
2 What we are proposing and why

Key points

The Australian Government's statutory paid parental leave scheme should:

- provide paid *parental* leave for a maximum of 18 weeks, which could be shared by eligible parents, but would have to be used within 12 months of the birth or adoption as part of a continuous period of parental care immediately after birth
- include an additional two weeks of *paternity* leave reserved for the father or same sex partner to be used within 12 months of birth
- be accessed only by an employed parent who has been employed continuously (with one or more employers) for at least 10 of the 13 months prior to the expected birth of the child, and who undertook at least 330 hours of paid work in the 10 month period
 - coverage would extend to all people meeting this employment test, including full-time, part-time and casual employees, the self-employed and contractors
 - parental leave would only be available to the primary carer of a child
- allow scope for a broad range of families to participate, including adoptive parents, same sex couples, and surrogate mothers and, subject to a range of stringent conditions, a capacity for participation by non-parental carers
- provide the federal minimum wage (currently \$543.78) for each week of leave for those eligible, with benefits subject to normal income taxation and included as income for assessment of any welfare payments, with the exception of income support payments (principally parenting payments, Newstart and the disability support pension)
 - recipients of paid parental leave would not get family tax benefit B while on leave and, with the exception of parents of multiple births, would not get the baby bonus
 - there is a prima facie case for superannuation entitlements for the paid parental and paternity leave period for longer-term employees eligible for such benefits prior to the parental leave period
 - but implementation should be deferred until the results of a review to be undertaken three years after the scheme's inception and should be contingent on compliance and other costs at that time
- be taxpayer-funded, but with scope for the future introduction of employer-funded superannuation contributions
 - employers would also act as paymasters where the employee had sufficient workplace tenure, with the Government prepaying employers by instalment to avoid cash flow impacts.

The scheme would be supported by complementary measures to help business cope with disruption burdens associated with greater leave taking.

Those families not eligible for paid parental leave may be entitled to paternity leave, the baby bonus (\$5000) and other financial support through the social transfer system.

The Commission estimates that the annual gross costs to the Government (taxpayer) of the scheme would be about \$1.3 billion. In net terms, the cost to taxpayers would be around \$310 million, reflecting tax savings and changes to the baby bonus. There would be an additional net economy-wide cost of \$70 million if super contributions were introduced later.

2.1 How to view the model

The Commission has been asked to design a statutory paid parental leave scheme for the Australian Government. We propose that the scheme should be largely taxpayer-funded, and should incorporate two types of leave:

- 18 weeks of paid parental leave for either parent (subject to the mother’s eligibility)
- two weeks of paid paternity leave for the father or other eligible partner.

Under the Commission’s proposal, the Government would pay both types of leave at the going federal minimum wage. People with access to privately negotiated paid parental leave schemes would still receive statutory parental and paternity leave payments if they met the eligibility conditions.

The purpose of this chapter is to set out the myriad features of this model and to sketch the evidence and reasoning for our choices — drawing on the more detailed material and views of participants discussed in subsequent chapters. In most instances, we provide simple and brief explanations for our choices, but for some features, particularly the duration of leave and eligibility requirements, the judgment depends on weighing up many competing factors.

The Commission’s model draws strongly on many of the features of schemes proposed by participants in this inquiry. But our model also has unique features that reflect the evidence about how parents behave and the many tradeoffs in designing any scheme — such as the community’s desire to help new parents, balanced against the costs imposed on the community by doing so.

While the Commission explores many alternative models for a scheme, we have proposed a specific, preferred model, with detailed consideration of its desirable features and its effects. For instance, rather than provide an optional range of durations, the Commission has proposed a particular duration of leave that appears to best meet the objectives of a scheme. Similarly, we have proposed a particular ‘hours of work’ test for eligibility to the proposed scheme.

The Commission’s proposed design — like those operating overseas — is complex, reflecting the need to avoid unintended consequences, and to accommodate the various tradeoffs that inevitably arise in schemes of this kind. Setting out its complex design elements provides a clear basis for implementation by government. That said, in the practical implementation of any scheme, small variations in our model are unlikely to affect its effectiveness materially.

We are less certain of the benefits of some features of a paid parental leave scheme than others. Where this is the case, we have suggested the Government consider these features later, after a review of the operations of the initial scheme. For instance, this includes the issue of parents sharing part-time paid parental leave. We have highlighted any such uncertainty where it occurs.

Given the useful feedback from participants following the draft report and our own analysis we have changed some elements of the draft report's proposals (box 2.1).

While the bulk of this chapter (and the rest of the report) is about paid parental leave, the Commission has taken into account the existing broad set of policy measures to support parents of newborn children.

Several overarching principles have guided the Commission in choosing model features:

- the model should be the simplest possible that achieves the main objectives of the scheme
- where possible, the model should avoid being overly prescriptive, allowing families to flexibly adapt the leave scheme to their specific needs. This is because families come in many forms and their needs depend on their particular circumstances. One size will definitely not fit all. For example, the needs of a family where the woman suffers postnatal depression are different from families where that is not so. However, as with the goal of simplicity, flexibility is desirable only to the degree that it does not subvert the objectives of a paid parental scheme. Without some constraint, the appropriate flexible model would be a general cash payment made to all families with newborn children that they could use for anything they liked (in effect, the present baby bonus). But that would not meet the objectives of a paid parental leave scheme.

2.2 The model

Table 2.1 sets out the basic features of the Commission's proposal. We discuss the details and the reasons for the specific choices in subsequent sections.

Box 2.1 What are the main changes since the draft report?

To promote access to the scheme by parents having second or subsequent babies, amendment of the average ten hours a week working requirement to effectively an average one day a week requirement

To make re-qualification for statutory leave easier for existing mothers and to allow scope for interrupted work and unpaid prenatal leave, amendment of at least a continuous 12 month prior period of work to a requirement for working for at least 10 of the 13 months prior to the expected birth of the child.

To fit in better with existing paid parental leave schemes and recognising the benefits of longer parental care, removal of the requirement that parents initiate statutory leave within six months of the birth of the child. In its place, there would be a requirement that parents complete statutory paid parental and paternity leave within 12 months of birth or adoption. Statutory parental leave would have to be taken as one block in a continuous period of parental care, with the parental care, but not necessarily the paid parental leave, commencing no later than birth.

For administrative simplicity and flexibility for parents, removal of the requirement that statutory paid parental leave payments to the primary carer follow or precede other private leave payments, so that statutory paid parental leave could be taken concurrently with other paid leave. The 'non-concurrence' requirement would still apply to paternity leave.

Reflecting a desire to reduce costs for business during the scheme's establishment phase and given current economic uncertainties, delayed and contingent implementation of superannuation contributions by employers, with this issue being part of a review of the scheme three years after its introduction.

To avert any cash flow problems for employers, introduction of the requirement that the Government pay by instalment those employers acting as paymaster for government before the businesses make parental and paternity leave payments to employees.

Given its better risk management processes and likely cost advantages, payment by Centrelink to employers undertaking the paymaster function, not through changes to pay-as-you-go withholding taxes.

Given consistency with other welfare payments, preserving the current means-testing of the baby bonus rather than eliminating income testing as proposed in the draft.

To allow broader access to the scheme by lower-income families and to encourage their longer-term workforce participation, provision that the income from statutory paid parental and paternity leave not count as income for the purposes of calculating parenting payments (single and partnered) and other income support payments.

Given the existing effects of the welfare system, removal of a lower rate of payment for juniors and others getting below minimum wage rates.

Given its administrative complexities, removal of the proposal to reimburse the remaining portion of the baby bonus for a parent on statutory parental leave who returns to work prior to 18 weeks.

Recognising the diversity of families and children's needs, a capacity for non-family members to get statutory paid parental leave in some limited cases.

