

Submission to the
Human Rights and Equal Opportunity
Commission

Valuing Parenthood
Options for Paid Maternity Leave:
Interim Paper 2002

19 July 2002

Executive Summary

The ACCER is of the view that it is a responsibility of government to assist families, as a vital part of its social policy responsibilities. This should include some form of financial support so that:

- the economic security of families is supported throughout their lives;
- the health and welfare of mothers and newborn children is supported; and
- women are not disadvantaged in their employment through their intrinsic role in child bearing.

To assist in achieving these objectives, government assistance should:

- focus on providing support to families irrespective of employment status; and
- recognise the role of the “primary care giver” in the formation and development of family life.

Within this context, it needs to be recognised that Paid Maternity Leave is only one aspect of an extremely complex social issue, which requires careful consideration of the totality and interdependence of issues and measures that may be necessary to achieve these objectives. That is, the discussion should move beyond the parameters of Paid Maternity Leave and *employees* to a comprehensive examination of the current and future measures necessary for *families* to be supported.

If the debate about Paid Maternity Leave is pursued as an industrial relations or employment issue, the ACCER is concerned that inequities and discriminatory practices might unintentionally arise – or be further entrenched - through the disproportionate impact on some employers and the inability of others to fund such provisions. Given these issues, and the

intrinsic social dimension of the matter, employers should not be legally *compelled* to fund or to contribute to a national scheme.

The following analysis should be undertaken before any final determination of whether or not to introduce Paid Maternity Leave or some other form of government assistance:

- Independent analysis and reappraisal of the effectiveness of current and proposed family assistance payments and rebates needs to be undertaken before there can be a final determination about the introduction of any form of new assistance to families, either by way of paid maternity or parental leave or universal family assistance;
- Economic modelling should be undertaken so as to better inform the debate and the consideration of 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 will be possible to evaluate the true cost of the different options and, most importantly, to allow more considered reflection upon the ability of the options to achieve the objectives claimed for them.

Critically, an examination of the current family assistance payments may lead to new thinking about the government support required to assist in meeting the potentially diverse 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. Its Terms of Reference are to provide 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, education, health and aged care and community services sectors.
3. Catholic Social Teaching is a set of teachings and principles based on Christian values that aim to bring about a good and fair 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.”¹

“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.”²

¹ The Holy See, *Charter of the Rights of the Family*, Rome, October 1983

² *ibid.* Article 9

ACCER Response

4. Over the past twenty years, the industrial and social interests of women and families have changed and diversified increasingly. Many families include dual income earners, with parents being required to balance increasing work commitments with family obligations. In addition, household debt has increased rapidly since the 1990s, as the cost of housing and accommodation has increased.³
5. Furthermore, the traditional concept of secure full-time employment been eroded by the increasing use of part-time, casual and contract employment. It is true that these types of employment offer flexibility to some employees. However, for many others there is not a choice about flexibility of working arrangements but the necessity to accept whatever work might be available.
6. The five options presented in the HREOC Interim Paper for the proposed introduction of a national Paid Maternity Leave scheme extend beyond the historical industrial relations objective of job preservation to the resolution of contemporary and future national policy and social objectives. Such objectives appear to include the issues of social equity; providing support and assistance to families; and achieving a sustainable population level.⁴
7. The structure of any Paid Maternity Leave scheme will vary and be dependent upon its primary objective. Notably, the amount and length of payment, the eligibility for payment and the funding of the scheme should be aligned to achieving the identified objective. In this respect, the degree to which some of the purported objectives can be achieved by the introduction of any of the proposed options may be arguable.
8. The Church recognises the family as being “the smallest social unit” and as such is considered to be fundamental to the life of every society.⁵

³ Australian Bureau of Statistics, *Social Trends*, Cat. 4102.0

⁴ Human Rights and Equal Opportunity Commission, *Valuing Parenthood Options for Paid Maternity Leave: Interim Paper 2002*; Sydney, May 2002, page 38.

⁵ Pope John Paul II, *Letter to Families*, St Paul Publications, Homebush, 1994, paragraph 17.

9. 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.”⁶

10. Consistent with the principles espoused by Catholic Social Teaching, the ACCER contends that the focus of any *employment* based Paid Maternity Leave scheme should be to support families by assisting employees to balance their work and family responsibilities.
11. However, the provision of a maternity based payment to only those people engaged as *employees* in the workforce may have an unintentionally narrow focus. For example, in the immediate sense, it would exclude women who are engaged as casual employees and do not have continuous service with the one or more employers. Further, it would not recognise women engaged in small business ownership, of which there is an increasing number,⁷ or those women who are engaged as independent contractors.

⁶ Pope John Paul II, *Laborem Exercens*, St Paul Publications, Homebush, 1981, paragraph 10.

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

12. Importantly, it would not recognise those women who choose to stay at home and care for their family on a full time basis. The Church teaches that:

*“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.”*⁸

13. Accordingly, the ACCER submits that the primary objective of any scheme to provide financial assistance to families at the birth of a child is, in essence, a social responsibility. Therefore, the payment of some amount of assistance at the time of a 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.
14. In this regard, the Federal Government currently provides assistance to families in respect of payments and tax incentives, and has proposed the introduction of a *Baby Bonus* scheme.⁹ The HREOC Interim paper estimates that *“Federal Government assistance for families is [currently] in excess of 10 billion dollars.”*¹⁰
15. The ACCER suggests that an independent review and reconsideration of such payments and incentives needs be undertaken before there can be a final determination about the introduction of any form of assistance to families, by way of paid maternity or parental leave or universal family assistance. As well as examining the potential diversity of need, this would need also to examine the equity issues that may arise in providing universal family assistance, including whether means testing is appropriate in this instance.

