Ref: cb:md

26 July, 2002

Ms P Goward
Sex Discrimination Commissioner
Human Rights and Equal Opportunity Commission
GPO Box 5218
SYDNEY   1042

By E-mail: paidmaternityleave@humanrights.gov.au

Dear Ms Goward

Re: Paid Maternity Leave Submission

Enclosed please find the ACTU’s submission to HREOC’s Paid Maternity Leave inquiry. The ACTU welcomes the national debate that your Options Paper has encouraged, and looks forward to the outcomes of your inquiry.

The ACTU is currently conducting a national workplace survey, and some of the questions relate directly to issues your options paper raises. The ACTU will provide HREOC with the outcome of the relevant sections of the survey as soon as practicable.

If you wish to discuss any aspect of this submission, or if the ACTU can assist you in any other way please contact Cath Bowtell on 03 9664 7348.

Yours sincerely

SHARAN BURROW
President

Encl:
ACTU Submission to HREOC’s

Paid Maternity Leave Inquiry
1. INTRODUCTION

The ACTU is the internationally recognised peak body representing unions and their 1.9 million members in Australia. The ACTU believes that paid maternity leave (PML) is a fundamental human right, and is necessary to address the systemic disadvantage that women face when they seek to combine their re-productive and productive roles.

For more than a quarter of a century the ACTU has been advocating for appropriate leave and income support associated with the birth of a child. In 1979 the ACTU won 12 months unpaid leave for mothers in the Maternity Leave Test Case in the then Australian Conciliation and Arbitration Commission. In 1985, following an ACTU application, the leave was extended to adopting mothers. Five years later the ACTU argued for the extension of unpaid leave to fathers – this was granted in 1990. In 2001, the ACTU successfully extended the right to casual employees.

In June 2000, ACTU Congress resolved as follows:

6.1 The ACTU will develop its work with the international trade union movement in relation to women, and will link international campaigns to Australia in support of: ratification and implementation of ILO conventions; the ICFTU maternity protection campaign;...

and

6.3 The ACTU will continue to campaign in the Australian community on issues of concern to women. The key issues following Congress 2000 will be:...

Paid maternity leave, to be funded by employers, government or a combination of both;....

Since the 2000 Congress the ACTU has fostered a debate amongst its affiliates about the best method to deliver a system of leave which:

- balances the rights and obligations of employers, employees and government;
- is fair to parents however they are employed, and
- which promotes the best interests of women and newborn babies.

The ACTU welcomes the publication of the HREOC Options Paper, which has promoted further debate amongst our affiliates and their members. We are pleased to present the results of that debate to HREOC.
The ACTU submission:

a) urges HREOC to recommend payment of 14 weeks paid maternity leave for mothers, including adoptive mothers, funded to the national minimum wage by government, and supplemented beyond that by employers through a levy;

b) calls for a revision to the existing family payments to ensure women who are ineligible for paid leave are able to access equivalent taxpayer support; and

c) calls for a process of negotiation between employers, government and unions to agree all the elements of the scheme. The ACTU sees such a process as best able to balance competing interests in a non-adversarial environment.

This submission is in four parts:

- Part 1 deals with the case for paid maternity leave, which we argue on economic as well as equity grounds;
- Part 2 argues for a nationally legislated scheme, funded by employers and government;
- Part 3 outlines the arguments in favour of the ACTU’s preferred model of paid maternity leave; and
- Part 4 relates our submission to the questions in the Options Paper.
1. THE CASE FOR PAID MATERNITY LEAVE

1.1 The HREOC Options paper identifies four potential benefits of paid maternity leave: achieving equity, supporting women and families, benefits to employers, and benefits to society. This section of the ACTU submission takes up these themes.

1.2 The ACTU supports families in making real choices about how they share household tasks, child-care and income earning. Most Australian women want to spend at least some time caring for their children after childbirth. This decision needs to be supported. Paid maternity leave gives women some freedom from economic pressure in making their choices regarding childcare.

1.3 However it also needs to be recognised that the majority of Australian mothers elect to return to work at some time; whether it be within the child’s first year or when the children are at school. As a society we need to equip mothers to move back into the labour force when they are ready to do so. Paid maternity leave is one of a range of work and family policies that can assist the transition into and out of the labour force. In combination with other policies, maternity leave, with effective job security, encourages labour market attachment, thus easing the transition back to the labour force.

Paid Maternity Leave or a Universal Maternity Allowance?

1.4 The objective of family policy is to support and help parents in their parenting role, and to give parents opportunities to build secure relationships with their children. Good family policy helps ensure children have a childhood that fosters their development. Families should have a reasonable standard of living, and both mothers and fathers should be able to combine participation in both the care and raising of children with gainful employment.

1.5 Paid maternity leave is one of a suite of measures which provide support for families, assisting parents of newborn babies maintain reasonable living standards. As such, the paid maternity leave issue sits comfortably within family policy.

1.6 Internationally paid maternity leave is generally employment related. However, as the National Women’s Consultative Council noted in its 1993 Discussion paper on Paid Maternity Leave, there is a case for all women to receive support at the time of the birth of a child.
1.7 “An argument in favour of universal payment can be made on equity grounds; it is inequitable that women who are in paid work get financial support while on maternity leave, whilst women who are working as full time homemakers are not eligible …”

1.8 The ACTU see the distinction between working and non-working women as simplistic; the fact is that women with dependants make the transition into and out of the labour market, and between different forms of employment at different times. Therefore a holistic approach to income support for mothers is required.

1.9 The ACTU, therefore, supports the provision of adequate income support for all women around the time of the birth of their child. As discussed below, the existing regime of family support around the time of the birth of a child is inadequate and inequitable at present.

1.10 Paid maternity leave for working women is income protection during a period of enforced leave, associated with the birth of a child. Paid maternity leave is also one part of an adequate and appropriate family policy framework that supports families of newborn babies. However PML is not necessarily sufficient support for all families. Some working mothers will require additional support, over and above PML. Additionally, support must extend to families where the mother is outside the paid workforce.

1.11 The ACTU supports a dual track of family support associated with the birth of a child and paid maternity leave.

1.12 In conjunction with the introduction of paid maternity leave, the ACTU calls for a review of the maternity allowance, baby bonus and Family Tax Benefit payments, at least as they relate to the first year of a child’s life.

1.13 A wide-ranging review of family payments may be outside the scope of this inquiry. However HREOC should consider whether the existing family support mechanisms provide adequate income support and assistance to families at the time of the birth of a child. HREOC should recommend that low and middle income families receive a minimum guaranteed payment of equivalent value to that paid by the Commonwealth to working women.

1.14 The ACTU proposes that the new maternity payment be of equivalent value to the Commonwealth contribution to paid maternity leave ie up to $6034.00 (pre tax). Clearly this is a significant increase on the existing Maternity and Immunisation allowances. However, a re-allocation of the funding for the baby bonus, plus the allocation for family tax benefits
payable during the first year of a child’s life, would go a significant way towards meeting the cost. The payment could be available around the time of the birth or families could opt to spread the payment across the child’s first year.

1.15 A dual track system of paid maternity leave coupled with an improved maternity allowance would ensure women who are outside the labour force, looking for work or working in low paid jobs are eligible to receive (at least) the same level of taxpayer funded support as women in paid employment. Such a scheme would ensure that women outside the paid workforce would gain adequate support, and care for different family choices.