Table 2.1 A snapshot of the Commission’s proposed model

Duration	<p>18 weeks of paid <i>parental</i> leave to be used up within one year of birth as one block of a continuous period of parental care, with the parental care, but not necessarily the statutory paid leave, commencing no later than birth. An additional two weeks would be available as <i>paternity</i> leave. It would be reserved for the father (or other eligible partner) who shares in the daily care of the child and would also need to be used within one year of birth. Payments would only be made if parents took leave ('use it or lose it').</p>
How much?	<p>The going adult minimum wage (currently \$543.78) for each week of parental or paternity leave, paid regardless of pre-birth incomes, subject to taxation, and included as income for assessment of welfare benefits, with the exception of income support payments (principally parenting payments, Newstart and the disability support pension).</p> <p>Parents taking any statutory paid parental leave would lose the baby bonus (except for multiple births) and there would be no access to family tax benefit B while on statutory paid parental leave. These conditions would not apply to paternity leave.</p> <p>Depending on a review to be held three years after program inception, payment of superannuation contributions while on leave, with benefits to only apply to the actual salary of the employee or the adult minimum wage, whichever is lower. Mandated contribution rates limited to the statutory 9 per cent rate, but no bar to negotiation for higher amounts.</p>
Who pays?	<p>Cash payments for paid parental and paternity leave would be fully taxpayer-financed, but with changes to the baby bonus and family tax benefit B.</p> <p>Where employees were entitled to unpaid parental leave under the National Employment Standards, the Government would prepay statutory paid parental and paternity leave entitlements by instalment to employers, who would then make payments to their employees.</p> <ul style="list-style-type: none"> The Australian Government would pay all other eligible employees directly <p>Employers would fund any future implementation of superannuation contributions, but only to long-term employees (12 months) eligible for super on their wages prior to the scheme.</p>
Eligibility and requirements for use	<p>Statutory paid parental leave would be available for a primary carer, typically the parent, but with scope for non-parental eligibility in special circumstances.</p> <p>Eligibility for parental or paternity leave would require 'continuous' employment (with one or more employers) for at least 10 of the 13 months prior to expected birth, and paid work of at least 330 hours in the 10 months.</p> <p>The scheme would cover all employees who met the employment test above, including the self-employed (including contractors) and casual workers.</p> <p>To get any future superannuation entitlements, employees must also be eligible for unpaid parental leave under the National Employment Standards and be entitled to these benefits before taking paid parental or paternity leave.</p> <p>Eligible mothers could transfer paid parental leave rights to fathers and other eligible partners, if they also meet the required employment tests above. In special cases (eg death of the mother), eligible partners could access paid parental leave if the mother was ineligible.</p> <p>'Paternity' leave would be available to eligible fathers, or, in same sex couples, to the other eligible partner, even if the mother was not eligible for statutory paid parental leave.</p> <p>No use of statutory parental leave by both parents at the same time, but statutory paternity leave could overlap with a mother's parental leave.</p> <p>Parents could take statutory paid parental leave at the same time as other private paid leave, but fathers would not be allowed to take paternity leave while on other paid leave.</p> <p>Eligible adoptive parents could get access to leave for children under 16 at time of placement.</p> <p>Primary carer could adjust leave to 'keep in touch' with employer if there is mutual consent.</p> <p>Parents giving birth to twins or more would get one leave entitlement but, subject to the income test, receive the baby bonus for each additional child.</p>
Other policies	<p>Regulatory and information measures to assist business to cope with disruption burdens and to advise employees of their entitlements</p>
Non-eligible parents?	<p>Those families not eligible for paid parental leave may be entitled to paternity leave, the baby bonus (\$5000) and other financial support through the social transfer system.</p>

2.3 How financially generous should the scheme be?

The Commission proposes that eligible parents would generally receive a payment equal to the current adult minimum wage of \$543.78 a week. The payment would be at the flat applicable rate, rather than prorated on wage earnings prior to the paid leave period.

While the Commission considered several, more complex, variants, a flat-rate payment:

- is easier to implement
- ensures that low-income female employees are better off under a paid parental leave scheme than they would be on welfare payments, providing stronger incentives for labour supply by mothers with weaker attachment to the labour force.

Our approach also takes into account the balance between the needs of parents and the burdens on taxpayers — especially those who would not receive any direct benefits, such as those without children. Some European countries offer full replacement wages (and for longer periods than contemplated in our model). The budgetary effects of a long-duration, full replacement wage scheme would be large (section 2.9). It would also entail support for high-earning women, who already have strong attachment to the labour force, often receive privately negotiated paid maternity leave, and usually have better access to resources to self-finance leave.

As in the draft report, the Commission proposes that many employees would be eligible for a superannuation contribution while on statutory paid parental and paternity leave (though its implementation should be delayed and contingent — see below). Such contributions are customary for recreational leave, and depending on the outcome of a final ATO tax ruling may be obligatory for private paid parental leave (chapter 8). To that extent, entitlement to these benefits would be consistent with the goal of making a statutory paid parental leave scheme mirror, as much as possible, leave arrangements more generally. It would emphasise that the statutory scheme is a work-based benefit (with potential retention benefits) and that a period of caring for children while employed is a normal feature of employment. The exact financial arrangements are spelt out in section 2.4 and recommendation 2.4.

The Commission also considered whether employees should be eligible for accrued leave entitlements while on statutory paid parental and paternity leave. While in principle, there is some merit to such a proposal, there are also some disadvantages that suggest this should not be a feature of the current scheme (chapter 8), though it can be reassessed as part of the proposed three year review.

The overall cash equivalent of the Commission’s package of paid parental leave (excluding the potential future super component), varies considerably as a share of the annual earnings of eligible parents (figure 2.1). For the lowest income earners, paid parental leave of 18 weeks would actually exceed their usual annual income.¹ (A workable scheme must have this consequence for the lowest income people as otherwise they would simply opt out because of the incentives posed by the tax and welfare system.)

Paid parental leave would be subject to taxation. Taxation of paid leave would:

- provide the biggest net payments to those parents whose behaviour (labour supply, time spent away from work) would be most responsive, resulting in a more cost-effective scheme (chapter 5)
- make the treatment of paid leave consistent with other wage incomes, normalising the arrangement, and signalling that it is not a ‘welfare’ payment (chapter 6).

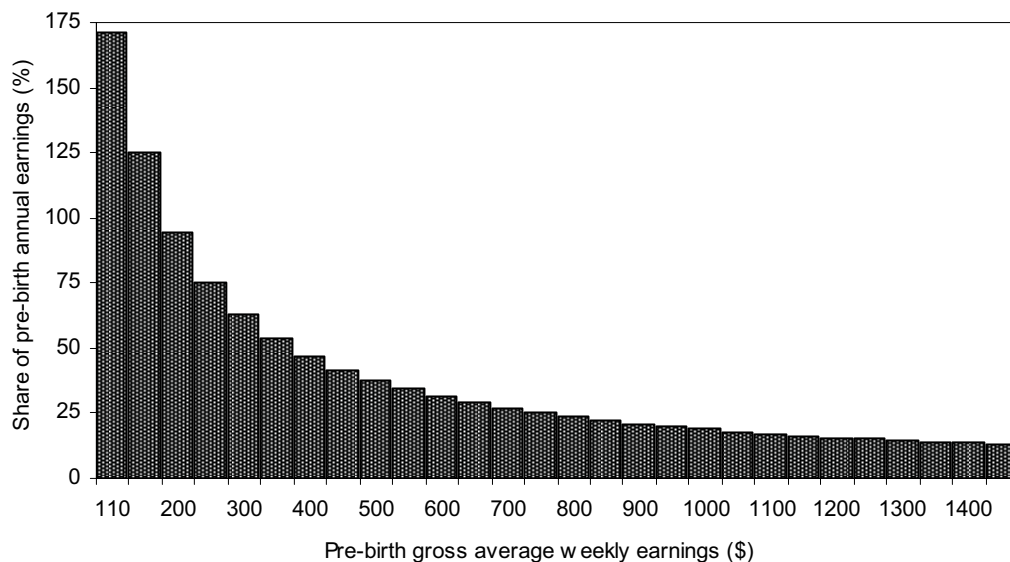
Income from statutory paid parental leave would also be recorded as part of assessable income for eligibility to welfare payments, with the exception of identified income support payments (of which the most relevant are parenting payments, Newstart and the disability support pension).² This exception is intended to encourage certain groups of low income parents to use statutory paid parental leave rather than to opt out into the welfare system. As an illustration, in the absence of an exception for parenting payments, a single mother would lose around two thirds of her entitlement to parenting payments while on statutory paid parental leave, reducing her incentives for participation in the scheme and weakening any of the scheme’s positive effects on her workforce participation. Similarly, without the exception for Newstart allowance, a father on Newstart would lose some or all of the allowance while his spouse was on statutory parental leave. Given other welfare benefits available to mothers outside the paid workforce, the mother would face a monetary incentive to opt out of statutory payments and the labour force.³ The exception would *not* apply to a wide range of other benefits — such as family tax benefits, rent allowance, and child care benefits.

