

## Report of the Australian Democrats

This Bill is the first of its kind to be presented in the Australian Parliament. If passed, it would establish a national, government-funded paid maternity leave scheme providing 14 weeks paid leave for most Australian women in paid work. This scheme is intended to underpin local ‘top ups’ at the workplace level. It will replace current arrangements whereby around a third of Australian women, mostly in larger companies and the public sector, enjoy paid leave while two-thirds of working women do not. The Bill aims to address this inequity by ensuring a more fair system of paid maternity leave for all working mothers on the birth of a child. Its rationale is considered in full in this report, along with a range of practical modifications that arise from the evidence presented to the Inquiry.

The Committee received 34 submissions on the Bill, and took additional evidence from witnesses over two days of public hearings. The contribution of individuals and organisations by means of submissions and verbal evidence is gratefully acknowledged. Many individuals and organisations put considerable effort into commentary on this important issue. Their efforts will result in a more robust and practical Bill and I thank them for their valuable contribution.

A practical, efficient, fair system of government-funded, paid maternity leave has clearly found widespread support amongst Australians. It is achievable and affordable now, within the current budget, provided that the Government follows the recommendation of the great majority of submissions to abolish the Baby Bonus. The introduction of such a system is long overdue and is our responsibility to Australian women, their babies, and our community.

### Support for a national paid maternity leave scheme

There is widespread support for a national system of paid maternity leave for Australia’s working mothers. Employers, unions, women’s organisations, individuals and community organisations see the need for greater support for women when they have a baby. Evidence before this Inquiry suggests that three-quarters of Australians support paid maternity leave<sup>1</sup>. It is widely recognised that Australia is lagging behind the international community with respect to support for women when they have a new child, particularly women in paid work.

At present, some Australian women return to their jobs well before they want to, because their families depend on their earnings. One mother told the Committee that she had returned to work two weeks after the caesarean birth of her child – not because she *wanted* to, but because she *had* to. She had no access even to unpaid leave, let alone any paid maternity leave. This is primitive. As she said:

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<sup>1</sup> BPW Australia, *Submission No. 14*, p.2

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. Two weeks time off for a new baby wasn't enough time, but economic pressure mean that I really had no choice<sup>2</sup>.

No Australian mother should have to return to work so soon after birth, when her body has not recovered, her baby is too young for childcare, and there is little real opportunity to breast-feed. Many mothers want longer than 14 weeks with their new child – and this Bill is not intended to suggest that 14 weeks is ideal or enough – but, at present, many mothers are left with little effective choice to take even that short period, given their family's dependence on their earnings. Australian families and households have changed over recent decades. It is time that our policies caught up with the fact that 7 out of 10 women of childbearing age are in the labour market, and family friendly provisions like paid maternity leave will make a real difference to their quality of life, and that of their families.

As Business and Professional Women put it:

Australia should catch up with the rest of the world and offer paid maternity leave to Australian women...It is clear that this is an issue about which working women feel strongly<sup>3</sup>.

Very few submissions to this Inquiry opposed a national system of maternity support. One of these, the Victorian Automobile Chamber of Commerce, called for "further research"<sup>4</sup>. The Australian Catholic Commission for Employment Relations also called for "further economic modelling"<sup>5</sup>. Finally, the Festival of Light said that the Bill should be rejected "on principle" as it would "encourage more mothers to leave young babies in childcare to the detriment of these children and to the nation as a whole"<sup>6</sup>.

## **The rationale for paid maternity leave**

This Inquiry heard six main arguments for paid maternity leave:

### **1. Welfare of the mother and child**

There is widespread evidence that maternal health, bonding with the child, and the child's health are all improved through a period of leave from paid work for the mother with her new baby. The Inquiry received evidence of these effects. Several

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<sup>2</sup> Lyn Collins, *Submission No. 15*, p.3

<sup>3</sup> BPW Australia, *Submission No. 14*, p.1

<sup>4</sup> Victorian Automobile Chamber of Commerce, *Submission No. 30*, p.7

<sup>5</sup> The Australian Catholic Commission for Employment Relations, *Submission No. 32*, p.3

<sup>6</sup> Festival of Light, *Submission No. 25*, p.5

submissions also argued that family health and well-being are improved by paid leave<sup>7</sup>. As the Australian Industry Group (AIG) put it:

Community benefits include improved returns on public investment in education and training as well as improved health and welfare of mothers and newborn children due to reduced hardship in the period immediately following the birth of a child.<sup>8</sup>

Significant changes in the labour market over recent decades create a strong argument for paid maternity leave. In 1976, only 48 per cent of women in the peak childbearing age group of 25-34 years were in the labour market. This has now increased to almost 70 per cent<sup>9</sup>.

Sixty-five per cent of women in the overall childbearing age group of 15-44 years are now in paid work, and a further 5 per cent are looking for work. The fact is that most women are now in paid work at the time they become pregnant, and many will return to work after the birth of their child.