1.16 This scheme would provide a safety net for certain categories of employed women: those women on long term sick leave, workers compensation, those already on maternity leave, and, potentially, contractors or out-workers who escape coverage of paid maternity leave.

1.17 In addition, a dual track system would potentially allow low paid women to receive taxpayer support over their usual income if their family circumstances warranted. Such women would have to elect whether to take paid maternity leave or the improved maternity allowance.

1.18 Currently women who are entitled to employer sponsored paid maternity leave are currently also entitled to taxpayer funded maternity allowance. This is not inappropriate as the Maternity Allowance is designed to assist with the additional costs associated with the birth and care of a baby, while maternity leave compensates for lost income during a period of leave.

1.19 However, should the Commonwealth assume responsibility for paid maternity leave and also improve the maternity allowance such that it forms an income support role, then women could be required to elect which stream of government assistance they will take. Such an election would need to be supported by appropriate information, and would not preclude low-income families from additional support, nor prevent government from providing top up payments in circumstances such as multiple births.

**Employment Related Maternity Leave**

1.20 The ACTU argues that the federal government has a responsibility to provide a legislative framework for paid maternity leave. Paid maternity leave performs all the functions of the maternity allowance. In addition to supporting families, a primary objective of paid maternity leave is to provide income security to women who have to take a period of leave from employment associated with the birth of their child. Paid maternity leave recognises
that the economic impact of parenthood falls unequally on men and women. Put simply, men can become parents without disrupting their work, women cannot.

Supporting Women’s Equal Participation in Society

1.21 The right to work is critical to women’s economic independence. Unpaid maternity leave, as currently provided, undermines that independence. Unpaid maternity leave is not only important for women’s independence – in couple families with dependants, women’s income contributes 30% of household incomes. In families without dependants this figure rises to nearly 40%.2 For these families female earnings are not discretionary.

1.22 The ACTU recognises that most babies are not born into sole parent households. Nonetheless, reliance on maternal earnings is even more crucial in sole parent households. Fifteen percent of families are one-parent families, and 71% of these have dependants. There are 473,400 sole parent families with dependants with a female head. In one-parent families with dependants, 40% of females are either in employment or looking for employment.3

Gender Pay Inequity

1.23 Women in full time employment currently earn $171 per week less than full-time men. Women’s earnings are 81% of male full time earnings. Even if we exclude managerial employees and overtime from the figures, full time female ordinary time earnings are 84.6% of equivalent male earnings. When part-time employment is included, the women earn only 67% of male earnings, or $271 less per week. While the gender pay equity gap is not entirely due to family responsibilities, there is no doubt that having a child has a profound effect on women’s employment patterns and earnings.

1.24 Paid maternity leave would:

- directly assist narrowing the pay equity gap by providing payment for the short period of leave associated with the birth;

- have a further minor direct effect if the model adopted allows such payment to be treated as income for the purpose of accruing leave and calculating superannuation contributions;
• allow women to maintain a “buffer” of annual leave and/or long service leave accrual for periods without pay at other stages of their working life; and

• indirectly assist by encouraging women’s labour market attachment.

**Human Rights and Equity**

1.25 The international community has supported paid maternity leave on equity grounds. The preamble to Article 11.2 (b) of CEDAW states:

_In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:_

_..._

_To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;_

Paid maternity leave is therefore recognised as an essential element to overcoming systemic discrimination against women.

**Equitable Sharing of the Caring Role**

1.26 An indirect effect of Australia’s current regime of unpaid maternity leave is increased hours for fathers of young children. The Organisation for Economic Co-operation and Development (OECD) reports that fathers of young children tend to work longer hours than other men. Preliminary data from the HILDA survey shows that fathers of young children work on average nearly 5 more hours than similar aged men without dependants. Paid maternity leave would relieve fathers of the pressure to replace maternal earnings, allowing them time to bond with their new baby, and encouraging shared caring responsibilities.

1.27 Work and family reconciliation policies can assist families develop more equitable sharing of caring responsibilities. Comparisons with the Finnish economy show a much smaller gap between male and female time spent on domestic activity compared with Australia. The study concludes that the extent of State support for families (including 10.5 months paid parental leave for young babies; well funded child care and/or income support up to the child’s 3rd birthday; and government assistance for part time work) had not eradicated sexual inequality, but had eradicated its most pernicious effects.
Paid Maternity Leave And International Competitiveness

1.28 Women’s participation in the labour market not only assists society through increased independence for women, and by addressing inequity, it also contributes to a strong economy. Women’s employment and the retention of skills will contribute to economic growth, productivity, and improved living standards.

1.29 Paid maternity leave is one of a raft of policies that would encourage ongoing labour market attachment for women. The OECD considered the link between parental leave policies and women’s employment rates in 2001. It reported:

“in countries with relatively well-developed systems of work/family reconciliation policies, women tend to have higher employment rates in their thirties (when their employment is most likely to be affected by child-rearing and child-care). Both formal child care coverage of young children and paid maternity leave policies appear important from this perspective. The direction of causality is not, of course, clear. It may be that in counties where women are more present in employment, they are better able to press for benefits. However it seems unlikely that the causality runs entirely in that direction.”

1.30 To remain internationally competitive, Australia must have a competitive labour market. While the past 30 years have seen huge changes in mothers’ labour market position Australia falls short when compared to other industrialised nations.

1.31 In 2001, an OECD survey of mothers’ labour market participation showed that, of the 20 OECD countries Australia reported the lowest employment rates of mothers with children under six, and the lowest employment rates for employment of lone parents. Australia ranked 15th in participation by mothers in couple families. (see Table 1)
### TABLE 1 – OECD COMPARATIVE DATA ON MATERNAL EMPLOYMENT RATES

<table>
<thead>
<tr>
<th></th>
<th>Employment rates of mothers with child under 6</th>
<th>Employment rates of mothers in couple families</th>
<th>Employment rates of sole parents</th>
</tr>
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<tbody>
<tr>
<td>Canada</td>
<td>70.0</td>
<td>68.3</td>
<td>68.3</td>
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<tr>
<td>US</td>
<td>61.5</td>
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<tr>
<td>Japan</td>
<td>33.5</td>
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<tr>
<td>Finland</td>
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<td>57.7</td>
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<td>Norway</td>
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<tr>
<td>Sweden</td>
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<tr>
<td>Greece</td>
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<tr>
<td>Portugal</td>
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<td>82.9</td>
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<td>Poland</td>
<td>47.6</td>
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<tr>
<td>Australia</td>
<td>45.0</td>
<td>48.0</td>
<td>30.2</td>
</tr>
</tbody>
</table>

Source: OECD 2001 p 134 Table 4.1

1.32 The OECD reports a correlation between maternity leave policies with employment protection and raised employment rates for mothers. The report considered what features of the scheme are likely to affect return to work rates, in particular duration. It concluded that leave of short duration is associated with maternal employment, while the evidence is inconclusive with longer periods of leave, with the return to work seemingly more dependant on the level of income replacement. The source of funding and the skill level of the mother will influence take up of leave and return to work rates. This report confirms the intuitive proposition that the longer the family has adjusted to loss of maternal earnings, the lower return to work rates will be. Thus paid maternity leave of reasonable duration will assist to maintain maternal labour market attachment. Flexibility to spread payment over longer periods may well enhance the scheme without increasing costs.
1.33 Promotion of maternal labour market attachment should not compromise family choice about the care of children. However, there is significant evidence that mothers want to remain attached to the labour force. Australian women have shown this in their behaviour – by the time their child is 1-2 years old, 57% of mothers are in work, and by the time their child is 3-4 years, 68% are in work. Glezer and Woolcott report that 64% of mothers would prefer to have a paid job even if they did not need the extra income.