¹ That is, \$14.31 *times* 8 hours average a week (the floor on the Commission’s employment test) *times* 52 weeks equals an annual salary of around \$6000, considerably less than the roughly \$9800 from 18 weeks of statutory paid parental leave.

² With income support payments identified under section 23 of the *Social Security Act 1991*.

³ In certain circumstances, it could have adverse impacts on the father’s job search activities. For instance, were the mother receiving privately negotiated paid leave entitlements of more than around \$180 a week and then participated in the statutory paid parental leave, then her combined income would be sufficiently high that the father would no longer be eligible for Newstart payments. In that case, the father would have no obligations to search for work, potentially undermining his incentives for labour force participation.

Figure 2.1 Low income earners benefit most from paid parental leave^a
 Paid parental leave as a share of annual pre-birth earnings



^a The calculations include the cash component of paid parental leave, but exclude superannuation contributions. (The latter make very little difference to the results.) The estimates assume that the parent takes all the leave and takes account of taxes. There is no subsidy for very low income earners since they do not meet the hours eligibility requirement. The calculations relate to gross statutory paid parental leave payments. They ignore the net effects arising from taxation of paid leave and the reduction in some social welfare payments. Those issues are considered in detail in chapter 9.

Data source: Productivity Commission calculations.

Given the complexity of the welfare system, it will be important for government to communicate to parents how they would fare if they took statutory paid parental leave rather than opting out. We consider the issue of information dissemination in section 2.7 and in recommendation 2.12.

Indexation of the payment

In the draft report, the Commission proposed that the value of paid parental leave should remain pegged over time to the going federal minimum wage (FMW), as set by the responsible regulatory authority. Such a basis for payment was an (uncontroversial) feature in all past Australian proposed statutory paid parental leave schemes and is a common basis for payment in schemes overseas (appendix I), including the minimum level of payment in the New Zealand scheme. It was also the proposed payment suggested by a wide spectrum of participants in this inquiry as either the sole payment or a base level, including prominent business

groups,⁴ unions,⁵ governments⁶ and other organisations.⁷ For instance, the Australian Chamber of Commerce and Industry said that it:

... welcomes the recommendation that any payments should be linked to the statutory federal minimum wage, which appears fiscally sensible and to have minimal impact upon the labour market (sub. DR399, p. 3)

However, the Australian Fair Pay Commission (sub. DR406, pp. 1–2) argued that using the FMW as the benchmark for future payment was problematic because:

Expanding the coverage of the FMW to encompass new parents would give currency to the view that the Commission should indeed have regard to their needs, especially the needs of new mothers. ... The fact that new parents would receive the FMW while on parental leave gives them a direct pecuniary interest in the level of the FMW which they might not otherwise have. At the very least, this complicates the Commission's processes for determining adjustments to the FMW. Arguably, it also exposes the Commission to pressure to adjust the FMW in a manner contrary to the interests of the low paid.

Were the process of wage determination to be materially affected this would represent a significant disadvantage of using the FMW in a statutory paid parental leave scheme. However, as noted in their submission, the Australian Fair Pay Commission is directed by its legislation to only consider certain defined matters when determining the minimum wage. By their nature, these matters would rule out consideration of the adequacy of payment in a statutory parental leave scheme. Accordingly, the Australian Fair Pay Commission would be *statutorily required* to ignore any pressures stemming from the use of the FMW in a paid parental leave scheme, and so the concerns it raises should not materialise.

Moreover, any such perceived disadvantage of using the FMW has to be set against its advantages and the relative merits of alternatives.

⁴ Such as ACCI (sub. DR399, p. 3); the Australian Industry Group (sub. DR363, p. 3); and the NSW Business Chamber and Australian Business Industrial (sub. DR340, p. 17).

⁵ For example, the ACTU (sub. DR365, p. 16); Shop Distributive and Allied Employees Association (sub. DR330, p. 3); Union of Australian Women, Victoria (sub. DR304, p. 1); Australian Education Union SA (sub. DR291, p. 2); and the Finance Sector Union of Australia (sub. DR306, p. 3). Unions (and often also groups representing women) generally favoured the federal minimum wage as the base payment, with top ups to full replacement wages when these were higher.

⁶ Such as the Western Australian Government (sub. 231, p. 1); Queensland Government (sub. 246, p. 2); and the Tasmanian Government (sub. DR411, p. 9).

⁷ Such as the Western Australian Commissioner for Children (sub 75, p. 5); the Australian Human Rights Commission (sub. DR377, p. 21); Women's Electoral Lobby Victoria (sub. DR368, p. 2); Hobart Women's Health (sub. DR313, p. 3); the Benevolent Society (sub. DR302, p. 11) and the National Council for Women Queensland (sub. DR392, p. 2).

The most obvious alternative to pegging the parental leave payment rate to future levels of the FMW is indexation by ordinary time average weekly earnings (AWE). This would amount to setting the payment equal to a fixed proportion of AWE. Were an initial parental leave payment to be set to \$543.78 per week,⁸ this would be equivalent to 47.2 per cent of AWE.⁹ Were AWE indexation to be used, then future statutory paid parental leave rates would be calculated as 47.2 per cent of AWE as recorded by the Australian Bureau of Statistics in any relevant period.

However, while easy to implement and divorced from future determination of the FMW, an AWE indexed payment has several significant limitations compared with the FMW:

- It is not a wage and therefore less clearly signals statutory paid parental leave as a work-based entitlement, reducing the benefits that stem from such signalling. To the contrary, use of AWE indexation for the payment would place statutory paid leave alongside welfare payments such as the disability support pension, the age pension and parenting payment (single).
- Determination of the FMW by the wage regulator takes account of the need to provide a safety net for the low paid, and also considers the need for the FMW to exceed welfare payments by a margin sufficient to encourage employment. This makes the FMW an appropriate benchmark for a basic rate of paid parental leave because there are parallel concerns for low-income families using parental leave. In contrast, movements over time in the AWE reflect changes in the occupational and skill composition of the workforce, the extent of salary sacrificing and many other factors that make it less clearly a sound conceptual basis for indexation of a basic parental leave payment.
- A ratio of paid parental leave payments to AWE of 47.2 per cent appears to be arbitrary and would almost certainly invite strong pressures on government for higher rates over time (50 per cent, 60 per cent and so on), whereas pressures on government would be likely to be lower when the payment is set at 100 per cent of an independently arbitrated wage. In other words, choice of the benchmarking method may influence future fiscal pressures for government in unexpected ways, and this should be a consideration in determining the appropriate benchmark.