## **2. Discrimination against women in the workforce.**

It is women who bear children and take time out of their paid working lives to do so. As a result, their employment is affected negatively, relative to men's. Their earnings are lower, their careers and experience are truncated, and their retirement benefits are reduced. Without compensating arrangements like paid maternity leave, women suffer systematic, indirect discrimination associated with motherhood and caring. As one submission put it:

Paid maternity leave addresses workplace discrimination by providing income replacement for women at the time of the birth of a child. Paid maternity leave recognises that men can become parents without loss of earnings, women cannot.<sup>10</sup>

Paid maternity leave will go some way to address the physical reality that distinguishes women's workplace experiences from men's on the birth of a child. In this sense, paid maternity leave is a basic and essential workplace measure to prevent indirect discrimination against women, who forego between \$167,000 and \$239,000 as a result of the birth of their first child alone, depending upon their qualifications<sup>11</sup>. It is an important workplace anti-discrimination measure.

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<sup>7</sup> See, for example, Shop Distributive & Allied Employees' Association (SDA), *Submission No. 11*, and National Pay and Equity Coalition (NPEC), *Submission No. 31*.

<sup>8</sup> AIG, *Submission No. 28*, p.22

<sup>9</sup> NPEC, *Submission No. 31*, p.12

<sup>10</sup> Australian Council of Trade Unions (ACTU), *Submission No. 18*, p.2

<sup>11</sup> Chapman, B. Dunlop, Y, Gray, M. Liu, A. and Mitchell (1999) 'The foregone earnings from child rearing revised', Discussion paper No 47, Centre for Economic Policy research, ANU, Canberra.

### 3. Employer benefits

Many employers recognise that family friendly policies and practices deliver real benefits to their businesses, such as increasing staff retention and productivity, reducing the costs of rehiring and training, and improving staff morale<sup>12</sup>.

There is evidence that the introduction of paid maternity leave results in an increased rate of return to work by employees<sup>13</sup>. The National Australia Bank, for example, experienced an increase in the rate of return to work by women from 54 per cent in 1996 to 100 per cent in 1998, following the introduction of 6 weeks paid maternity leave. A similar increase occurred at Westpac. Analysis at Westpac demonstrates, as one senior manager has put it, “that the business cost of attrition and rehiring far outweigh the cost of maternity benefits”<sup>14</sup>. The Australian Hotels Association (AHA) and the Australian Industry Group (AIG) support the thrust of the Bill.

### 4. Equity among workplaces

Ironically, women who work in feminised industries, such as retail and hospitality, tend to have less access to paid maternity leave. This also the case for lower paid women, dispelling any assertion that paid maternity leave is a middle-class benefit. The National Pay Equity Coalition (NPEC) refer to ABS data showing that:

While 78 per cent of managers and 60 per cent of professionals have paid maternity leave entitlements already, only 16 per cent of elementary clerical sales and service workers and 31 per cent of labourers and relations workers have an entitlement.<sup>15</sup>

The Australian Liquor, Hospitality and Miscellaneous Workers (LHMU) contrasts the experience of low paid women workers in highly feminised sectors like hospitality, where paid maternity leave is virtually unknown, with that of women working in the public sector<sup>16</sup>. It argues that this inequity is no longer acceptable. Similarly, BPW Australia notes that:

The federal government has awarded its own staff 12 weeks of PML but made no provision for other working women. The government is discriminating by paying its women employees and overlooking the equal needs of those working in the private and not-for-profit sectors. This inappropriate and inequitable double standard is impossible to justify. Babies deserve the same level of care whether their mother works in the government or private sector.<sup>17</sup>

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<sup>12</sup> AIG, *Submission No. 28*, p.21; Women’s Electoral Lobby Australia Inc (WEL), *Submission No. 24*, p.8

<sup>13</sup> Finance Sector Union of Australia (FSU), *Submission No. 4*, section 3, p.1

<sup>14</sup> *The Age*, 8/3/02

<sup>15</sup> NPEC, *Submission No. 31*, p.21

<sup>16</sup> LHMU *Submission No. 12*, p.9

<sup>17</sup> BPW Australia, *Submission No. 14*, p.3

The AIG referred to the inequitable provision of paid maternity leave across different workplaces<sup>18</sup> and the Women's Electoral Lobby (WEL) commented at length on this inequity:

[I]t is clear that leaving paid maternity leave to motivated employers or the current set of bargaining arrangements is not going to deliver adequate outcomes. A government-sponsored system is necessary to deliver substantive equality to women participating in society through paid work. It creates equity between women in all employment sectors, as well as between full-time, part-time and casual women employees.<sup>19</sup>

## **5. International Standards**

A number of international agreements contain provisions concerning family friendly workplace practices and paid maternity leave. These include the 1979 United Nations Convention on the Elimination of Discrimination Against Women (CEDAW); the International Labour Organisation Convention 183 (C183), Maternity Protection 2000 (with associated Recommendations); and ILO Convention 156, Workers with Family Responsibilities, 1981, (C156) (and Recommendations).

