Submission

To the Sex Discrimination Unit
Human Rights and Equal Opportunity Commission

on

‘Valuing Parenthood – Options for Paid Maternity Leave: Interim Paper 2002’

by the
Community and Public Sector Union (PSU Group)

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**Introduction**

The CPSU (PSU group) is pleased to have the opportunity to contribute to the current debate on options for paid maternity leave.

The focus of our submission is based on our experience of the administration of the *Maternity Leave (Commonwealth Employees) Act 1973*, together with initiatives gained under the current industrial framework under our areas of coverage in both public and private sectors. We have also sought to identify issues arising from proposals for the extension of a universal paid maternity scheme in Australia.

It is not our intention to respond in detail to all of the issues raised in the HREOC interim discussion paper 2002.

In an additional submission, the CPSU’s, Commonwealth Scientific and Industrial Research Organisation (CSIRO) Staff Association, has presented the experience of our members with maternity at work in CSIRO. We also note that the CPSU (SPSF group) has also contributed a submission that addresses issues pertaining to the State public sector.

As an affiliate of the Australian Council of Trade Unions, we endorse the position adopted in its submission to the interim discussion paper.

**Summary of Recommendations**

1. Where employees are currently entitled to paid maternity leave, they should continue to receive full payment.

2. The Commonwealth continue to provide a legislated right to Paid Maternity Leave at least at current levels of entitlement.
3. The Commonwealth, ACT and Northern Territory governments improve the current entitlement of 12 weeks paid leave to a minimum of 14 weeks.

4. Transitional arrangements to any new universal paid maternity leave scheme address the needs of all Commonwealth, ACT and Northern Territory government employees currently excluded from entitlements under the *Maternity Leave (Commonwealth Employees) Act 1973*.

5. The Commonwealth to undertake a review of current policy in relation to transmission of business, outsourcing and privatisation of public sector agencies, statutory authorities and government business enterprises such as Medibank Private and Telstra, to ensure access to paid maternity leave as currently provided under the *Maternity Leave (Commonwealth Employees) Act 1973* is retained.

6. That any consequential examination or adjustment to State and Territory grants as part of the process of introducing a universal paid maternity leave scheme should ensure no detriment to ACT and Northern Territory public sector employees entitlements under the *Maternity (Commonwealth Employees) Act 1973* and the capacity of their respective governments to fully fund 100% income replacement.

7. Support for the ACTU paid maternity leave model for a general government funded scheme and employer levy as outlined in its submission to the HREOC interim discussion paper.

**CPSU (PSU group) coverage**

CPSU is a federal union with regions and sections in each State and Territory.

CPSU (PSU Group)'s coverage is predominantly in the Federal public sector, but also includes ACT and NT Governments, and public and private sector employers in the communications, aviation, broadcasting and pharmaceutical industries.
Our members include people doing work in the areas of administration, sales, engineering, communications, information technology, technical, scientific research, broadcasting, and many others.

Our major employers include:

- Australian Public Service agencies such as Centrelink, Defence, Customs, Immigration, the Australian Protective Service and the Tax Office.
- Statutory authorities such as CSIRO, the ABC, and Health Insurance Commission.
- Government Business Enterprises such as Telstra, Australia Post, Air Services and Medibank Private.
- ACT and NT Government Departments and authorities.
- Private sector companies such as CSL Ltd, Ten Network, Seven Network, Pacific Access, Qantas, and Sydney Airport.

CPSU membership reflects the diversity of professional, technical, managerial, administrative and general occupations associated with this range of public and private sector employment.

CPSU is very active in representing the industrial interests of our members under the Workplace Relations Act 1996. Our union is party to over 100 Federal awards and nearly 200 current certified agreements.

CPSU Offices are located in every capital city as well as Newcastle and Lismore.

**History and coverage of the Maternity Leave (Commonwealth Employees) Act 1973**

The CPSU is proud of its history of support for paid maternity leave and our role in successfully campaigning for paid maternity leave which resulted in Commonwealth employees being given access to 12 weeks paid leave in 1973.