⁸ Setting the *initial* level of statutory parental leave payment to the existing FMW and using AWE as the basis for *future* indexation would avoid any of the concerns put forward by the Australian Fair Pay Commission.

⁹ The value of ordinary time full-time adult average weekly earnings was \$1151.40 per week in the August quarter 2008 (ABS 2008, *Average Weekly Earnings, Australia, August 2008*, Cat. no. 6302.0). Accordingly, the FMW level of \$543.78 (effective from 1 October 2008) would represent 47.2 per cent of AWE around the comparable time.

Consequently, the Commission still considers that the federal minimum wage is an appropriate benchmark for future level of payments in a statutory paid parental leave scheme. However, if the Government wishes to use an alternative benchmark, the Commission considers that indexation by AWE would be a second best option. The commencement pay level could still be \$543.78 a week (or the level of the federal minimum wage prevailing at the time of implementation).

Arrangements for those on low wages

Payment at \$543.78 has the implication that some parents earning an hourly wage rate below the federal minimum — such as apprentices, trainees or those on junior wages¹⁰ — would receive substantially more income while on parental leave than prior to birth. For example, in Queensland, the minimum hourly rate of pay for a clerk aged less than 16 years employed in a hotel is 45 per cent of the adult minimum wage (\$6.44 an hour).¹¹ Were such a junior to have worked the minimum hours to be just eligible for paid parental leave, they would have been paid \$2125 in the entire year preceding birth of their child.¹² They then would receive a total of \$9788 in direct benefits during just the 18 week paid parental leave period (plus any employer superannuation contributions in the proposed future addition to the scheme) — or nearly five times more than their usual wage over the full year.¹³

The draft report noted that the large differential between pre- and post-birth earnings for those on less than minimum wage rates might act as an inducement to early childbearing for some mothers (with adverse lifetime effects for them). The draft report accordingly proposed lower statutory parental leave payments for people whose pre-birth hourly earnings were less than the adult minimum wage rate, a recommendation opposed by many participants on a variety of grounds.¹⁴

The Commission has reconsidered its position, taking note of the fact that the existing welfare system already provides a rate of payment post-birth that would also substantially exceed the past employment earnings of the relevant low wage groups. A junior who became a single parent would qualify for the baby bonus,

¹⁰ Junior employees are those who are under 21 years of age and are not paid the full adult rate.

¹¹ *Clerks Award - Hotels and Registered Clubs - State 2003* (AN140068 – Qld). Trainee wages can be even lower than this.

¹² That is 330×6.44 .

¹³ In contrast, the proposed benefits received by adult employees during paid parental leave would be at most double the annual wages received in the pre-birth year. That is, $\{9788 / (330 \times 14.31) - 1\} \times 100 = 207$ per cent.

¹⁴ For example, the ACTU (sub. DR365, p. 16); Hobart Women's Health (sub. DR313, p. 3); the National Children's and Youth Law Centre (sub. DR327, p. 3) and the Australian Rail Tram and Bus Industry Union (sub. DR326, pp. 6–7).

parenting payment (single), family tax benefit (A and B) and several other entitlements, whose value over the same 18 week period would also exceed their pre-birth earnings by around a fivefold factor.

Paying juniors and other relevant groups a parental leave benefit below the full rate would therefore not alter the incentives for early childbearing. (In any case, teenage pregnancy rates are low and have generally been falling over time.¹⁵) Accordingly, the Commission recommends that all eligible parents should be paid the minimum wage while on statutory paid parental leave.

Multiple births

While still infrequent, twins and multiple birth rates are rising in Australia. The Commission proposes that parents bearing twins or more would receive the same paid leave arrangements as those having a single baby, but would also receive the baby bonus for any second or more babies if they met the income test. (They would continue to be ineligible for family tax benefit B.) For example, a woman bearing triplets would receive a paid parental leave entitlement of a woman giving birth to one child, and if under the income limit, would also get two non-taxable baby bonuses.

RECOMMENDATION 2.1

The Australian Government's statutory paid parental leave scheme should provide paid parental and paternity leave, with:

- ***payment at the going adult federal minimum wage for each week of leave***
- ***payments subject to income tax and included as income for assessment of welfare benefits, with the exception of income support payments as defined under section 23 of the Social Security Act 1991 (principally parenting payments, Newstart and the disability support pension)***
- ***superannuation entitlements, subject to the implementation approach and conditions specified in recommendation 2.4.***

RECOMMENDATION 2.2

Parents having multiple births, such as twins, should receive a paid parental leave entitlement for one child only and should be entitled to the payment of the baby bonus, subject to its income test, for each additional child.

¹⁵ In 2007, there were around 10 500 new mothers aged 15 to 19 years (the main age categories for juniors) — or 3.7 per cent of all mothers. Of these, around 30 per cent or 3200 would be eligible for the Commission's proposed statutory paid parental leave.

2.4 Who should finance the scheme?

The Commission proposes that the Australian Government exclusively fund any cash components of the paid parental leave scheme. The Commission considered many other models (chapter 8), but all involved risks or complexities that ruled them out as serious contenders. For instance:

- full direct employer financing for their employees would pose serious risks for businesses, especially small ones, that employed higher proportions of females, and exacerbate discrimination against women of reproductive age
- a funding arrangement that pooled these risks is more attractive because it would spread the costs across all businesses, reducing the burden on ‘female-intensive’ employers and eliminating discrimination. But setting up what would amount to a hypothecated payroll tax in Australia to collect a tiny proportion of wage income would not be worth its potential administrative and compliance burdens and would go against the principle of tax simplification embraced by the Treasury tax review
- other models — some very elegant — also involved complexities or had other limitations that reduced their practicability for a basic scheme. However, income-contingent loans may have a role in any future increase in the generosity of the government scheme (chapter 8).

A purely government-financed scheme has the virtue of simplicity, spreads the burdens across the whole community, and reduces some of the risks posed by other models.

The Commission proposes that the Australian Government partly finance the scheme by changing other family payments:

- parents receiving paid parental leave would not get the baby bonus for a single birth and the Australian Government would use the savings to help finance the paid parental leave scheme
- family tax benefit B (available for secondary income earners, usually the mother, and assessed on their income) would not be paid to a family while a parent was on paid parental leave, with the resulting savings also used to help finance the leave scheme. The payment would resume after the statutory leave period if the family were eligible.

In this way, there would be a more coherent set of family payments for in-work parents. Working parents would be better off under this arrangement (chapter 9), but the incremental burden for taxpayers would be considerably reduced by realignment of the current family payments regime.

Would business contribute?

The Commission identified flaws in an employer-funded scheme, but that need not preclude some contribution from business. In particular, the Commission considers that, over the 18 week period, there is an in-principle case that employers provide the superannuation contributions discussed earlier (chapter 8).

However, there are several concerns associated with the immediate inclusion of mandated employer-financed superannuation contributions in a statutory paid parental leave scheme:

- The ATO is yet to release its final tax ruling to determine whether payment of superannuation on privately negotiated parental leave would be required. Were there to be such a requirement, then it would reinforce the argument that a similar contribution should be required for a statutory paid parental leave scheme so that it will come to be seen as an ordinary workplace entitlement, rather than a conventional welfare payment (chapters 6 and 8).
- A statutory paid parental leave scheme involves uncertainties and transitional costs for employers associated with working out how the scheme is to operate, any changes in payroll systems for those employers acting as paymasters, any adaptations of existing private schemes and the impact of the scheme on employees' leave durations and retention rates. While the Commission's proposals have attempted to reduce these costs (for example, by prepayment of employers acting as paymasters), firms will still face some transitional costs with the introduction of the scheme. The current unprecedented global financial crisis and its unknown impacts on Australia suggest caution in *further* adding to employers' costs through mandated employer superannuation payments, even though such payments would be very modest in their own right. Adding labour costs at this time may also have employment effects and potentially create some hostility to parents using the statutory leave, working against the objectives of the scheme. However, the impacts of mandated superannuation payments are likely to be considerably muted were their introduction to be delayed until employers' uncertainties about the statutory paid parental leave scheme have been largely resolved.

