

**Submission to the Employment,  
Workplace Relations & Education  
Legislation Committee inquiry into the  
Workplace Relations Amendment (Paid  
Maternity Leave) Bill 2002**

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# EXECUTIVE SUMMARY

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- The key objectives of paid maternity leave are social objectives that concentrate on:
  - the decrease of the fertility rate in Australia and its consequential impact on Australia's economy; and
  - the health and welfare of mother and child during childbirth and the period immediately after childbirth.
- The key questions in the debate over paid maternity leave, are whether existing entitlements are adequate to meet the stated objectives, and if not, what is the most appropriate course of action to pursue?
- While the problem in meeting the objectives seems to exist predominately with women in the workforce, the suggested linkage that it then becomes a work related entitlement cannot be justified. This is a far broader issue than solely a work issue.
- The NFF supports the key social objectives being sought but submits that paid maternity leave is not the appropriate mechanism to pursue these objectives.
- It is the NFF's position that paid maternity leave, as a workplace entitlement should only be implemented at individual workplaces through enterprise agreements.
- The introduction of paid maternity leave as either the responsibility of Government or a forced responsibility of an employer is, therefore, opposed by the NFF.
- The NFF is concerned about the approach being pursued in the paid maternity leave debate regarding forced employer responsibility for payment of maternity leave and in particular the potential industrial consequences.
- An application in the Australian Industrial Relations Commission for a standard paid maternity leave clause could be filed at any time with serious adverse consequences to employers. The negative impact on an employer if the Government does not intervene to address the issues raised within this debate is of serious concern to the NFF.
- The NFF submits that the Federal Government should review existing social assistance measures currently provided by the Government to determine whether these are adequate to effectively pursue family and population policies. This approach would be more efficient and equitable than pursuing the paid maternity leave model.

# 1. INTRODUCTION

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The National Farmers' Federation (NFF) represents over 200,000 farming businesses that employ 350,000 people, of which 98% are deemed to be small business. Many of these businesses are family owned and operated.

As a substantial contributor towards employment and business within the Australian economy, the NFF is particularly interested in the debate regarding paid maternity leave and any implications upon employers and the economy as a whole if paid maternity leave was introduced on a compulsory and uniform basis.

In this submission, the NFF seeks to define:

- Why is paid maternity leave being pursued by various interested parties?
- Should paid maternity leave be a workplace entitlement?
- What are the industrial implications of paid maternity leave?
- Which recommended model (if any) should be pursued?
- What are the alternatives?

## 2. WHY PAID MATERNITY LEAVE?

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There are various reasons promoted to justify the introduction of a uniform provision of paid maternity leave.

The key objectives of paid maternity leave concentrate on concerns regarding a decrease in the fertility rate in Australia and its consequential impact on Australia's economy, and the health and welfare of mother and child during childbirth and the period immediately after childbirth.

The NFF supports these objectives as important social standards for Australia to pursue as a policy objective in the broader context of seeking a balance between work and family responsibilities and population policy. It is important for the agricultural industry that there is population increase, as opposed to a decrease, and a stable social environment to enable growth within our sector. Further, due to the predominance of family involvement within farming businesses, the balance of work and family responsibilities is very important for farming communities.

These social policy objectives are based on fundamental goals of the Australian community as a whole that need to be considered when determining government policy.

Other objectives of paid maternity leave relate either to discrimination or disadvantage issues at the workplace or potential advantages to an employment relationship. These include:

- ensuring that women are not disadvantaged in their employment through their intrinsic role in child bearing;
- maintaining a committed and competitive workforce; and
- compensating women for their loss of income resulting from family responsibilities.<sup>1</sup>

These workplace objectives are linked to the implementation of paid maternity leave as a concept itself as distinct to the broader social policy objectives noted above. This distinction is critical in the consideration of paid maternity leave. The debate needs to focus on the social objectives as opposed to the objectives being sought by a model that may or may not be the most appropriate mechanism in meeting the social objectives.

The key questions to determine in the debate over paid maternity leave, are whether existing entitlements are adequate to meet the social objectives, and if not, what is the most appropriate course of action to pursue?

The Human Rights and Equal Opportunity Commission (HREOC), *Valuing Parenthood – Options for Paid Maternity Leave: Interim Paper 2002 (Interim Paper)*, identifies existing Commonwealth Government payments to parents that provide assistance with the costs of raising children. These measures are designed to meet social objectives for families. Many of these assistance measures are means-tested and may preclude the access of assistance to double income families or women on high wages. As a result, the measures may not provide incentives to certain groups that may need encouragement and assistance in meeting the stated policy objectives.

Are existing measures, therefore, adequate? The NFF is not in a position to answer this question in detail, but submits that the substantive debate surrounding this issue, coupled with the recognition of the decline in fertility in Australia enforces the position that there is a need to reconsider the existing measures provided by Government.

The bigger question remains, however, what is the most appropriate course of action to pursue? Is paid maternity leave the answer in reconsidering existing measures?

