

## Chapter Two

### Issues Arising from the Bill

2.1 The private bill introduced by the Australian Democrats addresses an issue which the committee has found to be complex in its policy ramifications. The committee majority notes the energy which the opposition is putting into this issue, but it considers that this energy is likely to be misplaced if it pre-empts the report of the Sex Discrimination Commissioner which is due in November 2002. The committee majority acknowledges that the issue of paid maternity leave is now on the agenda for public discussion, following the publication, by the Human Rights and Equal Opportunity Commission, of the discussion paper *Valuing Parenthood*. The committee majority declines to take a pre-emptive path, realising that the Sex Discrimination Commissioner's report is likely to stimulate further debate. However some comments on the Bill are warranted

2.2 At the core of the bill is the unresolved dilemma of whether paid maternity benefits should be embedded in social welfare policy or whether they are, as this bill proposes, a workplace relations issue. Upon this question turns the issue of how government benefits can be most equitably and effectively directed to the welfare of women as employees and as mothers. Evidence before the committee indicates the pitfalls of assuming that benefits can be standardised for those in paid work and for those women who stay at home. It is difficult to achieve this aim without creating perceptions of unequal treatment. Government Party Senators regard the Government's announced comprehensive review of all facets of family and maternity benefits as part of a normal cycle of policy review. The paid maternity leave debate is in part a catalyst for this review.

#### **Paid maternity leave as a work and family issue**

2.3 A number of witnesses and submissions considered the issue of whether paid maternity leave is more appropriately classified as a workplace relations issue or as a social welfare issue. The Australian Council of Trade Unions, for instance, stated that paid maternity leave 'is absolutely a work related entitlement. It is like annual leave, leave for Army Reserve, jury leave or sick leave. It is related to the fact that you necessarily take a period of time off work to have a child.'<sup>1</sup>

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<sup>1</sup> *Transcript of proceedings*, Ms Sharan Burrow, ACTU, 9 August 2002, p.20

2.4 The Women's Action Alliance, on the other hand, saw the issue as a social welfare issue, and on that basis suggested that policies to support mothers should have a broader focus than women in the paid workforce. They stated that they '...feel that the model in the bill discriminates on the basis of a woman's choice about her work role when her children are very young, and that makes it hard ... to support.'<sup>2</sup>

2.5 The committee majority agrees that a universal one size-fits-all workplace based paid maternity leave policy is flawed because its benefits are confined to women who were in the paid workforce prior to their child's birth. The committee majority considers that good public policy in this area should address the need for financial security and dignity for all mothers with new children. At present the Federal Government spends \$12 billion on family related payments<sup>3</sup>. In this regard the committee notes the evidence of the Australian Family Association, which stated:

The AFA believes that paid maternity leave should be paid to all mothers and not only mothers in the workforce who wish to return to the workforce. To discriminate against mothers who wish to care for their children at home is to diminish the role that those mothers play and the work which they do. Being a homemaker is work and should be recognised.<sup>4</sup>

2.6 The committee observed that while a case can be made that paid maternity leave is a social welfare issue, or a workplace relations issue, it does not fall clearly into either category. This bill requires the Parliament to view maternity leave as a special case: as a category of leave requiring regulation and payment under Commonwealth legislation. The main objection to the proposed legislation rests upon this point. Paid maternity leave as a workplace relations matter is addressed in the next section.

2.7 Paid maternity leave is, nevertheless, a work and family issue. The committee majority considers that paid maternity leave is one element of a policy discussion about the way in which employees can balance their roles as workers with family responsibilities. The committee majority notes that the Government has embarked upon a comprehensive policy review of work and family issues. The committee notes that while this review will include consideration of paid maternity leave, this will be one element within a much broader package of assistance intended to meet the varying needs of employees and those outside the paid workforce. The committee majority noted the Prime Minister's statement to that effect:

We are looking at a range of options to provide further choice to parents in balancing their work and family responsibilities. We've already done a great deal in that area, we've introduced family tax benefits, we've introduced the baby bonus, we've enhanced those benefits, particularly the family tax benefits and we're looking at some other options as well, including, but not

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<sup>2</sup> *Transcript of proceedings*, Mrs Pauline Smit, WAA, 9 August 2002, p.8

<sup>3</sup> Speech transcript, Senator the Hon. Amanda Vanstone, 4 September 2002.

