

Productivity Commission
SUBMISSION COVER SHEET

Inquiry into Paid Maternity, Paternity and Parental Leave

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The National Pay Equity Coalition proposal

The National Pay Equity Coalition proposes a government funded universal system of paid parental leave for Australian employees. The system would have the following characteristics:

- 26 weeks paid parental leave at replacement income up to Average Weekly Earnings;
- leave to be available to either parent or the mother's same sex partner, or to another employed family member, such as a grandparent, to be the primary carer for the newborn child;
- paid parental leave to be available to adoptive parents on the same basis as biological parents;
- 2 weeks paid paternity leave at replacement income, where the father/other partner is not the primary carer, permitted to be taken concurrently with paid maternity leave being taken by the mother;
- employees in employment for 52 of the last 104 weeks or self-employed in business for 52 of the last 104 weeks, to be entitled to paid parental leave;
- continuing entitlement to the balance of 52 weeks unpaid parental leave, to be available to employees with 52 weeks employment or self-employment out of the previous 104 weeks. The balance of unpaid parental leave to be available for another employed family member, other than a parent, such as a grandparent, to provide primary care to the child;
- employees to continue to have the right to return to the position they held prior to taking leave;
- paid leave to be paid through a central government agency such as the Family Assistance Office;
- existing maternity-related entitlements to continue to women not in the paid workforce;
- public sector employer contributions to paid parental leave to be held constant at least at existing levels;
- existing legal requirements to pay parental leave to continue to be met.

NPEC proposes that the universal paid parental leave system should be complemented by a package of other measures to support parental responsibilities. These would include:

- the right to return from parental leave to quality part-time work;
- the right for either partner to work part-time while the child/children are young;
- the right to paid work breaks for a mother to breastfeed a baby or express breast milk for a breastfed baby, and to suitable private facilities for breastfeeding;
- access to high quality, affordable child care services.

What is NPEC?

The National Pay Equity Coalition this year celebrates twenty years of existence. NPEC was formed to address the issue of unequal earnings for men and women in Australia, over the working week, over the years of workforce participation, and over a lifetime. NPEC is a small group of women academics, researchers, policy workers and political activists. Its activities include publicity, education, lobbying of governments, State and Federal, and regular representations to industrial tribunals and government inquiries on all issues relating to women's earnings and workforce participation.

During its existence, NPEC has devoted considerable energy to a major factor contributing to women's unequal earnings- the historical undervaluation of women's skills in industrial instruments. NPEC has been gratified by some important breakthroughs on this issue whereby this historical undervaluation has been recognised by a number of Australian industrial tribunals. Following this recognition, these industrial tribunals have put in place mechanisms to allow a revaluation of women's work, and significant pay rises have been achieved for some groups of women employees. NPEC has sought and has been granted intervention status in industrial hearings that impact on the valuation of feminised work.

However, NPEC has also been active on issues such as the broad direction of the Federal industrial relations system over time and its impact on women workers, and on matters such as maternity leave, which have a direct impact on women's workforce attachment and income.

NPEC, by definition, concerns itself with the rights of women in paid employment.

Why does NPEC care about paid maternity, paternity and parental leave?

Paid maternity leave, and indeed paid parental leave, is a matter of great interest to the National Pay Equity Coalition. Paid parental leave provides a bridge to

women's continuing participation in paid work and ongoing economic self-sufficiency rather than requiring an ongoing downgrading of standard of living in the short and long term.

Because it has been shown that paid maternity leave increases the chances of a mother returning to work, it is directly relevant to the issue of women's unequal earnings over a lifetime. Paid maternity leave also addresses the issue of skills shortages and the need to keep skilled women in the workforce as a general collective and social good to the economy. Furthermore, paid maternity leave (paid by government) acknowledges the importance of child-bearing and rearing to the economy and the community.