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<sup>1</sup> These & other objectives are outlined within Part C “Objectives of paid maternity leave” in “*Valuing Parenthood – Options for Paid Maternity Leave: Interim Paper 2002*” by the Human Rights and Equal Opportunity Commission

In recognising that the key objectives being pursued within this debate are social objectives, the NFF does not support the proposition of HREOC and the Australian Democrats<sup>2</sup> that the issue should be resolved by an industrial mechanism such as paid maternity leave. While the problem in meeting the objectives seems to exist predominately with women in the workforce, the suggested linkage that it then becomes a work related entitlement cannot be justified. This is a far broader issue than solely a work issue.

There are substantive social and cultural matters that determine why Australia may not necessarily be meeting its social objectives in respect to fertility rates and the health and welfare of the mother and child. In many instances, because of the greater ability of women to pursue a career they are making decisions to not have children, or have them later. Further, women are deciding not have as many as they would have otherwise considered had they not continued with their career. Importantly, the provision of paid maternity leave may not impact on the decision making process for career women. Moreover, in defining the issue as a workplace matter, are we then creating problems of disadvantage and discrimination to other groups including employers, other employees and mothers who are not employees?

In the paid maternity leave debate there seems to be confusion as to the objectives being sought by proponents of the scheme. There are broad social objectives in respect to fertility decline and health and welfare of the child that are the general objectives in a social policy context. There are also specific objectives that are sought from the concept of paid maternity leave itself. These are two distinct matters that should be considered separately. In treating these two matters together, an assumption is made that paid maternity leave is the automatic answer in meeting the objectives. The NFF submits that this is not a correct assumption to make, as there can be adverse consequences, particularly for employers.

Within the paid maternity leave debate, the NFF is concerned about the issue of forced employer responsibility for payment.

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<sup>2</sup> As outlined in the Explanatory Memorandum to the Workplace Relations Amendment (Paid Maternity Leave) Bill 2002

There is no doubt that the Australian community has to consider the issues surrounding the paid maternity leave debate and in doing so, the following questions should be raised:

- Is paid maternity leave appropriate?
- Are there any industrial consequences of the introduction of paid maternity leave?
- Are there problems associated with the proposed models in both the HREOC paper and the Bill introduced by the Democrats?
- Do other avenues exist that should be pursued as an alternative option to those currently being espoused?



### 3. INDUSTRIAL CONSEQUENCES

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The NFF submits that regardless of any good intentions by HREOC, the Democrats and the Federal Government, employers should not be forced to pay for maternity leave. However, regardless of the lack of legislative requirements for employers to do so, the NFF is concerned that there is a substantial likelihood that employers will be forced to pay some form of paid maternity leave.

There are two potential outcomes through the industrial process that could adversely impact on employers from paid maternity leave. One relates to the consequences if the Government accepts the argument that this is a workplace entitlement and introduces some form of Government paid maternity leave. The other is the consequence if the Federal Government does not introduce Government paid maternity leave.

The NFF's concern is based on the opportunity for unions to force paid maternity leave upon employers through applications in the Australian Industrial Relations Commission to implement paid maternity leave in its entirety or as a 'top-up' to the Government payment.

#### **Government Paid Maternity Leave**

The realities are that if the Federal Government decides to recognise that the issue is best resolved in the industrial context through workplace entitlements and that paid maternity leave is introduced with Government payments, there will be restrictions on the eligibility of employees and the amount paid by the Government. If this occurred then unions could make application to the Australian Industrial Relations Commission for a "top-up" payment by the employer to make up the difference between the Government payment and what the female employee would have received as her ordinary wages. Such an application would have merit on the basis that the Government had accepted the principle that it is a policy to be implemented through the industrial context.

There is precedent already established requiring employers to pay a “top up” of government payments even though there is no corresponding benefit to the employer. The precedent is in respect to jury service clauses within federal awards.

Standard jury service clauses (that is an allowable matter of industrial awards pursuant to s89A(2)(q) of the Workplace Relations Act (Cth) 1996) stipulate that:

*“an employee other than a casual employee required to attend for jury service during their ordinary working hours will be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the amount of the ordinary wage they would have received Monday to Friday in respect of the ordinary time they would have worked had they not been on jury service”*

This clause exemplifies the concerns held by the NFF that employers, particularly small business, could be hit with the requirement to pay a “top-up” payment of paid maternity leave if the Government only paid for a component of maternity leave. This cost implication for employers is even more substantial if they are required to also pay for the wages of a temporary employee covering the work of the employee on maternity leave.

The ACTU President Ms Sharan Burrow, in a media release of 9 July 2002<sup>3</sup>, stated that it was the ACTU position that the Federal Government should pay up to the minimum wage with top-up payments up to the level of weekly earnings to be funded by an employer levy with possible exemptions for small business. The press release does not stipulate whether the ACTU model proposes that the employer levy is legislated or would be pursued through the Australian Industrial Relations Commission. Either way, the position outlined by the ACTU in the press release identifies forced cost implications to the employer.