The responsible Minister, Mr Clyde Cameron, in his second reading speech introducing the *Maternity Leave (Commonwealth Employees) Act 1973*, to Federal
Parliament on 24 May 1973, made it clear the Labor government of the day recognised, “that it has a role and responsibility, as Australia’s largest employer, in promoting the status of women”. Mr Cameron went on to claim that the effect of the bill would be to enable female employees to be mothers and to continue their career, as well as “help women endeavouring to pursue their careers on the same terms as men.”

The introduction of this legislation was even more groundbreaking when considered in the light of the fact that the marriage bar affecting Commonwealth female public servants had only been removed in 1966. Thus female employees in the Australian Public Service had moved from having access only to temporary employment once they married, to being encouraged to contemplate a ‘career’ and to be mothers at the same time. Thus the introduction of the entitlement to paid maternity leave was a work-related entitlement and one which remains in force to this day.

The CPSU supports the maintenance of paid maternity leave as a work-related entitlement.

**Coverage and application**

It is now thirty years since the introduction of paid maternity leave in the Commonwealth Public Sector. Negotiations by the CPSU at the granting of self government to both the Northern Territory (1978) and the Australian Capital Territory (1988), ensured that the subsequent transitional arrangements included extension of paid maternity leave under the *Maternity Leave (Commonwealth Employees) Act 1973* to these sectors. Both Territory jurisdictions retain a linked entitlement to the Commonwealth Act to the present day.

The application of the *Maternity Leave (Commonwealth Employees) Act 1973* is quite extensive. It not only covers Commonwealth employees in the Australian Public Service, a number of Government Business Enterprises (eg Australia Post, Telstra and Medibank Private), Statutory Authorities and Corporations (eg Australian Broadcasting Commission), as well as both Territory public services.
As cited in the HREOC ‘Valuing Parenthood’ discussion paper (Page 22), available statistics indicate there is a calculated take up rate of about 3.3 percent of paid maternity leave by female employees across the Commonwealth sector. The CPSU cannot supply any additional data, but believes there would be no reason to assume that the take up rate of the entitlement in the ACT and the Northern Territory would be substantially different.

**Industrial Instruments**

Parental Leave, including maternity and adoption leave, is an allowable matter specified at S89A (2) (h) of the Workplace Relations Act 1996.

The Australian Industrial Relations Commission (AIRC) has established a Parental Leave Test Case Clause (Print Q5596, 15/9/98) which it has varied by the addition of clauses dealing with rights for Casual and Labour Hire workers (PR904631, 31/5/01). Relevantly, the Australian Public Service Award 1998 contains Maternity and Parental Leave provisions that are based on the existing applicable entitlements.

Existing paternity and adoption leave entitlements are contained in the relevant regulations of the Workplace Relations Act 1996.

**Access, part time work and industrial bargaining**

Access to maternity leave for employees entitled under the *Maternity Leave (Commonwealth Employees) Act 1973* does not appear to be problematic. However, there is stronger evidence relating to issues surrounding return to work and access to part time employment.

The CPSU has for many years represented women returning to work from maternity leave wishing to negotiate suitable employment options. At times these matters have become serious industrial matters and the union has taken unresolved matters before the Australian Industrial Relations Commission. (For some recent decisions see C2002/1943 and C2002/2562)
In more recent times, CPSU workplace bargaining teams have also begun to successfully negotiate relevant clauses in Agency Certified Agreements which specify that part time work is automatically available for a period of two years from the birth. (eg Refugee Review Tribunal Workplace Agreement 2002). For a more detailed outline of recent bargaining developments see Certified Agreement initiatives pages 11-15.

Although many Agency Certified Agreements displace the Australian Public Service Award 1998, it is worth noting that the Award builds on the Maternity Leave legislation by, among other things, providing for an entitlement to return to part-time work. (Clause 29.5).

