



**Australian  
Human Rights  
Commission**  
*everyone, everywhere, everyday*

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# Inquiry into the Exposure Draft of legislation implementing the Government's announced Paid Parental Leave Scheme

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Australian Human Rights Commission Submission  
to the Community Affairs Legislation Committee

13 May 2010

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## 1 Introduction

1. The Australian Human Rights Commission ('the Commission') makes this submission to the Community Affairs Legislation Committee in its Inquiry into the Exposure Draft of legislation implementing the Government's announced Paid Parental Leave Scheme ('the Inquiry').
2. The Commission is Australia's national human rights institution.<sup>1</sup>
3. The Commission has undertaken substantial work over an extended period of time and 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>2</sup>
4. The Commission made a submission to the Productivity Commission's Inquiry into Paid Maternity, Paternity and Parental Leave 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>3</sup>
5. This work was followed by the Commission's second submission to the Productivity Commission's Inquiry in November 2008. This second submission was limited to key aspects of the Inquiry's proposed model, specific issues which the Inquiry had asked for feedback on, including advantages and

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<sup>1</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>2</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 7 May 2010) 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 7 May 2010). 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 7 May 2010) 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 7 May 2010). 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 7 May 2010). 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 7 May 2010).

<sup>3</sup> Australian Human Rights Commission, *Submission to the Productivity Inquiry into Paid Maternity, Paternity, and Parental Leave* (2008). At [http://www.humanrights.gov.au/legal/submissions/2008/20080602\\_productivity.html](http://www.humanrights.gov.au/legal/submissions/2008/20080602_productivity.html) (viewed 10 May 2010).

disadvantages of the proposed model, and aspects of the Commission's previous proposal that would enhance the Inquiry's model.<sup>4</sup>

6. The Commission supports the Australian Government's decision to deliver Australia's first national Paid Parental Leave Scheme and it welcomes the opportunity to comment on this important, long-awaited Exposure Draft of the Paid Parental Leave Scheme Bill 2010 and the Explanatory Memorandum.
7. This submission draws on the Commission's previous paid leave reports, recommendations and consultations. In this submission the Commission's comments will be limited to key aspects of the Government's proposed Paid Parental Leave Scheme Bill 2010 and Explanatory Memorandum, and aspects of the Commission's previous proposals that would enhance the Government's current proposed scheme.
8. This submission makes two key recommendations for improving the Government's proposed scheme. These recommendations if adopted would need to be reflected in the Exposure Draft of the Paid Parental Leave Scheme Bill 2010.

## **2 Summary**

9. The Commission endorses the Exposure Draft of the Government's announced Paid Parental Leave Scheme as a sound first stage of achieving a beneficial and equitable scheme of paid leave entitlements for parents in Australia.
10. It is essential that the Paid Parental Leave scheme is fully operational by 1 January 2011.
11. The Commission is of the view that there are gaps in the proposed scheme and hence the proposed legislation that must be addressed – some now and some in the near future. In particular:
  - (a) *Legislated independent review*
12. As stated in our first two submissions to the Productivity Commission's Inquiry in 2008, the Commission would like to see the initial scheme of paid leave independently reviewed after two years in order to measure the impacts of the new scheme, make any necessary improvements and to develop and implement a second stage of paid leave measures over time.
13. The Commission is of the view that the Government's proposed three year review of the scheme represents a minimal approach and rather the opportunity to extend the current scheme should be taken at the earliest available opportunity. The Commission's proposed two year review of the

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<sup>4</sup> Australian Human Rights Commission, *Submission to the Productivity Commission on the Inquiry into Paid Maternity, Paternity and Parental Leave* (2008). At [http://www.hreoc.gov.au/legal/submissions/2008/20081124\\_maternity.html](http://www.hreoc.gov.au/legal/submissions/2008/20081124_maternity.html) (viewed 10 May 2010).

scheme is consistent with the Government's 2009/2010 Budget Strategy and Outlook announcement where the Government stated that a comprehensive review to commence two years after implementation was necessary in order to ensure that the scheme is operating effectively.<sup>5</sup>