**Skill Retention**

1.34 Retention of women’s skills and removing barriers to labour market participation should retain trained workers in the labour market. The Australian Industrial Relations Commission (AIRC) recognized this in the Maternity Leave Test Case when it stated that maternity leave could “secure the retention of skills and abilities which might otherwise be lost to industry”.

1.35 Australia’s investment in women’s skill formation is significant. In addition to the higher education statistics cited in the Options paper (9.1.2), women are also significant participants in the Vocational Education and Training (VET) sector. During 2000, $4.16 billion was invested in public vocational education and training. The Australian National Training Authority (ANTA) does not account for this expenditure by gender, however in 2000, females made up 49.2% of the 1.7 million students in the public VET sector. Female participation in VET grew by 93.6% over the period 1991-2000 and in 2000 thirteen percent of working age women participated in VET. Women aged 25-39 represented 1/3 of enrolled women.

1.36 A key to improved living standards is the combination of high employment with improved productivity. High employment rates include high employment of women, and improved productivity requires a skilled workforce. Maternal labour market retention is therefore a key to economic competitiveness.

**Healthy Mothers and Babies**

1.37 Income security for the first three months post partum removes economic pressure for women to return to work.

1.38 Income security allows adequate time to recover from the physical and physiological impact of birth, including caesarean deliveries. According to the latest Victorian figures, 25% of women have caesarean births, which demand a longer recovery time.
1.39 Recent research at Canberra Hospital showed that a high proportion of new mothers are still suffering pain and difficulties up to 6 months after giving birth.  

1.40 According to the Commonwealth’s own publication, Breastfeeding at Work, The World Health Organisation (WHO) recommends that babies be exclusively breastfed until 4-6 months. It goes on to say “…Although 80% of babies are breastfed at birth, only about 40% are breastfed at 6 months …. Studies have shown that returning to work is a major reason for early weaning”  

1.41 The Australian Chamber of Commerce and Industry (ACCI) argues that the “assumed benefits” of early attachment, recovery from birth and breastfeeding should not be imposed on families – that paid maternity leave would constitute unwarranted government interference in families’ right to choose. Such an argument ignores the proper role of government in preventative health practices.  

1.42 Of all of its objectives paid maternity leave will undoubtedly contribute to child and maternal health, especially for low paid women.  

**Maternal employment and child poverty**  

1.43 Maintaining maternal labour market attachment is not only important for women’s economic security, independence and fulfilment the maternal income plays an increased role in total household income.  

1.44 Women’s income is critical to maintaining families’ standards of living. Australian women contribute more to the pooled family income than ever before. In 1982 female personal income accounted for an average of only one-quarter of total income of couples with children. As noted earlier, by 2000, women were contributing almost 30%. In families with no dependant children, nearly 40% of the family income is sourced from the woman’s earnings.
1.45 There is evidence that maternal employment is positively associated with lower child poverty. The UK *Work and Competitiveness Report* noted that:

“Women’s incomes and earnings are therefore increasingly important as a defence against poverty and in determining the opportunities available to their children. This is particularly true of lone mother households. It is highly relevant that one in six families fall into poverty as a result of the birth of a child. The impact of having a child on women’s future earnings and employment patterns will then continue to affect future household income.”

1.46 The poverty risk for a single parent is large compared to couple families. A 2000 OECD report\(^\text{13}\) showed Australia’s poverty rates (defined as proportion of people living with incomes below 50% of the median adjusted household disposable income of the entire population) for non-working lone parents was 42% compared to 9.3% of working lone parents. Australia had comparatively low levels of labour market participation by sole parents. Whilst taxation and income substitution programs are the key social interventions which affect labour force participation, parental leave and service provision (especially childcare) affect maternal labour force participation.

1.47 To the extent that paid maternity leave assists in maintaining labour market attachment, such leave can assist in addressing child poverty.

**Population Policies**

1.48 There is conflicting evidence about the effect that comprehensive family policies have on national fertility rates. As the OECD (2000) notes:

“Apart from the opportunity cost to being in work and the availability of and quality of family-work reconciliation benefits, the family formation decision, and its timing, depends on many other factors. These factors include changes in societal and cultural norms, individual preferences, workplace culture, career aspirations, increased precariousness of employment arrangements, as well as the direct and indirect costs of having children. Moreover these factors are likely to affect different families (rich and poor) in different ways.”

1.49 The ACTU recognises the significant challenges posed by a declining fertility rate. The ACTU supports HREOC’s Options Papers’ conclusion that “it is difficult to argue that a period of paid maternity leave alone will enable more women to chose to exercise their right to have children”.
1.50 Nonetheless, comprehensive family support measures, including paid maternity leave, have correlated with improved fertility rates in Sweden and France. While there is some debate about the long term impact of paid maternity leave on fertility rates there is some support for the notion that improvements in parental leave have been associated with upswings in fertility, associated with bringing forward childbearing.14

1.51 Paid maternity leave will assist with the transition out, and back in to paid employment. Other policy measures are needed to assist families with the ongoing phases of parenthood. These include:

- extended parental/family-care leave to extend job security and promote choice in childcare options;
- quality part time work, employee choice in hours and rostering and quality affordable childcare will assist the transition back to work while encouraging more equitable sharing of caring responsibilities; and
- more flexible emergency care and leave for planned family commitments (school holidays) for families managing work and caring responsibilities.

Conclusion

1.52 The arguments for introducing paid maternity leave are inescapable. In economic terms, paid maternity leave encourages women’s labour market participation that has the following benefits: skill maintenance; adequate resources for families, whatever their composition; and gender wage equality. Paid maternity leave is good in health terms, both directly and in terms of reduced absenteeism and reduced call on public health. Paid maternity leave, along with other policies, may encourage women to have more babies. Paid maternity leave will make Australian workplaces more equitable.
2. A NATIONALLY LEGISLATED SCHEME

2.1 In this section The ACTU argues in principle for the introduction of a national, legislated scheme of paid maternity leave, funded by a combination of employers and taxpayers.

2.2 The ACTU supports a nationally legislated system of paid maternity leave for a number of reasons: Australia should meet its international obligations both to mother and to child, it is incumbent on government to address systemic discrimination; and to support families; and because the labour market has failed to deliver paid maternity leave.

2.3 The ACTU rejects the view that paid maternity leave is best delivered by workplace bargaining. The market has failed to deliver paid leave in any consistent way. The Options Paper canvasses the available data on the spread of paid maternity leave through workplace arrangements, and highlights the unequal outcomes, which show disadvantage in certain occupations and industries, and disparity in the quality of maternity payments. The failure of the market creates its own inequities, whereby only some women have access to paid leave.