Given these concerns, the Commission proposes that the Australian Government defer the introduction of mandated employer-financed superannuation contributions until after a three-year review of the scheme (recommendation 2.14). The Government should then legislate for employer superannuation contributions to statutory paid parental and paternity leave by amending the *Superannuation Guarantee (Administration) Act 1992*, depending on:

-
- reconsideration of the impacts on business or legal and other administrative problems for government that may be involved. At present, these do not seem to be significant
 - sufficient time for business administrative systems for dealing with the obligations associated with the scheme to be bedded down (such as payroll software).

The detailed arrangements for paying the super contribution could also be considered as part of the review, including whether it would be feasible to provide employees with the option of taking the business contribution as a cash payment to meet their immediate financial needs or as a standard superannuation contribution. (This would not amount to early access to super funds collected under the superannuation guarantee and so would not create a precedent for cashing out past contributions.)

How big would the super contribution be?

Superannuation payments would be structured as follows (with some examples shown in box 2.2):

- For employees earning weekly income below the federal minimum weekly wage, their superannuation entitlements would be calculated at the 9 per cent superannuation guarantee statutory rate on their usual wages prior to taking paid statutory parental or paternity leave.
- Consistent with the ceiling on paid parental and paternity leave, the Government would limit mandated employer superannuation contributions (though employers could voluntarily pay more).¹⁶ Accordingly, employees would receive no more than those on minimum adult wages unless higher rates of contribution were privately negotiated. It follows that entitlements as a share of employee's actual pre-birth wages would fall rapidly once the employee was earning more than the adult minimum wage. The maximum mandated benefit would be 3.1 per cent and 0.3 per cent of annual wages for paid parental leave and paid paternity leave respectively.

¹⁶ Over 18 weeks of paid parental leave, the *maximum* accumulated employee benefit would be \$881 based on a 9 per cent super contribution rate applying to the federal minimum wage (that is $9\% \times \$543.78 \times 18$ weeks). It would be paid in instalments over the usual pay cycle of the business (often fortnightly). The maximum payment as a share of annual earnings would be 3.1 per cent ($881 / \{52 \times 543.78\}$). The benefit would be based on *actual* weekly earnings for employees earning less than the full-time adult minimum weekly wage. For example, an employee earning \$200 a week and getting 18 weeks of paid parental leave would be entitled to a total super contribution of \$324 (that is, $18 \text{ weeks} \times \$200 \times 9\%$).

Box 2.2 Some examples of potential superannuation obligations

Mary earns \$320 a week in a part-time job. She would be entitled to \$28.80 per week paid into her superannuation fund from her employer while she was on statutory paid parental leave. The aggregate cost over 18 weeks to the employer would be \$518.40, which would be tax deductible to the employer.

In contrast, Helen earns \$1280 a week. She would be entitled to a super contribution of \$48.94 per week, with an overall gross cost to the employer of \$880.92 over the full 18 week period (and a lower cost after tax deductions). Though Helen's weekly wages are four times greater than Mary's, her employer's mandated super contribution is only 70 per cent higher. This reflects the fact that the mandated amount is limited to \$880.92 (the amount that applies to the minimum wage).

Peter earns \$950 a week and takes his full two weeks entitlement to paid paternity leave. He would receive \$97.88 in superannuation benefits.

Who would get the employer contributions?

The employer contribution would only be available to a subset of employees who qualify for, and take, statutory paid parental leave:

- As for unpaid parental leave entitlements under the National Employment Standards, the quid pro quo of employer superannuation contributions would be an adequate period of tenure by the employee. Accordingly, the Commission proposes that an employee could only qualify for these benefits if they were eligible for unpaid parental leave under the National Employment Standards, which involves a 12 month tenure requirement. This requirement would help secure some retention benefits for employers.
- In addition, only those employees currently eligible for employer superannuation contributions could receive these benefits.

Overall, the Commission estimates that about 80 per cent of women who would be eligible for the paid parental leave under the Commission's proposed scheme would be able to access the superannuation contribution in the parental leave scheme. Some of the excluded women are employers/self-employed and others are employees with less than 12 months service.¹⁷ To provide employer superannuation contributions for current non-recipients would involve higher compliance costs for

¹⁷ These figures assume that women will (initially) be the predominant users of the statutory paid parental leave scheme. The super obligations of employers for men taking advantage of paternity leave have been included in the Commission's costing of its scheme, but are small. About 60 per cent of men eligible for paid paternity leave would be eligible for super on that leave under the Commission's scheme.

business and be inconsistent with the need for a quid pro quo for business identified above. The Commission does not propose that the Australian Government pay super contributions for those not receiving benefits from employers.¹⁸ To do so would be inconsistent with the underlying goals of superannuation policy generally and with workplace rewards (for example, loyalty to firms).

The impacts on business would be tempered

The burdens on employers of these super contributions would be reduced because the *mandated* amount would be:

- paid only at the statutory 9 per cent rate
- subject to ceilings, commensurate with the limit imposed on the government-funded cash contribution and only paid to those with an existing entitlement
- subject to tax deductions as for business expenses generally, so that the Australian Government would bear a proportion of the costs equivalent to the relevant tax rate.

Employers would be able to *voluntarily* provide greater superannuation payments on the statutory paid parental leave if they wished to do so — the Commission’s proposal is not intended to limit the capacity for employers and employees to supplement the statutory entitlements. However, the Government should not, as part of the introduction of a statutory scheme, require any obligations in relation to privately negotiated paid parental leave beyond those already set out in the superannuation guarantee legislation.

Subject to its future implementation, the business contribution to the total package of parental leave benefits would be small, with the lion’s share being the cash contribution by the Australian Government. (The *net* contribution — assessed in section 2.9 would be even smaller.) The employer contribution would be least for those on low wages because the superannuation entitlements would be prorated on an employee’s actual income, whereas the Government’s contribution would be a flat amount.

As noted above, the biggest dangers of employer co-funding of paid parental leave is discrimination against women of reproductive ages and, in the shorter-run, the financial pressures on cash-strapped employers. However, the *maximum* cost to an employer in a single year of a woman taking paid parental leave is around 3 per cent

¹⁸ Such contributions are not legally required for privately negotiated paid parental leave schemes. There are several complexities associated with obligations to pay superannuation for various types of leave, which are discussed in chapter 8.

of her annual wage. As discussed in chapter 7, the expected costs to employers in any given year are much lower than this, which should reduce the likelihood of discrimination and the burden on business. Waiting until Australia's economic conditions improve will also limit the impacts on business.

Some participants in this inquiry have called for mandatory 'top ups' by business. This would involve considerable costs to business and genuinely risk discrimination against women. The Commission considers that any top up to full replacement wage or any other form of supplementation should be voluntary and privately bargained.

Should there be a 'no disadvantage' test?

A major concern of some participants in this inquiry was that employers might weaken or even eliminate privately negotiated paid parental leave schemes after the introduction of a publicly funded statutory scheme (chapter 7). Any such 'crowding out' of privately negotiated leave would be problematic. The real financial gain to employees would be weakened and, with that, the expected benefits of a statutory scheme. For instance, were publicly-funded leave to entirely crowd out privately funded leave in a particular business, then the desired impact on leave duration, financial circumstances and workforce participation of its employees would not be achieved. Indeed, some employees could actually be worse off if employers were to behave this way.

