



Australian Catholic Commission  
for Employment Relations

Submission to the  
Senate Employment,  
Workplace Relations  
and Education  
Legislation Committee

Inquiry into the  
*Workplace Relations Amendment  
(Paid Maternity Leave) Bill 2002*

26 July 2002

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## Executive Summary

The ACCER supports the government provision of financial assistance to families as a vital part of its social policy responsibilities. That is:

- the economic security of families should be supported throughout their lives;
- the health and welfare of mothers and newborn children should be supported;
- women should not be disadvantaged in their employment through their intrinsic role in child bearing; and
- society should assist women and men to manage their work and parental responsibilities so that the needs of children and families may be met in the context of modern Australian society.

To assist in achieving these objectives, government assistance should:

- provide support to a family following the adoption or birth of a child, irrespective of employment status; and
- recognise the role of the “primary care giver” in the formation and development of family life.

The introduction of paid maternity leave should be seen as only one way to provide support for families. In this respect, the ACCER notes that the Human Rights and Equal Opportunity Commission (HREOC) is currently consulting with trade unions, employer representatives and community-based organisations about various options for the introduction of paid maternity leave, and which include the consideration of a universal government assistance scheme.

The debate about Maternity Payments should move beyond the parameters of employment to being one about public policy and the provision of support to families. This approach would assist in the identification of support appropriate to the potentially diverse needs of women and families, now and into the longer term.

Given this, the following actions are considered to be vital in order to progress this discussion:

- Further economic modelling should be undertaken of the proposed paid maternity leave model proposed by the Bill;
- Independent analysis and reappraisal of the effectiveness of current and proposed family assistance payments needs to be undertaken before there can be a final determination about the introduction of any new form of payment to families, either by way of paid maternity leave and/or other forms of support; and
- Due consideration should be given to the options presented in the HREOC Interim Paper and those that might be designed as a consequence of its discussions and submissions.

In this way, it may be possible to more accurately evaluate the true cost of paid maternity leave; and, most importantly, to allow a comprehensive investigation of the totality and diversity of options that might assist families to balance not only their work and family commitments but to ensure that public policy is implemented for the long term rather than from the consideration of one matter in isolation.

In this respect, an extensive examination of current family assistance payments may lead to new thinking about government support and the most appropriate way of meeting the needs of families.

## The Australian Catholic Commission for Employment Relations

1. The Australian Catholic Commission for Employment Relations (ACCER) is an organisation established by the Australian Catholic Bishops' Conference and supported by the Australian Conference of Leaders of Religious Institutes. As part of its mandate, the ACCER provides the Conference and Catholic Church organisations with advice, research and advocacy on matters affecting employment in the Australian workplace, within the context of Catholic Social Teaching.
2. The Catholic Church in Australia is a major employer engaged in diocesan and parish administration, pastoral care, health and aged care, education and the provision of community services.
3. Catholic Social Teaching is a set of teachings and principles based on Christian values that aim to bring about a good and just society. With respect to this submission, the Church places great importance on the interaction between the family and society. It is stated:

*“The family has a right to assistance by society in the bearing and rearing of children.”<sup>1</sup>*

*“Families have the right to be able to rely on an adequate family policy on the part of public authorities in the juridical, economic, social and fiscal domains, without any discrimination whatsoever.”<sup>2</sup>*

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<sup>1</sup> The Holy See, *Charter of the Rights of the Family*, Rome, October 1983.

<sup>2</sup> *ibid.*, Article 9.

## **The Workplace Relations Amendment (Paid Maternity Leave) Bill**

4. The Bill seeks to amend the *Workplace Relations Act 1996* (Cth) [the Act] to “provide a universal system of paid maternity leave for Australian working women.”<sup>3</sup> In this respect, the Bill proposes to provide financial support to working women at the time of the birth of a child, creating a nexus between the status of a woman’s employment relationship and the provision of a payment for maternity leave.
5. The ACCER notes that the Human Rights and Equal Opportunity Commission [the HREOC] is currently examining options for the introduction of paid maternity leave. These discussions emanating from or otherwise arising out of the HREOC inquiry may be of assistance in the identification of the most equitable model of financial assistance in this respect.

