

# Labor Senators' Report

## Introduction

Paid maternity leave is a substantial workplace entitlement initiative which has yet to be legislated for. The path Australia has taken over nearly a century of developing social welfare and industrial policy has seen paid maternity leave fall into a gap that is now recognised as an impediment to the productive employment of women, and an obvious anomaly in the gender equity equation. This is an issue about rights, but it is also an issue about the productive use of labour resources and its economic consequences.

The Australian Labor Party is committed to the introduction of paid maternity leave for all Australian women in paid work. Paid maternity leave is one part of a co-ordinated set of policies Labor will introduce to help balance work and family responsibilities. This suite of policies will provide benefits to all mothers, not just those in paid employment. They will provide genuine options to Australian parents, unlike government policy which purports to provide options, but in fact overwhelmingly penalises mothers who return to work following their baby's birth and in the case of the Baby Bonus provides greater assistance to those with higher incomes. It will be clear, through this balanced presentation, that the views and conclusions presented in the government report are not supported by the evidence which the committee has obtained.

Labor senators on the committee support the concept of a statutory paid maternity leave scheme which will provide a safety net for Australian working mothers. As noted below, however, the current bill falls short of being the appropriate measure. Labor senators reject the view expressed by government senators that paid maternity leave can be delivered effectively by the current workplace bargaining process. The government senators themselves acknowledge that only 38 percent of women in paid employment have access to paid maternity leave<sup>1</sup>. While the government claims success for this policy, it leaves 62 percent of women in paid employment without any form of paid maternity leave. Workplace bargaining alone cannot deliver what they need.

Further, Labor senators noted evidence presented by Government departments that only 7 percent of certified agreements in 2000-01 contained paid maternity leave<sup>2</sup> (a *decrease* from the 10% of agreements which contained such provisions in 1998-99<sup>3</sup>). If 7 percent of agreements can result in 38 percent of women having access to the paid maternity leave, this indicates that the agreements which include paid maternity leave

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1 See Majority Report para 2.12

2 Statistic in this paragraph are derived from *Submission 20*, OSW, DEWR, FACS, Attachment B

3 DEWR and the Office of the Employment Advocate (2002) *Agreement Making under the Workplace Relations Act*, fig. 3.5.9, p.81

are those covering a relatively large number of women. This, in turn, suggests that women in smaller workplaces, without access to collective bargaining on a large scale, will continue to be deprived of paid maternity leave. Finally, the committee noted that even among the certified agreements which contain paid maternity leave, fewer than half contain provision for six weeks leave or more. Just four out of 917 provided the 14 weeks' leave proposed in the bill. In the face of this evidence it is facile to argue that 'workplace bargaining is delivering paid maternity leave for women in the workforce.'<sup>4</sup> Such arrangements as are in place probably represent the limit of what is available through collective bargaining.

In considering the Bill, Labor senators note Australia's moral and legal obligations under instruments such as the Convention for the Elimination of all Forms of Discrimination against Women (CEDAW), and ILO Convention 183 and Recommendation 191. While, as government senators note, Australia may not have a legal obligation to enact paid maternity leave in accordance with these conventions, they are a strong moral force suggesting that all women in paid employment are entitled to paid maternity leave. Further, Labor senators note that the only reason Australia is not required to implement paid maternity leave under CEDAW is because Australia has entered a reservation regarding the relevant provision of CEDAW. The Convention itself, with which Australia should aspire to comply, calls on governments to introduce paid maternity leave.

### **Is the current bill the correct instrument?**

The purpose of the committee's deliberation is to assess whether the current bill is likely to achieve its purposes, and to consider whether an amendment to the *Workplace Relations Act 1996* is the appropriate instrument to introduce a payments scheme for paid maternity leave. Labor senators note that the *Workplace Relations Act 1996* contains provisions for *unpaid* maternity leave, but has no appropriations clauses, nor any provisions for the payment of publicly funded workplace benefits. Labor senators do not believe that the *Workplace Relations Act 1996* is an appropriate legislative instrument for the provision of these payments.