2.4 HREOC must consider the possible polarisation of mothers’ employment. The OECD Economic Outlook 2001 reported that mothers with medium and high education levels are closing the gap between their employment levels and paternal employment rates, but the employment rates of less well-educated mothers are lagging. The report notes that less well educated women are less likely to be afforded family friendly benefits by firms, and that labour market detachment for lower educated mothers may make successful re-entry difficult.15

2.5 It is unacceptable that the achievement of objectives such as the protection of maternal and child health should be dependant on labour market bargaining power. It is inequitable that highly skilled women should benefit from the business case for paid maternity leave, while women with less bargaining power be unable to gain access to such security. If society is to reap the rewards associated with paid maternity leave, it cannot be open to being bargained away in times of poor company performance.

2.6 Equity demands a universal entitlement to a safety net paid maternity leave scheme, with bargaining available to provide superior entitlements, and provide employers the capacity to distinguish themselves as employers of choice. The ACTU’s preference is for a nationally legislated scheme, which could be included as a minimum employee entitlement within the Workplace Relations Act 1996 or exist as a stand-alone piece of legislation.
In the absence of such national legislation, a test case could provide the vehicle for the introduction of a more widespread entitlement.

2.7 The ACTU argues strongly that the Commonwealth should legislate to ensure a nationally consistent, universally accessible system of paid maternity leave. In light of the broad societal benefits outlined in Section 1 the ACTU calls for the Commonwealth to assume responsibility for the safety net paid leave scheme, and for the improvements in maternity payments.

2.8 Depending on the treatment of public sector workers, the ACTU proposal for an employment-based entitlement would cost under $400 million, assuming savings on the maternity allowance. Costing for the alternate track maternity payment has not been undertaken due to the difficulties in assessing the current impact of increased maternity payment on eligibility for family tax benefit A and B. The ACTU is committed to work with other stakeholders to develop a proposal which is fiscally responsible.

The Role of Employers

2.9 The ACTU argues that employers should bear some of the costs associated with employment related paid maternity leave. Employers share the societal benefits of female labour market participation, and of child bearing and rearing.

2.10 The New Zealand EEO Trust looked at the business case for paid maternity leave, and expressed it as a three-way business case:

- Paid Parental Leave (PPL) helps sustain the population and strengthen families;
- PPL increases labour market equity for women; and
- PPL increases profits.

2.11 The ACTU supports this analysis, and rejects the ACCI position that pregnancy is simply a personal choice. The business community has a direct interest in population policy, in terms of labour market supply, and future consumers.

2.12 In the shorter term, the labour market is affected by whether highly skilled, highly mobile workers see Australia as an attractive place in which to raise children.
2.13 Employer support for families can lead to improved loyalty, and improved effort, and better reputation amongst consumers.

2.14 In an admittedly small sample, the NZ EEO Trust reported return to work rates increasing following the introduction of PPL. The lowest reported increase was 10%, (from 59% to 69%) whilst the highest increase was from 20% to 80%. In four of the seven companies the return to work rate after the introduction of PPL was at 90% or above.\textsuperscript{16}

2.15 The cost of replacement employees ranges from 25% to 200% of annual salary.

2.16 Even in industries where labour retention is less significant, employers benefit from paid leave. Paid leave, and the concomitant support for breastfeeding leads to reduced absenteeism. The NZ EEO Trust cites studies showing absenteeism amongst parents of breastfed babies is seven times lower than bottle-fed babies.

2.17 The ACTU acknowledges that the International Labour Organisation (ILO) discourages employer funded paid maternity leave schemes, highlighting the potential dis-incentive to employ women of childbearing age that attach to directly funded schemes. This argument may be over-stated. Occupational segregation of the Australian labour market and skill supply issues mean that alternative labour supply may not be readily available. Nonetheless the ACTU prefers employers to contribute to the costs of a scheme via a levy, based on employer size (numbers of employees/payroll). In this way all employers (or all mandated employers) contribute to the cost of parenthood regardless of the gender composition of their workforce.

2.18 Those who argue against employer contributions tend to contradict themselves, arguing on the one hand that employers should not bear responsibility for paid leave, and on the other that the labour market should be left to deliver paid leave unfettered by legislative intrusion.

**Individual Contributions**

2.19 The ACTU opposes families or women being obliged to contribute to a legislated paid maternity leave scheme.

2.20 Under the ACTU proposal, individuals will continue to bear the overwhelming majority of costs associated with loss of earnings and additional costs.
2.21 The personal economic cost of having a child is significant. In 1987 the cost was found to be around $435,000 (in 1997 dollars) in foregone earnings. A more recent study found that for women who have completed secondary education, having one child decreases after-tax lifetime earnings by around $160,000. This lower estimate reflects the increased incidence of maternal employment over the period.\textsuperscript{17}

Conclusion

2.22 The introduction of a dual track system of support for mothers, including improved government transfers and employment related paid maternity leave, funded jointly by employers and employers provides a fair balance between government, employers and individuals in bearing the costs associated with childbirth and the care of new-borns. National legislation provides the best chance of a fair outcome, and recognises the societal benefits of children. A dual track system recognises different family choice, and allows tailoring of both schemes to best meet their purposes, and ensures that no woman is excluded from societal support due to the nature of her employment, paid or unpaid, formal or informal.
3. THE ACTU MODEL

3.1 This section outlines the ACTU’s preferred model of employment related paid maternity leave. In doing so the ACTU answers some of the policy questions about the model. Details about implementation are not addressed. Once the core components of a scheme are established, the ACTU calls for ongoing consultation to develop the details of any scheme.

3.2 The ACTU supports a system of paid maternity leave that is founded on the ILO Maternity Protection Convention 2000 (ILO 183).

3.3 As noted by the Commonwealth in its report to the ILO, Australia currently does not meet the ILO standard.

“In brief, areas where Australia does not comply or where there are doubts about compliance with Convention 183 include the following mandatory criteria:

- access to maternity leave for all employed women (including those in “atypical forms of dependant work”) (article 2);
- a minimum of 14 weeks maternity leave, of which 6 weeks should be compulsory (article 4);
- the delivery and level of cash benefits (article 6);
- the burden of proof of non-discrimination to rest with the employer (article 8); and
- Access to paid breast-feeding breaks (article 10).”

Eligibility

3.4 Article (2) of ILO C183 states that the Convention applies to “all employed women, including those in atypical forms of dependant work”. In line with ILO C183, the ACTU calls for a scheme which delivers paid maternity leave to all working women.

3.5 One option would be for a scheme based on the existing eligibility for unpaid leave. Whilst administratively simple, the ACTU argues that such a scheme would entrench already discriminatory practices. Instead, the ACTU would support amendments to existing provisions to reflect a more equitable outcome.

3.6 The ACTU has longstanding concerns about the exclusion of particular groups of workers from qualifying for parental leave, and hence opposes the establishment of artificial boundaries that would limit access to paid maternity leave.
3.7 In order to comply with ILO C183, as many women as are covered by the convention, should qualify for cash benefits. Limits which apply to length of time in the labour force, length of time with a particular employer, minimum number of hours worked per week or income earned per week, nature of employer (e.g. small business) or nature of contract with employer (e.g. casuals, fixed term workers) would offend Convention C183.

**Duration of Employment**

3.8 The ACTU opposes the 12 month qualifying period for paid maternity leave. Nearly one-quarter of women have worked less than 12 months in their main job, compared to only 20.6% of men.

3.9 Younger women are most likely to have held their job for less than 1 year – 46% of 20-24 year olds have short tenure, 28% of women aged 25-34, and 19% of those aged 34-44.

