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## Paid parental leave

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## Introduction

Interest in widening working parents' access to paid leave to facilitate a child's birth or adoption (paid parental leave, PPL) strengthened in 2010 following the release of a PPL policy by the Leader of the Opposition, the Hon Tony Abbott on International Women's Day. The proposal, in essence, commits the Coalition, if returned to government at the next election, to introducing PPL for a period of up to 26 weeks at a 'high' level of replacement wage (up to a salary of \$150,000). While the Coalition had not committed to a PPL policy until 2010, the Howard Government had introduced a universal Maternity Payment ('Baby Bonus') in 2004.

The Australian Labour Party (ALP) by contrast had been reserved on maternity policy in the run-up to the 2007 federal election, despite having signalled a 'Baby-Care' payment in 2003. It proposed an extension to 12 months unpaid parental leave whereby families would be able to choose to have a parent at home on unpaid leave for the first two years of a child's life and parents would obtain a right to request a return to work on a flexible or part-time basis; in both cases applications could be rejected by employers.<sup>1</sup> Upon winning the 2007 federal election the Rudd Government requested the Productivity Commission to examine ways to support parents with new born children. Following its interim report in 2009, the Rudd Government committed to introducing a paid parental leave scheme from January 2011, based on 18 weeks pay at the federal minimum wage (currently \$543.78 per week, but likely to be increased during 2010). Access to this legislated PPL scheme will be conditional on forfeiture of claim for the Baby Bonus.

This Background Note updates the material canvassed in an earlier Parliamentary Library publication on paid maternity leave (PML).<sup>2</sup> It examines development of the debate, including the claims in the 1970s to introduce (unpaid) maternity leave by provisions of industrial awards, as well as via state and federal legislation across the national workforce. It reviews the limited spread of PML through either provisions of enterprise agreements or provisions of corporate employment policies over the 1990s into the 2000s highlighted in reports of the Human Rights and Equal Opportunity Commission (HREOC), as well as the role of government funded maternity payments. Reference is made to the international review of post natal assistance, and Australia's approach. The Background Note concludes with a comparison of the paid parental leave schemes which the major political parties appear to be committed to taking to the 2010 federal election.

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1. J Gillard, *Election 2007: Fresh ideas for work and family*, Australian Labor Party policy document, election 2007, viewed 24 March 2010, [http://parlinfo.aph.gov.au/parlInfo/download/library/partypol/NSPO6/upload\\_binary/nsपो63.pdf;fileType=application/pdf#search=%22fresh%20ideas%20gillard%22](http://parlinfo.aph.gov.au/parlInfo/download/library/partypol/NSPO6/upload_binary/nsपो63.pdf;fileType=application/pdf#search=%22fresh%20ideas%20gillard%22)
  2. S O'Neill, *Paid maternity leave*, E Brief, Department of the Parliamentary Library, 2002–2004, viewed 18 March 2010, [http://www.aph.gov.au/library/intguide/ECON/maternity\\_leave.htm](http://www.aph.gov.au/library/intguide/ECON/maternity_leave.htm)

## Background to unpaid maternity leave

Provisions to allow unpaid maternity leave of 52 weeks following the birth of a child (where the employee had 12 months continuous services with the one employer) were inserted into federal awards as a result of an Australian Conciliation and Arbitration Commission test case in 1979. The case was initiated by the Australian Council of Trade Unions (ACTU) co-ordinating affiliate union applications to have federal awards provide such leave. The case resulted in approximately 1.5 million women employed under federal awards being granted the right to unpaid leave.<sup>3</sup>

Maternity leave followed earlier initiatives to promote the interests of working women, as well as meeting skill shortages, such as the abolition of the marriage bar in the Australian Public Service (1966) and the equal pay cases (1969–74) conducted before the Australian Conciliation and Arbitration Commission.<sup>4</sup> The advancement of maternity leave in Australia has most often been pursued in the context of the application of the International Labour Organisation's Convention Concerning Maternity Protection (ILO, No.103, Revised 1952), and whether employment conditions expressed in industrial awards complied with that instrument.

In the context of ascertaining whether Australian employment conditions complied with the Maternity Protection Convention, a survey of industrial awards conducted by the federal Department of Labour in 1972 failed to identify any federal awards containing maternity leave provisions.<sup>5</sup> The same survey criticised factory and shop legislation of the major states for failing to specify a period of leave for pregnant female employees. Rather, these Acts prohibited the pregnant employee from working during specified periods immediately before and after childbirth (termed the period of confinement).<sup>6</sup> In this context, the 1979 test case and resulting award maternity leave provisions were a significant milestone.

In the current debate over paid maternity leave, it has been claimed that pregnancy is a social issue (or even a personal issue), but not an industrial issue – meaning that parents primarily should meet the costs of child-rearing, less so industry. A similar debate took place over the 1979 maternity leave case, resulting in the view that pregnancy at work *should* be regarded at the least, as an industrial issue. As the *Australian Labour Law Reporter* puts it:

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3. S Deery, D Plowman and C Fisher, *Australian industrial relations*, McGraw-Hill, Sydney 1980, p. 219.
  4. For a review of the equal pay cases see: Human Rights and Equal Opportunity Commission, *Just rewards, a report of the inquiry into sex discrimination in overaward payments*, Canberra, AGPS, 1992, pp. 30–32.
  5. Women's Bureau, Department of Labour, 'Maternity provisions', *Women and Work No. 10*, AGPS, Canberra, 1973, p. 8.
  6. *Ibid.*

... it is not the pregnancy as such that is being regulated but rather the leave entitlements of an employee who is pregnant. It is now accepted that maternity leave and related matters do come within the jurisdiction of industrial tribunals.<sup>7</sup>

State jurisdictions followed the 1979 Arbitration Commission decision, either through award variations by state tribunals, or through legislation. For example, provisions for 12 months unpaid maternity leave were inserted into the *Industrial Arbitration Act 1940* (NSW) in 1980, predating similar federal provisions by fourteen years.<sup>8</sup> Earlier, Commonwealth paid maternity leave legislation had first come into effect as from 1973, extending the previous unpaid entitlement found in public service legislation.<sup>9</sup> However, it was restricted to Commonwealth employee, providing 40 weeks unpaid maternity leave, paid maternity leave of twelve weeks and paid paternity leave of one week.<sup>10</sup> Its provisions were amended in 1978 removing the entitlement to paid paternity leave while standardising maternity paid leave at twelve weeks after a twelve months qualifying period. The public sector maternity provisions were intended to be “pace-setters”, so as to be emulated by the private sector, but not under compulsion.<sup>11</sup> The then Minister for Labour argued that should an attempt be made to flow paid maternity leave into the private sector by application to vary awards, ‘the Commonwealth would be prepared to intervene and officially oppose it’.<sup>12</sup>