This leaves the question of whether there is a more appropriate piece of legislation to carry provisions for paid maternity leave. The intent of this bill, for instance, could fit neatly within the *Equal Opportunity for Women in the Workplace Act 1999*, but this Act, like the *Workplace Relations Act 1996*, does not currently provide for appropriations. The *Family Assistance Act 1999* is another possibility. The *Maternity Leave (Commonwealth Employees) Act 1973* provides paid maternity leave for women working for the Commonwealth. The scope of this Act could be extended to become a more general Maternity Leave Act.

Another option may be to enshrine the right to paid maternity leave in the *Workplace Relations Act 1996*, and then to introduce a paid maternity leave bill containing the payment provisions. In the end, it may be that this vital issue warrants its own Act.

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4 Majority Report para 2.12

Just as compulsory superannuation, workers compensation and occupational health and safety have been addressed by separate legislation, Labor has proposed to address the protection of employee entitlements in this way. Labor senators consider that the appropriate legislative solution to paid maternity leave will emerge from the current policy development process.

While Labor senators conclude that the bill errs in seeking to enshrine a payment of this type in the *Workplace Relations Act 1996*, the opportunity to consider this bill has been welcomed. The introduction by the Australian Democrats of this bill and the committee process has facilitated parliamentary consideration of the more general issue of paid maternity leave. Government senators, in their report, suggest that this bill was designed to contribute momentum to the current debate.<sup>5</sup> Labor senators support the introduction of the bill on this basis, and encourage informed public debate on this issue.

Whereas the government senators have opposed the concept of statutory provision for paid maternity leave, Labor senators do not. The Labor senators' report will contribute to the current debate by setting out, in a more balanced and systematic fashion than the government senators' report, the evidence and submissions presented before the committee.

## **Who should be eligible for paid maternity leave?**

The most contentious issue before the Committee was the question of who should be eligible for paid maternity leave. This wider issue of eligibility contained four distinct concerns:

- what the qualifying period should be, and whether there should be a qualifying period at all;
- whether mothers outside the paid workforce should be included in the scheme;
- whether the bill fails to provide sufficient support for women employed in state governments; and
- whether the leave should be available only to mothers, or to either parent.

## **Qualifying Periods**

The bill links eligibility for paid maternity leave with eligibility for unpaid maternity leave under section 170KB of the *Workplace Relations Act 1996*, which includes a qualifying period of 12 months continuous service<sup>6</sup>. The explanatory memorandum to

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5 Majority Report para 2.1

6 *Workplace Relations Act 1996*, Schedule 14, Part 2, Clause 3(2)(h)

the bill states that “Given that gestation is 9 months, a 12 month service requirement is fair.”<sup>7</sup>

Virtually every submission received by the committee which supported paid maternity leave expressed concern about the 12 month service requirement<sup>8</sup> and a number of alternative models were suggested. The strongest concern related to the ‘casualisation’ of work, and in particular work undertaken by women. Evidence before the committee suggested that many women are likely to move rapidly, or at least regularly, from one employer to the next, or from one contract to the next. Under the current bill such women, despite their continuous employment, would be ineligible for paid maternity leave. The comments of the Australian Federation of Business and Professional Women (BPW Australia) describe the situation:

Being employed by the same employer for 12 months may exclude a large proportion of women. Women tend to be concentrated in sectors where lengthy periods of unbroken employment history are uncommon. They are more likely to be casual, part-time or agency based. A requirement for a long period of continuous employment will discriminate against those women working in hard labour areas. Many of these women may need to change employers to ensure the safety of their pregnancy due to the nature of their work. A minimum hourly rate will discriminate against women in part-time employment and those able to work only limited hours due to family commitments.<sup>9</sup>

Ms Lyn Collins gave the committee a personal example of how this qualifying period affects women in the workplace:

I have had three babies, the last, Ethan, only four weeks ago. I was working part-time for Coles when I became pregnant in October 2001. I was offered a graduate trainee position with the government in early January 2002 and I had to make a choice. I was fearful about not being employed because of the pregnancy so I didn’t disclose it initially, until I was offered the trainee job. My new employers wanted to know how long I intended having off the job when I had the baby. I said about 2 weeks. They said any more than that would jeopardise my chances of getting the contract, which I was really keen to begin. [...] So, when the birth came, I took 1 flex day and 9 annual leave days – 2 weeks leave in total. I worked up to the Friday before the caesarean operation on the following Monday. Because I had changed employer six months earlier, I wasn’t eligible for unpaid leave.<sup>10</sup>

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7 *Explanatory Memorandum*, p.9

8 The Australian Industry Group (*Submission 28*) was an exception.

9 *Submission 14*, BPW Australia, p.9. Other submissions expressing similar concerns were those from Associate Professor Wendy Weeks, the Finance Sector Union, Women’s Economic Think Tank, Slater and Gordon, the AMWU, the ACTU, Shop Distributive and Allied Employees’ Association, Liquor, Hospitality and Miscellaneous Workers Union, Ms Lyn Collins, the CPSU, the NTEU, Women’s Electoral Lobby, and the YWCA.

10 *Submission 15*, Ms Lyn Collins, p.3

Labor senators noted other evidence which suggested that the need to impose a qualifying period exists because it would be unreasonable to expect employers to accept the inconvenience and expense of supporting an employee on paid maternity leave if the employee had only been with them a very short time. Such an expectation might also have the effect of inviting unlawful discrimination by employers against pregnant job applicants. However in the case of the current bill, the government would be paying for the maternity leave. Some evidence before the committee suggested that under those circumstances, there may be no need for a qualifying period at all. The Australian Education Union, for instance, stated:

The concept of a service requirement *could* be argued as relevant to the *employer's* ability to budget for the contingency of paid maternity leave, but this Bill provides for a direct government subsidy to the employer to cover the costs involved. Therefore there can be no justification for *any* service requirement before eligibility.<sup>11</sup>

Sex Discrimination Commissioner, Pru Goward, presented similar evidence:

A lot of it depends on who pays. If the employer is paying, he or she wants a bang for his or her buck, so they want it very closely related to strong work force attachment—particularly to that employer, of course. If it is a government funded scheme—and I know that this bill outlines a 12-month waiting period so that it is consistent with other aspects of industrial legislation—I think it has some problems.<sup>12</sup>

Finally, during its research the committee noted a third option. Germany, which currently has no qualifying periods for paid maternity leave, previously had a system which enabled women to serve their qualifying periods *after* the birth of their baby. Such women would undertake a covenant with their employer to return to work, and work for that employer from the 4<sup>th</sup> until the 10<sup>th</sup> month following the baby's birth. This would enable women such as Ms Collins, who get a career opportunity during their pregnancy, to take up that opportunity.

### **Mothers outside the paid workforce**

Labor senators note that the issue of improved social welfare provisions for families has intruded into the issue of paid maternity leave and clouded the issue. Labor senators view paid maternity leave as a targeted policy to assist mothers in paid work. It is not targeted to address the needs of mothers who are outside the paid workforce. Despite this, some evidence and submissions before the inquiry suggested that women outside the paid workforce should also be entitled to paid maternity leave. The Australian Family Association, for instance, stated:

The AFA believes that paid maternity benefit should be paid to all mothers and not only mothers in the workforce who wish to return to the workforce.

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11 *Submission 19*, Australian Education Union, p.4

12 *Transcript of Evidence*, Ms Pru Goward, 22 August 2002, p.62

To discriminate against mothers who wish to care for their children at home is to diminish the role that mothers play and the work which they do. Being a homemaker is work and should be recognised.<sup>13</sup>

Other submissions and evidence suggested that while paid maternity leave might not be appropriate for mothers outside the paid workforce, other policies should be implemented in order to support mothers outside the workforce. The ACTU, for instance, proposed ‘a dual track system of paid maternity leave coupled with an improved maternity allowance.’<sup>14</sup> Further, Labor Senators noted that increasingly, women cannot be categorised strictly as ‘stay at home’ or working. Many will spend periods in and out of the workforce. This is why the issue of qualifying periods, discussed above, must be carefully considered.

