendations for more support for breastfeeding and strengthening of policies and programs that develop parenting skills.
211. The Commission recommended an array of measures in the broader area of work and family reconciliation in the final paper of a two year project, *It's About Time: Women, men, work and family* (2007) ('*It's About Time* (2007)')<sup>45</sup> and would welcome continued attention to this area of policy in addition to the implementation of a national scheme of paid leave for parents.
212. The Commission notes in particular that certain elements of the proposed scheme, such as the paid paternity leave period that the Inquiry terms the 'Daddy fortnight', will have a better chance of success if combined with other work and family reconciliation policies and programs which target men as carers, as previously recommended by the Commission.<sup>46</sup>
213. A holistic approach to policy in this area, including progress in the area of the government's committed and mooted reforms to early childhood education and care, is essential given the pressures that women and men face in balancing work and family life and the impacts that this has on the nation's productivity and wellbeing.

214. In summary, a paid leave scheme cannot be expected to deliver everything that is required for families when it comes to combining paid work and family responsibilities. Paid leave must be considered as part of a suite of measures needed in this area, which the Commission has commented on extensively in other submissions and policy projects.<sup>47</sup>
215. ***Inquiry question:*** *‘For that reason, we seek feedback from participants about services for children aged less than two years, particularly concerning: gaps in services; learning from the existing policy measures; policy measures that would increase the effectiveness of existing programs, including coverage, the triggers for parents’ access to services, resourcing, and service delivery.’*
216. As part of the consultations and research conducted for the *It’s About Time* (2007) final paper between 2005 and 2007 the Commission made a range of findings and recommendations in the area of early childhood education and care which included policies and programs for children under two years as well as older children.<sup>48</sup>
217. Since this time the Commission has not had the opportunity to revisit these findings in the context of the current government’s policies and reforms in this complex area of policy. To the extent that this work remains current, the Commission’s previous work may be of interest to the Inquiry in determining the adequacy of policies and programs in this area.

## **8 Evaluation and review**

218. The Commission endorses the Inquiry’s recognition that evaluation of the proposed scheme must take place on an ongoing basis in order to monitor its interactions with the tax and welfare system, particularly as this system is currently under review.
219. The Commission also endorses the Inquiry’s recommendation for an evaluation of the scheme two years into its operation and again at five years into its operation.
220. However the Commission would like to see that these reviews are undertaken not only to measure progress and evaluate the impact of the scheme against its objectives (including impacts on business and interactions with other payments and work and family policies), but that they are undertaken with a view to extending the scheme over time.
221. In its earlier submission to the Inquiry, the Commission recommended a two stage process for reform so that an initial minimal scheme could be implemented as a matter of urgency, to be followed by an independent review which would inform the design of a second stage of reform which would provide a more comprehensive scheme of paid leave.
222. The Commission reiterates that proposal that the Government legislate to mandate a formal, independent review of the scheme two years after its introduction.
223. This review should be conducted by an independent body, informed by a solid evidence base, and incorporating input from key stakeholders, including government, business, academia and civil society groups.

224. The Commission also reiterates its proposal for the Minister for Education, Employment and Workplace Relations to hold ministerial responsibility for the national paid leave scheme, including the independent review two years into the scheme's operation.
225. A policy unit should also be established within the Department of Education, Employment and Workplace Relations, and adequately resourced to coordinate implementation, monitoring and review of the scheme over time.
226. **Recommendation 7:** That following implementation of the proposed paid leave scheme an independent review be carried out two years into its operation in order to make any necessary modifications and improvements and so that a second stage of paid leave measures be introduced so that in total the scheme provides for:
- 34 weeks of additional paid parental leave, of which 4 weeks may only be taken by the supporting parent, in addition to
  - 18 weeks paid parental leave, to be initially paid to the mother and
  - 2 weeks supporting parent leave to be taken concurrently at the time of birth.
227. **Recommendation 8:** That the Minister for Education, Employment and Workplace Relations should have ministerial responsibility for the proposed paid leave scheme and that a policy unit should be established within the Department of Education, Employment and Workplace Relations to coordinate implementation, promotion, education, monitoring and review of the scheme over time.