Australia ratified C156 in 1990, CEDAW in 1983 with a reservation in relation to paid maternity leave, and has not ratified C183. These Conventions reflect the view that family friendly measures are essential to promote equal opportunity and treatment for women workers, and to achieve effective equality of opportunity and treatment between men and women with family responsibilities. The Australian Government has refused to sign the relevant provisions of CEDAW or to ratify C183. It should, however, remove its reservations and implement a scheme that meets these international standards, joining most of the rest of the developed world.

## **6. A positive impact on the declining birth rate?**

Several submissions to the Inquiry referred to the potential impact of paid maternity leave on the fertility rate. For example, the National Farmers Federation (NFF) identified increasing Australia's fertility rate as one of the key objectives of paid maternity leave<sup>20</sup>. In contrast, other submissions argued that debate concerning paid maternity leave should be independent of concerns regarding Australia's decreasing fertility rate<sup>21</sup>.

The Women's Action Alliance correctly noted that I do not rely on a fertility argument to advocate paid maternity leave anywhere in this Bill, its Explanatory Memorandum or in my Second Reading speech. It may be true, as some submissions suggest, that paid maternity leave will help to address the decrease in Australia's birth rate – now at 1.7 and well below the replacement rate of 2.1.

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<sup>18</sup> AIG, *Submission No. 28*, p.8

<sup>19</sup> WEL, *Submission No. 24*, p.11

<sup>20</sup> NFF, *Submission No. 3*, p.3

<sup>21</sup> YWCA of Australia, *Submission No. 27*, p.14

There are complex arguments concerning the appropriate population level for our country, and to what extent pro-natalist policies such as paid maternity leave will affect the birth rate. European demographers suggest that pro-natalist policies like paid maternity leave, public childcare and extensive parental leave may raise the birth rate by 0.2 to 0.5 of a percentage point<sup>22</sup>. Such an increase would enable Australia to achieve the replacement rate. Australian demographer Peter McDonald has similarly claimed that such policies could have a real effect in Australia<sup>23</sup>. Certainly the higher age of mothers on their first birth (now almost 30 years), and the consequent loss of opportunity to have a second or third child, is contributing to the declining birth rate, an argument made by Sex Discrimination Commissioner, Pru Goward. It may be that paid maternity leave will change the timing of births and marginally increase their incidence, contributing to a change in Australia's fertility rate.

But the case for paid maternity leave is not dependent on this fertility argument and I have never relied on it. The case for paid maternity leave is very strong on other grounds: the grounds of anti-discrimination, the welfare of mothers and babies, employer costs, and equity between mothers. Each of these grounds has firm roots in the history of Australian public policy. Australians want fairness for women, healthy mothers and babies, efficient workplace and equity between women regardless of where they work.

Submissions to this Inquiry, and the high level of support they provide for paid maternity leave, confirm that it is time to act.

Contrary to any argument that paid maternity leave constitutes a 'bribe to coerce women back into the paid workforce'<sup>24</sup> or that it will encourage more women to leave their children in childcare<sup>25</sup>, paid maternity leave will provide a guaranteed right to at least 3 months out of the paid workforce on the birth of a child, and will guard against the necessity for women to return prematurely to paid work against their wishes, in order to provide for their family. As the Australian Hotels Association (AHA) noted:

The AHA consider that a scheme should be implemented to ensure that women who wish to leave the workforce to have children are not penalised and that the employer is also not penalised through increased costs. That is why the maternity payment model proposed by the Leader of the Australian Democrats, Senator Stott Despoja, in her Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 would be acceptable to the industry.<sup>26</sup>

Such a provision is long overdue. As the NPEC notes, Australian social support arrangements around maternity are now "unworkable, irrational and unfair"<sup>27</sup>.

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<sup>22</sup> *Insight*, SBS, 15/8/02

<sup>23</sup> McDonald, P (2002) Speaking on *Insight*, SBS, 15/8/02

<sup>24</sup> Australian Family, Association, *Submission No. 6*, p.1

<sup>25</sup> Festival of Light, *Submission No. 25*, p.5

<sup>26</sup> AHA, *Submission No. 26*, p.4

<sup>27</sup> NPEC, *Submission No. 31*, p.5

## **An important part of the story – but not the whole story**

The majority of submissions express the view that paid maternity leave is only one part of the action necessary to support working women and their families. Good quality accessible childcare, quality part-time work, flexible working hours and conditions, and support for fathers are other essential measures that a wide range of employers, organisations and unions support.

However, paid maternity leave is widely seen as an overdue and essential measure, given the rising participation rate of women of childbearing age in the Australian workforce, and an important part of a comprehensive national approach to building more family friendly workplaces and communities.

## **For women in paid work or all women?**

There has been much debate as to whether paid maternity leave should be established for women in paid work so that equitable access is provided for all in paid work, or whether a maternity payment should be made to all women, including women at home outside the paid labour force.