Labor senators noted that virtually none of this evidence suggested that paid maternity leave should *not* be paid to mothers in the paid workforce.<sup>15</sup> Instead, the argument put by the AFA, the ACTU and others appears to suggest that the current government’s measures to support families, whatever their circumstances, are inadequate, and as a result women outside the paid workforce also need additional assistance. The deficiencies of current schemes such as the so-called Baby Bonus, Family Tax Benefit Part B and the Child Care Benefit (which will see many families lose their tax returns due to the poor design of the benefits), have been pointed out to the committee by a number of witnesses.

### **Mothers already receiving paid maternity leave**

The current bill includes provisions exempting Commonwealth, State and Territory government employees from access to this particular scheme of paid maternity leave.<sup>16</sup> The reasons for this are outlined in the Explanatory Memorandum:

This Bill will provide a payment to eligible women employees other than employees of Federal, State and Territory governments, on the expectation and belief that these governments should (and in many cases already do) provide at least equivalent paid maternity leave for their employees. It is administratively unwieldy and unnecessary to make a federally-funded payment to these employees, whose employment costs are already met by taxpayers.<sup>17</sup>

Evidence and submissions to the committee indicated that while it may be fair to say that State and Territory governments should pay paid maternity leave at equivalent

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13 *Submission 5*, Australian Family Association, p.1

14 *Submission 18*, ACTU, p.12

15 *Submission 10*, Salt Shakers, and *Submission 25*, Festival of Light did appear to oppose support for mothers in paid employment.

16 See Schedule 1, Part 2, Clause 4(2)(b)

17 Explanatory Memorandum, p.9

rates to the bill, few actually do so. The CPSU provided the committee with the following table:

Award/ EBA Provisions	C'wealth	Vic	Qld	WA	Tas	SA	NSW	ACT	NT
Paid Maternity Leave	12 wks	12 wks	6 wks	None	12 wks	2 wks	9 wks	12 wks	12 wks

This evidence suggests that the exclusion of State and Territory governments from the proposed system could result in some women employed by those governments being substantially worse off. Labor senators noted Senator Stott Despoja's statement during the hearings that while she did not wish to '[let] state governments off the hook'<sup>18</sup> she was 'not implacably committed to the provisions of the bill.'<sup>19</sup>

Similar concerns emerged in relation to employers who currently provide some form of paid maternity leave. The bill's intention is to provide statutory paid maternity leave in addition to any such leave which was previously in place. The explanatory memorandum states:

The Maternity Payment is additional to any existing legal, award or agreement rights to paid leave. The Government contribution should not be seen, or applied, in ways that replace or diminish the contribution that employers currently make to paid maternity leave. The Bill applies the principle of *additionality* to existing provisions.<sup>20</sup>

The Australian Industry Group, however, took the view that this principle of additionality simply penalises those employers who have already agreed to implement paid maternity leave and, consequently, rewards those who have not agreed to do so:

Why should employers be penalised because they have taken the initiative and introduced arrangements at the enterprise level? We think that in many cases—say the employer is providing a certain amount of benefit and then this scheme is introduced—employers would say, 'We will readjust what we are doing at the enterprise level.' If the scheme nationally provides a certain level of payment, it can be used to top up. If it provides a certain number of weeks, an employer might choose to extend that. But we do not think that you can force employers to do that or force them to have to maintain what

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18 *Transcript of Evidence*, Senator Stott Despoja, 9 August 2002, p.18

19 *Transcript of Evidence*, Senator Stott Despoja, 9 August 2002, p.18

20 Explanatory Memorandum, p.12

they are doing at the moment just because they proactively did something before others did.<sup>21</sup>