Feedback from recent regional seminars held in conjunction with the current HREOC options paper, also indicate that many women decided on their length of leave from work, based on the availability of suitable quality care for their child. It is clear from this pattern of responses that there is a direct link in public policy terms between the availability of suitable, quality child care and working mothers decisions in relation to their return to work.

**Employment framework changes in the public sector**

Since the introduction of the Act in 1973, a number of structural and policy changes have occurred in public sector jurisdictions which have changed the nature of work, the employment framework and the size and structure of many departments. They include:

- Large agencies (eg Post Master General’s, Commonwealth Employment Service, Department of Administrative Services) have been abolished and government business enterprises and statutory authorities and corporations (eg Australia Post, Telstra, Australian Broadcasting Commission, Medibank Private) have been created;

- A large service delivery agency with over 25,000 employees, (Centrelink) which has a very high proportion of female employees (around 75%) and which contracts to other government departments was created in 1997;
• The industrial framework and associated policy parameters in the Commonwealth public sector have changed dramatically;

• There has been an aggressive agenda to contract out public sector work;

• A number of transmission cases have been tested at law, where in the instance of Employment National, the entitlement to paid maternity leave was lost (see page 10 for a detailed summary);

• The Job Network has been created which effectively replaced the Commonwealth Employment Service with employees in the new ‘industry’ not entitled to paid maternity leave;

• The Commonwealth public sector has shed over 100,000 jobs since 1996;

• Technological change has seen a dramatic change in the duties of public servants and a consequent and ongoing reduction in both the number and classification levels of employees. Many of these jobs, were where significant numbers of female employees were located in both metropolitan and regional Australia;

The Australian Public Service today

While women are still concentrated in the lower classification levels of the Australian Public Service (APS), the proportion of women employees has steadily risen over the past ten years, with women for the first time now overtaking men, having reached 51.4% at June 2001 (APS Statistical bulletin 2000-01)

In addition, the Public Service and Merit Protection Commissioner noted in the State of the Service Report (2000-01) that, “the steady increase in the representation of women means that agencies may need to pay particular attention to the career and workplace interests of women if they are to retain an increasing number of this group.”
• The median age of ongoing female engagements to the APS is 31 years.

• The median length of service for ongoing APS employees is ten years, with the average length of service for women being eight years at 30 June, 2001.

Thus the former strong focus in the public sector of a life long career, is rapidly changing under current government policy direction for both male and female employees.

There are clearly longer-term implications for female employees in the public sector and their capacity to combine a career with motherhood and parenting in a context where employment in the sector in the future may be of a much shorter duration.

There are also unmistakable trends towards contract and fixed term employment which would also diminish female employees access to entitlements under the 1973 paid maternity leave Act.

Indeed, the various forms of non-ongoing employment not only minimise access to current legislated benefits, but may also act as a disincentive to family formation. (For a more developed discussion of these issues see our separate CSIRO Staff Association submission).

• The Public Service Act 1999 simplified arrangements for the employment of non-ongoing staff that enables agencies to engage non-ongoing employees for a specific term or the duration of specified task.

There has been a dramatic rise in the use of labour hire, temporary and casual employment in the public sector, both at a Commonwealth and Territory level.
Employment National and the loss of entitlement to paid maternity leave

The creation of Employment National in 1998 resulted in lengthy litigation concerning terms and conditions of employment. One of those terms and conditions was paid maternity leave.

Employees transferring from the old Commonwealth Employment Service (CES) who were permanent APS employees were given a guarantee by the Government that they would retain their paid maternity leave entitlement. Employment National did not want to make this condition available to “new” employees recruited from outside the old CES.

In the award making proceedings before the Full Bench, Employment National argued that paid maternity leave was a condition particular to the APS and had limited application to private sector employers. More particularly, it was not a condition paid by Job Network providers, with whom Employment National were competing. The competitive nature of the industry, based primarily on tender contracts, meant that Employment National would be singularly disadvantaged compared to its competitors if it had to provide any condition, including paid maternity leave, that wasn’t provided by competitor employers.