There are meritorious arguments on both sides of the debate.

To summarise the arguments in favour of a scheme for women in paid work only:

- Around 2/3 of women in paid work have no income support when they have a child. Many return to work too quickly, putting their own and their child's welfare at risk;
- The opportunity cost for women in paid work who forego earnings on the birth of a child is higher than the opportunity cost of women not in paid work;
- It is estimated that between 30 and 40% of family income is now provided by women's earnings, so that many families are dependent upon women's earnings. The loss of women's earnings on the birth of a child materially disadvantages their families;
- At present, a third of women already have paid leave – a national scheme for women in paid work addresses an inequity between women in paid jobs;
- The Commonwealth currently spends over \$18 billion annually on family supports. A sizeable portion of this flows to families with a single earner, frequently with the mother at home, so that women outside the paid workforce already receive considerable benefits that are less available to dual income households;
- A payment to all women would increase the costs of a scheme considerably.

The arguments in favour of a scheme for all women, regardless of their labour force participation are:

- All mothers deserve support and recognition on the birth of a child;
- It is inequitable to make a payment only to mothers in paid work;
- The birth of a child brings new expenses which all families must meet.

These arguments are often value laden. Frequently, underpinning them are views about the ‘proper’ role of mothers and their place in the labour market and home. It is important to note, however, that those who support a payment for all mothers, do not oppose paid maternity leave – they argue instead for its broad application. The Australian Catholic Commission for Employment Relations, the ACTU, the Women’s Action Alliance, the Shop Distributive & Allied Employees’ Association (SDA) and the Australian Family Association (NSW) all express support for a paid maternity benefit – but one which is available to all mothers, not just mothers in paid work<sup>28</sup>. BPW Australia strongly supports paid leave for women in paid work, but suggests that “other schemes should be made available for women who are not in the paid workforce”<sup>29</sup>. Like others, however, BPW Australia sees some urgency in relation to paid maternity leave for women in paid work:

(In the first instance BPWA would prefer to see an effective and accessible PML scheme made available to all working women and then further consideration to be given to allowances already provided to women not in the aid workforce.<sup>30</sup>

Eva Cox, on behalf of the Women’s Economic Think Tank, notes that “there have been very few recent funded policies which assist women who try to combine child rearing and paid work”<sup>31</sup>. She details a range of initiatives that assist single income families “which put two income families at a disadvantage”<sup>32</sup>. The SDA calculate the benefit that is available to a woman when she has a baby and is married to someone earning the base shop assistant rate of \$496/week:

- the maximum Family Tax Benefit B payment: \$2,836.05
- Maternity Allowance: \$798.72
- Maternity Immunisation Allowance: \$208

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<sup>28</sup> ACCER, *Submission No. 32*, pp.2-3; ACTU, *Submission No. 18*, p.11; Women’s Action Alliance, *Submission No. 9*, p.2; SDA, *Submission No. 11*, p.6; Australian Family Association (NSW), *Submission No. 5*, p.1

<sup>29</sup> BPW Australia, *Submission No. 14*, p.8

<sup>30</sup> BPW Australia, *Submission No. 14*, p.9

<sup>31</sup> Women’s Economic Think Tank (WETTANK), *Submission No. 7*, p.2

<sup>32</sup> WETTANK, *Submission No. 7*, p.2



- Minimum Baby Bonus: \$500
- **TOTAL: \$ 4342.77**

Women who return to work will receive the last three of these, though their level of Baby Bonus will vary depending on their pre-baby earnings, and their pattern of working hours relative to their pre-birth pattern of working hours.

The Australian Democrats reject any argument that mothers belong at home. Labour force participation is a decision for individual women. It is their right to decide on their level of work and home participation. Such decisions should be free of the effects of systemic discrimination. Clearly, these decisions are influenced by those of their partners, and particularly by men's participation in household and childcare arrangements.

There is, however, merit in the idea of support for women on the birth of a child, regardless of their labour market status. All mothers are working mothers.

Nonetheless, paid maternity leave has a well established history in Australian law as a workplace and industrial issue, and it is treated as such internationally. Regardless of the merits of support for all mothers, there is a pressing need in Australia for *remedial* action to ensure that women do not have to return to paid work within 3 months of birth because there is simply no other means of support for them or their families. This is happening today. It places mothers and children at risk and it only affects women in paid jobs.