## **9 Research and education**

228. Implementation of the proposed paid leave scheme should include adequate funding for the commissioning of longitudinal research to monitor the impact of the scheme against the scheme's objectives.
229. The commitment to research and monitoring should generate a solid, policy-relevant evidence base to ensure that the scheme's interaction with other work and family reconciliation policies continues to positively contribute to the key national objectives over time.
230. The Commission has previously identified that there is currently only minimal Australian research to underpin assessment of the likely success of a paid leave scheme.
231. For example, it is essential that the impact of the scheme is monitored over time in conjunction with early childhood education and child care policies to assess effectiveness in improving early childhood development, leading to improved chances for Australia's future generations.
232. The Commission reiterates its previous call for the government to invest in generating a strong evidence base for informing over-arching policy frameworks of gender equality, work and family, and early childhood education and care.

233. In particular, the re-running the Parental Leave in Australia Survey (PLAS) as part of a wider research program would be of benefit given that it has already established useful benchmarks used by the Commission, other stakeholders and the Inquiry in the production of the Draft Report.
234. The particular strengths of the PLAS in relation to other surveys include the size and scope of the survey, which covered parents of children born in a particular 12 month period and that it produced over 3,500 responses from parents.
235. The PLAS also has the unique capacity to track mothers' return to work experiences given that the survey was conducted when the children were aged between 16 and 30 months, so many of the mothers had returned to work at that stage, allowing the effective tracking of return to work experiences.
236. Tracking return to work experiences is particularly important given that the Commission has noticed an increasing trend in pregnancy and sex discrimination complaints in recent years.
237. Noting that the Commission received a reduction in funding from last budget and noting a likely increase in complaints when a paid leave scheme is introduced as employers and employees grapple with operation of the new entitlement, an increase in operational funding would enable the Commission to continue to provide a complaints handling service that is effective and efficient.
238. Increased tied funding to the Commission so that it could produce updated pregnancy and family responsibilities guidelines as part of a wider education and awareness raising strategy to accompany the new scheme would be another way of increasing the Commission's effectiveness in carrying out its education function.
239. Beyond the Commission, to ensure the effective implementation of the proposed paid leave scheme the government should fund and coordinate an education and awareness strategy to promote the rights and responsibilities under the scheme.
240. The education strategy should meet the diverse communication needs of the community, and be tailored for, and targeted towards, groups less likely to have information about the new entitlements. Unions, community and other civil society groups could play a role in developing this strategy disseminating information to members to ensure that employees are aware of their new entitlements.
241. All information should be culturally appropriate and available in an accessible format.
242. There should also be particular support provided to employers to assist them to implement the new scheme. This support should include, as noted above, evidence-based guidelines and information about any financial or other support for small business in particular. Plain language forms and online tools could form a part of this implementation measure and could be rolled out in partnership with employer representative groups in order to ensure widespread take-up.

243. This work could be coordinated through a dedicated policy unit established within the Department of Education, Employment and Workplace Relations, as discussed in section 8.
244. **Recommendation 9:** That the federal government commit to investing in a solid evidence base to inform ongoing monitoring, review and continuous improvement of the proposed paid leave scheme over time, including providing funding to repeat the Parental Leave in Australia Survey.
245. **Recommendation 10:** That the federal government provide adequate funding to the Australian Human Rights Commission so that it can continue to provide an effective and efficient complaint service in the context of a predicted rise in complaints as a result of the initial implementation of the proposed paid leave scheme.
246. **Recommendation 11:** That the federal government provide funding to the Australian Human Rights Commission to produce updated pregnancy and family responsibility guidelines as part of a broader education and awareness campaign for employers and employees.
247. **Recommendation 12:** That the implementation of the proposed paid leave scheme be accompanied by a comprehensive education community awareness campaign that meets the diverse communication needs of the community and which includes targeted education strategies for groups less likely to have information about the new entitlements.
248. **Recommendation 13:** That as part of a broader education and awareness campaign the federal government provides targeted education and practical support to employers, with a particular focus on small and medium sized employers as part of the implementation of the proposed paid leave scheme.

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<sup>1</sup> The Australian Human Rights Commission was until recently known as the Human Rights and Equal Opportunity Commission. In this submission, all endnote references to documents produced prior to this change retain the name they were originally published under.

<sup>2</sup> The Commission is established by the *Human Rights and Equal Opportunity Commission Act 1986* ('HREOC Act'). Sections 11 and 31 of the HREOC Act set out the Commission's functions relating to human rights and equal opportunity in employment respectively. The Commission also has functions under the *Sex Discrimination Act 1984* (Cth), *Racial Discrimination Act 1975* (Cth), *Disability Discrimination Act 1992* (Cth) and *Age Discrimination Act 2004* (Cth).