In 1990 the Australian Industrial Relations Commission (AIRC) commenced a review of its 1979 test case decision. While not significantly enhancing the basic unpaid maternity leave entitlement, the concept of parental leave (paternity, maternity and adoption leave<sup>13</sup>) was introduced into federal awards, and other issues such as returning to part-time work upon

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7. CCH, *Australian Labour Law Reporter*, ¶40–440, viewed 25 March 2010, <http://intelliconnect.wkasiapacific.com/>
  8. *Industrial Arbitration Act 1940* (NSW): Part XIVA – Maternity Leave, commencing 28 April 1980.
  9. *Public Service Act 1922* at section 54B.
  10. *Maternity Leave (Government Employees) Act 1973*, viewed 25 March 2010, <http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/all/search/3A679BB50F862B56CA25713E001FF710>
  11. See for example E Anderson, G Griffin and J Teicher, *The changing roles of public sector unionism*, Working Paper No 83, National Key Centre for Industrial Relations, Monash University, 2002, p 6 viewed 25 March 2010, <http://www.buseco.monash.edu.au/mgt/research/working-papers/nkcir-working-papers/nkcir-workingpaper-83.pdf>
  12. C Cameron, Second reading speech: Maternity Leave (Australian Government Employees) Bill 1973, House of Representatives, *Debates*, ASGPS, 24 May 1973, p. 2639.
  13. The right to take unpaid leave when adopting a child was inserted into federal awards in 1986, while the arrangement for fathers to undertake a caregiver role for their children as well as attending births was recognised in federal awards in 1990: AIRC, *Parental leave test case*, Print J3596, 26 July 1990.

return to work were addressed by the AIRC in its decision. These provisions formed the basis of a 'last resort' national standard of unpaid parental leave and implemented legislatively in the federal *Industrial Relations Act 1988* (from 1994), carried over to the *Workplace Relations Act 1996*, and to the *Fair Work Act 2009* under the National Employment Standards.<sup>14</sup>

### Towards paid maternity leave

The debate on extending unpaid maternity leave provisions to paid maternity leave has moved considerably from a minor reference in HREOC's 1999 pregnancy and discrimination report, *Pregnant and productive*, to assuming prominence in 2010.<sup>15</sup> The HREOC report responded to terms of reference set by the then Attorney-General, the Hon Darryl Williams. He commissioned a national inquiry into discrimination on the grounds of pregnancy and potential pregnancy and the management of pregnancy in the workplace. The report's recommendations included, amongst others, a proposed review between HREOC and the Department of Employment and Workplace Relations of funding options for paid maternity leave.

Since then, the debate has been raised frequently in Parliament, initially through questions of non-government parties seeking the Howard Government's response to *Pregnant and productive*. In turn, the Howard Government supported certain recommendations of *Pregnant and productive*, reflected in its Sex Discrimination Amendment (Pregnancy and Work) Bill 2002. At issue has been whether a paid parental leave entitlement should be provided for on a universal basis, or by an enterprise to enterprise approach.

The ACTU updated its women's employment issues policy for the 2001 federal election, advocating parameters for maternity assistance found in the ILO's revised Maternity Protection Convention. This includes 14 weeks paid maternity leave of at least two-thirds of the woman's previous earnings (where she had been working).<sup>16</sup> Australia has not ratified the Convention. However, Article 11.2(b) of the United Nations' Convention on the Elimination

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14. Workplace Relations Act (now repealed) at section 170KA and Schedule 14; Fair Work Act at sections 67 to 85.

15. HREOC, *Pregnant and productive, It's a right not a privilege to work while pregnant*, 1999, pp. 226–229, viewed 25 March 2010, [http://www.hreoc.gov.au/sex\\_discrimination/publication/pregnancy/report.html](http://www.hreoc.gov.au/sex_discrimination/publication/pregnancy/report.html). Interestingly, the focus of this and subsequent HREOC reports as well as federal parliamentary bills facilitating paid leave has been on paid maternity leave. The terminology change to paid parental leave coincides with the terms of reference provided to the Productivity Commission to inquire into forms of parental assistance in 2008. Parental leave incorporates maternity leave, paternity leave and adoption leave.

16. ILO Convention 183, articles 4, 5 and 6, viewed 25 March 2010, <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C183>

of all forms of Discrimination Against Women<sup>17</sup> commits signatories to introduce ‘maternity leave with pay or with comparable social benefits’. Australia had ratified this convention but maintained (and still maintains) a reservation to Article 11.2(b).

HREOC's former Sex Discrimination Commissioner Pru Goward presented five options for extending paid maternity leave in an interim report, *Valuing parenthood*, in April 2002, followed up by a final report, *Time to value*, later that year.<sup>18</sup> The Australian Democrats had developed a paid maternity leave proposal for the 2001 election, and tabled the Workplace Relations Amendment (Paid Maternity Leave) Bill in May 2002 as a proposed amendment to the Workplace Relations Act.

#### Pros and Cons for Paid Maternity Leave

Arguments supporting PML have been canvassed in HREOC's *Valuing Parenthood* report.<sup>19</sup> Some of these are:

- a national paid maternity leave scheme would go some way to addressing the male/female wage disadvantage and compensate for the period of childbirth and time shortly after when women take time off work or reduce their labour force activity
- maternity leave is generally restricted to long term, permanent employees. Industries with high proportions of women and casual workers, such as retail and hospitality, are generally less likely to offer paid maternity leave
- for couples who save money to afford each child, a period of paid leave would enable them to bring forward their decision to have a child. It may also encourage some couples to have an additional child
- paid maternity leave would assist with the direct costs of having children, especially the increased costs faced at the time of the birth of a child
- paid maternity leave encourages women to participate in the labour force and promote their economic security by enabling them to retain skills and expertise and maintain income, and

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17. United Nations, *Convention on the Elimination of all forms of Discrimination Against Women*, viewed 25 March 2010 <http://www.austlii.edu.au/au/other/dfat/treaties/1983/9.html>

18. HREOC (now Human Rights Commission) *Valuing parenthood: options for paid maternity leave – Interim paper 2002*, viewed 26 March 2010 [http://www.hreoc.gov.au/sex\\_discrimination/paid\\_maternity/pml/index.html](http://www.hreoc.gov.au/sex_discrimination/paid_maternity/pml/index.html) and *Time to value – proposal for a national paid maternity leave scheme*, viewed 26 March 2010, [http://www.hreoc.gov.au/sex\\_discrimination/paid\\_maternity/pml2/index.html](http://www.hreoc.gov.au/sex_discrimination/paid_maternity/pml2/index.html)

19. Ibid.

- paid maternity leave would assist to reduce attrition rates, particularly for women, and encouraging women who have had babies to maintain their attachment to the workforce (benefiting the employer by reducing retraining and staff replacement costs).