For these reasons, together with the practical difficulty of finding a much larger source of public funds for a general maternity payment, I make the following recommendations:

#### **Recommendation 1:**

**That the Government immediately adopt a paid maternity leave scheme as set out in the Bill (with a range of modifications as set out below).**

#### **Recommendation 2:**

**That the Government initiate a review of all benefits available to families and, as part of such a review, ensure that women outside paid work receive an appropriate basic maternity allowance on the birth of a new baby, equivalent to, say, the after tax value of the basic payment of 14 weeks at the minimum wage.**

### **Eligibility**

A number of difficulties with current eligibility requirements for unpaid and paid maternity leave were raised during this Inquiry. Many submissions argued that a government-funded scheme should have broad eligibility, given that the broader community, rather than any specific employer, reaps the benefits of women's workforce contribution and return to work. The Finance Sector Union of Australia

(FSU), for example, recommended the abolition of the 12 month qualifying period for maternity leave in agreements and in any statutory standard<sup>33</sup>. Other organisations expressed concern regarding the 12 month qualifying period, and advocated less stringent eligibility requirements<sup>34</sup>.

Given the high proportion of Australian employees, particularly women, who are employed casually or for short periods of time, it is clearly arguable that eligibility for paid maternity leave should be broad enough to include women with short periods of prior employment, interrupted periods of employment, or periods served with a variety of employers. This argument is persuasive.

A growing number of women are self-employed in small business. BPW Australia and NPEC each argued that self-employed women should have access to paid maternity leave alongside employees. This is an innovation that is not practiced in relation to other workplace-based benefits (like annual leave) and presents unique issues. Self-employed women may be eligible for a basic maternity payment as recommended through the review of current family based payments. In light of these considerations, I make the following recommendation:

### **Recommendation 3:**

**That the Government investigate the costs of providing paid maternity leave to self-employed women and consider extending eligibility for paid maternity leave to this group of women.**

In order to address some of the concerns which have been raised regarding eligibility, it is proposed to amend the Bill to render eligible all women with up to 12 months employment, accumulated with one or more employers, *before or after* the period of paid leave, over a 2 year period. In other words, a woman with only six months employment in the year prior to taking leave, which may have been served with more than one employer, who undertakes paid work for another 6 months within a year of the end of her maternity leave, will be eligible for the payment.

Women who do not meet these requirements (including those having children in quick succession, those on long term sick leave or workers compensation, contractors, outworkers and self-employed women) will be eligible for the basic maternity payment recommended above.

This approach adopts six principles which I am persuaded have merit and will be incorporated in the amended bill:

- eligible employment periods can be accumulated across multiple employers;
- the 12 months employment can be accumulated over a two year period;

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<sup>33</sup> FSU, *Submission No. 4*, p.4

<sup>34</sup> YWCA, *Submission No. 27*, p.15; NPEC, *Submission No. 31*, p.4

- the two-year accumulation period can occur either side of the period of leave;
- no distinction is made between casual and permanent employment (ie any eligible casual employees should have access to the government funded payment);
- no distinction is made between part-time or full-time employment and there is no minimum hours requirement (although these factors may affect the level of payment); and
- a comprehensive system that delivers either paid maternity leave or a basic maternity payment for all women on the birth of a child, with women to nominate which payment they will receive.

## **Public Sector Employees**

The Bill treats public and private sector workers differently, requiring State and Federal governments to meet the paid maternity needs of their employees to a standard at least equivalent to that which applies to the non-government sector under this Bill.

A number of submissions to the Inquiry argued for the inclusion of all employees in a national paid maternity leave scheme, regardless of the sector in which they are employed<sup>35</sup>. The Community and Public Sector Union (CPSU) (SPSF Group) points out that South Australian Government employees have a meagre entitlement of only 2 weeks, and they estimate that 58 per cent of all public servants across Australia have less than 12 weeks entitlement<sup>36</sup>.

My concern with including public sector employees in the proposed scheme is that this would effectively shift the burden of providing paid maternity leave to State Government employees from State Governments to the Commonwealth, and that laggard states – most notably Western Australia and South Australia – will then avoid any responsibility for the issue.

It may be possible for the Commonwealth Government to include State Government employees in the scheme, provided that the States agree – for example, through the States Grants negotiations – to recompense to the Commonwealth for the amount paid to their employees. This approach was discussed with the Sex Discrimination Commissioner when she appeared before the Committee. If this can be agreed between the Commonwealth and State Governments, then the Bill could be amended to apply to all employees regardless of the sector in which they are employed.

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<sup>35</sup> Australian Education Union (AEU), *Submission No. 19*, p.3; Community and Public Sector Union (CPSU) (PSU Group), *Submission No. 29*, p.4

<sup>36</sup> CPSU (SPSF Group), *Submission No. 17*, p.6

In the absence of such agreement, however, it is inappropriate for the Commonwealth to pay a public sector employment entitlement that is currently met by some State Governments, or to step into the gap where State Governments have been derelict.

In either case, the Commonwealth and all State Governments should increase the payment to their employees to ensure that it is at least equivalent to the 14 weeks recommended in the Bill.

## **Access to unpaid maternity leave**

It is evident from a personal submission to this Inquiry that the absence of any *unpaid* maternity leave for certain classes of women imposes significant hardship upon them and their children. All women in paid work deserve a break from their jobs when they have a baby. Accordingly, I make the following recommendation:

### **Recommendation 4:**

**That the Workplace Relations Act be amended to ensure a minimum of 3 months unpaid leave for all women in paid work in Australia, regardless of their prior employment record, casual or part-time status or any other employment criteria.**

Without universal provision of this kind, some women are forced to return to work very soon after the birth of their child – indeed only two weeks after a caesarean birth, in the previously mentioned case before this Inquiry. Few Australians would think this appropriate.