Because of these concerns, some participants have called for a 'no disadvantage' test to accompany a statutory scheme to ensure that employers maintain all existing private schemes.

The Commission continues to think that most employers with existing schemes will wish to preserve their status as an 'employer of choice'. They will do this by either maintaining their current leave arrangements (the most likely outcome) or by re-configuring the package of employee benefits in a different way (such as introducing other family-friendly policies or higher wages), while preserving the value of that package.

Even were this not always to be the case, there are potential difficulties in applying a no-disadvantage test (chapter 7). That said, the Government should actively monitor the response by employers and consider timely policy action if there were to be widespread withdrawal from privately negotiated schemes. This issue should be assessed on an ongoing basis, while the broader interaction of privately negotiated leave and statutory paid parental leave should be considered as part of the three year review (recommendation 2.14).

Arrangements for paying leave

Arrangements for paying leave should as much as possible support the underlying objectives of the policy, while being as far as possible ‘straightforward, simple, cost effective and not administratively onerous for either families or the administrators’ (as articulated by Family Day Care Australia, sub. DR379, p. 2).

Given the desire to link paid parental leave to work, where an employee has reasonable tenure with an employer, the employer would act as an agent for government and pay the statutory leave payment on its behalf. This is the arrangement used in the United Kingdom. The Commission proposes that employees must have been with an employer for at least a year for an employer to act as ‘paymaster’ under the statutory paid parental leave scheme. This qualifying period is consistent with the tenure requirements that underlie many of the obligations employers face under the proposed National Employment Standards.

Structuring payments in this way would strengthen the link between the employer and employee, which should increase retention rates for the business (and lead to higher lifetime employment by women).

In the draft report, the Commission proposed a model based on delayed reimbursement of employers, potentially through credits to pay-as-you-go (PAYG) withholding payments made by employers to the ATO. While the Commission estimated that this approach would involve small cash flow costs to business, some employers and employer groups were nevertheless concerned that these cash flow impacts might be serious for some businesses. The present difficulties in accessing business credit to address short-term cash flow shortages might exacerbate such risks.

In addition, feedback sought by the Commission from the ATO suggests that providing credits through PAYG withholding payments could be costly to implement and would not adequately manage fraud or other risks.

Accordingly, the Commission proposes an alternative mechanism for an agency arrangement with employers. This would involve *prepayment* by Centrelink to employers of statutory parental and paternity leave instalments around the time of commencement of statutory paid leave (usually, but not always, at the birth of the child). Payment arrangements would be put in place using processes similar to that leading to payments to parents of the baby bonus. The employer would then pay the parents as part of their normal pay cycle. Such an approach would overcome the cash flow consequences of the Commission’s draft proposal and would allow more appropriate risk management by the Australian Government (chapter 7).

In some instances, a beneficiary of statutory paid parental leave will be working with multiple employers, but only one of these can fulfil the paymaster role. In the Australian tax system, the tax-free threshold for an individual employee is allocated to only one employer for PAYG withholding purposes to prevent underpayment of tax. The Commission proposes that that employer would fulfil the paymaster function.

Some participants have argued that where employers act as paymasters for government (see later), the employer is, in effect, acting as if they were paying the leave, with an incidental obligation to provide accrued leave entitlements and potentially to pay payroll tax and/or workcover premiums. In fact, as far as the employer is concerned, the employee is on unpaid parental leave, for which no such requirements exist. Accordingly, the Commission does not consider that there would be any such obligations associated with the paymaster function.¹⁹ Any such obligations would run against the intent of the industrial relations system. However, the legislation and guidelines for the paymaster function should explicitly rule out any such (incidental) employer obligations.

The Australian Government should deal with other eligible parents directly through the Family Assistance Office — which is a partnership arrangement between several government agencies — including Centrelink, making payments to individuals.

RECOMMENDATION 2.3

The Australian Government should fund the cash component of the paid parental leave scheme, partially offsetting these costs by:

- ***removing eligibility for family tax benefit B while a primary carer is on statutory paid parental leave***
- ***removing eligibility for the baby bonus for a family using statutory paid parental leave (with the exception of any additional children where there are multiple births).***

¹⁹ In contrast, sometimes payroll tax would be imposed on the employer superannuation contribution — since this contribution is being genuinely made by the employer. This would only apply for larger employers in some states and territories (such as Queensland). As discussed in chapter 8, the additional amounts would be small.

There is a prima facie case that employers should fund superannuation contributions during the paid parental and paternity leave period, with:

- *superannuation entitlements calculated on the pre-birth (or pre-adoption) wage of the employee who is taking the leave, or at the federal minimum wage, whichever is the smaller*
- *superannuation payments made only to those employees who have (a) qualified for and chosen to take statutory paid parental leave; (b) were entitled to employer superannuation contributions in their jobs before taking leave; and (c) were entitled to unpaid parental leave under the National Employment Standards*
 - *If parental leave is transferred to an eligible partner, the partner may qualify for superannuation contributions, even if the original primary carer did not qualify. Only one parent may receive superannuation contributions for statutory parental leave at any given time.*
- *mandated superannuation contributions under the scheme should be limited to the statutory rate (currently 9 per cent), but with no bar to privately negotiated higher rates.*

The Australian Government should implement these employer contributions following a review of the statutory paid parental leave scheme three years after its inception (recommendation 2.14), subject to consideration of:

- *the outcome of a final Australian Taxation Office ruling on the applicability of the superannuation guarantee to paid parental leave*
- *legal and other administrative issues for government*
- *any significant detrimental effects on business viability at that time or on compliance costs.*

The employer should make statutory parental and paternity leave payments directly to employees, with prepayment of each instalment by the Australian Government. However, an employer would only act as a paymaster for government where an employee was also eligible for unpaid parental leave under the National Employment Standards. Where such an employee worked with multiple employers, the employer allocated the tax-free threshold for PAYG withholding purposes should act as paymaster.

Legislation and guidelines for the paymaster function should explicitly rule out:

- *any employer obligations for accrued leave entitlements*

-
- *any impacts on notice periods and severance payments*
 - *any impacts on payroll tax or workcover obligations.*

The Australian Government should pay other eligible primary carers directly.

2.5 Eligibility and requirements for use

The Commission has crafted eligibility requirements for a statutory paid parental leave scheme that are accountable and administratively feasible, while giving parents as much flexibility as possible. However, excessive flexibility can:

- impose costs on business and taxpayers
- confuse parents about their entitlements
- lead to unintended impacts — such as fraudulent claims
- require complex accountability processes. (As one participant quipped, the complexity and administrative costs of a scheme are equal to ‘flexibility to the power of accountability’.)

Leave would only be available for primary carers

In general, the Commission proposes that only *the* primary carer of a baby would be eligible for paid parental leave, with a limited capacity for both parents to receive paid leave simultaneously. This is consistent with the provisions for unpaid parental leave that will apply under the proposed National Employment Standards (where a three week period of concurrent leave is provided for under clause 72). There would, however, be a special provision for surrogacy (recommendations 2.7 and 2.10).

Which employees would be eligible?

A critical prerequisite for eligibility to paid parental and paternity leave is genuine attachment to the labour market prior to birth. This reflects the objectives of the scheme to provide, on child welfare grounds, a means for parents in the paid workforce to take sufficient time off for the exclusive care of children (chapter 4), while, over the longer-run helping to reduce the adverse incentives for paid work posed by the taxation and welfare system (chapter 5). In the draft report, the Commission proposed that parents would be eligible for statutory payments if they had been employed continuously for at least 12 months prior to the expected date of birth and worked an average of at least 10 hours a week.