Countering both the HREOC reports and the Democrats maternity leave Bill, Senator Minchin, as Minister for Finance and Administration, made the following points:

- fertility rates have been falling in Australia and the developed world for the past 30 years. Births are forecast to exceed deaths in Australia for at least another 30 years while the total population is forecast to continue to increase through immigration until 2063. So with one of the highest fertility rates in the OECD, Australia is in far better shape to manage than many nations
- most experts acknowledge that the government can do little to affect fertility rates, and
- paid maternity leave will cost between \$415m and \$780m per annum depending on the rate of pay and eligibility. This would be a major new burden on taxpayers. Little justification for taxpayers contributing an additional half a billion dollars to mothers in the paid workforce while ignoring all other mothers.<sup>20</sup>

### Senate Committee Review 2002

Submissions to the Senate Employment, Workplace Relations and Education Committee reviewing the Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 canvassed funding options for PML and many expressed concern over the limited extent of any forthcoming provision. PML proposals tended to reflect the basic parameters of the ILO Convention 183, that is, a form of payment generally for 14 weeks. Submissions from business generally opposed PML if business were required to pay for it (a theme which runs throughout PML inquiries to the present), while otherwise being supportive of the need for PML. Most business submissions recognised the contributions by businesses to PML and work and family policies already being made, either via company policy or enterprise agreements.

The Joint Submission by the Department of the Prime Minister and Cabinet, the Department of Employment and Workplace Relations and the Department of Family and Community Services on the Paid Maternity Leave Bill avoided putting a funding option for paid maternity leave.<sup>21</sup> However it canvassed the four key instruments for funding PML: workplace or

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20. N Minchin, *Minchin reiterates opposition to taxpayer-funded paid maternity leave and embryonic stem cell research*, media release, 16 August 2002, viewed 7 April 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FWS776%22>

21. Joint Submission by the Department of the Prime Minister and Cabinet, the Department of Employment and Workplace Relations and the Department of Family and Community Services to the Senate Employment, Workplace Relations and Education Committee reviewing the



enterprise agreements<sup>22</sup> (as well as individual employment contracts), company policy, legislation and traditional awards of industrial tribunals. These instruments are central to the delivery of PML.

### Source of PPL entitlement

PPL may be made available to employees through awards of industrial tribunals, enterprise agreements, employer or company policy or via legislation. Thus there has been no one bargaining level to pursue maternity leave. As Justice Munro of the AIRC observed:

Many significant employee benefits, for instance maternity leave, accrued rights protection, and severance pay are evolutions of national policies pursued by unions at all available negotiation levels.<sup>23</sup>

A fifth mechanism, that of providing PPL through an income contingent loan, similar in principle to the Higher Education Contribution Scheme was considered by the Productivity Commission. However, the loan scheme was not considered compatible with the view that parental paid leave should be an employment entitlement. The Productivity Commission supported the view that the community regarded parental leave as similar to annual leave and other leave entitlements.<sup>24</sup>

### Enterprise (Workplace) Agreements

HREOC's *Valuing Parenthood* report estimated that 6.7 per cent of enterprise agreements included provisions for paid maternity leave. This encompassed 21 per cent of all public sector agreements and 3.4 per cent of private sector agreements and 0.7 per cent of Australian Workplace Agreements. This information drew upon survey work of mainly federal enterprise agreements undertaken by ACIRRT and reported in its March 2002 *Adam* report.<sup>25</sup>

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Workplace Relations Amendment (Paid Maternity Leave) Bill 2002. See submission 20 at: [http://www.aph.gov.au/Senate/committee/eet\\_ctte/completed\\_inquiries/2002-04/wrpaidmatl02/submissions/sublist.htm](http://www.aph.gov.au/Senate/committee/eet_ctte/completed_inquiries/2002-04/wrpaidmatl02/submissions/sublist.htm)

22. While the award system has underpinned Australia's collective bargaining system, enterprise bargaining was introduced from the early 1990s, so as to reflect the productivity needs of individual companies and their capacities to fund employee benefits. Enterprise agreements have been referred to as workplace agreements, collective agreements and certified agreements. Australian Workplace Agreements (AWAs, 1997–2008) were an individual employer-employee agreement.
23. AIRC, *Print T1982*, 16 October 2000.
24. Productivity Commission, *Paid parental leave: support for parents with newborn children*, Report No. 47, (28 February 2009) p 8.14, viewed 26 March 2010, p. 8.14, [http://www.pc.gov.au/data/assets/pdf\\_file/0003/86232/parental-support.pdf](http://www.pc.gov.au/data/assets/pdf_file/0003/86232/parental-support.pdf)
25. The Adam Report has been terminated and ACIRRT operates under the title of the Workplace Research Centre.

The public sector, community services and utilities set the standard, while the finance sector had only 7.4 per cent of agreements mentioning paid maternity leave. Within a few years the percentage of agreements with PML/PPL provisions had increased. The Department of Employment and Workplace Relations' survey of agreement making over the period 2004–2006 reported that 15 per cent of collective agreements surveyed over this period contained provisions for paid maternity/parental leave.<sup>26</sup> Workplace bargaining can create a new entitlement to PPL, or alternatively can remove or 'trade off' entitlements such as PML.

#### Human Resource Policy

Employer policy statements, often expressed in company policy or human resource (HR) manuals, provide particular entitlements to employees such as allowing time-off for employees under particular circumstances, or provide other benefits. Large organisations and public sector agencies may have extensive human resource policies which are also likely to address a range of issues such as conduct and behaviour, dress codes and the like. The attraction of this form of arrangement is that such policies are not legally binding, since they are not formalised under an enterprise agreement or other enforceable instrument. On the other hand, company policy manuals can be cited in applicable enterprise agreements or employment contracts.

The courts are putting more weight on such statements or manuals and have found that a breach of stated human resources policies by an employer can give rise to a successful damages claim for breach of the employment contract.<sup>27</sup> As well, eligibility and access to a benefit may vary according to an assessment of the particular circumstances of the applicant. Overall the extent to which company policy represents a legal obligation is grey. For workplace researchers, over-reliance by employers' on informal policies may make assessment of employment provisions or entitlements difficult, short of major employment surveys such as those conducted by the Australian Bureau of Statistics. Nevertheless HR policy constitutes an important avenue delivering benefits including PPL in workplaces; as put by Baird, Brennan and Cutcher:

Given the absence of legislative provisions and the rarity of paid maternity leave in enterprise bargains, company policy potentially becomes a very important custodian of the entitlement.<sup>28</sup>

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26. Department of Employment and Workplace Relations, *Agreement making under the Workplace Relations Act 2004 to 2006*, 2007, p. 56.

27. J Riley, 'The potency of workplace policies', *Australian Industrial Law News*, CCH, 20 September 2006, viewed 16 April 2010, <http://intelliconnect.wkasiapacific.com/>

28. M Baird, D Brennan and L Cutcher, 'A pregnant pause: paid maternity leave in Australia', *Labour and Industry*, vol. 13, no. 1, 2002.