<sup>4</sup> *Submission 5*, Australian Family Association (NSW), p.1

only, the issue of paid maternity leave. It's one of a number of things, you can't expect any early announcement on initiatives, further initiatives in this area but it is a very important priority of the Government over the longer term.<sup>5</sup>

## **Effective workplace relations policy**

2.8 While the committee has noted that paid maternity leave is best described as work and family policy, this bill has been presented as an amendment to the *Workplace Relations Act 1996*. The committee notes that since coming to office in 1996 the Government has undertaken significant reform of workplace relations in Australia, and that the general direction of these reforms has been to give Australian workers and employers the opportunity to resolve workplace relations issues in the workplace, through certified agreements and Australian workplace agreements. The committee majority considers that this bill runs counter to this reform process. It seeks to mandate, by statute, a matter which ought to be determined at the workplace level along with the overwhelming majority of other employment conditions.

2.9 The committee majority considers that, if paid maternity leave is a desirable feature of working conditions, it can be discussed as part of the usual process of negotiating certified agreements or Australian Workplace Agreements. Evidence to the inquiry suggests that this is a continuing process. The ACTU, for instance, stated that 'if there is not 100 per cent income replacement available through a government scheme ... we will continue to bargain in this area.'<sup>6</sup> The committee majority regards this process as consistent with the intentions of the Workplace Relations Act.

2.10 The committee noted evidence presented by government departments which demonstrates that workplace bargaining is delivering paid maternity leave for women in the workforce. About half (50.9 per cent) of all women in full time employment were entitled to paid maternity leave in the June quarter of 2000<sup>7</sup>. The committee further noted that 38 per cent of all women in work, full time or part time, were entitled to paid maternity leave at that time.<sup>8</sup>

2.11 During hearings on this matter, the committee heard a number of outstanding success stories where the current bargaining arrangements have resulted in paid maternity leave schemes tailored to the needs of both employees and companies. Esprit, for instance, gave evidence to the committee about their paid maternity leave and family friendly policies. Their evidence demonstrates how a flexible, negotiated policy can provide an excellent outcome for mothers:

Esprit offers up to 12 weeks paid maternity leave for all full-time colleagues of more than two years service. These colleagues must intend to return to

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<sup>5</sup> Transcript of media interview with Prime Minister the Hon. John Howard MP, 31 July 2002.

<sup>6</sup> *Transcript of proceedings*, Ms Sharan Burrow, ACTU, 9 August 2002, p.21

<sup>7</sup> *Submission 20*, OSW, FACS, DEWR, p.31

<sup>8</sup> *ibid*

the same or a similar position on their return to work. [...] Esprit also offer a flexible return to work policy for colleagues who wish to return to work within six months of maternity leave. Such a colleague would then have another 120 days owing of maternity leave to use. For example, a colleague might return to work for two days a week after five months, increasing this to three days a week after seven months and then to four days a week after 10 months from the start of leave. She would then be able to work four days a week for a further two years following the end of the initial 12-month maternity leave. This policy allows our colleagues the flexibility of working part time, thus finding a balance between family and work in their child's early years. It also allows the company to have their valuable colleagues back in the business sooner. Other aspects of our family friendly policy include flexible weekly working hours to fit in with family responsibilities, car lease payment assistance during maternity leave, utilising sick leave for family emergencies and the flexibility to be able to work from home when the need arises.