3.10 Those who support exclusions based on length of employment argue that without such qualifications, women will abuse the system by getting a job and claiming benefits, without having made a contribution to the workplace to “earn” their entitlement. This argument has some weight where the employer funds the entitlement. It has little weight in the context of a taxpayer-funded scheme, where the fact that a woman changed employer within the qualifying period is irrelevant, as entitlement doesn’t attach to a particular employer.

3.11 Similarly, the argument that women will enter the labour force to claim the benefit is discounted if the family support measure available to women outside the labour force is of equivalent value to paid maternity leave.

3.12 Any residual concerns can be dealt with by using a method for calculating income that discounts artificial inflation of income pre-maternity leave.

3.13 There should be no time based-restriction on taking second or subsequent periods of leave.

**Tenure of appointment**

3.14 Currently a mother’s entitlement to unpaid leave (and where available, paid leave) terminates at the conclusion of the fixed term contract, on the understanding that the employer’s obligation to an employee concludes at the expiration of the contract.
3.15 Fixed term employees should have access to paid leave. Women whose employment terminates during a period of leave could elect to continue on paid leave or convert to the revised maternity allowance.

Casual employees

3.16 All casual employees should be eligible for paid maternity leave. The nature of casual employment has significantly changed in the last two decades. The percentage of the workforce employed on a casual basis has more than doubled; the average length of employment on a casual basis has considerably expanded and industries with substantial levels of casual employment have also increased. Consequently, the gender, age and occupation of a casual employee is more widely spread than ever before.

3.17 More than a quarter of the Australian workforce is now employed on a casual basis; nearly 60 per cent have been employed for 12 months or more by their current employer. Over eleven percent of the full-time workforce is employed as casuals.

3.18 It is increasingly difficult to differentiate between those persons with an expectation of ongoing employment, often referred to as permanent employees, and those that do not have an expectation of ongoing employment – true casual employees. According to the Australian Bureau of Statistics’ (ABS) Employment Arrangements and Superannuation survey, almost three out of every four casual employees expect to be working for their employer in 12 months time, ie they have an expectation of continuing employment.

3.19 Often the true nature of an ongoing or continuing contract of employment is cloaked behind the term casual, when the employment relationship is in no respect casual in nature. More than half of casuals report working arrangements of set weekly, fortnightly or rostered work.

3.20 Until last year, casual employees were not entitled to job security associated with the birth of a child. Following the ACTU Test Case Decision, regular casuals are now entitled to unpaid leave.

3.21 The ACTU argues that all casuals should be entitled to paid leave.

3.22 Like other women, casual employees and their families rely on their income, however irregular. Such women may be multiple jobholders whose employment in total constitutes a significant income.
3.23 The customary rationale for excluding casuals is that the loading compensates for the entitlement, however, as paid maternity leave is not entitlement for permanent employees, it cannot be said to be included within the loading.

3.24 To exclude casuals would disproportionately exclude migrant women from paid leave.

Other Potential Exclusions

3.25 The ACTU notes that in some jurisdictions, women are excluded from eligibility based on the number of hours worked per week (e.g. New Zealand), or on their weekly wage (e.g. United Kingdom). The ACTU opposes such exclusions. However, the ACTU acknowledges that for women on low incomes a revised maternity payment stream is likely to be more attractive than employment related paid maternity leave.

3.26 Any exclusion based on duration or tenure of appointment, or minimum labour market attachment, would artificially exclude women from the scheme, and create its own form of discrimination.

Duration of leave

3.27 Article 4 (1) of ILO Convention No. 183 on Maternity Protection 2000 states that “a woman to whom this convention applies shall be entitled to a period of maternity leave of not less than 14 weeks”. As noted earlier (cite) Australia complies with this minimum by providing 52 weeks absence from work, but without payment. A national scheme should, as a minimum standard, conform to ILO C183, and introduce 14 weeks paid maternity leave. This should be a first step, aiming to reach the provision of 18 weeks contained in ILO Recommendation 191. Fourteen weeks would at least protect the health of the mother, give her the best chance of establishing breast-feeding, and reflect the limited availability of formal childcare for babies under 13 weeks.

3.28 The ACTU also draws HREOC’s attention to recent literature on post-partum recovery and the benefits of longer term breast-feeding. To facilitate longer periods of leave, where this is the families’ choice, recipients should be able to elect to take the payment at half pay over double the period.

3.29 The ACTU notes moves by some Australian employers (notably the Australian Catholic University) to provide 12 months payment at variable levels. We note that this is consistent with trends in developed nations. Greece, Spain, Canada, Austria, the Netherlands,
Switzerland, Belgium, France, and Luxembourg provide 15-20 weeks paid leave. Italy, Portugal, the UK (from April 2003), the Czech Republic, Hungary, and the Slovak Republic provide 20-30 weeks, and Denmark, Finland, Norway and Sweden, providing 30-64 weeks paid leave. In this context, the ACTU proposal is modest and achievable.

**Rate of Payment**

3.30 ILO C183 calls for payment to be at a level that ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living. The Convention allows nations to provide cash benefits (paid maternity leave) at a minimum of either 2/3 of previous earnings, or a comparable amount.

3.31 In view of the purpose of paid maternity leave; to provide income security for working women; we call for a scheme that provides 100% of the women’s pre-leave income during the period of leave.

3.32 As a work related entitlement, maternity leave is no different from sick leave, long service leave, jury service leave and defence forces leave which are funded at 100% income replacement.

**Responsibility for Payment**

3.33 However, the ACTU does not call for employers to assume 100% of the burden, nor for the full amount to be included in a national minimum scheme. In view of the societal benefits accruing from maternity leave, and in light of the Commonwealth’s role in addressing discrimination, we call for the government to partially fund the scheme, for employers to partially fund the scheme, and for the parties to bargain to top up the national scheme.

3.34 Hence, the ACTU calls for the Commonwealth to assume responsibility for funding paid maternity leave for 14 weeks up to the level of the federal minimum wage (currently $431pw). As table 2 shows, forty-eight percent (48%) of women workers earn less than $500pw, and 35% earn less than $400pw. Payment to the federal minimum wage would ensure full income replacement for the lowest paid women. Almost half of the Commonwealth’s contribution to the paid maternity leave scheme (excluding its contribution as employer) would be paid to women earning less than the federal minimum wage. The cap therefore allows an appropriate level of targeting of taxpayer funding to lower-paid women.
### Table 2

<table>
<thead>
<tr>
<th>Weekly earnings – all jobs $ (a)</th>
<th>No. of women</th>
<th>cumulative %</th>
<th>Number of women taking PML (b)</th>
<th>$431 as % of previous earnings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 100</td>
<td>241,800</td>
<td>7.1</td>
<td>7,979</td>
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<tr>
<td>100-200</td>
<td>280,700</td>
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<td>4,442</td>
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<td>1000-1200</td>
<td>170,600</td>
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<td>5,630</td>
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<td>1200-1400</td>
<td>68,000</td>
<td>97.5</td>
<td>2,244</td>
<td>33.2</td>
</tr>
<tr>
<td>1400-1600</td>
<td>33,200</td>
<td>98.5</td>
<td>1,096</td>
<td>28.7</td>
</tr>
<tr>
<td>1600-1800</td>
<td>14,600</td>
<td>99.0</td>
<td>482</td>
<td>25.4</td>
</tr>
<tr>
<td>1800-2000</td>
<td>10,200</td>
<td>99.3</td>
<td>337</td>
<td>22.7</td>
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<tr>
<td>2000 plus</td>
<td>25,100</td>
<td>100.0</td>
<td>828</td>
<td>21.6</td>
</tr>
</tbody>
</table>