## **What level of payment?**

Most women who currently receive paid maternity leave are paid at their normal pay rate.

The minimum wage rate for the level of paid maternity leave in the Bill will deliver replacement earnings for between 35 and 48 per cent of all women<sup>37</sup>. A number of submissions to the Inquiry argue for a payment rate that is higher than the minimum wage. For example, the WEL, the ACTU, the AMWU, and the CPSU-SPSF all argued for a rate of average weekly earnings. This would deliver replacement earnings for 87 per cent of all women in paid work.

With the exception of the Women's Action Alliance, which suggested 'at least' the Newstart level, no submissions argued for a rate of benefit lower than the minimum wage. As the SDA put it:

It is not uncommon for women to be the only breadwinner in the household or for her partner's income to be low and/or intermittent. In these situations

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<sup>37</sup>NPEC, *Submission No. 31*, p.22

and in many others, the family is reliant on her income to meet their commitments and will experience severe financial difficulty without it<sup>38</sup>.

The SDA points out that the minimum wage is the “bare minimum income for working people at which they can have a chance to make ends meet. As such, it is the lowest acceptable rate for a paid maternity leave scheme”<sup>39</sup>.

The ACTU recommend that the gap between the Federal minimum wage and women’s usual incomes should be met by means of separate legislation imposing a levy on employers to meet this gap. This was opposed by the AIG. The ACTU argued that such a levy would need to apply to all employers regardless of the number female employees, in order to avoid a disproportionate impact on feminised workplaces.

NPEC advocated income replacement up to average weekly earnings, pointing out that this would provide “at least two-thirds of previous income (in keeping with ILO 183 article 6) for around 95 per cent of women and would provide income replacement for around 75 per cent”<sup>40</sup>. It takes the view that paid maternity leave is more akin to workers compensation payments than to social security, “since it is a provision for a temporary absence required for the worker to be able to return to paid workforce participation and economic self-sufficiency”<sup>41</sup>.

I support increasing the rate of paid maternity leave to approach the level of women’s usual earnings. At present, I recommend that this occur through locally offered or negotiated employer ‘top ups’ which may increase the rate of pay, or extend the period of paid leave. The Bill envisages that current paid maternity leave provisions continue to supplement the new government payment. It is not the intention of this Bill that employers replace their current contributions with government funds. Neither is it the intention of this Bill that employees should receive a double payment (one from the Government, and one from their employer) for any period of leave.

My view on the level of payment is that it should, in the first instance, be set at the level of the minimum wage, supplemented by employer top ups. However, I make the following recommendation:

### **Recommendation 5:**

**That a review of the scheme be undertaken in three years and that this review incorporate:**

**(a) an analysis of the scope and impact of enterprise ‘top ups’; and**

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<sup>38</sup> SDA, *Submission No. 11*, p.6

<sup>39</sup> SDA, *Submission No. 11*, p.11

<sup>40</sup> NPEC, *Submission No. 31*, p.25

<sup>41</sup> NPEC, *Submission No. 31*, p.25

- (b) depending on the results of that analysis, consideration as to the demand for, and merits of, an employer levy, such as that proposed by the ACTU.**

I support amendments to the current Bill to ensure this review.

Given my support for a review of current family benefits with a view to providing an equivalent basic maternity payment for women outside paid work, there is a strong argument for a general basic payment level for all women, including those who work for less than the minimum wage (ie through part-time work). I therefore make the following recommendation:

**Recommendation 6:**

**That separate legislation be enacted to introduce a basic maternity payment for all mothers and that women be given the opportunity to nominate whether they wish to receive this basic maternity payment through the welfare system, or paid maternity leave pursuant to the Workplace Relations Act, topped up by their employer in some cases.**

It is likely that working women whose earnings are lower than the basic maternity payment will opt to receive that payment rather than paid maternity leave.

As a first step, the rate of payment for paid maternity leave should be set at the minimum wage level, or at an employee's normal rate of pay if that is lower. As suggested by the AEU<sup>42</sup>, an employee's normal rate of pay should be calculated by applying the employee's current rate of pay to the average number of hours worked per week in the 12 months preceding the commencement of paid maternity leave, excluding from the calculation any period of approved leave during those 12 months.

Just over 8 per cent of women in paid work hold multiple jobs. With this in mind, it is appropriate that the paid maternity leave entitlement of such women be calculated in accordance with their combined income from all their jobs, where this is less than the minimum wage.