## Legislation

The NSW initiative to introduce unpaid maternity leave to State award workers as an amendment to its Industrial Arbitration Act in 1980 is a good example of legislation providing for unpaid maternity leave to NSW workers under the then NSW industrial jurisdiction. PML may be legislated by the Commonwealth, as noted, and/or the States in respect of their public servants and employees covered by State awards. Legislation providing for paid maternity leave applies to Australian Public Servants and to employees of Commonwealth and Territory authorities.

Privatising an APS service effectively removes PML as an employee entitlement unless it is preserved in some other instrument. This is a consequence of the new entity no longer being defined as a Commonwealth authority and not being bound under awards and legislation pertaining to Commonwealth employees. A case in point is the now defunct Employment National in 1998 being the privatised successor to the Commonwealth Employment Service, and the loss of PML to those CES employees who took up employment with Employment National.<sup>29</sup> Note that all states with the exception of Western Australia referred industrial power to the Commonwealth in 2009, meaning that the Fair Work Act effectively replaces state laws as the principal vehicle for providing Australian employees access to unpaid parental leave.

## Industrial awards

Until the Howard Government's 'Work Choices' legislation, federal awards incorporated the 1990/91 unpaid parental leave test case clause, with the legislative provision acting as a fall-back national parental leave standard, catching employees not covered by the award safety net.<sup>30</sup> Unpaid maternity leave had been extended to casual employees with requisite service employed under federal awards following the AIRC's Parental Leave Casual Employees decision in 2001 and extended to New South Wales and Queensland by respective legislation.

Under the Work Choices, the legislated unpaid parental leave standard became one of five Australian Fair Pay and Conditions Standards (AFPCS). Parental leave was removed as an allowable matter in federal awards, but retained as a 'preserved' award matter. This meant that where an employee's particular parental leave award terms were superior to the AFPCS, the award term applied.<sup>31</sup> At the time of the Senate inquiry into paid maternity leave in 2002,

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29. M Baird, 'Paid maternity leave, the good the bad and the ugly' *Australian Bulletin of Labour*, vol. 29, no. 1, March 2003, pp. 105–106.

30. *Work Choices (Workplace Relations Amendment (Work Choices) Act 2005*, which amended the Workplace Relations Act.

31. Workplace Relations Act (as amended), sections 527 and 529.

87 federal awards contained provisions for PML and these provisions would have been superior to the AFPCS and thus enforceable under Work Choices.<sup>32</sup>

Under the current Fair Work Act, the NES replaces the AFPCS. The Fair Work Act's 'modern' awards exclude parental leave provisions.<sup>33</sup> The PML provisions evident in federal awards in 2002 are likely to have been lost to employees unless maintained under other instruments, such as an employee's employment contract or an enterprise agreement. Indeed, the extent of loss of PML from awards is possibly greater than indicated above as certain state awards which contained PML have been subsequently incorporated under the federal jurisdiction, initially as a consequence of the constitutional base underpinning Work Choices from 2006, and continued under the Fair Work Act. These transferred state awards have been subsumed into 122 'modern' federal awards determined by the AIRC, under award modernisation during 2008–2009. In short, awards no longer provide for either unpaid or paid parental leave.

The shortcomings of HR policy, enterprise agreements and industrial awards as mechanisms for providing PPL uniformly, when combined with advocacy for PML from key government agencies such as HREOC, trade unions and pay equity coalitions, helped persuade the Howard Government to create a form of PML in a payment known as the Baby Bonus, and delivered via legislation.

### The Baby Bonus

The origins of the current government funded maternity payments can be found in the 1994 Accord negotiations between the Keating Government and the ACTU.<sup>34</sup> In the review of the Accord 1993, the ACTU had signalled its intention to:

... seek discussions on further measures designed to assist workers with family responsibilities including the implementation of ILO Convention 103 (Maternity Leave).<sup>35</sup>

The 1995 Commonwealth Budget subsequently introduced a payment termed the Maternity Allowance. It was to be a lump sum payment (then \$840.60) equivalent to six weeks of the Parenting Allowance and available from February 1996. To qualify for the new allowance, a family had to be eligible to receive the then Family Payment (similar to the current Family Tax Benefit, Part A) within 13 weeks of the birth. Working and non-working mothers were

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32. Joint Departments Submission, op. cit.

33. Section 576J of the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*.

34. An earlier Maternity Allowance introduced in 1912, was abolished in 1978.

35. ALP-ACTU, *Accord Agreement 1993–1996: Putting Jobs First*, p. 14. The first Accord came into operation in 1983 following the election of the Hawke Government. There were to be eight Accord documents to 1996, which set out national strategic, social and macro-economic policy goals as well as wages frameworks.

eligible. Mothers who received paid maternity leave from their employers were in many cases excluded from receiving the allowance by application of a means test.

A tax concession termed the First Child Tax Refund, referred to as the Baby Bonus at the time and administered by the Australian Taxation Office, was introduced in 2002 and provided tax refunds of up to \$2500 per annum for five years for mothers after the birth of their first child. From July 2004, a new Maternity Payment replaced both the Maternity Allowance and the First Child Tax Refund.<sup>36</sup> The Maternity Payment was paid as a lump sum of \$3000 for each newborn child and each child adopted at less than 26 weeks of age. No means test or work attachment test applied. The rate of payment was increased to \$4000 in July 2006 and to \$5000 in July 2008.

The Maternity Payment was introduced as the centrepiece of the 2004 Commonwealth Budget and seen as the Howard Government's response to the HREOC reports calling for PML, as well as a response to the then Opposition's proposal for a universal Baby Care payment. The question of universal access to PPL is at the nub of the debate and both the Coalition parties and the ALP have formulated schemes to ensure universal coverage under a payment scheme for parents with responsibilities for the care of new babies or adopted children. Cabinet discussions on maternity payment options in 2003 coalesced around the view that any new maternity-related payment should be made to all mothers regardless of their working status, but also should not be targeted to low income families.<sup>37</sup>

The Maternity Payment/Baby Bonus came to represent a de facto form of PPL, a point recognised by the Productivity Commission.<sup>38</sup> Its annual cost increased from initial estimates of approximately \$700 million pa, to \$1.39 billion expected for the 2009–2010 financial year.<sup>39</sup> However, it could also form the basis of a formal PPL scheme. Demographer Peter MacDonald, for example, has suggested that the Baby Bonus might be recast to deliver a maternity leave-type payment for all mothers by:

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36. P Costello and N Minchin, 'More help for families', *Budget Paper No 2*, 2004, viewed 30 March 2010, <http://www.budget.gov.au/2004-05/bp2/html/revenue-02.htm>
  37. S Lewis *PM spends up big on mothers*, *The Australian*, 7 May 2004, viewed 30 March 2010, [http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/HPEC6/upload\\_binary/hpec67.pdf;fileType=application%2Fpdf#search=%22maternity%20payment%20media%202000s%202004%2005%22](http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/HPEC6/upload_binary/hpec67.pdf;fileType=application%2Fpdf#search=%22maternity%20payment%20media%202000s%202004%2005%22)
  38. Productivity Commission, Paid parental leave.
  39. Department of Families, Housing, Community Services and Indigenous Affairs, *FaHCSIA Additional Estimates Statements 2009* at Table 2.1.1.3, viewed 26 April 2010, [http://www.fahcsia.gov.au/about/publicationsarticles/corp/BudgetPAES/budget09\\_10/PAES/Documents/PAES\\_2009\\_10.pdf](http://www.fahcsia.gov.au/about/publicationsarticles/corp/BudgetPAES/budget09_10/PAES/Documents/PAES_2009_10.pdf)

... (taking) the Baby Bonus and the Family Tax Benefit (Part B) for the first year of a child's life, combine it and use it to fund a paid-maternity-leave scheme for 16 weeks at the minimum wage ... It should be paid to all women, whether they are working or not.<sup>40</sup>

From August 2007 the Baby Bonus could be paid in 13 fortnightly instalments to recipients who were subjected to an income management regime. From January 2009 the Baby Bonus was income tested so that families with an annual taxable income of \$150,000 (\$75,000 in the six months after the birth of the child) were no longer eligible. This threshold was indexed in July each year. Importantly, the Baby Bonus could be claimed up to 52 weeks after the birth of the child.

#### Accessing and utilising maternity leave

The introduction of the Maternity Payment coincided with the growth in the number of female and male employees entitled to PPL. The Joint Departments' Submission to the Senate Committee review of the Paid Maternity Leave Bill 2002 made reference to unpublished data from the *Survey of employment arrangements and superannuation* conducted over 2000, which found:

- 38 per cent of female employees responded that they were entitled to paid maternity leave (51 per cent of full time employees and 21 per cent of part time employees)
- women in casual employment had almost negligible access to paid maternity leave (0.4 per cent of self-identified casuals responded that they were entitled to paid maternity leave, compared to 53.6 per cent of other female employees)
- the highest coverage of paid maternity leave (percent of female employees) occurred in the following industries: Government Administration and Defence (68.1 per cent), Communication Services (59.1 per cent ), Finance and Insurance (59 per cent) and Education (57 per cent )
- the lowest coverage of paid maternity leave was found in the following industries: Agriculture (4.5 per cent), Accommodation, Cafes and Restaurants (13.4 per cent), Retail (20.2 per cent of female employees) and Cultural and Recreational Services (28.2 per cent)
- the highest incidence of paid maternity leave was recorded in the following occupations: Managers and Administrators (65 per cent) and Professionals (54 per cent)
- the lowest incidence of paid maternity leave was recorded in the following occupations: Elementary Clerical, Sales and Service Workers (18 per cent) and labourers and related

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40. S Lunn, *Pay the baby bonus as maternity leave urge economists*, *The Australian*, 15 March 2008, viewed 30 March 2010: <http://www.theaustralian.com.au/news/pay-the-baby-bonus-as-maternity-leave-urge-economists/story-e6frg6no-111115803795>

workers (21 per cent) and access to paid maternity leave was higher the greater an employee's length of service with an employer.

Since 2000, the proportion of employees with an entitlement to PPL has grown incrementally. The Australian Bureau of Statistics (ABS) found that in August 2008 40 percent of 8.57 million employees were entitled to PPL while 44.9 per cent of female employees were entitled to PML.

- the highest coverage of PML (percent of female employees) occurred in the following industries: Public Administration and Safety (82.2 per cent), Electricity, Gas, Water and Waste Services (77.6 per cent ), Finance and Insurance (71.3 per cent) and Education and Training (63.5 per cent )
- the lowest coverage of PML was found in the following industries: Agriculture (18.1 per cent), Accommodation, Cafes and Restaurants (13.1 per cent), Retail Trade (22.7 per cent), Administrative and Support Services (27.5 per cent) and Arts and Recreational Services (27.8 per cent)
- the lowest incidence of PML was recorded in the following occupations: Community and Personal Service workers (31.3 per cent), Sales workers (20.3 per cent) and Labourers (19.9 per cent) and access to paid maternity leave was higher the greater an employee's length of service with an employer
- the highest incidence of paid maternity leave continued to be recorded in the following occupations: Managers and Administrators (56.5 per cent) and Professionals (64 per cent).<sup>41</sup>

In the past few years some major employers have introduced PPL schemes, such as the Woolworths group employing 85,000 female employees in various divisions such as Woolworths and Safeway supermarkets, petrol stations and liquor stores, BIG W discount department stores, Dick Smith Electronics, BWS and Dan Murphy's. Other employers include the Myer retail chain, which has introduced a six-week PPL benefit for its 10,000 permanent employees. The Aldi supermarkets group, Domino's and Target stores were among many businesses to introduce or widen PPL schemes.<sup>42</sup>

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41. Australian Bureau of Statistics, *Employee Earnings, Benefits and Trade Union Membership*, Cat. No. 6310, Table 17, August 2008, viewed 26 March 2010, [http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/6476EC332689282BCA25759A001A4526/\\$File/63100\\_aug%202008.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/6476EC332689282BCA25759A001A4526/$File/63100_aug%202008.pdf).

42. 'Woolworths joins the groundswell on paid maternity leave', *Workplace Express*, 5 June 2008.

Despite these developments, recent data from the ABS shows that 45 per cent of employees were entitled to paid parental leave in November 2009. This was a slight increase on the 44 per cent recorded in November 2008.<sup>43</sup>

#### Utilising leave

In terms of utilising time off work in the lead up to and following childbirth, the ABS compiled data from a 2005 survey of birth mothers with a natural child living with them who was under two years of age. It found that 217,000 or 74 per cent of the 294,000 women who worked in a job at some time while pregnant also took leave or time away from their job for the birth of their child.<sup>44</sup> For 161,000 women who worked in a job while pregnant, and returned to employment after the birth of their youngest child under two years of age, the total time out of the workforce (both before and after the birth) averaged 27 weeks. Of these women, 126,000 had taken leave or time away from work for the birth, with an average absence of 28 weeks. The remaining 35,000 women did not take leave or time away, most commonly because they were operating their own business or had permanently left their last main job while pregnant. On average, these women were out of the workforce for 24 weeks. Also, 181,000 or 39 per cent of the women with their youngest child under two years of age had worked in a job since the birth and most of these mothers (126,000) had returned to work with the employer that they had prior to the birth. The Productivity Commission provided additional information on mothers' return to work, finding of the mothers who had been in paid employment in the 12 months prior to childbirth:

- 11 per cent had returned to work before the child was three months old
- 26 per cent returned before the child was six months old
- 57 per cent returned before the child was 12 months old, and
- 74 per cent returned before their child was 18 months old.<sup>45</sup>

#### Draft Productivity Commission Report on Paid Parental Leave 2008

Early in its term, the Rudd Government requested the Productivity Commission to examine ways the Government could provide improved support to parents with newborn children. As the media release announcing the terms of reference explained:

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43. Australian Bureau of Statistics, *Forms of Employment, Australia, November 2009*, Cat. No. 6359.0, viewed 2 May 2010, <http://www.abs.gov.au/ausstats/abs@.nsf/latestProducts/6359.0Media%20Release1November%202009>

44. Australian Bureau of Statistics, *Pregnancy and Employment Transitions*, Cat. No. 4913, Nov 2005, viewed 15 April 2010, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4913.0Explanatory%20Notes1Nov%202005?OpenDocument>

45. Productivity Commission, *Paid parental Leave*, p. C 8.



We want to explore ways to make it as easy as possible for working mums to balance their employment with the important job of raising a new generation of Australians.<sup>46</sup>

The Productivity Commission released a draft report on 29 September 2008.<sup>47</sup> It recommended that the Government introduce 18 weeks of publicly-funded paid postnatal parental leave to be shared between parents, plus two weeks paid leave for fathers or same sex partners. It would be paid at the federal minimum wage of \$543.78 and be provided to all employees with a 'reasonable attachment' to the workforce and extend to casuals, contractors and the self-employed. Mothers who take paid parental leave would be entitled to super contributions from their employer if they qualify for unpaid maternity leave under the National Employment Standards *and* be entitled to paid parental leave under the proposed scheme. Employers would pay workers their parental leave entitlements before being 'speedily' reimbursed. Employees would receive maximum benefits of \$11,854 – made up of \$10,876 for 18 weeks paid parental leave and two weeks paid partner's leave, plus \$979 in superannuation contributions.

The draft report estimated that 176,000 employed mothers have babies each year. Some 36,000 (20 per cent) would not have sufficient workforce attachment under the scheme's rules to qualify for the publicly-funded scheme; they would continue to access the Maternity Payment (Baby Bonus) and related entitlements. The remaining 139,000 (80 per cent) would be entitled to paid parental leave, with 118,000 entitled to have their super contributions paid by their employer while on leave. In gross terms, the 18 weeks of parental leave would cost \$1336 million and the two weeks' partners' leave would cost \$61 million. But the new scheme would cut tax and welfare spending by \$307 million and save \$670 million in Baby Bonus payments, resulting in a net public cost of \$450m. The scheme would cost \$530m when employer superannuation contributions are taken into account. The overall objective of the scheme was to enable mothers to stay at home for at least the first six months of their baby's life using a combination of other leave and the 18 weeks paid leave. The proposed scheme would allow employees on the paid parental leave to have 'brief interruptions' (of up to 10 days in total) to keep in contact with their employer or for self-employed people to perform some administrative duties.<sup>48</sup>

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46. W Swan, J Gillard and J Macklin *Productivity commission to investigate paid maternity leave*, Joint Media Release, 17 February 2008, viewed 28 March 2010, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FGHOP6%22>

47. Productivity Commission, *Paid parental leave: support for parents with newborn children*, draft inquiry report, 29 September 2008, p. xxvi, viewed 18 April 2010, [http://dpl/Books/2008/PC\\_parentalsupport.pdf](http://dpl/Books/2008/PC_parentalsupport.pdf)

48. *Ibid.* p. xxix.

## The 2009 Commonwealth Budget and Paid Parental Leave

The Rudd Government announced on Mothers' Day 2009 that it would introduce Government-funded PPL. The announcement took the form of the Government's response to the Productivity Commission's draft PPL report.<sup>49</sup> The 2009 Commonwealth Budget consequently provided \$731 million over five years to fund the new paid parental leave (PPL) scheme. The proposed funding for the scheme is based on the beneficiary trading off a number of payments, particularly the Baby Bonus (the Maternity Payment was formally renamed the Baby Bonus in 2007). Key points of the proposed PPL scheme are:

- The scheme is to commence from 1 January 2011 and pays 18 weeks paid parental leave at the minimum wage (currently \$543.78) for primary care givers earning less than \$150,000 annually. The estimated cost of the scheme is \$260 million a year, with an anticipated 148,000 primary care givers to be eligible each year.
- In most cases the new statutory PPL scheme will be delivered through employers, with the Government to pre-pay them to 'avoid cash flow pressures'. To be eligible, parents would need to have worked continuously for at least 10 of the 13 months prior to the expected birth or adoption date.
- Part-time workers would receive the full weekly rate of payment and low income earners should pay little, if any, tax on PPL. The weekly payments will be treated as taxable income and will affect entitlement to family assistance payments, but not to income support payments such as the parenting payment, disability support payment and Newstart allowance.
- Parents receiving PPL will be ineligible for the \$5,000 Baby Bonus (except for multiple births), Family Tax Benefit Part B, dependant spouse, child-housekeeper and housekeeper tax offsets for the 18 weeks.

The Government intends to review the scheme after two years and will then consider any Productivity Commission recommendations that it did not adopt first time around. These include the two weeks paid leave for the child's secondary carer and the proposal that employers to make superannuation contributions on the payments. Employer reception to the Budget's PPL proposal was generally positive. The Australian Industry Group, for example, stated:

The announcement that a paid maternity leave scheme will be included in the Federal Budget is an important reform which is welcomed by the Australian Industry Group... The design of the scheme - 18 weeks at the minimum wage paid by the Government - is in

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49. J Gillard, W Swan and J Macklin *Australia's paid parental leave scheme: supporting working Australian families*, joint media release, 10 May 2009: <http://home.deewr.gov.au/Budget/documents/PPLBooklet.pdf>, viewed 26 March 2010. The Productivity Commission's final report, *Paid parental leave: support for parents with newborn children*, Report No. 47, 28 February 2009, was released on 12 May 2009.

line with Ai Group's recommendations. The means testing of paid maternity leave is consistent with the need for fiscal caution and is supported by Ai Group – as too is the delay in its start date which will give time for businesses to prepare and understand the scheme. Superannuation obligations around paid maternity leave had been an issue of concern for employers and it's good that the Government has indicated that employers will not be required to pay superannuation on the Paid Parental Leave entitlements.<sup>50</sup>

Draft PPL legislation to implement this scheme was released by the Government on 4 May 2010.<sup>51</sup>

### Coalition PPL policy in 2010

Federal Opposition Leader Tony Abbott announced a PPL policy on behalf of the Coalition parties on 8 March 2010. The policy aims to provide mothers with a new-born child with 26 weeks PPL at her full wage or salary capped at an income level of \$150,000. A 1.7 per cent levy on the taxable income of 3200 companies paying company tax of more than \$5 million a year would raise \$2.7 billion. According to Mr Abbott:

There would be potential offsetting savings for those (mostly large) businesses that are already paying some parental leave. Such a scheme would provide smaller businesses' employees with a benefit that is funded by larger businesses.<sup>52</sup>

The proposal would fund 26 weeks of paid parental leave for every woman in the workforce immediately before giving birth, at an income of up to \$150,000 pa. Mr Abbott made the following points in the release of the policy:

- for economic and social reasons, the majority of mothers-to-be will be in the workforce and institutional arrangements should evolve to reflect this new social reality.
- every woman who is in the workforce before the birth of her child should have the option of six months' parental leave or of a similar option for her partner
- six months leave was chosen because it was the recommended minimum period for exclusive breastfeeding and because it would give parents and babies time to bond

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50. H Ridout, *Ai Group welcomes Paid Maternity Leave scheme*, media release, 11 May 2009, viewed 2 May 2010, <http://www.aigroup.com.au/>

51. Exposure Draft: Paid Parental Leave Bill 2010, viewed 5 May 2010, [http://www.fahcsia.gov.au/sa/families/progserv/paid\\_parental/Documents/PPL\\_bill\\_2010\\_draft.PDF](http://www.fahcsia.gov.au/sa/families/progserv/paid_parental/Documents/PPL_bill_2010_draft.PDF)

52. T Abbott, 'International Women's Day Address', Sydney, 8 March 2010, [http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/1U3W6/upload\\_binary/1u3w60.pdf;fileType=application/pdf](http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/1U3W6/upload_binary/1u3w60.pdf;fileType=application/pdf), viewed 7 March 2010. Note also Liberal Party of Australia, *The Coalition's direct action plan on paid parental leave*, March 2010, viewed 19 April 2010, <http://www.liberal.org.au/~media/Files/Policies%20and%20Media/Community/Paid%20Parental%20Leave.ashx>

- payments should be set at the carer's salary, capped at a generous amount, because that was the only way to avoid the serious stress on the family budget until both parents can resume working or until adjustments can be made to family finances
- parental leave was as much part and parcel of any decent system of employment entitlements as sick pay, holiday pay and retirement benefits, all of which, one way or another, were mandated by government
- the Howard Government's Baby Bonus removed some of the financial stress on families but it was a government benefit, not an employment benefit
- once an incoming Coalition Government repaid the Rudd Government's economic stimulus debt, it may be then feasible to remove the parental leave levy so that it would only be a temporary increase in tax.<sup>53</sup>

The response by business to the Coalition's proposal has generally been hostile, evident in this statement from the Australian Chamber of Commerce and Industry:

Today's proposal by the Leader of the Opposition to impose a new levy on larger businesses to fund a paid parental leave scheme is an unfair impost which will not be well received by Australian employers. Taxing businesses to fund social policy is double counting given that employers already contribute substantially to Commonwealth revenues.

Doing so for paid parental leave purposes is contrary to independent analysis released by the Productivity Commission which found that schemes such as these should be funded through general revenue given that the primary beneficiaries are the employees concerned rather than their employers. Business will seek further information from the Opposition but will not support a tax on business of this type, nor a bidding war between Government and Opposition at the expense of the business bottom line.<sup>54</sup>

#### International comparisons on paid parental leave.

The OECD released a review of the pros and cons for parental leave as well as the practices pertaining to the provision of such assistance across OECD countries in its seminal report, *Babies and Bosses*.<sup>55</sup> Since then through the OECD Family Database in the OECD Social

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53. Ibid.

54. P Anderson, *Business to oppose parental leave levy*, media release, 8 March 2010, viewed 2 May 2010, <http://www.acci.asn.au/>

55. OECD, *Babies and bosses: reconciling work and family life: Volume 1 Australia, Denmark and the Netherlands*, Paris, OECD, 2002, viewed 26 March 2010, [http://dpl/Books/2002/OECD\\_BabiesBosses.pdf](http://dpl/Books/2002/OECD_BabiesBosses.pdf)

Policy Division's Directorate of Employment, Labour and Social Affairs, updates to the 2002 work have been provided.<sup>56</sup>

In most countries it is up to parents to decide who takes leave and claim income support; in other words PPL is predominantly delivered as government-funded income support. The median period of maternity leave taken (at previous earnings) is about 18 weeks across OECD countries. Maternity leave taken in Australia is shown as about 6 to 7 weeks and recorded, perhaps incorrectly, as unpaid leave (supplemented with employer 'top-ups' as noted below).<sup>57</sup> Some countries, to achieve gender equity objectives (Norway, Iceland and Sweden) have introduced a 'father quota' in parental leave systems. The report also noted that differences in other national child-related policies affect international comparisons of leave systems. These differences include:

- the role of other child payments. For example Australia is one of two OECD countries without paid maternity leave but makes lump-sum payments at childbirth and income-tested family tax benefit payments to families with one earner
- some countries have additional high child benefits to families with very young children or 'home-care payments' to families with very young children who do not use public childcare facilities (Austria, Finland and Norway)
- local governments can provide additional financial support for parents on leave such as the US states of California and New York. In Germany, some jurisdictions make leave payments for a third year above the payments for the first two years provided at Federal level
- employer-provided top-up payments are not accounted for and these can be significant sometimes and vary greatly across the OECD.

#### **Paid Parental Leave in 2011: some scenarios**

Legislation to facilitate the Rudd Government's PPL scheme has been signalled to be introduced to Parliament later in 2010. Inevitably there may be public expectation for the Government to 'match' the Opposition's more generous PPL scheme, possibly in terms of extending the 18 week payment to 26 weeks (at the minimum wage). Such a proposal has been raised by the Australian Greens.<sup>58</sup> The Opposition, on the other hand, has signalled it may not oppose the Government's scheme.<sup>59</sup>

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56. OECD, *Key characteristics of parental leave schemes* (updated as at 29 March 2009), viewed 16 April 2010, <http://www.oecd.org/dataoecd/45/26/37864482.pdf>

57. Ibid., Chart PF7.1.

58. S Hanson-Young, *Six months plus super is the way forward*, media release, 15 March 2010, viewed 7 April 2010, <http://greensmps.org.au/content/media-release/six-months-plus-super-way-forward>. The Australian Greens introduced a Fair Work Amendment (Paid Parental Leave)

One avenue to stretch the 18 weeks PPL scheme, as noted by the Productivity Commission and reinforced by the Government, is to combine employer-based PPL schemes with the Government's incoming legislative scheme:

It will be 18 weeks paid leave at the Federal Minimum Wage and can be taken with schemes set up by employers ...<sup>60</sup>

Under this combined arrangement it may be possible for the primary care giver to access more than 18 weeks PPL, derived from the proposed legislative scheme and from employers in the form of PPL provisions in enterprise agreements or HR/employer policy. One problem potentially facing this strategy is the actual wording of PPL provisions in thousands of agreements or employer policy manuals, some of which for example have made the final week or fortnight's PPL payment conditional on the resumption of duties. Other PPL schemes provide different eligibility criteria to the Government's planned model, such as making PPL accessible once an employee has 2 year's service, in contrast to the Government's planned 10 month service criteria.