<sup>3</sup> See the report of the Commission's National Pregnancy and Work Inquiry *Pregnant and Productive: It's a right not a privilege to work while pregnant* (1999) at [http://www.humanrights.gov.au/sex\\_discrimination/publication/pregnancy/report.html](http://www.humanrights.gov.au/sex_discrimination/publication/pregnancy/report.html) (viewed 12 November 2008) and *A Time to Value: Proposal for National Maternity Leave Scheme* (2002) at [http://www.humanrights.gov.au/sex\\_discrimination/paid\\_maternity/pml2/index.html](http://www.humanrights.gov.au/sex_discrimination/paid_maternity/pml2/index.html) (viewed 12 November 2008). See also the initial paid maternity leave publication *Valuing Parenthood: Options for paid maternity leave - Interim paper* (2002) at [http://www.humanrights.gov.au/sex\\_discrimination/paid\\_maternity/pml/index.html](http://www.humanrights.gov.au/sex_discrimination/paid_maternity/pml/index.html) (viewed 12 November 2008) and *It's About Time: Women, men, work and family* (2007) at [http://www.humanrights.gov.au/sex\\_discrimination/its\\_about\\_time/index.html](http://www.humanrights.gov.au/sex_discrimination/its_about_time/index.html) (viewed 24 May 2008). See also the initial publication *Striking the Balance: Women, men, work and family – Discussion Paper* (2005) at [http://www.humanrights.gov.au/sex\\_discrimination/publication/strikingbalance/index.html](http://www.humanrights.gov.au/sex_discrimination/publication/strikingbalance/index.html) (viewed 12 November 2008). The report of the Sex Discrimination Commissioner's recent national Listening Tour also addressed the issue of paid maternity leave - *Gender Equality:*

*What matters to Australian men and women: The Listening Tour Community Report* (2008). At [http://www.humanrights.gov.au/sex\\_discrimination/listeningtour/index.html](http://www.humanrights.gov.au/sex_discrimination/listeningtour/index.html) (viewed 12 November 2008).

<sup>4</sup> Australian Human Rights Commission, *Submission to the Productivity Inquiry into Paid Maternity, Paternity, and Parental Leave* (2008). At [http://www.hreoc.gov.au/legal/submissions/2008/20080602\\_productivity.html](http://www.hreoc.gov.au/legal/submissions/2008/20080602_productivity.html) (viewed 12 November 2008).

<sup>5</sup> Prime Minister Kevin Rudd, 'Productivity Commission recommend paid maternity' *Lateline* Australian Broadcasting Corporation Broadcast 29 September. At <http://www.abc.net.au/lateline/content/2008/s2377239.htm> (viewed 12 November 2008).

<sup>6</sup> See *Pregnant and Productive: It's a right not a privilege to work while pregnant* (1999) at [http://www.humanrights.gov.au/sex\\_discrimination/publication/pregnancy/report.html](http://www.humanrights.gov.au/sex_discrimination/publication/pregnancy/report.html) (viewed 12 November 2008) and *A Time to Value: Proposal for National Maternity Leave Scheme* (2002) at [http://www.humanrights.gov.au/sex\\_discrimination/paid\\_maternity/pml2/index.html](http://www.humanrights.gov.au/sex_discrimination/paid_maternity/pml2/index.html) (viewed 12 November 2008). See also *It's About Time: Women, men, work and family* (2007) at [http://www.humanrights.gov.au/sex\\_discrimination/its\\_about\\_time/index.html](http://www.humanrights.gov.au/sex_discrimination/its_about_time/index.html) (viewed 24 May 2008) and the report of the Sex Discrimination Commissioner's recent national Listening Tour, *Gender Equality: What matters to Australian men and women: The Listening Tour Community Report* (2008). At [http://www.humanrights.gov.au/sex\\_discrimination/listeningtour/index.html](http://www.humanrights.gov.au/sex_discrimination/listeningtour/index.html) (viewed 12 November 2008).

<sup>7</sup> Human Rights and Equal Opportunity Commission, *Submission to the Productivity Inquiry into Paid Maternity, Paternity, and Parental Leave* (2008). At [http://www.hreoc.gov.au/legal/submissions/2008/20080602\\_productivity.html](http://www.hreoc.gov.au/legal/submissions/2008/20080602_productivity.html) (viewed 12 November 2008). This second submission will not reiterate every aspect covered under the first submission.