Some submissions to the Inquiry recommended that employers be required to maintain normal superannuation payments throughout periods of paid maternity leave<sup>43</sup>, while others opposed this<sup>44</sup>. With respect to superannuation entitlements, I make the following recommendation:

**Recommendation 7:**

**That employers continue to pay superannuation contributions to employees during the period of their paid maternity leave.**

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<sup>42</sup> AEU, *Submission No. 19*, p.8

<sup>43</sup> CPSU (SPSF Group), *Submission No. 17*, p.11

<sup>44</sup> AIG, *Submission No. 28*, p.31

I will amend the Bill to provide for this.

Among the submissions to the Inquiry, there was widespread support for the scheme to provide women with the opportunity to take the payment either on a full rate basis for 14 weeks, or at half the rate over a period of 28 weeks<sup>45</sup>. I view this as a valuable means by which to provide working mothers with a greater degree of flexibility around the birth of a child and I propose to amend the Bill accordingly.

## **Payment mechanism**

Some submissions pointed to the administrative costs of making paid maternity leave payable to the employee through their employer. NPEC for example, suggested an alternative system, by which payments would be made through the workers compensation system, which already functions efficiently at a State level<sup>46</sup>. The NPEC rejects a “HECS-style” payment, which it argues would add to the already heavy burden of HECS debts borne by many women.

The AIG, amongst others, recommended a dual track payment system which would allow employers and employees to nominate whether the payment is made to the employer or to the employee. This approach has merit because of the degree of flexibility which it facilitates. It would enable larger employers to receive paid maternity leave payments from the Government whilst maintaining regular wage payments to employees on paid maternity leave. It would also accommodate smaller employers who may prefer the payment to be made directly to the employee in order to minimise administration costs, and would facilitate the efficient payment of women with short prior periods of employment, where there is no established long-term employer through whom the payment can be easily made.

## **For mothers or fathers? For adoptive parents?**

Submissions to the inquiry strongly supported a payment specifically for mothers, for the reasons set out in the Bill’s Explanatory Memorandum. An exception is provided by the Catholic Women’s League Australia, who wanted to see paid maternity leave converted to parental leave<sup>47</sup>.

There was some support for the simultaneous provision of a short period of paid paternity leave (say 2 weeks) for fathers. This was advocated by the YWCA and the NPEC. The New Zealand Government has adopted this approach, and given the strong arguments in favour of men’s early involvement in parenting, I am persuaded that this would be a positive suggestion to adopt in the longer term, once the physical needs of mothers are met as a first priority.

As the Women’s Studies Research Unit at the University of Melbourne put it:

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<sup>45</sup> See, for example, The Australian Liquor, Hospitality and Miscellaneous Workers Union (LHMU), *Submission No. 12*, p.4

<sup>46</sup> NPEC, *Submission No. 31*, p.28

<sup>47</sup> Catholic Women’s League Australia, *Submission No. 16*, p.1

(T)he need for leave is inextricably linked with maternal health (recovery from childbirth, sleep deprivation and child health (establishment of bonding and breastfeeding where possible)<sup>48</sup>.

There was also support for general parental leave, available to both fathers and mothers, after the initial post-partum period when the mother has recovered, but this was seen as supplementary to the provision of basic paid maternity leave.

Only the Australian Catholic Commission for Employment Relations specifically opposed the provision of paid maternity leave for same-sex couples.

There was no opposition to the eligibility of adoptive parents to the scheme.

## **Funding and costings**

There was widespread concern about the potential for an employer-funded scheme to result in discrimination against women in the workforce<sup>49</sup>. None of the submissions supported an employer payment alone.

There was, however, widespread support for a minimal payment out of Commonwealth revenue. This was advocated by employers, such as the AIG and AHA, as well as some unions.

Many submissions saw merit in local top-ups which would extend the period of the payment, or increase the rate of pay. For example, the Women's Studies Research Unit at the University of Melbourne argued that:

6 months is a better period of time to take leave after the birth of a baby before returning to paid employment, based on information about mother's and infants health. This also facilitates parent-child bonding and establishment of breastfeeding as recommended by the World Health Organisation.<sup>50</sup>

With the exception of the NPEC submission, none of the submissions specifically commented on the on the costs of paid maternity leave. The NPEC estimated that a system of paid maternity leave at replacement income up to average weekly earnings, net of tax and the maternity allowance, would boost the scheme's costs to around \$480 million<sup>51</sup>. Recent Government estimates foreshadow a cost of \$415 million for 14 weeks paid maternity leave capped at the Federal Minimum Wage and limited to employees with one employer for 12 months or more. The cost of the scheme would increase to \$475 million if eligibility is extended to employees with one or more

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<sup>48</sup> Wendy Weeks, Women's Studies Research Unit, School of Social Work, University of Melbourne, *Submission No. 2*, pp.4-5

<sup>49</sup> See, for example, Council of Small Business Organisations of Australia, *Submission No. 13*

<sup>50</sup> Wendy Weeks, Women's Studies Research Unit, School of Social Work, University of Melbourne, *Submission No. 2*, p.6

<sup>51</sup> NPEC, *Submission No. 31*, p.24



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employers for 12 months or more<sup>52</sup>. Determining the final cost of the scheme will obviously require more work, taking into account amendments to the Bill and any arrangements that may be negotiated between the Commonwealth and the States.