Arguments were put by the CPSU as to the market share already granted to Employment National, the dominance among staff of persons who were entitled to paid maternity leave given they transferred from the CES, and the unique position of Employment National given its 100% Government shareholding. Submissions on paid maternity leave generally were also put by various organisations (Women’s Electoral Lobby etc).

The Full Bench ultimately handed down an award that did not contain paid maternity leave. They agreed with the submissions as to the commercial nature of Employment National, and that conditions in the APS were peculiar to the circumstances existing in the APS. Their conclusions on paid maternity leave were:
“Another example relates to the leave provisions in the APSA for maternity leave. The present provision provides for an entitlement to a maximum of 52 weeks' leave of which the employee has an entitlement to up to 12 weeks' paid leave. This paid entitlement is not provided for in the Commission's test case standard for such leave. The APSA maternity leave provisions were wholly derived from legislation.”

It would be unfair they said to impose such conditions on an agency operating in a different environment.

As a result, old CES staff retained paid maternity leave through a term in their AWA. The model AWA for non-CES staff contained no such clause. To the knowledge of the CPSU, no female employee from outside CES employment received paid maternity leave as part of her conditions of employment with Employment National.

This case highlights some of the employment issues that arise in the context of public sector outsourcing and contracting out together with policy in relation to transmission of business.

It also throws into relief the situation of thousands of female employees in both Telstra and Medibank Private who currently have access to twelve weeks paid maternity leave under the Maternity Leave (Commonwealth Employees) Act 1973. These employees, under current government policy, and in the absence of any alternative arrangements, may lose access to this entitlement. It is pertinent to note that in the Telstra (Transition to Full Private Ownership) Bill 1998, Schedule 3 itemised a list of amendments which included repealing access to the Maternity Leave (Commonwealth Employees) regulations.

**Recommendation:**

The Commonwealth to undertake a review of current policy in relation to transmission of business, outsourcing and privatisation of public sector agencies, statutory authorities and government business enterprises such as Medibank Private
and Telstra to ensure access to paid maternity leave as currently provided under the *Maternity Leave (Commonwealth Employees) Act 1973* is retained.

**Certified Agreement initiatives**

CPSU workplace bargaining teams have recently been successful in setting new standards in Certified Agreement negotiations in relation to maternity and paternity leave. 2002 is a major bargaining year within the Australian Public Service in the cycle now established under the *Workplace Relations Act 1996*.

Building on family friendly initiatives sponsored by the CPSU in previous bargaining rounds, (especially the capacity to pool personal leave and establish the capacity to buy back leave) we are now achieving in both the public and private sector additional benefits for both maternity and paternity leave.

Gains include taking the current 12 weeks paid maternity leave and extending it to the international standard of **14 weeks** as well as a variety of paternity leave options for working fathers (eg 4 weeks paid leave for non-primary carers after birth or adoption in Family and Community Services).

In the commercial television sector, a CPSU workplace bargaining team successfully secured an industry first with agreement on the provision of **six weeks paid maternity leave** in the *Network Ten* Enterprise Agreement. Since that agreement we have extended the initiative by successfully negotiating similar entitlements with Seven Network and Capital Television.

**Details of recent Certified Agreement bargaining outcomes on maternity and paternity leave**


- Two weeks paid leave in addition to the 12 weeks paid leave provided under the *Maternity Leave (Commonwealth Employees) Act 1973*.
- Paid leave may be taken at half pay
- Two weeks paid parental leave
• For employees returning to work from a period of maternity leave, part time work is automatically available for a period of two years from the birth.