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<sup>3</sup> ACTU Backs Pru Goward's Push for Paid Maternity Leave, ACTU Press Release, 9 July 2002

## **No Government Paid Maternity Leave**

If it was determined by the Federal Government not to introduce paid maternity leave financed by the Government then there is the potential for unions to apply to the Australian Industrial Relations Commission for paid maternity leave to be the responsibility of the employer through industrial awards. The NFF would oppose such an application, however, there is (without pre-empting a decision of the Commission) a strong possibility that such an application would be successful.

The ACTU President stated in her press release of 9 July 2002 that, "*paid maternity leave is long overdue*".

The NFF believes that there is no doubt that if the Federal Government does not act to resolve some of the social objective concerns expressed during the paid maternity leave debate, then there will be an application to the Commission for a standard clause to be implemented into awards granting paid maternity leave. If such a standard clause was implemented the employer would be responsible for the payment regardless of the cost implications and impact on business and whether or not there is a benefit to the employer.

An application in the Australian Industrial Relations Commission for a standard paid maternity leave clause could be filed at any time with serious adverse consequences to employers. The negative impact on an employer if the Government does not intervene to address the issues raised within this debate is of serious concern to the NFF.

## Impact on Employers

HREOC recognises that there are cost implications for employers.

*“A system that required individual employers to pay the full cost of paid maternity leave for their employees may result in some employers paying a greater cost than the benefit they receive, depending on the nature of their business.”<sup>4</sup>*

The NFF submits that HREOC has taken a too simplistic view of the impact on business in respect to paid maternity leave regardless of whether it is a government paid system or an employer forced paid system, particularly given the potential for employer forced payments through industrial awards. There is no consideration of the possible industrial consequences contained within the Interim Paper. The NFF submits that these issues should be given considerable weight by HREOC when drafting the final paper in respect to this matter.

The NFF acknowledges that some employers may find paid maternity leave provides a benefit to their particular business including providing them with a competitive advantage and in the long term minimising costs through a reduction in replacement costs, training costs and loss of productivity.

These employers currently have the ability to negotiate with employees for the provision of paid maternity leave through agreements at the workplace, whether certified agreements, Australian Workplace Agreements or common law agreements. There are numerous examples of this already occurring in Australia within both the Public and Private sectors.

The provision of paid maternity leave should be a decision taken by the individual employer when considering all issues affecting the business.

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<sup>4</sup> page 56 of the HREOC *Interim Paper*

The impact of forced employer responsibility for paid maternity leave will result in an increase in costs that may well be unaffordable particularly if the employer is not benefiting from paid maternity leave. This could result in discrimination against some women in employment if the employer considers they may have to pay maternity leave for their female employees at some time in the future. If an individual employer has the choice to implement paid maternity leave at the workplace, then the concerns regarding employment discrimination on the basis of cost to the business is less likely to arise.

## **Equity**

An issue that is raised in respect to the model of paid maternity leave is discrimination against women that may have already had children, women that may not want or cannot have children and men. Paid maternity leave would be a paid entitlement to only a certain percentage of employees in the workplace. Will the next step be that the employer is required to pay entitlements to those who do not meet the eligibility criteria on discrimination grounds? Further, it could be argued that this model discriminates against women that decide to stay at home. Although some in this group may be entitled to existing social assistance measures, some may not. Should they also be entitled to some form of payment or is it considered that only working women are able to meet the social objectives being sought?

## 4. ARE ANY OF THE PROPOSED MODELS ACCEPTABLE?

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The NFF does not consider acceptable any options as proposed by both HREOC (Chapter 12 of the *Interim Paper*) and the Democrats (in the *Workplace Relations (Paid Maternity Leave) Bill*), as they are based on the assumption that the social objectives should be resolved through workplace entitlements and they all consider some form of employer payment.

The NFF does recognise however that option three of the HREOC paper providing for universal payment that is government funded, goes some way to recognising this matter as a social rather than industrial issue. Despite this, the option is opposed because it still specifically requires employers to pay a top-up payment to the level of the woman's actual earnings and discriminates between working and non-working women.

## 5. ACTION REQUIRED

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It is the NFF's position that paid maternity leave, as a workplace entitlement, should only be implemented by agreement at an individual workplace through existing agreement-making mechanisms.

The introduction of paid maternity leave as either the responsibility of Government or a forced responsibility of an employer is opposed by the NFF. This is not a matter that falls within the industrial context, but rather it is an important social issue that must be borne by all Australians.

The NFF is not opposed to the key social objectives being sought but submits that paid maternity leave is not the appropriate mechanism to pursue these objectives. The community is seeking assistance and encouragement to implement social change within Australian culture to resolve key social policy issues. The Government may need to provide additional assistance to achieve those objectives.

The NFF submits that the Federal Government should review existing social assistance measures to determine whether there should be amendments to existing measures or the introduction of new measures that may enhance the pursuit of the objectives in respect to family and population policies. This approach would be more efficient and equitable than pursuing the paid maternity leave model.