### **‘Top ups’, and a supplementary levy?**

Many employers currently offer some paid maternity leave. It varies widely in length and application. Larger employers tend to offer more than smaller employers. For example, the major banks pay around 6 weeks paid maternity leave, with the exception of the Commonwealth Bank which pays 12 weeks.

Submissions to the Inquiry indicated widespread support for employer ‘top ups’ of the basic government payment. This may enable women to receive their usual pay rate, or close to it, and/or be paid by their employer for additional weeks of leave.

The ACTU and various unions advocate the introduction of a levy, payable by employers with more than 20 employees (regardless of their sex), out of which maternity leave would be topped up to average weekly earnings or pre-leave earnings. The Australian Manufacturing Workers Union specifically proposed a trust scheme for this purpose. Most women who currently receive paid maternity leave do so at their normal rate of pay. We can certainly anticipate that the rate of pay for paid maternity leave will increasingly become an important focus of bargaining over coming years, despite employer association hopes for it to remain outside the industrial sphere. This horse has already bolted, as the AIG note. It is the Parliament’s responsibility to ensure an orderly, equitable and efficient pattern to the provision and level of this leave.

I am persuaded that in the longer run, the level of pay for paid maternity leave should increase to approach normal earnings. As a first step, this should occur through top-ups bargained or offered at the enterprise level. This will not, however, reach the great number of women in small businesses and many parts of the private sector. So, in accordance with Recommendation 5 above, I propose to amend the Bill to establish a review of the scheme in 3 years, which will specifically examine the extent and equity of enterprise based ‘top ups’, and consider the introduction of a levy or alternative scheme, to encourage the systematic supplementation of the rate of paid maternity leave, at least amongst larger businesses employing 20 employees or more.

### **Can enterprise bargaining deliver paid leave?**

The pace of the spread of paid maternity leave through enterprise bargaining can only be described as glacial in most industry sectors. Only 7 per cent of all enterprise agreements include paid maternity leave provisions, with an average provision of between 2 and 6 weeks. This is a substandard provision, and even this is not available under the great majority of agreements. The fact that some of these agreements cover large numbers of employees, particularly in the public sector, means that they affect

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<sup>52</sup> Media Release, Senator Nick Minchin, Minister for Finance and Administration, 12 September 2002.

more than 7 per cent of employees. However, it is clear that enterprise bargaining will not deliver paid maternity leave for most working women at any time in the near future. The fact that enterprise bargaining tends to deliver greater benefits for those in larger workplaces with higher unionisation and some bargaining power, means that this route will particularly disadvantage lower paid women.

The AIG – an experienced bargainer on the employer side – does not advocate enterprise bargaining as the means by which to increase access to paid maternity leave. The extensive barriers to progress through bargaining in the manufacturing industry were canvassed in evidence before the Inquiry.

Against this, the National Farmers Federation opposes all models of paid maternity leave, with the exception of enterprise bargaining. We can only speculate as to how long it would take for paid maternity leave to become available to the 350,000 employees in the farming sector, 98 per cent of which are small businesses<sup>53</sup>. It seems a fair guess that this would take a very long time.

In the finance sector, the FSU notes that progress “has occurred at a varying pace. The anomalies that remain, even where 6 weeks is agreed, suggest that future achievements in paid maternity leave through bargaining, will be incremental”<sup>54</sup>.

The LHMU note the slow progress of bargaining in their sector, which includes large numbers of low paid workers. The first paid maternity leave advance in the hospitality industry, at Star City Casino in Sydney, was only negotiated recently.

## **The Baby Bonus**

There is strong and widespread support for the immediate reallocation of the Baby Bonus to paid maternity leave. This recommendation was made by the AIG, the NPEC, the Women’s Action Alliance, BPWA, the Catholic Women’s League Australia Inc, unions and individuals.

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<sup>53</sup> NFF, *Submission No. 3*, p.4

<sup>54</sup> FSU, *Submission No. 4*, p.3

## **Conclusion**

There is widespread support for greater action to provide women with paid maternity leave and reduce the current inequity which provides many permanent, higher paid women in larger companies with paid maternity leave, while leaving two-thirds of Australia's working mothers with no such support. The general approach in the Workplace Relations Amendment (Paid Maternity Leave) Bill has received wide support. The Bill represents a practical means of taking action now. The submissions received, and the subsequent consultations, have provided a range of very useful suggestions that can improve the Bill. This report sets out a range of amendments which I will make to the Bill.

Clearly, it is time to make progress on this issue – in the interests of the welfare of mothers, babies and families; equal opportunity at work; employer interests; equity between women; and in order to meet international standards that widely apply to employment conditions around the world.

**Senator Natasha Stott Despoja**