NPEC is also concerned about the impact of a lack of paid parental leave on the health and wellbeing of working women and their families. A number of our members are mothers who have juggled parenting, paid employment and political activism, as either single parents or with partners. We know first-hand of the pressures that parenthood can bring to women. It is out of compassion for the women and families affected that we seek an alteration of the present barbaric arrangements whereby many women are forced to go back to work before they are physically and emotionally ready because they have no financial alternative.

ILO Maternity Protection Convention 183- a starting point

Although NPEC is fully aware that Australia has not ratified ILO Convention 183, and is therefore not bound by it, we believe that the provisions of the Convention, designed to provide an international minimum standard for maternity protection, are a logical starting point for any discussion of parental leave standards for Australia (Attachment 1- *C183 Maternity Protection 2000*).

This Convention was designed to apply to both developed and developing countries, and those who have ratified it since 2000 include countries in both categories.¹

There are a number of provisions in the Convention which are relevant to the community debate on paid parental leave in Australia. The Convention begins with a statement expressing the philosophy that maternity protection is not just a private responsibility or the responsibility of employers alone:

...the circumstances of women workers and the need to provide protection for pregnancy... are the shared responsibility of government and society... (ILO 183, Preamble).

The Convention includes in its scope the protection of women in all forms of employment, including precarious employment:

¹ Albania, Austria, Belarus, Belize, Bulgaria, Cuba, Cyprus, Hungary, Italy, Lithuania, Republic of Moldova, Rumania and Slovakai have ratified the Convention.

This Convention applies to all employed women, including those in atypical forms of dependent work [Article 2 (1) ILO 183].

The Convention provides for a minimum period of maternity leave of 14 weeks (Article 4 (1)), including a period of compulsory leave after childbirth:
With due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organisations of employers and workers [Article 4 (4)].

The Convention provides for leave to be available to the mother beyond the period of maternity leave in case of illness or complications of pregnancy or childbirth (Article 5).

Article 6 of the Convention provides that women who are absent from work on the leave referred to in Articles 4 and 5 are to be paid cash benefits for this period of leave, to an appropriate level:
Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living [Article 6 (2)].

The Convention provides for a recommended level of payment for maternity leave, to be equal or equivalent, on average, to not less than two-thirds of the woman's previous earnings [Article 6 (3) and 6 (4)].

Article 6 also provides that each Member state shall ensure that the conditions to qualify for paid maternity leave shall be designed in such a way that they can be satisfied by the large majority of the women to which the Convention applies (i.e. all employed women) [Article 6 (5)].

The Convention provides that adequate support should be made available to women who do not qualify for paid maternity leave under the Convention through "social assistance funds", that is, through what we would describe in Australia as the social security system.

Article 6 further provides that employers should not be obliged to cover the cost of paid maternity leave, except in specified circumstances, and that payment should be funded by the government or through social insurance:

In order to protect the situation of women in the labour market, benefits in respect of the leave referred to in Articles 4 and 5 shall be provided through compulsory social insurance or public funds...an employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer's specific agreement...except where...it is subsequently agreed at the national level by the government and the representative organisations of employers and workers [Article 6 (8)].

The Convention contains encouragement for member states to consider extending the period of leave referred to in Article 4 (14 weeks) or increasing the amount or the rate of cash benefits referred to in Article 6 (Article 11).

The Convention also provides that, at the conclusion of maternity leave, a woman is to be guaranteed the right to return to her previous position or an equivalent position paid at the same rate of pay [Article 8 (2)]. It also provides for rights in relation to breastfeeding after returning to work:

A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child... These breaks or the reduction in daily hours of work shall be counted as working time and remunerated accordingly (Article 10).

The present position in Australia

Using ILO 183 as a benchmark, we can see that Australia is well below this standard when it comes to providing paid maternity leave as a universal entitlement for all women workers. Australia is also below the standard on a universal right to return to the same or equivalent job after maternity leave, and to the universal right to paid breastfeeding breaks at the place of employment.²

Australia has superior provisions to the Convention in relation to the duration of unpaid parental leave. Australia has a legislated entitlement to 12 months' unpaid parental leave for employees with at least 12 months employment with the same employer, which is an advance on the 14 weeks' maternity leave provided for in the Convention. It also provides for the right for either parent to take the unpaid leave, thus allowing families some flexibility in how they utilise leave around the birth of a baby.