• 12 weeks paid maternity leave
• 1 week paid paternity leave

AWM (Australian War Memorial) Teamwork Agreement - 2002-2004 (19 June 2002)
• 12 weeks paid maternity leave
• Up to 4 weeks paternity leave from personal leave credits

• 12 weeks paid maternity leave
• 3 days per confinement paternity leave from personal leave credits, more at discretion of Director- General

Network Ten Staff Enterprise Agreement 2002 (4 June 2002)
• 6 weeks paid maternity leave (The clause requiring this leave to be re-paid if the parent does not return to work at Channel 10 has been favourably modified in the latest agreement)
• 1 week paid paternity leave

• 12 weeks paid maternity leave
• 3 weeks paid paternity leave

Department of Transport and Regional Services (13 May 2002)
• 12 weeks paid maternity leave
• "Personal circumstances leave" of 25 days full pay per annum which replaces the traditional sick/carers/emergency leave provisions and can be used, among other things, for leave when "becoming a new parent"

• 12 weeks paid maternity leave plus 2 additional weeks on return from paid leave
• 2 weeks paid paternity leave
• request for part time work from an employee returning from a period of maternity leave or paternity leave will not be refused and will be approved by the principal member or delegate for a period of at least 12 months.

Sydney Symphony Orchestra (Corporate Staff) Agreement 2002 (23 April 2002)
• 12 weeks paid maternity leave
• 12 weeks paid paternity leave if primary carer

Family and Community Services Certified Agreement 2002 - 2005 (10 April 2002)
• 12 weeks paid maternity leave
• 4 weeks paid paternity leave (from personal leave credit of 20 days full pay per annum)

Defence Employees Certified Agreement 2002 -2003 (26 February 2002)
• 12 weeks paid maternity leave
• 1 week paid paternity leave

Pacific Access Employment Partnership Agreement No. 2, 2001
• 6 weeks paid maternity leave on full pay or 12 weeks paid maternity leave on half pay
• 1 week paid paternity leave on full pay or 2 weeks paid paternity leave on half pay

National Native Title Tribunal Certified Agreement 2000 - 2003
• 12 weeks paid maternity leave
• 1 week paid paternity leave

Capital Television (Southern NSW) Certified Agreement 2000
• An employee returning from parental leave may elect to return to part time employment for a period of up to 12 months

Seven Network (Operations) Limited Enterprise Agreement 2000
• The first 6 weeks maternity leave taken by an employee giving birth is paid leave
• Supportive parent can access one week's paid carer's leave.

Source: CPSU (PSU Group) National Management Committee - Rule 2.10d decisions

Enterprise bargaining and paid maternity leave

The current 1973 based Act has provided many thousands of women with access to paid maternity leave for close to thirty years. More recently, under enterprise bargaining the CPSU has been able to make some significant improvements to aspects of both maternity and paternity leave.

In relation to private sector coverage however, CPSU workplace bargaining teams have been only able to make limited gains. Leaving ‘top ups’ to enterprise bargaining means industrially weak sectors, (generally female dominated areas or new sectors such as the burgeoning call centre industry and communications sector) are left with second class entitlements.

The initiatives gained by CPSU bargaining teams while limited in their extent to date, in both the public and private sector, also provide clear evidence that there is strong support amongst employees for the modernisation of entitlements relating to maternity and paternity leave. The CPSU submits that there is also growing body of evidence to support extension of paid maternity leave from 12 weeks to 14 weeks on full income. This would be in accord with ILO Convention No 183 on Maternity Protection and would set a new benchmark for all employers in Australia.

Recommendation:

Where employees are currently entitled to paid maternity leave, they should continue to receive full payment.

Recommendation:

The Commonwealth continue to provide a legislated right to Paid Maternity Leave at least at current levels of entitlement.
**Recommendation:**
The Commonwealth, ACT and Northern Territory governments improve the current entitlement of 12 weeks paid leave to a minimum of 14 weeks.

**Impact of a universal paid maternity leave scheme on the public sector**

The introduction of a universal scheme of paid maternity leave would have an impact on the Commonwealth and both Territory public sectors. In particular, employees currently not covered under the current 1973 Act, (labour hire employees, casuals, and contractors) would have access to paid leave.

There would also be increased competition from the private sector as ‘employer of choice’ for female employees where the options of paid maternity leave and associated family friendly conditions were part of a suite of conditions that influence women’s choice of employment.