<sup>8</sup> Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children* Draft Inquiry Report (2008), p XXI.

<sup>9</sup> Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children* Draft Inquiry Report, p 2.16 and Chapter 4.

<sup>10</sup> See Human Rights and Equal Opportunity Commission, *Submission to the Productivity Inquiry into Paid Maternity, Paternity, and Parental Leave* (2008). At [http://www.hreoc.gov.au/legal/submissions/2008/20080602\\_productivity.html](http://www.hreoc.gov.au/legal/submissions/2008/20080602_productivity.html) (viewed 12 November 2008), p 22-23 and research reported by the UK's Fatherhood Institute at <http://www.fatherhoodinstitute.org/index.php?id=0&clD=586> (viewed 12 November 2008).

<sup>11</sup> See ABS, *Labour Force, Australia* Cat No 6202.0 April 2008 (2008), ABS *Forms of Employment, Australia* Cat No 6359.0 November 2007 (2008), Equal Opportunity for Women in the Workplace Agency, *EOWA 2008 Australian Census of Women in Leadership* (2008) and Human Rights and Equal Opportunity Commission, *Annual Report 2007-2008* (2008), p 69.

<sup>12</sup> Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children* Draft Inquiry Report, p 5.13-5.14.

<sup>13</sup> Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children* Draft Inquiry Report, p 5.1.

<sup>14</sup> See Human Rights and Equal Opportunity Commission, *Submission to the Productivity Inquiry into Paid Maternity, Paternity, and Parental Leave* (2008). At [http://www.hreoc.gov.au/legal/submissions/2008/20080602\\_productivity.html](http://www.hreoc.gov.au/legal/submissions/2008/20080602_productivity.html) (viewed 12 November 2008), paras 210-213.

<sup>15</sup> OECD, *Economic Survey of Australia, 2008* (2008).

<sup>16</sup> Ricardo Hausmann, Laura Tyson and Saadia Zahidi, *The Global Gender Gap Report 2007* (2007). At <http://www.weforum.org/en/initiatives/gcp/Gender%20Gap/index.htm> (viewed 18 November 2008).

<sup>17</sup> Human Rights and Equal Opportunity Commission, *Submission to the Productivity Inquiry into Paid Maternity, Paternity, and Parental Leave* (2008). At [http://www.hreoc.gov.au/legal/submissions/2008/20080602\\_productivity.html](http://www.hreoc.gov.au/legal/submissions/2008/20080602_productivity.html) (viewed 12 November 2008). See also the transcript of the Commission's evidence before the Inquiry at [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0006/80484/sydney-20080520.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0006/80484/sydney-20080520.pdf) (viewed 13 November 2008).

<sup>18</sup> International instruments and human rights obligations relevant to this inquiry are discussed at length in Human Rights and Equal Opportunity Commission, *Submission to the Productivity Inquiry into Paid Maternity, Paternity, and Parental Leave* (2008). At [http://www.hreoc.gov.au/legal/submissions/2008/20080602\\_productivity.html](http://www.hreoc.gov.au/legal/submissions/2008/20080602_productivity.html) (viewed 14 November 2008), paras 38-71.

<sup>19</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981), ratified by Australia 28 July 1983. The Convention is set out in the Schedule to the *Sex Discrimination Act 1984* (Cth).

<sup>20</sup> Preamble to the *Convention on the Elimination of All Forms of Discrimination Against Women*.

<sup>21</sup> Preamble to the *Convention on the Elimination of All Forms of Discrimination Against Women*.

<sup>22</sup> *Convention (No 156) Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities*, opened for signature 23 June 1981, 1331 UNTS 295 (entered into force 11 August 1983), ratified by Australia 30 March 1990. The following articles are of particular importance to this Inquiry: art 3(1) (non-discrimination on basis of family responsibilities); art 7 (workers with family responsibilities to be integrated into the labour force).

<sup>23</sup> ABS, *How Australians Use Their Time*, 2006 Cat No 4153.0 (2008) and see discussion in Human Rights and Equal Opportunity Commission, *Striking the Balance: Women, men, work and family* (2005), Chapter 3.

<sup>24</sup> Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children* Draft Inquiry Report, p 6.6.