However, in 2006 at least 27% of Australian working mothers and 35% of Australian working fathers were not eligible for this unpaid leave. Their ineligibility resulted from either being self-employed or having not had 12 months' continuous service with the same employer (Whitehouse et al. 2006b, cited in Productivity Commission 2008). Thus it is not a universal entitlement for all workers.

Australia has no provision whatsoever for a universal entitlement to paid parental leave, funded either by the government or a social insurance scheme. Where paid parental leave is available in Australia, it is funded by the individual employer. In 2005, 44% of working women and 35% of working men had access to some paid parental leave as a condition of employment (ABS 2006a, cited in Productivity Commission 2008). However, this availability was not spread evenly

² In discussing comparable provisions in the Australian context, we will use the term parental leave rather than maternity leave, in line with the terminology and concepts regarding comparable provisions in Australia.

across all occupational, industry and working hours indicators. Employees on higher weekly incomes were more likely to have access to paid parental leave; full-time employees were more likely than part-time employees to be entitled to paid parental leave, and in some industries, including the accommodation and food services sector, less than 20% of employees were entitled to any paid parental leave (Productivity Commission 2008).

Where paid parental leave does exist, there is no indication in the ABS data of the duration of such leave, and therefore no indication of whether it meets the ILO standard of 14 weeks paid at two-thirds of previous earnings.

The reality in Australia is that many families cobble together various other forms of paid leave (e.g. annual leave, long service leave) to cover periods of unpaid or inadequately paid parental leave. Even this option is not available to employees without entitlements to these other forms of leave.

Australia has no universal right to paid breastfeeding breaks for women returning to work after parental leave. Personal evidence presented to this Inquiry indicates that in Australia, even where breastfeeding mothers are permitted to express breast milk at work, there is no clear understanding of an entitlement to count a breastfeeding break as paid working time, not to mention the poor provision of suitable private and comfortable facilities for doing so.

NPEC position on ILO Convention 183

NPEC supports the underlying premise of the Convention that maternity protection is a social responsibility rather than a private family responsibility or the responsibility of individual employers. We believe that the social benefits of supporting workers through the period of childbirth and early parenting justify strong social support for these arrangements.

NPEC supports the position that maternity leave should be available to all women employees, including those in “atypical” forms of work. Similarly, we would support paternity leave being available to male employees in atypical work. In the Australian context, this would include casual and seasonal employees. It would also include employees who are employed on successive contracts meaning they can never accumulate 12 months’ continuous service with the same employer (this is common, for example, in the female-dominated community services sector, where government funding is often short term and project based so that employees are repeatedly employed on successive contracts).

NPEC supports the principle that payment for parental leave should be at a level enabling the maintenance of a healthy and decent standard of living. We support the position that parental leave should be paid at the level of at least two-thirds of the woman’s previous earnings, for reasons that will be discussed below. We do not support proposals that suggest that the payment should be at the level of

welfare payments or uniformly at the level of the Federal minimum wage, which in many cases would represent well below two-thirds of the mother's previous earnings.

We know that most Australian families are financially committed up to the level of their usual earnings prior to parental leave. The cost of rent and or housing repayments in the modern Australian economy is such that most families require two incomes to keep a roof over their heads. While some families do manage to save a year's mortgage to cover foregone income while the mother is on unpaid maternity leave, many cannot. Families have to reduce expenditure (at a time when there are extra unavoidable costs) and many go into debt, falling behind on mortgages, using credit card debt, loans from family members, consuming savings and so on. This is undesirable.