Labor senators noted several witnesses echoed the view suggested by the Australian Industry Group that, were the bill to be enacted, employers should be able to reallocate money previously used for paid maternity leave to other family friendly benefits. The ACTU noted:

Given the small number of companies paying at 100 per cent for 14 weeks, I think it is better if the government accepts that that may be a windfall for those companies. Certainly, from the unions' point of view, we would be saying that that money should not go back into consolidated revenue but should be used to improve other things so that that employer can continue to be an employer of choice. 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>22</sup>

Esprit Australia indicated that it would adopt this approach:

... if the government did introduce some sort of benefit for women in that way, we would use that to top up our existing policy rather than replace it and would extend on some of the family friendly practices that we have already implemented. [...] At Esprit we would still want to be an employer of choice, so we would probably want to still have something that would draw us apart from our competitors and make us more attractive to work for. I would hope that that would be something that we would look at doing.<sup>23</sup>

The Sex Discrimination Commissioner concurred:

for almost all the employers who do it, it is an employer of choice issue—it is a way in which they compete with other employers for scarce skill labour—they still want to retain that advantage over their competitors, so I imagine, as an economist, you would use that money in other family-friendly ways to retain your advantage.<sup>24</sup>

Labor senators consider that the interaction between publicly-funded paid maternity leave and existing public and private sector schemes is not adequately addressed in this bill and requires a broader response which addresses the concerns raised in evidence before the committee.

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21 *Transcript of Evidence*, Mr Stephen Smith, 9 August 2002, p.6

22 *Transcript of Evidence*, Ms Cath Bowtell, 9 August 2002, pp.21-22

23 *Transcript of Evidence*, Ms Libby Sanderson, 9 August 2002, p.25

24 *Transcript of Evidence*, Ms Pru Goward, 22 August 2002, p.63



## Maternity leave versus parental leave

Under the current bill, maternity leave would generally be available only to mothers; it can be extended to fathers, but only in exceptional circumstances. According to the explanatory memorandum:

The Bill is structured this way for two reasons. Firstly, and most significantly, carrying a baby in the later weeks of pregnancy, giving birth, recovering from birth and early mothering to establish breast feeding where possible, are physical acts that affect the body and being of the mother. This payment distinguishes this physical phase of maternity from general parenting, which will remain to be shared between parents, as they see fit, for the remaining 38 weeks of unpaid leave. Secondly, if men could claim the payment for maternity leave, given their on average higher earnings, it might make economic – if not practical - sense for the father to receive the payment and take at least some of the paid leave. In many cases, where women work part-time, male parents would receive a higher level of payment than their female spouses. Limiting the payment primarily to mothers means that any impulse to seek higher economic benefit by nominating fathers for it, rather than fund a work break for the biological mother, will be curtailed.<sup>25</sup>

Various views were expressed in evidence and submissions concerning the possible extension of paid maternity leave to include fathers, thus establishing a paid parental leave system. The National Pay Equity Coalition, for instance, argued:

There are strong arguments in favour of providing a period of paid parental leave for partners of women giving birth. Women now stay in hospital for quite brief periods after birth and do require care in the immediate post-birth period.<sup>26</sup>

BPW Australia took the view that providing paid parental leave would increase the choices available to parents:

A number of BPWA members have advocated flexibility whatever PML scheme is introduced, and stressed that this would need to allow for PML payments to be shared across both mum and dad at the discretion of the couple. It is the right of the parents, not the state, to choose what care arrangements suit their child and their family.<sup>27</sup>

However Labor senators noted that, on balance, the evidence before the committee tended to favour leave which directly addresses the needs and circumstances of the mother. The NTEU, for example, stated:

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25 Explanatory Memorandum, p.10

26 *Submission 31*, National Pay Equity Coalition , p.20

27 *Submission 14*, BPW Australia, p.8

Women in work face unique disadvantage, including employment discrimination, lack of access to career progression and low wages compared with their male counterparts. This disadvantage is often exacerbated greatly if a woman chooses to have a child. Paid maternity leave for working women is one way to combat this kind of overall disadvantage for women: the fact that provision for paid maternity leave for working women is reflected in International Labor Organisation and United Nations Conventions, and that almost all western nations provide for paid maternity leave for working women reflects international acceptance of this view.<sup>28</sup>