<sup>25</sup> OECD, *Babies and Bosses: reconciling work and family life A synthesis of findings for OECD countries* (2007), p 117.

<sup>26</sup> See Human Rights and Equal Opportunity Commission, *Submission to the Productivity Inquiry into Paid Maternity, Paternity, and Parental Leave* (2008). At [http://www.hreoc.gov.au/legal/submissions/2008/20080602\\_productivity.html](http://www.hreoc.gov.au/legal/submissions/2008/20080602_productivity.html) (viewed 14 November 2008), paras 38-71 and paras 123-158.

<sup>27</sup> See Committee on the Elimination of Discrimination against Women, *Report of the Committee on the Elimination of Discrimination against Women*, 16<sup>th</sup> and 17<sup>th</sup> Sessions, 12 August 1997 and Committee on the Elimination of Discrimination against Women, 34<sup>th</sup> Session, *Concluding comments of the Committee on the Elimination of Discrimination against Women: Australia* 16 January - 3 February 2006 and discussion at paras 53-53 in Human Rights and Equal Opportunity Commission, *Submission to the Productivity Inquiry into Paid Maternity, Paternity, and Parental Leave* (2008). At [http://www.hreoc.gov.au/legal/submissions/2008/20080602\\_productivity.html](http://www.hreoc.gov.au/legal/submissions/2008/20080602_productivity.html) (viewed 14 November 2008).

<sup>28</sup> *Concluding observations of the Committee on the Rights of the Child: Australia* 10/10/97. CRC/C/15/Add.79 and see discussion at para 70 in Human Rights and Equal Opportunity Commission, *Submission to the Productivity Inquiry into Paid Maternity, Paternity, and Parental Leave* (2008). At [http://www.hreoc.gov.au/legal/submissions/2008/20080602\\_productivity.html](http://www.hreoc.gov.au/legal/submissions/2008/20080602_productivity.html) (viewed 14 November 2008).



- <sup>29</sup> International Labour Organization *Maternity Protection Convention, 2000* (No 183) International Labour Conference (88th: 2000: Geneva Switzerland). See also discussion at paras 57-64 in Human Rights and Equal Opportunity Commission, *Submission to the Productivity Inquiry into Paid Maternity, Paternity, and Parental Leave* (2008). At [http://www.hreoc.gov.au/legal/submissions/2008/20080602\\_productivity.html](http://www.hreoc.gov.au/legal/submissions/2008/20080602_productivity.html) (viewed 14 November 2008).
- <sup>30</sup> International Labour Organization *Maternity Protection Convention, 2000* (No 183) and *Maternity Protection Recommendation* International Labour Conference (88th: 2000: Geneva Switzerland).
- <sup>31</sup> Recommendation 10(3).
- <sup>32</sup> The Commission made this recommendation - Recommendation 5 – in Human Rights and Equal Opportunity Commission, *Submission to the Productivity Inquiry into Paid Maternity, Paternity, and Parental Leave* (2008). At [http://www.hreoc.gov.au/legal/submissions/2008/20080602\\_productivity.html](http://www.hreoc.gov.au/legal/submissions/2008/20080602_productivity.html) (viewed 14 November 2008) and previously in *Pregnant and Productive: It's a right not a privilege to work while pregnant* (1999).
- <sup>33</sup> Willem Adema, 'Babies and Bosses: What lessons for governments?' *OECD Observer* 264/265 (December 2007-January 2008), p 2.
- <sup>34</sup> See discussion in section 6.4 (a).
- <sup>35</sup> World Health Organisation, Statement to the International Labour Conference, 2 June 2000 on the health aspects of maternity leave and maternity protection at [http://www.who.int/reproductivehealth/publications/maternal\\_mortality\\_2000/Health\\_aspects\\_of\\_maternity\\_leave.en.html](http://www.who.int/reproductivehealth/publications/maternal_mortality_2000/Health_aspects_of_maternity_leave.en.html) (viewed 24 May 2008).
- <sup>36</sup> Thirty-two percent of the Equal Opportunity for Women in the Workplace Agency's reporting organisations provide paid paternity leave, with 83 per cent providing 1-2 weeks of paid leave: *Equal Opportunity for Women in the Workplace Survey 2005: Paid paternity leave* (2006). The majority of employed Australian fathers (74 per cent) currently take two weeks or less of paid leave of some form at the time of birth: ABS, *Pregnancy and Work Transitions Australia* Cat No 4913.0 Nov (2005). Countries providing two weeks of paid paternity leave include Belgium, France, Spain, United Kingdom, Sweden, Norway, and Denmark: Department for Business, Enterprise and Regulatory Reform (UK), *International Review of Leave Policies and Related Research 2007* (2007).
- <sup>37</sup> International Labour Office, *Equality in employment and occupation*, Report III (Part 4B) (1999), p 42.
- <sup>38</sup> Productivity Commission, *Fact sheet: some implications for employers* (2008), p 2. At [http://www.pc.gov.au/data/assets/pdf\\_file/0006/83625/factsheetemployers.pdf](http://www.pc.gov.au/data/assets/pdf_file/0006/83625/factsheetemployers.pdf) (viewed 14 November 2008).
- <sup>39</sup> National Foundation for Australian Women, *NFAW response to the Productivity Commission Draft Report* (2008), para 75. At <http://www.nfaw.org/assets/Media/Response.pdf> (viewed 18 November 2008).
- <sup>40</sup> Under the UK scheme employers who are liable to pay statutory maternity pay are able to claim back 104.5% of the money they pay out if their total National Insurance Liability in the previous tax year was £45 000 or less (other employers may claim 92%): Business Link, *Maternity leave and pay* (2008). At <http://www.businesslink.gov.uk/bdotg/action/detail?r.l1=1073858787&r.l3=1080898273&r.lc=en&type=RESOURCES&itemId=1080903421&r.l2=1080898061&r.s=sc> (viewed 14 November 2008).
- <sup>41</sup> Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children* Draft Inquiry Report, p 2.30.
- <sup>42</sup> Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children* Draft Inquiry Report, p 8.31.