NPEC supports the position that, in order to protect the situation of women in the labour market, the costs of paid maternity leave should not be imposed on individual employers. NPEC accepts that many small businesses will not feel able to fund paid maternity leave plus the costs of a replacement employee, and that it may be counter-productive to employment opportunities for women of childbearing age to require them to do so. As Australia does not operate its public health and social welfare systems on the basis of compulsory social insurance schemes, we feel that this means in the Australian context that paid parental leave should be funded by the government.

NPEC supports the right of all employees with a demonstrated attachment to the workforce over time to have the right to return to the position in which they were employed prior to proceeding on parental leave. We do not support this right being limited to those employees who have had 12 months' continuous service with the same employer prior to proceeding on parental leave.

NPEC supports the granting of the breastfeeding provisions of the Convention to breastfeeding mothers returning to the workforce after parental leave.

ILO Convention 183 has been ratified by 13 countries since 2000, and many other countries that have not ratified the Convention provide a universal entitlement to paid parental leave at some level (e.g. Belgium, Sweden, New Zealand, United Kingdom, Japan and Norway). Australia is the only OECD country apart from the USA that does not offer universal paid parental leave at any level.

NPEC believes that it is high time Australia, which has a developed and modern economy, found a way to offer universal paid parental leave, job security and breastfeeding rights to Australian workers who are bearing children and nurturing newborn children.

Features of a universal paid parental leave system for Australia

NPEC believes that a universal system of paid parental leave should be created in a form which is relevant to modern Australian society. We believe this system should reflect at least the minimum standards of ILO 183. We believe that in some matters it should provide better provisions, to respond to current Australian social and economic realities, to improve women's lifetime earnings, and to provide for the health and well-being of parents, carers and children.

How much paid leave?

NPEC recommends that paid parental leave should be for 26 weeks after the birth of the child.

Many countries provide universal paid maternity or parental leave for periods of well over 26 weeks. For example, Sweden offers a parental benefit of 420 days, with a further 60 days available to the primary carer's partner; Norway offers 44 weeks at 100% of earnings or 54 weeks at 80% of earnings (Productivity Commission 2008).

A scheme providing 26 weeks' paid parental leave would support the mother breastfeeding for the first six months, in line with the World Health Organisation's recommendation the infants should be exclusively breastfed for the first six months of life. There are well-documented health benefits for the baby in breastfeeding. Breastfeeding also has emotional benefits for mother and baby, as it promotes bonding and a secure attachment to the mother. NPEC supports a system where no mother is forced to abandon breastfeeding prior to six months in order to return to work due to financial pressures.

Providing for 26 weeks paid leave also takes into account the health needs of the mother, both physical and mental. Mothers need time to recover physically from childbirth, and in recent times, with the increasing incidence of Caesarean births, many mothers need time to recover from this form of surgery, and any complications that may arise from it. The early months of a child's life are characterised by broken sleep, while sleeping and feeding routines are established, and most mothers experience extreme fatigue at this time. Furthermore, 10 to 15 percent of new mothers experience postnatal depression. It is bordering on barbaric to expect women to return to work because of financial pressures in these circumstances.

Where the mother does stay at home with the baby in the absence of paid maternity leave, many Australian families cope without the mother's income by the father increasing his hours of paid work. This in turn puts extra pressure on the whole family:

Working longer hours has a deleterious effect on the father's ability to adapt to fatherhood, to bond with his child, and to provide emotional support and household assistance to his partner at a particularly stressful time for all members of the family (HREOC, 2002).

Removing the financial pressure on parents to return to work prior to 26 weeks also enables the child to be kept in a familiar home environment at least until the age of 6 months. Many parents are not comfortable with the idea of placing a very small baby in child care, and parents should not be forced to do so because of financial pressures.

Should the paid parental leave be transferable between the mother and others?