⁸ *Letter to Families* op. cit., paragraph 17.

⁹ *Taxation Laws Amendment (Baby Bonus) Bill 2002*

¹⁰ *Valuing Parenthood*, op. cit., page 8.

16. Importantly, for the proper evaluation of any model to be adopted, the HREOC Interim Paper acknowledges that the *“economic modelling to support this debate has not yet been done.”*¹¹ That is, there is a *“lack of statistical information...available about maternity, family responsibilities and work arrangements. This means that there are significant limitations on what can accurately be predicted about future provisions for paid maternity leave.”*¹²
17. It is suggested that extensive economic modelling be undertaken so as to better inform the debate and the consideration of the options presented in the HREOC Interim paper and those that might be designed as a consequence of its discussions and submissions. Without such modelling, there is a risk of misdirecting payments or creating social inequities that might minimise or negate the benefit of paid maternity leave or its alternatives.
18. Moreover, in evaluating any proposed model, due consideration should be provided not only to the financial consequences but also to any potential social outcomes. The contemplated proposals for the introduction of Paid Maternity Leave may actually cause deterioration in the equality of employment for women. The Australian Council of Trade Unions (ACTU) argued in the 1990 Parental Leave test case *“the absence of parental leave for men is seen as reinforcing the traditional role of women as the primary providers of child-care which contributes to their inability to compete equally in the work force.”*¹³ Similarly, the provision of paid leave for women may act unintentionally to reinforce the traditional role of women as the primary providers of care.
19. Further, by allowing for payment to the *primary care giver*, a degree of flexibility is provided to families in determining who is the most appropriate carer of the child. This was recognised by the Australian Industrial Relations Commission (AIRC) in its 1990 Parental leave decision. Specifically, in providing leave for the *“primary care giver”* the AIRC 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.”*¹⁴

¹¹ *Valuing Parenthood*, op. cit., page 9.

¹² *Valuing Parenthood*, op. cit., page 10.

¹³ *Parental Leave Case*, Cohen, J., Moore, DP., Polites, DP., Griffin, C., Turbet, C., Print J3596, Melbourne, 1990, page 6.

¹⁴ *Parental Leave Case*, op. cit., page 9.

20. However, with the concept of the *primary care giver*, as with all of the proposed options and possible variants, it is not possible to definitively support one model or approach above others until detailed analysis, modelling and costing of the various options is available.
21. Further, as with any proposed scheme, consideration of how such a scheme may interact with current provisions relating to unpaid maternity and parental leave will be required, especially in relation to current eligibility requirements.
22. From an industrial relations perspective, the ACCER submits that the award system and enterprise bargaining are not appropriate mechanisms to introduce paid maternity or parental leave on a national level, as they are limited in their scope and ad hoc in their outcomes. In particular, enterprise bargaining runs the risk of *work and family measures* being relegated to a lower level priority in the bargaining process.
23. In this respect, the ACCER does not support the introduction of a national maternity leave scheme funded by employers as it is considered to be inconsistent with the social aspects of such payment.
24. Further, while the costing and detail of such a scheme is not yet available, an employer funded scheme may be inequitable in its design, especially for those employers who already provide some quantum of Paid Maternity or Parental Leave. On the other hand, some employers genuinely may not have the financial capacity to provide Paid Maternity Leave, because of their revenue or funding circumstances. This is particularly problematic for the not for profit sector which is largely reliant upon external funding from governments and other sources of income, donations and bequests. Additionally, the gender demographics of particular industries may result in a disproportionate impost falling on some employers relative to others where paid leave is to be provided by the employer.
25. With a government funded scheme, employers who currently provide paid assistance to employees should not incur a disproportionate increase in their taxation obligations if this is necessary to fund such a scheme. In this context, depending upon the nature and extent of a government scheme, recognition of current employer payments should be considered in any assessment of employer liability.

26. The impost of paid maternity leave may also place an undue emphasis on direct monetary provision as one of the prime solutions to the work and family predicament. In fact, flexibilities in return to work arrangements, unpaid child rearing leave, training and retraining opportunities, working days and times, and childcare arrangements may be of greater benefit to employees, especially in the longer term, as they continue to balance the responsibilities of the workplace with those attached to the care of a growing child or children. In this context, employers may assist their employees in a meaningful manner over a longer period of time. Such initiatives can be tailored to suit the particular needs, constraints and priorities of employees and employers at the individual workplace.
27. Indeed, the implementation of a government funded universal payment scheme would not necessarily imply that employers no longer have any role or responsibility to assist employees in balancing their work and family commitments. However, this should not be taken in every instance to mean the payment by employers of “top up” margins for maternity or paternity leave or parental leave. The provision of paid leave at the time of the birth of a child is only one possible means of assistance to employees to meet both their work and family responsibilities. Other alternatives, especially flexibilities in return to work arrangements after parental leave and child rearing leave, may be as valid and as practical as short-term paid leave provisions. This is especially so for those employers who genuinely would have difficulty in providing for an employer based scheme – even in part - and for those employees who have children of pre-school and primary school age.
28. Critically though, where employers have not agreed freely to such provisions, this may result in discrimination against women of child bearing years as some organisations may seek to avoid the cost of paid maternity leave by not employing a person who has the potential to become pregnant. While this could be considered to be discrimination under both Federal and State legislation, such discrimination would not necessarily be pursued in every case.
29. In conclusion, Paid Maternity Leave is but one means of providing support and assistance to employees 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.

30. 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.
31. The wider social implications of providing a financial payment at the time of the birth of a child are considerably complex. Given this, the ACCER would therefore 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.
32. Otherwise, the implementation of a new payment scheme may result in inadequate or inappropriate public policy outcomes that do not meet the needs of women, families and society.