### ***Providing Government Assistance to families***

6. The ACCER supports the provision of financial assistance to families by government.
7. Catholic Social Teaching espouses that society has a role in fostering the formation and development of a family. For example, Pope John Paul II identifies that:

*“just as the intimate connection between the family and society demands that the family be open to and participate in society and its development, so also it requires that society should never fail in its fundamental task of respecting and fostering the family.”*<sup>4</sup>

8. Pope John Paul II continues to place specific responsibility on society in supporting families:

*“In the conviction that the good of the family is an indispensable and essential value of the civil community, the public authorities must do everything*

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<sup>3</sup> *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Explanatory Memorandum*, text as per: <http://www.aph.gov.au>, page 4.

*possible to ensure that families have all those aids - economic, social, educational, political and cultural assistance - that they need in order to face all their responsibilities in a human way.”<sup>5</sup>*

9. Consistent with these teachings, the ACCER submits that the primary objective of any Maternity Payments scheme should be to provide financial assistance to families at the adoption or birth of a child. The *family unit* should be the focus of any such scheme. This is, in essence, a social responsibility. Consequently, the payment of an amount of assistance at the time of adoption or birth of a child should be provided to all women, regardless of whether they have or have not engaged in employment. It is acknowledged, however, that this raises issues regarding the structure and level of assistance provided by any proposed scheme, including matters of social equity.
10. The Federal Government currently provides assistance to families in respect of direct financial payments and taxation incentives. The ACCER suggests that an independent review and reconsideration of all family payments needs to be conducted before there is any final determination on the provisions of the Bill. Such a review would need to examine equity issues that arise, including whether means, income or asset testing is appropriate; the time span over which financial assistance can and should be provided to families; and the most appropriate structure of any payment scheme. Such a review would necessarily include all proposed schemes such as the *Baby Bonus*, the provisions of this Bill and any other scheme proposed as a consequence of the current HREOC Inquiry.
11. Moreover, in evaluating the provisions of the Bill and any other proposed model the potential social outcomes need to be given due consideration. It is contended that certain provisions of the Bill may result in social inequities. That is, the provision of a payment to only those women engaged as employees in the workforce appears to have an unnecessarily narrow focus. Specifically, in the immediate case, it would exclude women who are engaged as casual employees and do not have continuous service of more than twelve months with the one employer. In addition, those women who are owner operators of a business;<sup>6</sup> of which there is

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<sup>4</sup> Pope John Paul II, *Familiaris Consortio*, Pauline Books and Media, Boston, 1981, paragraph 45.

<sup>5</sup> *ibid.*

<sup>6</sup> *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Explanatory Memorandum*, op. cit., page 9.

an increasing number,<sup>7</sup> and independent contractors, would not have access to the proposed Maternity Payment.

12. Importantly, the proposed Maternity Payment would not recognise those women who choose to stay at home and care for their family on a full time basis. This may also appear to disadvantage those women who have been engaged in paid work and who, after the birth of the first child, choose to have more than one child, and accordingly have to terminate their employment.
13. The Church teaches that:

*“While speaking about employment in reference to the family, it is appropriate to emphasize how important and burdensome is the work women do within the family unit: that work should be acknowledged and deeply appreciated. The “toil” of a woman who, having given birth to a child, nourishes and cares for that child and devotes herself to its upbringing, particularly in the early years, is so great as to be comparable to professional work.”<sup>8</sup>*

14. Indeed, the Australian Democrats have recognised the disparity in providing payments only to women engaged in employment:

*“However, mothers at home, mothers looking for work, and self employed mothers also deserve some support. Basic notions of equity, recognition of the contribution and situation of new mothers, and the community benefit that arises from well-nurtured babies and healthy families, demands support for women whether they are inside or outside paid work when they have a baby.”<sup>9</sup>*

15. While it is acknowledged that women who are not in paid work will continue to receive the Maternity Allowance and Maternity Immunisation payments provided by government, there is a monetary difference between these payments and the proposed Maternity Payment.

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<sup>7</sup> Australian Bureau of Statistics, *Women in Small Business*, Year Book, 1997, AGPS, Canberra.

<sup>8</sup> Pope John Paul II, *Letter to Families*, St Paul Publications, Homebush, 1994, paragraph 17.

<sup>9</sup> *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002, Explanatory Memorandum*, op. cit., page 5.