(a) ABS 6310.0 August 2001  
(b) Assumed take up of 3.3% of female workforce across evenly distributed across all income levels, not adjusted for age of childbearing  
(c) Assumes actual earnings at midpoint of range in column 1

### The relevance of the minimum wage

3.35 The rate of payment should be benchmarked against an appropriate external rate, to avoid erosion of its value over time. The minimum wage is an appropriate benchmark because it is an independently assessed rate, which is varied from time to time, reflecting the needs of employees in the context of living standards generally. In setting the rate the AIRC is required to:

- establish and maintain a safety net having regard to:
  - (a) the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;
  - (b) economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment;
(d) *when adjusting the safety net, the needs of the low paid.*

3.36 In its recent National Wage Decision the Full Bench looked at the adequacy of the minimum wage.

“[131] It is apparent from their evidence that all of the witnesses struggled to make ends meet. A significant proportion of their expenditure is on necessities and unexpected expenditures are difficult to finance. There were a number of things which the witnesses went without, for example:

- regular holidays;
- social outings;
- replacing household appliances;
- new clothes;
- insurance;
- telephone;
- motor vehicle.

[132] We accept that many low paid employees experience difficulties in making ends meet and are unable to afford what are regarded as necessities by the broader Australian community.”

3.37 It is evident from this finding that the national minimum wage represents a modest claim for an adequate income to maintain a mother and her child at a reasonable standard of living.

3.38 The minimum wage is also appropriate because it is independently set, with the industrial parties and governments having opportunity to present their case to the AIRC.

**The Employer Levy**

3.39 In recognition of the benefits to employers, the ACTU calls for employers to fund the gap between the federal minimum wage and women’s pre-leave incomes. The ACTU calls for legislation introducing a levy on employers to fund the gap between the federal minimum wage and the average weekly earnings (currently $897). If such a levy were introduced with this cap, paid maternity leave would deliver full income replacement for 87% of all women accessing the scheme. If capped at AWE the scheme will meet the ILO requirement for 2/3 of pre-leave income for 97.5% of Australia’s working mothers.

3.40 A cap on the total payment to an individual woman is proposed in order for employers to have confidence that the levy is being appropriately paid, and to allow some certainty in the calculation of the total fund required to meet its obligations. The cap is set at average full time earnings.
TABLE 3

<table>
<thead>
<tr>
<th>Weekly earnings in all jobs $ (a)</th>
<th>Number of women taking PML (b)</th>
<th>gap by employer to $897pw (c)</th>
<th>Fund requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 100</td>
<td>7,979</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
<tr>
<td>100-200</td>
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<td>500-600</td>
<td>15,137</td>
<td>$119.00</td>
<td>$25,218,408.60</td>
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<tr>
<td>600-700</td>
<td>12,434</td>
<td>$219.00</td>
<td>$38,123,870.40</td>
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<td>700-800</td>
<td>9,171</td>
<td>$319.00</td>
<td>$40,956,346.20</td>
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<td>800-900</td>
<td>6,098</td>
<td>$419.00</td>
<td>$35,773,214.40</td>
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<td>900-1000</td>
<td>4,442</td>
<td>$466.00</td>
<td>$28,978,303.20</td>
</tr>
<tr>
<td>1000-1200</td>
<td>5,630</td>
<td>$466.00</td>
<td>$36,728,815.20</td>
</tr>
<tr>
<td>1200-1400</td>
<td>2,244</td>
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<td>1400-1600</td>
<td>1,096</td>
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<td></td>
<td><strong>111,689</strong></td>
<td></td>
<td><strong>$238,309,579.20</strong></td>
</tr>
</tbody>
</table>

(a) ABS 6310.0
(b) Assumed take up of 3.3% of female workforce across evenly distributed across all income levels, not adjusted for age of childbearing
(c) Assumes actual earnings at midpoint of range in column 1

3.41 However, as table 3 shows, the cost of the employer levy would be around $240 million per annum. Without any cross-subsidisation, the weekly cost per employee would be $0.59. The ACTU acknowledges that other costings which more closely relate earnings and age would be needed.

3.42 The ACTU would oppose any exemption of small business that meant that women employed by small business were ineligible for paid maternity leave. However, the ACTU would not oppose exemptions from payment of its proposed levy for employers based on number of employees employed. Similarly, the ACTU would not oppose the provision of additional payments to small business to cover any additional administrative costs associated with the payment of paid maternity leave. In the UK small employers receive 105% of the cost of payments, subsidised by larger employer who receive only 92% of payment.
3.43 There are a number of options for levy collection, each with its own advantages and disadvantages:

- The Australian Taxation Office (ATO) – which would be simple for employers who already make payments in favour of the ATO, but an additional administrative burden on government;
- State payroll tax offices, which already keep data on payroll, but would involve 8 different agencies;
- A NEST style scheme, jointly administered by employers and unions, which could use any return on investment to improve the scheme or assist employers; or
- A new agency.

3.44 The ACTU is prepared to work with employers to develop an appropriate rate and vehicle for collection of and administration of the employer levy.

**Full Income Replacement**

3.45 Only 13% of women earn more than average weekly earnings. Such women could bargain for 100% payment via enterprise bargaining or award applications. HREOC could recommend that government explore incentives to employers to provide maternity leave over and above the statutory minimum.

**Basis For Calculating Earnings**

3.46 Where a woman’s income has varied during the course of the previous year, averaging could be used – the period of averaging must be long enough to deter employers from artificially reducing a woman’s hours in the period before the leave, yet not so long as to discount recent wage movements, promotions or access to increments. Averaging over a reasonable period would also overcome fears of abuse by women joining the labour force in late pregnancy in order to gain access to the scheme.

**Multiple Job Holding**

3.47 Where a woman holds multiple jobs her entitlement should be based on her cumulative income. Multiple job holding is more common amongst females (8.4% of females hold two or more jobs compared to only 6.5% of males)\(^{19}\), reflecting women’s concentration in casual employment.
3.48 As the ACTU model spreads funding responsibility across employers, there is no rationale to tie eligibility to a particular employer.

Relationship to Existing Entitlements

3.49 Where employees are currently entitled to paid maternity leave, they should continue to receive full payment. The ACTU notes that some commentators have called for the exclusion of public sector employees, or workers currently entitled to paid maternity leave. While such a proposal would alleviate the burden on the national scheme, it ignores the different levels of payment currently available between the States and private sector employers.

3.50 For Commonwealth employees, it would be open to the Commonwealth to exclude its own employees from a national minimum scheme on the proviso that any new scheme ensures that no employees fall between the two schemes. The Commonwealth should continue to provide a legislated right to Paid Maternity Leave. The Commonwealth should improve its scheme to 14 weeks at full income replacement.

3.51 The situation with the State public sector employees is more complex, due to differential entitlements, and different sources of those rights. HREOC should explore with the parties the options including appropriate adjustments to States’ grants in recognition of the Commonwealth assuming partial responsibility for payments currently borne by the States. Governments, as employers, should lead by example and provide 14 weeks at 100% income replacement.