Notwithstanding the health benefits to the mother of 26 weeks' paid maternity leave, NPEC believes that the paid leave should be available as parental leave, to be taken by either parent, or by the mother's same sex partner. It may best suit some families for the father/partner to take paid leave to provide care for the baby and for the mother to return to paid work. For some mothers breastfeeding is not possible. In some families the mother may earn more than the other parent/partner and therefore household welfare is maximised by her return to work. Paid and unpaid leave for fathers also addresses the issue of gender equity in parenting and in modifying workforce participation due to caring responsibilities.

The existing legislated unpaid parental leave provisions do in effect generally provide for transferability of leave by allowing either parent to take the leave to be the primary care-giver, and this should be maintained for paid leave. We believe, however, that transferability of both paid and unpaid parental leave should not be limited to the father of the child, but should also be available to a same sex partner of the mother, or to any working relative of the baby (such as a grandmother) who takes on the day to day care of the child. It may well be that a grandparent, for example, is in a better position to take time out from a career at their stage of life than the younger parents of a newborn child. The pressure of high rents and mortgages may make it essential for both parents to maintain their previous salaries in their entirety and to remain on the career track without interruption. A grandmother, for example, may have lower mortgage repayments and less pressure to avoid work interruptions, and thus be better able to manage on paid parental leave at a rate which may not fully replace her usual income.

The benefits of keeping a baby in its home environment for at least 6 months are equally present whether the primary carer is the mother, father, other partner of the mother or other relative at home on paid leave. Furthermore, if one person is financially supported to stay home with the baby for 6 months, at least that person is not juggling sleep deprivation with having to go to work at this time. If the mother has returned to work while still breastfeeding, the father/ partner/ relative on paid leave may well be able to bring the child to the mother during working hours for breastfeeding, thus allowing breastfeeding to continue and maintaining the physical and emotional benefits for mother and baby.

We believe families should be able to make the decision as to who is the best person to remain at home with the baby.

Who should be eligible for paid parental leave?

At present in Australia, an employee is ineligible for statutory unpaid parental leave if she or he has not had 12 months' continuous employment with the same employer prior to the expected date of birth of the child. As referred to above, this disadvantages employees in short-term casual jobs, seasonal workers and workers on a series of fixed-term contracts, as well as the self-employed.

NPEC recommends that both paid and unpaid parental leave should be available to all parents with regular attachment to the workforce. So as not to disadvantage employees with broken service, we believe both paid and unpaid parental leave should be available to employees who have worked, or been operating a business, for a total of 12 months out of the 24 months prior to the expected date of birth of the child.

Maintaining some requirement for service would discourage non-working women from commencing short-term employment while pregnant in order to become eligible for the paid leave.

How should paid parental leave be funded?

NPEC recommends that the paid parental leave scheme should be funded entirely by the federal government from consolidated revenue.

NPEC supports the position of the ILO Convention that individual employers should not be required to fund paid parental leave. This is because we consider it likely that small businesses, of which there are 1.9 million in Australia, may find it difficult to pay 26 weeks' leave while also meeting the cost of a replacement employee. Despite the existence of anti-discrimination legislation in Australia, we believe that if the responsibility for paid leave were imposed on small employers, it is likely that they would discriminate against women of child-bearing age when hiring employees.

A social insurance scheme covering paid maternity leave such as exists in the UK covers many other benefits (including retirement pensions and job seeking allowances). It includes government, employee and employer contributions. Employees pay a substantial levy, and the employer contribution required is substantial, and so are the administrative and compliance costs. It would be a huge and expensive exercise to introduce in Australia a social insurance system to fund the relatively modest costs of a paid parental leave scheme.

There are other more compelling reasons why paid parental leave should be funded by the government. We see it as a very clear example of something that justifies a broadly based community contribution. It is a good example of an area

of social policy where a small investment yields very high economic and social returns. There are benefits that arise from the availability of paid parental leave that require a different funding basis to other employment entitlements. Parental leave has a significant broader and intergenerational benefit to the community generally and to the national economy. Undoubtedly there are employment benefits, in maintaining quality labour supply. There are also broader issues at stake including securing a better economic base for women during and after their working lives and making better use of women's educational investments. On the basis that the benefits of the paid parental leave are more broadly applied and used, it is appropriate for the contribution base to be broader than employers alone.