16. Moreover, the Australian Democrats acknowledge that this equity issue needs to be addressed at the same time as the introduction of the Maternity Payment. They propose the introduction of “an appropriate benefit” for those women ineligible for the proposed Maternity Payment.<sup>10</sup> This could be provided out of a “restructured Baby Bonus and other Allowances”.<sup>11</sup>
17. The ACCER would suggest that, at the very least, there should be comprehensive evaluation of the introduction of an appropriate and effective payment for all women, whether engaged in paid employment or not. This should then examine the totality of the issues for the long term benefit of society and families.
18. The Bill proposes to base the rationale for a *Maternity* payment in recognition of the physical effects of maternity; in particular, carrying a baby in the later weeks of pregnancy, giving birth, recovering from birth and early mothering to establish breast feeding where possible.<sup>12</sup>
19. Current legislated unpaid leave is based on a person being the *primary care giver* of a child. This is intended to provide a degree of flexibility to families in determining who is the most appropriate carer of a child. Significantly, this was recognised by the Australian Industrial Relations Commission [the AIRC] in its 1990 Parental leave decision. In that decision, the AIRC indicated that it was “*persuaded that families should have a choice as to which parent becomes the primary care-giver of a child, when both [parents] wish to remain in the workforce.*”<sup>13</sup>
20. However, the introduction of a *Maternity* based payment may act unintentionally to reinforce the traditional portrayal of the role of women as the primary providers of care. The consideration of who is to be the primary care giver of a family should be the decision of the family. In this respect, both the payment and the provision of leave by the government should be to the *primary care giver* of a child.

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<sup>10</sup> *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Explanatory Memorandum*, op. cit., page 5.

<sup>11</sup> *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Explanatory Memorandum*, op. cit., page 5.

<sup>12</sup> *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Explanatory Memorandum*, op. cit., page 8.

<sup>13</sup> Cohen, J., Moore, DP., Politics, DP., Griffen, C., Turbet, C., *Parental Leave Case*, Print J3596, Melbourne, 1990, page 9.



***Employer provided assistance to employees***

21. Employers have a responsibility to assist employees with achieving a balance between their work and family commitments.
22. Of the relationship between work and family, Pope John Paul II has written that:

*“Work constitutes a foundation for the formation of family life, which is a natural right and something that man is called to. These two spheres of values - one linked to work and the other consequent on the family nature of human life - must properly unite and must permeate each other. In a way, work is a condition for making it possible to found a family, since the family requires the means of subsistence which man normally gains through work. Work and industriousness also influence the whole process of education in the family, for the very reason that everyone “becomes a human being” through, among other things, work, and becoming a human being is precisely the main purpose of the whole process of education. Obviously, two aspects of work in a sense come into play here: the one making family life and its upkeep possible, and the other making possible the achievement of the purposes of the family, especially education. Nevertheless, these two aspects of work are linked to one another and are mutually complementary in various points. It must be remembered and affirmed that the family constitutes one of the most important terms of reference for shaping the social and ethical order of human work. ...In fact, the family is simultaneously a community made possible by work and the first school of work, within the home, for every person.”<sup>14</sup>*

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<sup>14</sup> Pope John Paul II, *Laborem Exercens*, St Paul Publications, Homebush, 1981, paragraph 10.

23. For example, Catholic Social Teaching states:

*“Respect for human dignity requires that working conditions ... be such as to protect the health and well-being of workers and to recognise their obligations to their family and the wider community.”<sup>15</sup>*

24. However, the support provided by employers to assist employees in meeting their family and work commitments does not necessarily entail direct financial payment or compensation. It may be more beneficial for employers and employees to consider other non-monetary workplace initiatives, such as flexibility in return to work arrangements and working hours, to assist the achievement of a balance between work and family responsibilities. Such initiatives will depend on the particular needs, constraints and priorities of employers and employees at the workplace level.
25. The relationship between current agreement or award provisions for paid maternity leave and the proposed Maternity Payment requires further examination. Specifically, the Bill states *“this maternity payment does not affect or reduce any other entitlement that the employee may have under the terms of any other employment agreement, award or law.”<sup>16</sup>*
26. Some current awards or agreements contain provisions for paid maternity or parental leave. If the proposed provisions of the Bill are introduced, it appears that an employee taking maternity leave could hypothetically receive a concurrent period of leave at full pay under the enterprise agreement, **and** some or all of the proposed fourteen weeks of Maternity Payments under the Bill at the minimum federal wage rate of pay. This would not appear to be the system of employer “top up” envisaged by the Bill.<sup>17</sup> Rather, it could equate to a double payment - by government and employers - to those women fortunate enough to be employed by an organisation that already provides paid maternity or parental leave. The ACCER suggests that this is not the intention of the Bill but that it needs to be redrafted to remove a possible ambiguity in its operation.