3.52 For private sector employers, HEROC should consider recommending incentives to employers to maintain and improve existing schemes. The Victorian government’s offer of payroll tax concessions should be further explored.

3.53 The Commonwealth should 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.

3.54 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.

3.55 Any legislation should provide disincentives to reductions of existing entitlements and should provide a dispute resolution process where employers seek to reduce entitlements as a result of the introduction of a national scheme. Any jurisdictional impediments to the AIRC hearing such disputes should be considered and addressed in the legislation.

Administration of Payments

3.56 In the absence of an agreed framework the ACTU does not make a detailed submission on the administration of a national scheme instead the ACTU is prepared to work with employers and government to develop the most appropriate administrative arrangements if a framework is agreed.

3.57 The ACTU model would work if the employer were to make the payment, and claim it back from one or more agencies. The scheme would also work if the eligible women made claims directly to the appropriate agency/agencies.

3.58 In developing any scheme regard should be had to the need to:

- Minimise the administrative burden on employees and employers;
- Ensure ease of enforcement;
- Provide women with flexibility; and
- Provide an easy mechanism for women to determine if they are better off under the paid maternity leave or maternity allowance scheme.

3.59 The ACTU sees merit in the payment bearing the same characteristics of wages or salary paid during other periods of paid leave. Women could take their leave in a lump sum at the time leave commences, or continue to be paid according to the normal wages cycle. Many women have expressed a preference for being able to take the leave at half pay, to assist with family budgeting. Payment as wages would presumably attract superannuation, and other forms of leave would continue to accrue. The employee would have minimal disruption to pay arrangements and the employer would maintain contact with the worker. Small business could be compensated for the additional administration via the levy.
3.60 While payment as wages has merit, the ACTU also has concerns about payment by employers, if this might result in some women not accessing payment, for example where the employer is unaware of their obligations to pay, or where the employer is unscrupulous.

3.61 Payment via the Family Assistance Office (FAO) or alternative levy collection/administration agency would ensure that all women claiming their leave entitlement would be paid. It would ensure adequate advice is available about which track is most suitable for each woman. It would be important to have only one claims agency, with transfers between government and the levy collection agency if needed, to minimise the burden on new mothers of making a claim.

3.62 In many recommendations about the administration of any scheme, HREOC should balance these considerations.

**Conclusion**

3.63 The ACTU strongly supports the introduction of paid maternity leave, and the improvement of existing family payments to provide a dual track model of income support to families of newborn babies.

3.64 The ACTU acknowledges that paid maternity leave is only one part of a comprehensive package of measures which will support Australian families whatever their composition, promote the welfare of children, respect the choices families make, and enhance equity in our workplaces and society.

3.65 Paid maternity leave on its own will not achieve all the desired outcomes; in particular the declining fertility rate and maintaining female labour market attachment are complex issues. But paid maternity leave will directly assist women recover from birth and attach with their child. It will give breastfeeding the best chance. It will directly assist families by replacing foregone income associated with becoming parents. It will provide women with income security, certainty and a measure of workplace equity.

3.66 The ACTU model is fair, and ensures substantial compliance with ILO C183. By sharing responsibility between employers and government for employment related paid leave, the model is both affordable and responsible. The ACTU commends its model to HREOC, and affirms its commitment to work with government and employers to agree the details of the scheme.
4. QUESTIONS IN THE OPTIONS PAPER

Q.1 Are you aware of any more specific information that would assist calculation of the number of women who are in the Australian workforce at the time they have a baby?

The ACTU has no additional information. Results of the ACTU’s national workplace survey will be provided to HREOC as they become available.

Q.2 Are you aware of any more specific information that would assist calculation of the number of women who are in the Australian workforce who are eligible for unpaid maternity leave?

No

Q.3 Is there an accurate way to estimate take up rates for unpaid or paid maternity leave under current provisions based on current information about women and work?

The ACTU has no further information.

Q.4 Is there an accurate way to estimate take up rates for unpaid or paid paternity leave under current provisions based on current information about men and work?

The ACTU has no further information. Results of the ACTU’s national workplace survey will be provided to HREOC as they become available.

Q.5 Is it more likely that women or men would take leave if they were eligible for payments?

Please provide details.

The Department of Trade and Industry in the UK provided a Regulatory Impact Assessment to accompany the introduction of extended paid maternity leave (to 26 weeks) and the introduction of 2 weeks paid paternity leave. The estimated take up rate was 85% of eligible mothers and 70% of eligible fathers. These were based partly on UK experience that only 18% of mothers took less than their previous entitlement of 18 weeks paid leave.\(^{20}\)
All evidence on paternal take up suggests that the closer the rate of payment to full income replacement, the more likely men are to take leave, but cultural factors are also significant (Buchanan and Thornthwaite).

**Q.6** Do you consider that government support for families with newborn children may be considered to approximate paid maternity leave?

Family assistance payments and paid maternity leave share many objectives.

Paid maternity leave has an additional objective; to provide income security to women who have to take a period of leave from employment associated with the birth of their child. Refer paragraphs 1.4, 1.9, 1.18 & 1.19.

**Q.7** Do you consider that government support for families with newborn children is appropriately targeted? If not what additional or alternative support do you consider is required?

Existing government support for families of newborn children is both inadequate and inequitable.

The Maternity and Immunization Allowances of $798.72 and $208.00, means tested, are inadequate to compensate families for the costs associated with childbirth.

The Family Tax Part B ($2752.00) was justified as support for families who choose to care for their children at home, rather than in child care. The ACTU supports choice and notes the Finnish model of neutrality in support for childcare of toddlers. However the Family Tax Benefit Part B does not perform this role, in that it:

- is payable to parents of children up to 18 years of age
- discourages dual income earning and the sharing of care responsibilities, and penalises return to part time employment
- is not means tested, and thus is paid to some high-income families.
The ACTU also questions how many families with the mother in employment would be eligible for Family Tax Benefit Part B in the child’s first year, given the likelihood of some maternal income in the period before the child’s birth.

The new Baby Bonus is regressive and acts as a disincentive to employment. Payment is made at the end of the financial year, not at the time of the birth. Payment has outstanding debt taken from it. Payment in the first year reduced proportionally to the timing of the birth over a whole year.

Q.8 Do you have any more information than provided in this paper on current arrangements that women and their families make to support themselves at the time of the birth of a new child?

A number of ACTU affiliates have surveyed their members. These surveys are found in the FSU submission to this inquiry, and the APESMA survey at www.apesma.asn.au

Results of the ACTU’s national workplace survey will be provided to HREOC as they become available.

**Part B**

Q.9 If a paid maternity leave scheme were to be introduced in Australia what components would it need to include in order to meet relevant international agreements?

Refer to section 3

In addition, breastfeeding breaks should be introduced as a minimum employee entitlement.

**Part C**

Q.10 Which objectives, whether discussed in this paper or not, do you consider should be the primary objectives of a paid maternity leave system? Why?

Refer to Section 1
Q.11 Do you consider that a paid maternity leave system would be able to meet any or all of these objectives? If so, to what extent?

Refer to Section 1

Q.12 Are there particular design elements for a paid maternity leave scheme that would be crucial for achieving particular objectives? If so, what are those elements?

Refer to Section 1

Q.13 Are you aware of any additional international or Australian evidence or studies that document the effectiveness of paid maternity leave in achieving any of these objectives?