We note that the New Zealand system of paid parental leave is fully funded by the government (Productivity Commission 2008).

What should be the rate of payment for paid parental leave?

NPEC recommends that payment for paid parental leave should be at full income replacement up to the level of Average Weekly Earnings (Persons). A scheme with a cap at average weekly earnings so that full income replacement is provided for women earning below average weekly earnings and those who earn more are paid at average weekly earnings would provide income replacement for around 75% of women and would provide some benefit to those who earn more in recognition of the drop in their and their household earnings. A scheme capped at minimum wage would provide income replacement for a minority of women, an outcome that does not support recognition of maternity as a part of working life rather than as an alternative to it. The scheme proposed by NPEC is better placed to meet the social and economic objectives of paid maternity leave. It also recognises the considerable discrepancy between the federal minimum wage and average weekly earnings.

The objective in a paid leave scheme should be to ensure that it provides the most appropriate result for the largest proportion of women. Such an objective should be linked to satisfaction of Convention 183. The rationale for the level of two-thirds of previous weekly earnings set by the Convention is to provide continuity in the woman's standard of living. The relevant reference point here is the woman's own previous earnings.

Basing the payment on Average Weekly Earnings (persons) ensures that a greater proportion of women/ primary carers would achieve at least the level of two-thirds of the women's previous earnings than would basing the payment on the federal minimum wage (NPEC 2002)

Should both parents/partners be able to take parental leave at the same time?

There are strong arguments in favour of providing a period of paid parental leave for partners of women giving birth. Women now stay in hospital for quite brief periods after birth and do require care in the immediate post-birth period. There are many household accommodations to be made particularly in relation to establishing breastfeeding and sleeping routines, baby-care and looking after other family members.

If the mother is to be the primary leave taker, we believe there should be a period of concurrent paid leave available to the father/same sex partner. We recommend that this be for two weeks on full pay at the time of the birth.

Men's earnings are higher than women's and so the cost of the two week paid parental leave would be higher than two weeks' paid leave for the mother. However the take-up rate for the two-week period of leave could be expected to be high but less than 100%.

Should parents other than birth parents be eligible for the proposed parental leave scheme?

NPEC believes that all parents, including adoptive parents, should be entitled to the benefits of the proposed scheme. Adoptive parents are already eligible for the legislated minimum of 12 months' unpaid parental leave, and have the right to share such leave. Making the scheme available to adoptive parents acknowledges that they experience much the same responsibilities as birth parents in the early period after placement of a child.

Other measures needed to support working parents

In order to realise the full social and economic benefits of a paid parental leave scheme, it is also necessary to provide other measures to support the family responsibilities of working parents. These include providing employees with the right to return from parental leave to quality part-time work, the right for either partner to work part-time while the child/children are young, and measures to support breastfeeding at work in accordance with the provisions of ILO Convention 183. Providing access to affordable and high quality child care arrangements is also a vital ingredient in the mix of measures needed.

- **Access to part-time work**

The right to return from parental leave to quality part-time work is relevant to women's career progression and therefore income over a lifetime, including superannuation contributions. It also provides a significant framework to help women reconcile work and career needs with family responsibilities. Availability of part-time return lessens the impact on mother and child of fulltime childcare. By ensuring additional household income it lessens the likelihood that the woman's partner will increase working hours to compensate for the loss of her

income, and thus helps to ensure participation by both parents in the parenting process.

Women returning from maternity or adoption leave should have an entitlement to request to work part-time until the child reaches school age. Where at all possible, part-time return should be to the same substantive position occupied prior to the commencement of the leave, to minimise disruption to the woman's career progression. Employers should be obliged to consider the request, and should only be able to refuse on reasonable grounds related to the effect on the workplace or the employer's business. Reasonable grounds might include cost, lack of adequate replacement staff, loss of efficiency or impact on customer service.