Finally, Labor senators noted the view of Associate Professor Wendy Weeks that 'Parental leave in itself is an important component in the support of families and one that we also wholly support. However we stress that it should be an additional scheme rather than a replacement for maternity leave.'<sup>29</sup>

### **Level of payments under a paid maternity leave scheme**

A wide range of views were expressed to the committee regarding the appropriate level of payment under a paid maternity leave scheme. The four most commonly supported levels are as follows:

- **Minimum Wage:** The bill provides for women to be paid at the minimum wage rate, currently \$431.40 per week. This suggestion represents a safety net approach, and is the most economical option.<sup>30</sup>
- **Average Wage:** According to the ABS<sup>31</sup>, full time adult ordinary earnings in May 2002 were \$868.50 per week. This is approximately double the cost of the minimum wage model.
- **Average Female Wage:** According to the ABS<sup>32</sup>, full time adult female ordinary earnings in May 2002 were \$778.30 per week. This is slightly less than the average wage model, but this model may penalise women because female average earnings are less than those of men.
- **Full Wage Replacement:** Depending on whether women taking paid maternity leave earn a similar average wage to that of all women, this option is likely to cost a similar amount to a scheme based on the average female wage. However, the distribution would be rather different, resulting in higher payments to women with higher base incomes, and lower payments to women with lower incomes.

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28 *Submission 23*, NTEU, Attachment 1, p.3

29 *Submission 2*, Associate Professor Wendy Weeks, p.5

30 The SDA supported this level. The Women's Action Alliance supported this level as a compromise, with average weekly females earnings as an ideal.

31 ABS cat 6302.0 May 2002

32 *ibid*

The NTEU and Australian Industry Group supported payment at the minimum wage. The CPSU, the National Pay Equity Coalition and the Women's Electoral Lobby supported payment at the average weekly wage.

A number of witnesses suggested that a minimum or average wage rate could be implemented as a safety net, with a view to negotiating higher rates through the workplace bargaining system. Associate Professor Wendy Weeks, BPW Australia, Esprit, and the YWCA supported this view.

The Womens Economic Think-Tank took the view that full wage replacement should not be supported if the scheme was paid for by government:

... it is more difficult to justify paying public money at differential rates for basically undertaking the same tasks. If the maximum is set at a high rate or as income replacement for all, it will be reproducing the inequalities of pay rates by matching prior wages. Other forms of leave usually replace the lost wages so there is justification for the differential rate but this is paid by the employer. If we are requesting that this payment be paid from public funds, it is harder to sustain such differentials. Therefore it would seem more equitable to pay a standard maximum rate but not more than prior earnings which would cover part time workers. So we would support the use of minimum wages as the basic payments<sup>33</sup>

Several unions (the AMWU, ACTU, AEU and LHMU) proposed a hybrid scheme where the government would pay for maternity leave at the minimum wage rate. In addition, employers would be levied a compulsory, across-the-board fee to be held in an industry-based fund scheme. Money from this scheme would then be used to bring paid maternity leave benefits up to the full wage replacement level.<sup>34</sup>

## **Funding and administration of a paid maternity leave scheme**

Two significant issues were raised in evidence and submissions in relation to the proposed scheme. The first issue was the question of who should pay for paid maternity leave, and the second issue related to the practicality of the indirect payment process contained in the bill.