As well, there is the interplay of the Baby Bonus with proposed PPL scheme to be considered. Family policy commentator, Peter Apps has argued that there is not a great difference between the proposed PPL scheme and the Baby Bonus for women at or close to the minimum wage, as the Government's proposed PPL scheme replaces the Baby Bonus but PPL is to be taxed and reduces family tax benefits whereas the Baby Bonus payment does not affect these other entitlements:

For these women (on the minimum wage), the net amount of maternity leave is not much more than the Baby Bonus. If they can't afford to take time off now, paid maternity leave won't help.<sup>61</sup>

In other words, female employees may find the Baby Bonus an attractive alternative to the foreshadowed PPL scheme, depending on their income levels. Obviously many choices of

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Bill 2009 to the Australian Senate to provide for 26 weeks paid parental leave at the minimum wage on 13 May 2009. Senate, *Debates*, p. 2640, viewed 2 May 2010, <http://www.aph.gov.au/hansard/senate/dailys/ds130509.pdf>

59. 'Abbott softens line on Labor's PML plan', *Workplace Express*, 11 March 2010.

60. J Macklin, *Paid Parental Leave, Doorstop, Canberra*, media release, 1 April 2010, viewed 9 April 2010, [http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/pp\\_leave\\_1apr10.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/pp_leave_1apr10.htm)

61. P Apps, 'Both sides offer poor value for money', Letter to the Editor, *The Australian Financial Review*, 23 March 2010, viewed 7 April 2010, [http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/T79W6/upload\\_binary/t79w60.pdf;fileType=application/pdf#search=%22peter%20apps%22](http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/T79W6/upload_binary/t79w60.pdf;fileType=application/pdf#search=%22peter%20apps%22)



parents will hinge on the final make-up of the statutory scheme, and its conditions of access but also the relative attractiveness of the Baby Bonus. While some employers, in rare cases, have provided PPL schemes of up to a year, most provide PPL schemes of less than 10 weeks.

While it is very difficult to canvass the full gamut of PPL provisions currently available under a variety of instruments, one study of parental leave provisions by Baird, Frino and Williamson showed that maternity leave was commonly paid at three to 14 weeks in about 42 per cent of the enterprise agreements surveyed. Less than three per cent of agreements contained PML at greater than 14 weeks; indeed 50 per cent of agreements with parental leave provisions in the survey merely incorporated the unpaid statutory scheme. The proportion of agreements with between 12 to 14 weeks PML appear to be boosted by public sector schemes.<sup>62</sup> Thus, it would be not unreasonable to expect private sector businesses that have PPL schemes to seek to re-fashion these to conform with the parameters of the statutory scheme over time, perhaps providing enhancements to the legislated scheme.

Under the possible scenarios of PPL between 18 weeks and 26 weeks at the minimum wage and 26 weeks PPL at replacement wage to \$150,000, employers could re-work their existing PPL schemes in the following ways: With the minimum wage at 18 weeks proposal, (the AP's scheme) employers might apply their existing schemes 'on top' of the 18 week legislated scheme, where this is feasible. Employees entertaining using PPL might seek to access the employer's scheme first and then the legislated scheme as the legislated scheme can be accessed over 52 weeks. The wording of the employer's PPL scheme becomes critical in determining which of the options is appropriate. However, even a major employer such as Qantas, is reported to have concerns that staff seeking PML do not 'double dip'. Qantas provides for 12 weeks PML and one week's paid paternity leave at the employees' ordinary rate of pay (through HR policy and enterprise agreements):

for (Qantas) and other employers who had addressed the (PPL) issue in bargaining, avoiding a 'double dip where this now becomes a safety net entitlement will be a challenge.<sup>63</sup>

Should the proposed legislated scheme be extended to 26 weeks at the minimum wage per the Australian Greens proposal, employers might in due course seek amend their schemes to provide top-up to pay levels only, to at or near replacement wage levels. Those PPL schemes which are employer policy based schemes rather being terms of enterprise agreements could be reconfigured reasonably quickly. Employers will be in effect receiving a subsidy to fund PPL, but also potentially bearing greater costs for replacement staff.

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62. M Baird, B Frino and S Williamson, 'Paid maternity and paternity leave and the emergence of 'equality bargaining' in Australia: an analysis of enterprise agreements, 2003–2007' *Australian Bulletin of Labour*, vol. 35, no. 4, 2009, viewed 16 April 2010, [http://parlinfo.aph.gov.au/parlInfo/download/library/jmart/XW8V6/upload\\_binary/xw8v60.pdf;fileType=application/pdf#search=%22baird,%20marian%22](http://parlinfo.aph.gov.au/parlInfo/download/library/jmart/XW8V6/upload_binary/xw8v60.pdf;fileType=application/pdf#search=%22baird,%20marian%22)

63. 'Tension at heart of Fair Work laws, says Qantas IR head', *Workplace Express*, 23 April 2010.

Should the Coalition's 26 weeks at replacement wage up to \$150,000 come to be implemented, then employers would probably seek to terminate private sector PPL schemes, perhaps replacing these with other schemes to assist with child-care such as working from home where feasible and similar arrangements. Businesses would in effect implement the statutory scheme.<sup>64</sup>

Public sector PPL schemes could be similarly redrafted (with difficulty) to conform to the incoming legislated scheme, presumably matching the higher quantum of leave with the employee's regular rate of pay. If higher PPL entitlements result, it seems doubtful that the Baby Bonus would continue to be paid conjointly with enhanced schemes. By 2011–12 the combined cost of the Baby Bonus with the basic statutory PPL scheme is likely to reach \$2.2 billion.<sup>65</sup>

These scenarios will be revisited in an update to this Background Note, as the evidence of the legislated scheme in place becomes clearer from 2011 and employer responses to the legislated scheme are made known.

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64. Representatives of the AiG, Woolworths, the Business Council of Australia, the ACTU and Human Rights Commission discussed the future of employer-based PPL schemes in the context of the incoming legislated PPL scheme. J Macklin, *Paid parental leave scheme – doorstep*, Transcript, Melbourne, 4 May 2010, viewed 4 May 2010, [http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/ppl\\_scheme\\_4may10.htm](http://www.jennymacklin.fahcsia.gov.au/internet/jennymacklin.nsf/content/ppl_scheme_4may10.htm)
65. Department of Families, Housing, Community Services and Indigenous Affairs, *FaHCSIA Additional Estimates Statements 2009*, op. cit.