Feedback from participants and further empirical evidence (chapter 5 and appendix J) suggest that these criteria may not be appropriate for parents who already have at least one child and are seeking to re-qualify for statutory paid parental leave:

- Women in this group work for less hours and have relatively short work tenures after their last baby. For instance, around 10 per cent of employee pregnant mothers with one or more existing children would fail a 10 hour rule (compared with less than 1 per cent for first-time mothers).²⁰
- Parents must often pay for a full day of child care, even if they use only part of it. Consequently, a woman just able to meet the 10 hour test may have to pay for two complete days of child care, lowering her net earnings and discouraging her workforce participation.
- Continuity of employment and accumulated workforce experience for existing mothers are critical elements in determining the lifetime workforce participation of women. Accordingly, one of the goals of a paid parental leave scheme is to help reduce the disincentives faced by mothers outside the labour force to re-enter work on at least a part-time basis to qualify for paid parental leave for a subsequent child. However, if the eligibility threshold for hours/tenure is set too high, it can discourage this transition. This appears to be a concern for a significant minority of existing mothers. (The evidence is discussed in chapter 5.)
- Any tenure test has the potential to affect how much leave a woman takes to care for her baby, or the spacing of subsequent births. As an illustration, with a 12 month tenure test, a woman wanting to space her children 70 weeks apart would need to return to work at around 18 weeks after her initial birth to qualify for a second round of statutory leave. This is less than the desired six months of leave to care for a child. If she wanted to take off six months to care for her first child, she would have to delay conception and the birth of her second child to qualify. So the desire for re-qualification may affect either the initial period of leave taken by a woman or birth spacing — with potential child and maternal welfare implications (chapter 4 and appendix J). The extent of these effects depends on the distribution of birth spacing among existing mothers who have some aspiration for workforce attachment.

The Commission considered whether it was appropriate to have two different criteria for first-time mothers and existing mothers. In particular, higher hours and tenure eligibility thresholds might be appropriate for first-time mothers. However, the incentive effects of such higher thresholds are not likely to be that great since

²⁰ And, as the Women and Work Group (sub. DR283, p. 1) pointed out, some education and employment programs limit work to 8 hours a week.

women without children already have high workforce attachment. It would add complexity without much gain. Accordingly, the Commission favours a common set of eligibility conditions, but geared more to the needs of mothers who already have at least one child.

Given the above findings, the Commission has adapted the eligibility criteria in the draft report. We propose that an employed parent would be eligible for government-financed parental and paternity leave payments if they had:

- worked ‘continuously’ for at least 10 months (the ‘qualifying’ period) of the 13 months prior to the expected date of the birth or adoption, though not necessarily with the same employer (the ‘10-13’ rule), *and*
- worked for at least 330 hours in the qualifying period. The 330 hour requirement allows the eligibility of a parent who has worked an average of one conventional day a week (7.6 hours a week) for the relevant ten months.²¹

‘Continuously’ is a requirement for some form of regular hours.²² It should be defined to allow parents reasonable breaks in employment, such as a casual worker taking a holiday, or a worker moving between jobs were their employer to make them redundant. In the New Zealand system, this regularity rule requires a parent to have worked at least one hour every week or 40 hours every month. The Commission has not defined the precise criterion for an Australian scheme, but something akin to the New Zealand approach appears appropriate.

It should be noted that (as is customary in other contexts) a person would be regarded as ‘working’ if they were on some form of normal employer-*paid* leave, such as recreation leave.²³ For example, suppose that a woman’s standard hours of work was 15 hours a week and that she took 12 weeks of (paid) long service leave in the year prior to giving birth. That leave period would contribute nearly 30 per cent to the qualifying period and 180 hours to the required hours for participation in

²¹ The 330 hours requirement was derived as follows. First, note that a conventional day of work involves 38 hours/5 days=7.6 hours. Second, ten calendar months is equivalent to 43.45 weeks (that is, 10/12 months× 365/7 weeks). Finally, when multiplied these give 330.2 hours over the ten month period.

²² The National Employment Standards uses a requirement for ‘regular and systematic’ work — though its scope is not defined — to determine who is a long-term casual employee (which is the basis for eligibility to unpaid parental leave). While the Commission favours alignment of a statutory paid parental leave scheme with the National Employment Standards for features that involve employer obligations (such as super contributions and the paymaster function), this does not need to hold for other features. Accordingly, the definition of ‘continuous’ work under a statutory paid parental leave scheme need not be the same as ‘regular and systematic’ in the National Employment Standards.

²³ This, for example, is the approach taken in the Canadian federal system.

the statutory paid parental leave scheme. Unpaid leave — such as that allowed for parental leave under the proposed National Employment Standards — should not qualify as ‘working’ for the purposes of a statutory paid parental leave scheme,²⁴ since one of the goals of a statutory scheme is to encourage women’s continued *actual* employment after a reasonable period away to care for a newborn. Nor would participation in the current form of CDEP count as employment, since CDEP is a labour market program for the unemployed, rather than typical employment.

These eligibility requirements increase the number of potentially eligible women and reduce some of the limitations present in the previous criteria identified by participants in this inquiry (such as the National Pay Equity Coalition, sub. DR342, p. 5): The 10-13 rule:

- has the advantage that it will cater for many instances where a woman has a premature birth, is retrenched prior to birth (and can’t get another job) or where the business folds prior to birth
- provides considerably more latitude for eligibility for statutory paid parental leave for employees with more interrupted patterns of work (for example, casual teachers).

The Commission’s work test reflects the need for the leave to apply to parents with genuine attachment to the labour force, rather than those with precarious links. (Carers with limited attachment would still be eligible for welfare payments, such as family tax benefits and the baby bonus.) Very low hour or tenure requirements — for example one hour worked in the last month — would create perverse incentives for people to enter the labour force merely to qualify for the benefit, rather than because they seriously wish to obtain a job.

We have spelt out the additional criteria needed for the employer superannuation contribution in section 2.4.

Employee rights to a job on return from leave

Most employees on statutory paid parental leave would also be guaranteed a job on return from parental leave under the National Employment Standards. However, some employees would fail to meet the tenure or permanency tests of those

²⁴ An employee’s absence from work on unpaid parental leave under the National Employment Standards *does* count as service for the purpose of determining the employee’s entitlement to a later period of *unpaid* leave (Explanatory memorandum to the Fair Work Bill 2008). However, such an absence from work does not count as service for accruing other entitlements, such as paid leave. Accordingly, adoption of the Commission’s definition of ‘working’ for the purposes of qualification for statutory *paid* parental leave is consistent with the National Employment Standards.

standards, yet would be still eligible for statutory paid parental leave. For example, an employee who had worked for more than an average ten hours weekly over the last year, but with different employers, would qualify for the statutory paid scheme, but not a job return guarantee. The Commission's proposed scheme design would not extend the job guarantee rights of the proposed National Employment Standards. Employees not covered by the National Employment Standards would have to negotiate privately their return to work with their employer.

What about the self-employed?

The self-employed (including contractors and employers) would also be eligible for paid parental and paternity leave with the same requirements above.

There would need to be an appropriate definition of this group — with definitions used by the Australian Tax Office a likely basis. A clear definition would ensure that people get the entitlements that are due to them and prevent people essentially outside the labour force from categorising themselves as 'self-employed' to access a benefit that is greater than the baby bonus.

The Government would need some process to ensure the reasonable probity of eligibility processes for the self-employed, given the lack of an objective arbiter of exactly how many hours a self-employed person works. It might be expected that some would exaggerate their actual hours of work to qualify for paid parental leave. As shown in figure 5.4 in chapter 5, the potential risk is not trivial. Around 20 per cent of self-employed pregnant women work less than an average eight hours per week (the threshold for eligibility in our proposed scheme). And it is possible that some people not in the labour force at all, could declare self-employment status so as to qualify.