### **Who should pay?**

There are four possible sources for paid maternity leave. They are:

- employers;
- employees;
- government; and

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33 *Submission 7*, Women's Economic Think-Tank, p.4

34 *Submission 8*, AMWU; *Submission 12*, LHMU; *Submission 18*, ACTU; *Submission 19*, AEU

- some mix of the three

The committee heard strong evidence suggesting that employers should not be wholly responsible for the payment of paid maternity leave schemes. The Australian Industry Group, for instance, stated that:

Ai Group is opposed to the introduction of any paid maternity leave scheme which is funded by employers. The significant costs of such a scheme would place an excessive burden on industry which would most likely lead to lower employment levels and reduced competitiveness for Australian businesses – large and small. It is also likely that any such a scheme would adversely impact upon employment opportunities for women.<sup>35</sup>

Sex Discrimination Commissioner Pru Goward described employer-funded paid maternity leave as a ‘third world option’:

The first myth is that paid maternity leave in Australia must be directly funded by employers. Apart from the fact that that is a Third World option, most of Australia’s international competitors fund PML—paid maternity leave—through either entirely government funding or social insurance schemes into which contributions come from all parties. The exception to this is Switzerland but, as you would know, the business tax rate in Switzerland is very low. Government funding in full or in part has certainly been the preferred option of those with whom we have consulted, and there was a general view that direct funding by employers could lead to discrimination against women, would unfairly share costs across employers and industries and would be unaffordable for some small businesses and businesses on narrow profit margins such as supermarkets.<sup>36</sup>

The committee did not receive any evidence suggesting that the full cost of paid maternity leave should be borne by employees. The current situation is that the vast majority of women, who do not have access to paid maternity leave, fund their own maternity leave. Another way to have employees fund paid maternity leave could be to introduce a social credit type of arrangement. However such a scheme was not proposed or supported in evidence before the committee.

Most of the evidence and submissions before the committee supported the payment of paid maternity leave benefits by government. This seems to be in accord with the wide body of opinion canvassed by the Human Rights and Equal Opportunity Commission for its current inquiry into paid maternity leave. Ms Goward stated, in relation to the various models offered for discussion by HREOC, that ‘there is very strong support for a government funded scheme for a minimum of 14 weeks.’<sup>37</sup>

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35 *Submission 28*, AI Group, p.4

36 *Transcript of Evidence*, Ms Pru Goward, 22 August 2002, p.57

37 *Transcript of Evidence*, Ms Pru Goward, 22 August 2002, p.63

However, as noted in paragraphs 1.36 and 1.38 above, a substantial number of submissions favoured a system where responsibility for the payment of paid maternity leave benefits is divided between the government and the employer. Under this view, the government would provide a safety net of funding up to a certain level (the minimum wage or average wage), and employers would ‘top up’ the funding to the level of wage replacement.

Labor senators noted two schools of thought as to how this should be achieved. Those witnesses listed in paragraph 1.36 suggested that employers top up paid maternity leave funding for employees on leave, at the time they are on leave. Such an arrangement would be negotiated through the workplace bargaining system. Those witnesses listed in paragraph 1.38, however, preferred a system where employers were compulsorily levied, regardless of whether they had employees on paid maternity leave or not. These levies would become the source of top up payments as necessary.

### **Direct payments versus indirect payments via employers**

The bill proposes that entitlements be paid, in the first instance, to the employer, who would then pay the money as wages in the normal manner. The bill’s explanatory memorandum offers the following reason for this administrative process:

In effect, the employer is receiving from government the cost of the Maternity Payment. Regulations would assist employers to be paid in advance. This system has been adopted to minimally disrupt existing systems, to ensure that the period of paid leave is counted as continuous employment, and to ensure ongoing contributions to employee benefits like superannuation. This is highly desirable in light of women’s lower average superannuation benefits.<sup>38</sup>

Labor senators noted that two major objections were raised in relation to this process. First, there was a concern that some employers may be unscrupulous and may not pass on the full amount of the benefit their employees are entitled to. The ACTU, for instance, offered general support for the payment of paid maternity leave benefits as normal wages, but qualified this support:

While payment as wages has merit, the ACTU also has concerns about payment by employers, if this might result in some women not accessing payment, for example where the employer is unaware of their obligations to pay, or where the employer is unscrupulous. The Bill should be supported by an information and education campaign, and information about rights should be included with other government information provided to mothers at the time of the birth of their child.<sup>39</sup>