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<sup>15</sup> Australian Catholic Bishops’ Committee for Industrial Affairs, *Industrial Relations - The Guiding Principles*, 1993, page 2.

<sup>16</sup> *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002*, section 170KD(6).

<sup>17</sup> Hon. N. Stott Despoja, *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002* Second Reading Speech.

27. The ACCER would therefore suggest that the Bill allow for the review and re-negotiation of paid maternity or parental leave provisions in such awards or agreements if government funded Maternity Payments or other form of assistance is introduced.
28. *Administration of the Scheme*
29. The administration of any maternity payment scheme is an important component in its success. In this regard, the ACCER seeks clarification on the following administrative and related matters.
30. Specifically, there appears to be an element of uncertainty about the administration of the Maternity Payment. The Bill establishes that the Commonwealth will pay the proposed Maternity Payment to an eligible employee in the first instance by means of a payment to the employer. Employers will then make the payment directly to the eligible employee around the time of the birth of a child.<sup>18</sup> However, the Explanatory Memorandum of the Bill suggests that there may be an alternative approach of a direct payment made by the Commonwealth to employees.
31. Where an employer is required to administer the proposed maternity payment, the ACCER would seek clarification of the following issues:
- who will fund the superannuation and other benefits that are accrued during the period of maternity leave?
  - will there be any lag period between applying for the payment and the receipt of the payment? If so, will these periods of delay be consistent with the current time frames requiring employees to apply in advance for maternity leave?
32. The ACCER also seeks clarification of the costs associated with the administration of government funded maternity leave payments. Will these be borne in whole or part by employers?

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<sup>18</sup> *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002* section 170KD(4).

33. The Bill proposes to amend the existing provisions of the Act to “*remove discrimination between heterosexual and same sex couples*”<sup>19</sup>. Church teaching and previous submissions to government on such matters has been consistently opposed to any widening of the definition of the “spouse” to include same sex couples.
34. Moreover, the proposal to remove alleged discrimination between heterosexual and same sex couples appears to be inconsistent with the Commonwealth’s current proposed amendments to the *Sex Discrimination Act 1984* (Cth) found in the *Sex Discrimination Amendment Bill 2002*. Such a proposal is also arguably inconsistent with relevant provisions of the *Marriage Act 1961* (Cth) and certainly with a number of provisions of the *Family Act 1975* (Cth), specifically which enjoin bodies such as the Family Court of Australia “...*to preserve and protect the institution of marriage as the union of man and a woman to the exclusion of all others voluntarily entered into for life.*”<sup>20</sup>
35. In conclusion, the ACCER suggests that the introduction of the proposed Maternity Payment is only one means of providing support and assistance to women - and families - in balancing their work and family commitments. Other alternatives and initiatives, especially flexibilities in workplace practices and return to work strategies may be as valid in assisting employees at the workplace level.
36. Importantly, through a comprehensive review of current government assistance measures, including taxation incentives, it may be possible to develop new approaches to providing assistance that are more targeted to the needs of individual families.
37. It is recognised that the wider social implications of providing a financial payment to families at the time of the adoption or birth of a child are considerably complex. Given this, the ACCER would therefore recommend that an extensive investigation into current government family assistance payments is undertaken before a final determination is made on this Bill. Given this, the ACCER would recommend that extensive inquiry and economic modelling is undertaken into current government family assistance payments and the proposed maternity payment options before any scheme is introduced.

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<sup>19</sup> *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Explanatory Memorandum*, op. cit., page 11.

<sup>20</sup> section 43.

38. Otherwise, the implementation of a Maternity Payment scheme may result in inadequate or inequitable public policy outcomes that do not meet the potentially diverse needs of women, families and society.