Where the employer refuses a request for part-time return to work, it should be a requirement that the refusal be conveyed in writing giving reasons. If an employer agrees to part-time return, but to another position, the employer should provide reasons why the woman's own job is not suitable for part-time work, and the part-time position made available should be equivalent in pay and status to the woman's own job.

These measures would act to ensure that employers give proper consideration of whether work can be done part-time, and should lessen the likelihood that women returning to work part-time are sidelined into dead-end jobs and are denied career progression because of their family responsibilities.

The option for quality part-time work while the child is young should equally be available to the father of the child or other partner of the mother, where this is more suitable to the family's circumstances.

Universal entitlement to paid breastfeeding breaks and appropriate facilities

There should be a universal entitlement to adequate breastfeeding breaks for women returning to work after maternity leave to enable them to either feed the child or express milk. As per ILO Convention 183 Article 10, the breaks should be considered as part of paid work time. Employers should also be required to provide appropriate facilities – at a minimum, availability of private space for the period of the breastfeeding or lactation break and secure separate refrigerated storage for expressed milk.

We believe that such arrangements, which would not constitute a heavy impost on employers, would play a significant role in ensuring that women returning to work are able to breastfeed their babies, thus enhancing the health of both mother and child.

Desired outcomes of the NPEC proposal

We believe that the introduction in Australia of a universal scheme of paid parental leave and associated provisions to support working parents will have many social and economic benefits.

Benefits will include:

- improved physical and emotional health outcomes for the mother and child;
- improved family economic security around the time of the birth of a child;
- greater equity between men and women in the workplace through enhanced maternal workforce attachment;
- increased likelihood of women's return to work after maternity leave, thus improving women's lifelong earnings, opportunities for career progression and contributions to retirement savings; and
- improved long-term productivity through retention of skilled workers and realisation of employer and community investment in the education and training of women.

Attachment One

ILO C183 Maternity Protection Convention, 2000

The General Conference of the International Labour Organization,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 88th Session on 30 May 2000, and

Noting the need to revise the Maternity Protection Convention (Revised), 1952, and the Maternity Protection Recommendation, 1952, in order to further promote equality of all women in the workforce and the health and safety of the mother and child, and in order to recognize the diversity in economic and social development of Members, as well as the diversity of enterprises, and the development of the protection of maternity in national law and practice, and

Noting the provisions of the Universal Declaration of Human Rights (1948), the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979), the United Nations Convention on the Rights of the Child (1989), the Beijing Declaration and Platform for Action (1995), the International Labour Organization's Declaration on Equality of Opportunity and Treatment for Women Workers (1975), the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998), as well as the international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, in particular the Convention concerning Workers with Family Responsibilities, 1981, and

Taking into account the circumstances of women workers and the need to provide protection for pregnancy, which are the shared responsibility of government and society, and

Having decided upon the adoption of certain proposals with regard to the revision of the Maternity Protection Convention (Revised), 1952, and Recommendation, 1952, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this fifteenth day of June of the year two thousand the following Convention, which may be cited as the Maternity Protection Convention, 2000.

SCOPE

Article 1

For the purposes of this Convention, the term **woman** applies to any female person without discrimination whatsoever and the term **child** applies to any child without discrimination whatsoever.

Article 2

1. This Convention applies to all employed women, including those in atypical forms of dependent work.
2. However, each Member which ratifies this Convention may, after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from the scope of the Convention limited categories of workers when its application to them would raise special problems of a substantial nature.
3. Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, list the categories of workers thus excluded and the reasons for their exclusion. In its subsequent reports, the Member shall describe the measures taken with a view to progressively extending the provisions of the Convention to these categories.

HEALTH PROTECTION

Article 3

Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child.

MATERNITY LEAVE

Article 4

1. On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks.
2. The length of the period of leave referred to above shall be specified by each Member in a declaration accompanying its ratification of this Convention.