<sup>43</sup> New Zealand Department of Labour, *Parental Leave in New Zealand 2005/2006 Evaluation* At <http://www.dol.govt.nz/PDFs/research-parental-leave-evaluation2005-06.pdf> (viewed 23 May 2008)

<sup>44</sup> Article 11, *International Covenant on Economic, Social and Cultural Rights*, opened for signature December 1966, 999 UNTS 3 (entered into force 3 January 1976), ratified by Australia 10 December 1975, entered into force for Australia 10 March 1976.

<sup>45</sup> Human Rights and Equal Opportunity Commission, *It's About Time: Women, men, work and family* (2007). At [http://www.humanrights.gov.au/sex\\_discrimination/its\\_about\\_time/index.html](http://www.humanrights.gov.au/sex_discrimination/its_about_time/index.html) (viewed 24 May 2008).

<sup>46</sup> See findings and recommendations contained in Chapters 4 and 5 of Human Rights and Equal Opportunity Commission, *It's About Time: Women, men, work and family* (2007). At [http://www.humanrights.gov.au/sex\\_discrimination/its\\_about\\_time/index.html](http://www.humanrights.gov.au/sex_discrimination/its_about_time/index.html) (viewed 24 May 2008).

<sup>47</sup> Much of the Commission's previous work is summarised in Human Rights and Equal Opportunity Commission, *Submission to the Productivity Inquiry into Paid Maternity, Paternity, and Parental Leave* (2008). At [http://www.hreoc.gov.au/legal/submissions/2008/20080602\\_productivity.html](http://www.hreoc.gov.au/legal/submissions/2008/20080602_productivity.html) (viewed 14 November 2008). See also Human Rights and Equal Opportunity Commission, *It's About Time: Women, men, work and family* (2007). At [http://www.humanrights.gov.au/sex\\_discrimination/its\\_about\\_time/index.html](http://www.humanrights.gov.au/sex_discrimination/its_about_time/index.html) (viewed 24 May 2008) and Human Rights and Equal Opportunity Commission, *Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the effectiveness of the Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equality* (2008). At [http://www.humanrights.gov.au/legal/submissions/2008/20080901\\_SDA.html](http://www.humanrights.gov.au/legal/submissions/2008/20080901_SDA.html) (viewed 14 November 2008).

<sup>48</sup> See Chapter 7 of Human Rights and Equal Opportunity Commission, *It's About Time: Women, men, work and family* (2007). At [http://www.humanrights.gov.au/sex\\_discrimination/its\\_about\\_time/index.html](http://www.humanrights.gov.au/sex_discrimination/its_about_time/index.html) (viewed 24 May 2008).