The second concern, which Labor senators note was raised in the government report, relates to the costs associated with employers being required to administer the

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38 Explanatory Memorandum, p.13

39 *Submission 18*, ACTU, p.6

payment. Labor senators noted the submission of the Australian Hotels Association, which stated:

The AHA is unsure as to why the Bill would require that the maternity payment should be made to the employee by the employer and then the employer would be compensated by a government payment. This is potentially burdensome on employers and leads to double handling of the payment.<sup>40</sup>

## **Paid maternity leave and fertility rates**

Labor senators have noted that public discussions on paid maternity leave have become linked with discussions about Australia's current and projected fertility rate. However the fertility rate has not been presented as the main driver of the need for paid maternity leave. HREOC, for instance, in its discussion paper *Valuing Parenthood*, addressed the fertility rate, but this was the very last of its list of objectives of paid maternity leave. Others, such as 'achieving equity', 'supporting women and families', and 'benefit to employers' were all addressed first. Even when HREOC did address the fertility question, it did so in guarded terms:

Paid maternity leave is one possible mechanism for ensuring that economic considerations do not prevent families from choosing to have children and better enabling women to combine work and family as they choose.

[...] It is difficult to argue that a period of paid maternity leave alone will enable more women to choose to exercise their right to have children. A period of weeks compared with the long years of financial dependency is not necessarily significant. It is most likely to provide the necessary support to those women for whom remaining in paid work is essential. For those couples who save money in order to afford each child, a period of paid leave enables them to bring forward their decision to do so and may encourage some to have the additional child they had wanted. As part of a suite of family-enabling work provisions however, paid maternity leave would also play a useful role in enabling more women to effectively combine work and motherhood.<sup>41</sup>

In evidence before the committee, the Australian Industry Group stated:

We do not think that it will provide the total solution. I do not think anyone would think that the provision of 12 or 14 weeks of paid maternity leave would be the total answer to this worldwide problem of a falling fertility rate amongst developed nations. But we think it would make a very important contribution as part of a broader range of policy initiatives.<sup>42</sup>

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40 *Submission 26*, Australian Hotels Association, p.5

41 HREOC (2002) *Valuing Parenthood* p.63

42 *Transcript of Evidence*, AI Group, 9 August 2002, p.2

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Similar views were expressed by other groups including the ACTU, the Women's Electoral Lobby, and BPW Australia. However the majority of submissions which favoured paid maternity leave did not mention fertility rates as a driver for such a scheme. Professor Wendy Weeks, for instance, providing a convincing list of reasons for paid maternity leave – none of which relied on the objective of increasing fertility rates. She stated that paid maternity leave:

- i. Has been acknowledged by international instruments such as CEDAW and the ILO Maternity Protection Convention as a human right.
- ii. Is a basic family and workplace policy in the great majority of developed nations, with the USA and Australia being the two exceptions.
- iii. Will go some way towards addressing systemic discrimination on the basis of gender.
- iv. Will provide some income security for women.
- v. Acknowledges the social and economic worth of parenting.
- vi. Is supportive of families in their choice to have children.
- vii. Is responsive to women's health needs pre- and post-partum, and during the establishment of breastfeeding.
- viii. Values the work that women do carrying, delivering and caring for their infants *as work*<sup>43</sup>

Labor senators consider that the arguments in favour of paid maternity leave – arguments such as those presented by Professor Weeks above – are unassailable, regardless of whether or not a link with fertility rates can be proven.

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43 *Submission 2*, Professor Wendy Weeks, pp. 2-3

## **Conclusions**

The Australian Labor Party has made its support for paid maternity leave clear. While Labor senators are unable to support the particular system of paid maternity leave proposed in this bill for the reasons outlined in this minority report, the bill's referral to the Employment, Workplace Relations and Education Committee has given Senators a valuable opportunity to consider these issues in some detail. The views placed before the committee in submissions and evidence represent a substantial contribution to the continuing debate on paid maternity leave.

**Senator George Campbell**

**Senator Trish Crossin**