3. Each Member may subsequently deposit with the Director-General of the International Labour Office a further declaration extending the period of maternity leave.

4. With due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers.

5. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leave.

LEAVE IN CASE OF ILLNESS OR COMPLICATIONS

Article 5

On production of a medical certificate, leave shall be provided before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. The nature and the maximum duration of such leave may be specified in accordance with national law and practice.

BENEFITS

Article 6

1. Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leave referred to in Articles 4 or 5.

2. Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.

3. Where, under national law or practice, cash benefits paid with respect to leave referred to in Article 4 are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.

4. Where, under national law or practice, other methods are used to determine the cash benefits paid with respect to leave referred to in Article 4, the amount of such benefits shall be comparable to the amount resulting on average from the application of the preceding paragraph.

5. Each Member shall ensure that the conditions to qualify for cash benefits can be satisfied by a large majority of the women to whom this Convention applies.

6. Where a woman does not meet the conditions to qualify for cash benefits under national laws and regulations or in any other manner consistent with national practice, she shall be entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance.

7. Medical benefits shall be provided for the woman and her child in accordance with national laws and regulations or in any other manner consistent with national practice. Medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.

8. In order to protect the situation of women in the labour market, benefits in respect of the leave referred to in Articles 4 and 5 shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. An employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer's specific agreement except where:

(a) such is provided for in national law or practice in a member State prior to the date of adoption of this Convention by the International Labour Conference; or

(b) it is subsequently agreed at the national level by the government and the representative organizations of employers and workers.

Article 7

1. A Member whose economy and social security system are insufficiently developed shall be deemed to be in compliance with Article 6, paragraphs 3 and 4, if cash benefits are provided at a rate no lower than a rate payable for sickness or temporary disability in accordance with national laws and regulations.

2. A Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of this Convention under article 22 of the Constitution of the International Labour Organization, explain the reasons therefor and indicate the rate at which cash benefits are provided. In its subsequent reports, the Member shall describe the measures taken with a view to progressively raising the rate of benefits.

EMPLOYMENT PROTECTION AND NON-DISCRIMINATION

Article 8

1. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during

a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.

2. A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

Article 9

1. Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including - notwithstanding Article 2, paragraph 1 - access to employment.

2. Measures referred to in the preceding paragraph shall include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment, except where required by national laws or regulations in respect of work that is:

(a) prohibited or restricted for pregnant or nursing women under national laws or regulations; or

(b) where there is a recognized or significant risk to the health of the woman and child.

BREASTFEEDING MOTHERS

Article 10

1. A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.

2. The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.

PERIODIC REVIEW

Article 11

Each Member shall examine periodically, in consultation with the representative organizations of employers and workers, the appropriateness of extending the

period of leave referred to in Article 4 or of increasing the amount or the rate of the cash benefits referred to in Article 6.

IMPLEMENTATION

Article 12

This Convention shall be implemented by means of laws or regulations, except in so far as effect is given to it by other means such as collective agreements, arbitration awards, court decisions, or in any other manner consistent with national practice.

FINAL PROVISIONS

Article 13

This Convention revises the Maternity Protection Convention (Revised), 1952.

Article 14

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 15

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force 12 months after the date on which the ratifications of two Members have been registered with the Director-General. 3. Thereafter, this Convention shall come into force for any Member 12 months after the date on which its ratification has been registered.

Article 16

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may

denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 17

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and acts of denunciation communicated by the Members of the Organization.
2. When notifying the Members of the Organization of the registration of the second ratification, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention shall come into force.

Article 18

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations, for registration in accordance with article 102 of the Charter of the United Nations, full particulars of all ratifications and acts of denunciation registered by the Director-General in accordance with the provisions of the preceding Articles.

Article 19

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 20

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
 - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 21

The English and French versions of the text of this Convention are equally authoritative.

References

ABS, 2005, *Pregnancy and Employment Transitions, Australia*, cat. No. 4913.0

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