2.12 The committee notes that the benefits available to Esprit's staff go much further than the benefits mandated by the current bill. Furthermore, the committee notes that Esprit's program was specifically designed to attract and retain retail sales employees. This tends to rebut the suggestion that paid maternity leave is only provided in higher-paid, higher-skilled professions. The decision by Australian company Pacific Brands, during the course of the inquiry, to provide paid maternity leave for many of its factory-floor staff is further evidence that the businesses often place value on the maintenance of a stable workforce including employees in unskilled and semi-skilled positions.

2.13 The committee also noted the submission of the Shop Distributive and Allied Employees Association which indicated that the SDA has 'had some success'<sup>9</sup> in obtaining, through enterprise bargaining agreements, a range of work and family provisions for mothers with newborn children. However the SDA made it clear that paid maternity leave was only one among several options for flexible working arrangements. The SDA stated that these include:

- the availability of extended (up to 3 years) unpaid parental leave;
- an entitlement to return to work on a part time basis after a period of parental leave;
- a specific entitlement to paid pre-natal leave for both mother and father to attend medical appointments related to the pregnancy;
- a pro-rata amount of leave for those who have not worked for the ... required 12 months to be eligible for parental leave;
- an entitlement to consideration of family responsibilities when establishing rosters on return to work;

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<sup>9</sup> *Submission 11, SDA, p.5*

- family leave; and
- paid maternity leave<sup>10</sup>

2.14 The committee can see no compelling reason to impose a bill which would mandate an inappropriate ‘one size fits all’ policy when the workplace negotiation process has already delivered more flexible, tailored work and family options to a wide range of women, in a wide range of workplaces, with a wide range of skill levels.

2.15 The committee noted the increasing number of employers realising that there is a strong business case for the introduction of a competitive work and family scheme. The ACTU, for instance stated:

Those companies that have made the decision to introduce paid maternity leave have done so because they see the business case for being an employer of choice, attracting and retaining highly skilled women. They see the business case for retention, and they see that there are benefits in terms of reduced absenteeism and so on. So, if they are sensible employers, they will divert the funds into other initiatives which support the retention of women in the work force and have ongoing and obvious economic and societal benefits.<sup>11</sup>

2.16 The Australian Industry Group agreed:

[Employers need to] take into account the costs associated with losing a valued female employee—costs such as recruitment, selection and training. The loss of skills is the biggest issue. Not only are there those direct costs to the employer; there are also significant community costs—for example, the loss of the education that has been devoted by the community and so on.<sup>12</sup>

2.17 Under these circumstances, the committee notes that if there is a business case in favour of paid maternity leave, and an enterprise bargaining system available to negotiate and deliver work and family related conditions, it is clearly in the interests of both business and employees to pursue their mutual interests.

## **Legislative anomalies and doubtful policy**

2.18 The committee majority recognises that a private bill which attempts to legislate for ambitious social policy measures is likely to produce anomalous provisions. Some anomalies were identified during public hearings on this bill. The first of these relates to the way existing paid maternity leave schemes would mesh with the model proposed in the bill.

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<sup>10</sup> *Submission 11*, SDA, pp.5-6

<sup>11</sup> *Transcript of proceedings*, Ms Sharan Burrow, ACTU, 9 August 2002, pp.21-22

<sup>12</sup> *Transcript of proceedings*, Ms Stephen Smith, AIGroup, 9 August 2002, p.3

2.19 The bill's practical effect will be that private employers, including large corporations which have made a business decision to introduce paid maternity leave, would receive what amounts to a considerable subsidy, as the Commonwealth assumes part of existing paid maternity leave payments. In other words, the bill will undo the substantial progress made under the government's reformed workplace relations processes, and will increase the outlay of public funds to provide a benefit which these particular employees already receive.