14. 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, but that they are undertaken with a view to implementing a more substantial package of paid leave measures over time. Where the scheme is to be extended, this would include a review of the funding model.
  15. The Commission reiterates the proposal put forward in its earlier two submissions to the Productivity Commission Inquiry in 2008 that an independent two year review be conducted so that a second stage of paid leave measures can be assessed to ensure that over time the total scheme provides for:
    - a minimum of two weeks paid leave for fathers and other supporting parents;
    - a full year of paid parental leave that can be shared between parents, to ensure that children receive the care they need at this important early stage;
    - the year's paid leave to include a minimum of four weeks paid leave for fathers and supporting parents on a 'use it or lose it' basis, to enable more men to be involved in caring during the first year of their child's life; and
    - leave paid at the rate of at least two thirds of the parent's income, so that more families can afford to take the leave.
  16. The Commission considers it essential that the two year review be conducted by an independent body, informed by a solid evidence base, and incorporate input from key stakeholders, including government, business, academia and civil society groups.
- (b) *Inclusion of superannuation*
17. The Commission is disappointed with the Government's decision to defer consideration of compulsory superannuation contributions until a review of the scheme is conducted three years after implementation.
  18. The Commission views the significant disparity between women and men's retirement savings, and the high proportion of women with alarmingly low superannuation balances, as one of the gravest aspects of gender inequality in Australia. The most recent assessment of retirement savings, compiled by the Association of Superannuation Funds of Australia, reports that in 2006, the average superannuation account balance was \$35 520 for women, compared

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<sup>5</sup> Australian Government, *Budget Strategy and Outlook Budget Paper No. 1 2009-10* (2009). At <http://www.budget.gov.au/2009-10/content/bp1/html/index.htm> (viewed 10 May 2010).

to \$69 050 for men.<sup>6</sup> Similarly, in 2006, the average retirement payouts (determined by the average balance for those aged 60 to 64) were \$63 000 for women and \$136 000 for men.<sup>7</sup> Importantly, when superannuation balances are broken down by age, the largest widening of the gender gap occurs between the 23-34 and 35-44 age brackets, coinciding with the time when women commonly have children.<sup>8</sup> Consequently, the Commission is firmly of the view that whilst the proposed scheme will increase women's labour market attachment, the decision to exclude compulsory superannuation contributions will serve to hinder rather than improve the ability of women to accumulate greater lifetime earnings and subsequently higher retirement savings.

19. The Commission is also concerned that the decision to exempt employers from making superannuation contributions in respect of Parental Leave pay will undermine the message that paid leave for parents should be treated as a workplace entitlement. In order for the Government to adequately address the workplace disadvantage that women experience as a result of their maternal role and to ensure economic security for women in retirement, the Commission is firmly of the view that superannuation entitlements should be included in any new paid parental scheme.

### 3 Recommendations

20. **Recommendation 1:** The Paid Parental Leave Scheme Bill 2010 should be amended to include provision for an independent review of the Paid Parental Leave Scheme after two years of operation in order to measure the impacts of the initial minimal scheme. This would include how well the scheme is meeting its objectives, impacts on business, interactions with existing government payments, and other work and family policy measures, and to make any necessary improvements in order to implement a second stage of more substantial paid leave entitlements.
21. **Recommendation 2:** The Australian Government should immediately extend its proposed Paid Parental Leave scheme to provide for compulsory additional superannuation payments on paid leave (either government or employer funded). The legislative change necessary to achieve this should be reflected in the Paid Parental Leave Scheme Bill 2010. The Commission emphasises that it is essential that the model does not operate as a disincentive to the employment and retention of women.

### 4 Conclusion

22. The Commission welcomes the opportunity to make this submission to the Inquiry, presenting as it does an exciting occasion to progress implementation of a national paid leave scheme for parents, long overdue in the Australian context.

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<sup>6</sup> Ross Clare, *Retirement Savings Update* (2008). At <http://www.superannuation.asn.au/Reports/default.aspx> (viewed 10 May 2010) at 3.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid* at 6.

23. However, the Commission considers that implementing a national paid leave scheme should be staged and continuously improved over time in order to promote gender equality in an effective and sustainable way. The Commission therefore urges the Australian Government to immediately extend the proposed scheme to provide for superannuation contributions on paid leave and to reinstate a two year review process following implementation of the proposed scheme.