The scale of the impact would also depend on the variation between the length of leave available, proportion of pay availability and associated entitlements in relation to the return to work.

**Recommendation:**
Transitional arrangements to any new universal paid maternity leave scheme address the needs of all Commonwealth, ACT and Northern Territory government employees currently excluded from entitlements under the *Maternity Leave (Commonwealth Employees) Act 1973*.

**Recommendation:**
That any consequential examination or adjustment to State and Territory grants as part of the process of introducing a universal paid maternity leave scheme should ensure no detriment to ACT and Northern Territory public sector employees entitlements under the *Maternity (Commonwealth Employees) Act 1973* and the capacity of their respective governments to fully fund 100% income replacement.
Return to work

The experience in the Commonwealth public sector to date points to the importance of establishing an unambiguous return to work guarantee which gives full weight to the employee’s changed needs and ensures they are able to be dealt with in a meaningful manner in the workplace. In short, the employee should have real choice in relation to their hours of work.

An additional issue which may also arise when a woman is returning to work is access to appropriate levels of training and development opportunities. This applies across all sectors, with solutions ranging through refresher courses in new products in call centres, to training in changes in administered legislation within the public sector to skills in new technology. In this way, women returning to the workplace will be genuinely able to take up duties at their previous level and will minimise skill loss and career opportunity. It would also ensure a rapid return to full productivity levels for the employer.

Further examination should be given to recognising the need for access to part time work for a period of from 12 to 24 months for part time work to maximise the positive benefits of any leave scheme.

Continuous service

It is evident that women and others with caring responsibilities have suffered the consequences of breaks in their working life, for example with regard to its effect on their retirement income.

The CPSU suggests that any period of maternity/parental leave should not be considered to break continuous service. In practice this will mean that funding arrangements, whatever they may be, needs to take superannuation contributions and accumulated leave benefits into account.
Other issues
While the CPSU accepts that the "Valuing Parenthood 2002" paper is focused on maternity arrangements, the issue is much broader than the implementation of a national scheme. The availability and cost of quality childcare and the capacity of employees to arrange work to suit competing responsibilities are other important measures. There is anecdotal evidence of a connection between suitable child care and the timing of the decision to return to work.

Terminology
The CPSU advocates the use of the terms 'parental leave', 'primary parental leave' and "supportive parental leave". This highlights several matters in our view:

- that the birth parent will not necessarily be the primary carer and some portion of leave must be transferable
- any such leave scheme must include adoption
- it is not sufficient to provide leave only for maternity health purposes
- the terms ‘maternity leave’ and ‘paternity leave’, whilst widely understood, are implicitly limiting the application of entitlements to non-standard family arrangements

Conclusion
The Paid Maternity Leave (Commonwealth Employees) Act 1973 continues to set benchmark conditions for paid maternity leave in the Australian workforce. Thirty years after its introduction it remains relevant, although public sector employment practices, industrial framework and policy directions have changed and continue to re-shape the sector.

However, while the 1973 Act remains the national benchmark, its provision of 12 weeks paid leave now falls below the recommended international minimum standard of 14 weeks.

Any transition to a new national scheme of paid maternity leave will need to ensure no detriment to employees currently entitled to paid leave under the Maternity Leave (Commonwealth Employees) Act 1973.
Test case provisions relating to unpaid maternity leave, parental leave and applicability to casual and labour hire employees now have some limited impact on employee entitlements.

Enterprise agreement making under the *Workplace Relations Act 1996*, has resulted in initiatives at the enterprise level, and while welcome, will inevitably fall short of the provisions of a nationally legislated scheme. These initiatives are potentially restricted to unionised and industrially organised sectors of the workforce.

The operation of paid maternity leave within the Commonwealth and Territory public sectors can also inform associated policy issues relating to return to work, the provision of quality child care and access to part time work.

An emerging and important policy area for further action is the development of appropriate paternity leave arrangements for working fathers.

**Community and Public Sector Union (PSU Group)**

25 July, 2002