See above

Q.14 Do you consider that a paid maternity leave scheme would assist to provide greater workplace equity?

Yes. See paragraphs 1.21 – 1.27

Q.15 Are there particular design elements for a paid maternity leave system that would be crucial for achieving workplace equity? If so, what are they?

Eligibility – see paragraph 3.4 – 3.26, plus the inter-relationship between the maternity payment and maternity leave which ensures low income women can elect the scheme best suited to their circumstances will ensure equity.

Q.16 Are you aware of any additional international or Australian evidence or studies that document the effectiveness of paid maternity leave in achieving workplace equity?

See above
Q.17 Do you consider that a paid maternity leave scheme would provide appropriate support for women and families with new babies?

Paid Maternity Leave is part of an adequate and appropriate family policy framework which supports families of newborns. However Paid Maternity Leave is not necessarily sufficient support for all families. Some working mothers will require additional support, over and above PML. Additionally, support must extend to families where the mother is outside the paid workforce.

See paragraphs 1.4 – 1.19

Q.18 Are there particular design elements for a paid maternity leave system that would be crucial for providing appropriate support for women and families? If so, what are they?

See above, plus Section 3

Q.19 Are you aware of any additional international or Australian evidence or studies that document the effectiveness of paid maternity leave in supporting women and families?

See Section 1

Q.20 Do you agree that a paid maternity leave scheme would provide commercial benefits for employers?

Yes. See paragraphs 2.9 – 2.18

Q.21 To what extent would paid maternity leave create workforce incentives for women to maintain labour force attachment?

See paragraphs 1.25 – 1.36
Q.22 Are there particular design elements for a paid maternity leave system that would ensure commercial benefits to employers? If so, what are they?

The ACTU is aware of some schemes which require women to return to work for a particular employer to access all/part of the payment. Such a condition:

- is inappropriate in a scheme where funding is not tied to a particular employer;
- is inconsistent with the aim of income security for women;
- is inconsistent with the aim of assisting families with costs associated with the birth of the child;
- pays inadequate regard to the difficulty (particularly for first-time mothers) of accurately stating their return to work plans

Q.23 Are you aware of any additional international or Australian evidence or studies that document the commercial benefits to employers of paid maternity leave?

See paragraphs 2.9 – 2.18

Q.24 Do you agree that a paid maternity leave scheme would provide benefits to society?

Yes. See Section 1

Q.25 Are there particular design elements for a paid maternity leave scheme that would be crucial for imparting social benefits? If so, what are they?

See above

Q.26 Are you aware of any additional international or Australian evidence or studies that document the social benefits of paid maternity leave?

See above
Part D

Q.27 Should a paid parental leave scheme provide payment to women or both men and women? Why?

The ACTU does not oppose the extension of eligibility to the child’s father or other primary caregiver in circumstances where the mother has genuinely opted to transfer her leave entitlement.

The ACTU sees advantages in allowing the mother to transfer her entitlement to the child’s father. It:

- gives families greater choice;
- encourages more equitable division of domestic responsibilities. The ACTU is aware that in some jurisdictions some parental leave is ring-barked to encourage men to take part in child care; and
- caters for situation where a mother is seriously ill or otherwise unable to assume caring responsibilities.

However the ACTU believes that, consistent with the anti-discrimination purpose, and to support maternal recovery post birth, the primary entitlement should rest with the mother.

In considering paid maternity leave, HREOC should examine the case for additional paid leave for the father or alternative supporter (eg grandparent) to care for the mother and any siblings. Two weeks concurrent paid leave is not uncommon.

Q.28 Should a paid maternity leave scheme provide payments to adoptive parents?

The ACTU supports the provision of paid maternity leave for adoptive parents, as a means to encourage attachment and bonding between the adoptive parents and the child. Such leave should be available to either parent, or split between the parents. The definition of adoption should be wide enough to cater for genuine informal adoption.

Q.29 If paid leave is made available to adoptive parents, should eligibility be limited to parents with adopted children of a particular age?

No, the issues of family settlement remain regardless of the age of the child.
Q.30 Do you consider that there are stronger reasons for a work-related entitlement or a universal payment? Why?

The ACTU supports a dual track system of support, which recognises the different outcomes expected from a universal scheme and an employment related scheme.

See paragraphs 1.4 – 1.19

Q.31 Should eligibility for paid maternity leave be limited to women with a minimum length of employment? If so, what length of employment do you consider is appropriate? Would this need to be with a single employer?

See paragraphs 3.8 – 3.13

Q.32 Do you consider that the same eligibility requirements should apply for both unpaid and paid maternity leave?

The ACTU supports revised eligibility requirements for maternity leave - see paragraphs 3.4 – 3.26

Q.33 For how many weeks should paid maternity leave be available?

See paragraphs 3.27 – 3.29

Q.34 Should the duration of paid maternity leave be extended in special circumstances, such as illness of the mother or child?

Government assistance should be available to families that suffer financial hardship due to the illness of an income earner, or due to caring responsibilities whenever these arise. The ACTU supports the extension of paid and unpaid leave for caring for family. Where unpaid leave is taken, families should be eligible to qualify for means tested support.
Q.35 Do you consider that paid maternity leave should be paid as a fixed amount or a proportion of income? Why?

The ACTU supports full income replacement. However, as part of a national scheme, the ACTU supports a combined form of funding with the government paying up to 14 weeks at minimum wages, ($431pw) and an employer levy funding payment up to average weekly full time earnings. Employers would be encouraged to top up to 100% of earnings in enterprise agreements. The ACTU model is accompanied by a maternity payment to women ineligible for Paid Maternity leave equivalent in value to the government contribution to Paid Maternity leave, which acts as an effective minimum payment.

See paragraphs 3.30 – 3.32

Q.36 If paid maternity leave were to be a fixed amount what should that amount be? For example: unemployment benefits or parenting payment; the federal minimum award wage; average weekly earnings or a proportion of it; women’s average weekly earnings or a proportion of it; or an individual’s full pay or a proportion of it.

See paragraphs 3.34 – 3.45

Q.37 If paid maternity leave were to be a proportion of income, what proportion should it be and should there be a cap or maximum rate for payments?

See above

Q.38 How do you consider paid maternity leave should be funded? Why?

See above
Q.39 Do you consider that there is a stronger case for funding by government, employers or employees? If so, why? Would a form of combined funding work effectively? How?

See above

Q.40 If employers were to contribute to paid maternity leave, do you think this funding should be provided by individual employers or be spread across all employers?

See paragraphs 2.17, & 3.39 – 3.44

Q.41 If employers were to contribute to paid maternity leave, should there be any exemptions for certain types of employers (e.g. those with less than 20 employees)?

See paragraph 3.42

Q.42 Who should be responsible for funding paid maternity leave?

See above

Q.43 Do you support a particular option or model for a paid maternity leave scheme?

See Section 3

Q.44 Do you have any information relevant to costing these models?

See paragraph 3.40
2. ABS *Australian Social Trends*, 2001
3. ABS *Labour Force and Other Characteristics of Australian Families*, 6224.0, June 2000
6. OECD 2001 op cit
8. NCVER 2001 op cit
9. Study Highlights Later Problems, The Age, 10 June, p16
15. M’Donald, Peter, op cit
18. Commonwealth Report to the ILO Committee of Experts on Maternity Protection Convention