2.20 The committee majority noted evidence that the bill would not take away from the focus on workplace bargaining to achieve greater levels of payments that assists workers to meet family commitments. The committee, for instance, heard the following evidence from the ACTU:

. . . ., if the Commonwealth were to provide the \$431 per week, we would still be bargaining with those state governments to provide full income replacement to add the extra two weeks in those states and territories where it is 12 weeks paid leave and to increase the number of weeks in those other states and to broaden the scope. No, we do not want to let the state governments off the hook, but it would be inequitable for the Commonwealth to fund the private sector and leave out those state government employees. There are obviously mechanisms available to the Commonwealth in the states grants process if it felt that it was giving a windfall, in particular, to states that were already providing paid maternity leave.

In the same way, we would be encouraging private sector employers who receive a windfall through their employees becoming eligible for paid maternity leave to use that money to provide other family friendly policies or to increase the level of payment—in most cases, it is only two or six weeks anyway. In the same way, you would encourage the states to reach best practice rather than minima.<sup>13</sup>

2.21 The evidence from the ACTU also suggests the complex Commonwealth/state funding issues which would arise from the bill. The effect of the bill may be to force states and territories to increase the paid maternity leave benefits available to their employees, without offsetting gains in productivity, to enable those governments to fund the benefits. This, in turn, would be likely to result in increased calls for Commonwealth funds to support an additional outlay by the states and territories.

2.22 An unnecessarily complex payment process is now proposed. Under this bill, employers would receive payments from the Commonwealth, and would then be expected to make these payments to the employee when the employee takes paid maternity leave. This process creates unnecessary compliance issues for businesses, particularly small businesses, as noted in evidence from the Australian Industry Group:

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<sup>13</sup> *Transcript of proceedings*, Ms Cath Bowtell, ACTU, 9 August 2002, p.19

We believe that most employers would be concerned about an approach of having to provide the funding and then being reimbursed, even if that was handled quite early on in the piece<sup>14</sup>

## International Obligations

2.23 Some evidence and submissions before the committee asserted a relationship between international agreements such as the Convention for the Elimination of All Forms of Discrimination Against Women ('CEDAW'), and various ILO instruments, with the current bill. Senator Stott Despoja's second reading speech on the bill seems to support this suggestion, by asserting that the bill:

reflects the relevant ILO recommendations that national policies enable employees to exercise their right to work, 'to the extent possible, without conflict between their employment and family responsibilities' (ILO Recommendation (No, 165) Concerning Equal Opportunities and Equal Treatment for Men and Women Workers; Workers with Family Responsibilities).<sup>15</sup>

2.24 The committee notes the advice of the Office of the Status of Women, the Department of Employment and Workplace Relations, and the Department of Family and Community Services that 'Australia has no specific obligation in international law to provide paid maternity leave.'<sup>16</sup> The committee notes that the ILO conventions which support paid maternity leave were devised and driven by European nations with a long history of the provision of social insurance. These policies have limited application to Australia. The Government agrees with the basic objective of the ILO conventions – to support workers with family responsibilities. In achieving this objective, the legislative framework must reflect the continuing and evolving policy which we have seen in the Workplace Relations Act.

2.25 The committee majority has, noted its opposition to a 'one size fits all' policy and its strong preference for flexible policies enabling decisions to be made by employers and employees at the workplace. If a national 'one size fits all' policy cannot be accommodated, an international declaration or convention has little relevance.

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<sup>14</sup> *Transcript of proceedings*, Mr Stephen Smith, AIGroup, 9 August 2002, p.3

<sup>15</sup> *Senate Hansard*, 16 May 2002, p.1696

<sup>16</sup> *Submission 20*, OSW, DEWR, FACS, p.9

## **Conclusions**

2.26 The committee notes that this bill has been introduced prior to HREOC's final report on paid maternity leave; and that the Government has begun a process of considering work and family policy in Australia. The committee majority considers it would be premature to consider legislation until these processes have been completed.

2.27 The committee majority further notes that the bill proposes a system which would mandate an inflexible paid maternity leave scheme at a time when the Government's workplace relations policies are clearly delivering family-friendly flexible provisions to increasing numbers of parents.

## **Recommendation**

The committee recommends that the Senate should not support the bill.

**Senator John Tierney**  
**Chair**