A risk-management approach might involve a statutory declaration by the self-employed person and an accountant regarding hours of work.²⁵ This was, for example, supported by Australian Women Lawyers (sub. DR389, p. 9). A possible supplement (or substitute) might be a test to substantiate that the business is a genuine ongoing concern. For instance, the latter might involve a requirement for some threshold level of weekly business revenue or some indicator from a self-

²⁵ In New Zealand, there is also a requirement for a statutory declaration by a Justice of the Peace or a chartered accountant. The declaration relates to self-employment status, net income and earnings, but not to the hours worked, with the latter based on self-assessment. In the New Zealand system, there are generally low incentives for the self-employed to exaggerate hours of work because people working less than 10 hours a week (the New Zealand minimum requirement) would often get more by taking the Parental Tax Credit (a substitute payment). The incentives would be higher in an Australian system.

employed person's tax return.²⁶ However, the risks of fraud should not be overstated — with the majority of people observing the law as much for ethical reasons as the risks of being caught (Torgler and Murphy 2004).

What kinds of families would be eligible?

Families assume many forms. A single baby has many potential primary carers — including the biological parents (whether partnered or not), stepfathers, stepmothers and adoptive parents. The Commission proposes that a variety of primary carers should be eligible for statutory paid parental and paternity leave if they meet its employment eligibility conditions.

Parents of adopted children

As discussed in chapter 4, adopted children may have special needs for care, whether they are below school age or not. For instance, in relation to children adopted from overseas, Australian governments recognise these needs, requiring one adoptive parent to be at home for six months to a year, depending on the jurisdiction. Given this, the Commission proposes that the Government extend, at placement of the child, full paid parental leave to the parents of non-familial adoptions for children under the age of 16 years. This age limit is consistent with the eligibility criteria for adoptive parents accessing the 'baby' bonus.²⁷ This leave would be available to the adoptive parents even if the birth mother had received the baby bonus, family tax benefit B payments or statutory paid parental leave.

The treatment of adoption leave under the originally proposed National Employment Standards excluded school-age children. In its draft report, the Commission recommended that this age constraint be relaxed. Since then the Fair Work Bill has proposed that the National Employment Standards incorporate provision for unpaid leave for adoption placements involving children under 16 years old (clause 68). There is currently a Senate inquiry (to be completed by the end of February 2009) considering all aspects of the Bill as a prelude to its passage through the Senate. Given that the Bill has not been passed yet, the Commission reiterates its position that leave for adoption should include all ages of children under 16 years old.

²⁶ As suggested by YWCA Australia (sub. DR410), the Women's Electoral Lobby (sub. DR368), and the Retail Confectionery and Mixed Business Association (sub. DR318).

²⁷ The Australian Government extended eligibility for the 'baby' bonus to adopted children under the age of 16 years from 1 January 2009, reflecting the changing policy view about the significant caring responsibilities of parents of newly adopted children of any age.

Provision of paid parental leave for adoption is also consistent with the findings of the inquiry into adoption by the House of Representatives Standing Committee on Family and Human Services (2005). The Commission proposes 18 weeks of paid parental leave, which, like the unpaid leave provisions of the proposed National Employment Standards, would commence at the time of placement.

Under the Commission's recommendations, so-called 'known child' adoptions, where the adoptive parents have a pre-existing relationship with the child, would generally be excluded from eligibility for paid parental leave.²⁸ Australian Women Lawyers opposed this general exclusion (sub. DR389, pp. 6–7). However, in the Commission's view, by their nature, 'known child' adoptions do not usually involve the same challenges as non-familial adoptions have for developing a close relationship between new parents and an adopted child or for adaptation to a new environment. In particular, familial adoptions are overwhelmingly made by step-parents, who usually have strong prior relationships with the adopted child. Notably, the proposed National Employment Standards excludes most familial adoption placements (step-parents and those involving children residing with the employee for six months or more). In principle, the proposed Standards could cover familial adoptions by some non-step-parents, but these are extremely rare (Queensland Government 2002, pp. 53–54).

Nevertheless, the Commission recognises that there may be special circumstances when it is appropriate to allow eligibility to statutory paid parental leave for known child adoptions. For example, one case may be if there has been significant demonstrated trauma experienced by the child that requires intensive care by the new parent/s. The Commission proposes a capacity for administrative determinations of eligibility in such cases and in other special circumstances as discussed later (recommendation 2.8).

Families where the child or primary carer dies

The death of a baby in uterus or during labour ('stillborn') is a devastating experience for parents. The Commission proposes that mothers having stillborn babies that meet the requirement for birth registration in Australia would be eligible for full entitlement to paid parental leave.²⁹ This recognises the potentially

²⁸ 'Known child' adoptions (mainly step-parents) account for about one in ten of all adoptions in Australia and have been falling over time as alternatives for adoption have become available (such as parenting orders).

²⁹ Parents must register stillborn babies weighing more than 400 grams, or more than 20 weeks in gestation as a birth. This requirement reflects the significant development of the embryo. A 20 week qualifying period is in line with practices in the United Kingdom, where the government provides full entitlement to paid leave for babies born after reaching the mid-second trimester — that is around 24 weeks after gestation. The Commission's proposed qualifying period is

prolonged psychological effects on the mother (in addition to the usual physical maternal recovery period) (chapter 4). Those parents with stillborn babies not meeting the birth registration requirement would often still be eligible for sick and compassionate leave.

Similarly, the Commission proposes full entitlement for:

- (eligible) parents whose children die before the end of the statutory paid leave period (consistent with the treatment of stillborn babies)
- a person who assumes the role of caring for a child after the death of their (eligible) partner. Families in this position have factored in the income they would have received from the scheme. Given that, and the potentially traumatic nature of these events for the child and partner concerned, the Commission proposes that the new carer would not need to meet the employment eligibility tests.

Long-term foster parents?

Some participants argued for the inclusion of foster parents in a statutory paid parental leave scheme (such as the Benevolent Society, sub. DR302, p. 5), observing that it is difficult to recruit foster parents. However, the Commission considers that foster parents should not be eligible for paid parental leave because there are existing state and territory foster carer payments (as noted by HREOC, sub. 128). While such payments are below the level we propose for paid parental leave, there are many considerations in deciding on the appropriate assistance levels provided to foster carers. As a result, it would be better for state and territory governments to determine the appropriate payment levels for fostering, in the broader context of their policies to fostering in general.

Surrogacy

The surrogate mother of a baby should be eligible for sufficient paid parental leave to allow her to have a reasonable period of leave for adequate post-natal maternal recovery (see recommendation 2.10). The treatment of the custodial parents is more complex, since different Australian jurisdictions have varying legal provisions for surrogacy. In most jurisdictions, commercial surrogacy is not legal, but in some states this also applies to altruistic surrogacy. Where governments permit altruistic surrogacy, the baby must generally go through adoption processes before the government can grant custody. In March 2008, the nation's Attorneys-General agreed to develop a uniform framework to allow conditional, non-commercial

considerably longer than that in the National Employment Standards, where there is provision for special maternity leave around 11 weeks after gestation. However, that special leave is unpaid.

surrogacy³⁰ and in mid-January 2009 released a consultation paper.³¹ The Commission proposes that paid parental leave provisions for parents taking custody of such infants be finalised when Australian Governments have determined that framework. However, the Commission considers that, in principle, any arrangements would be the same as those for parents of adopted children (as previously discussed) — and indeed this may be the automatic outcome of a new framework. Some might argue that payment to the surrogate mother and the adoptive parents is ‘double dipping’, but it takes account of the maternal recovery and child welfare needs, which in this special case, involves two sets of families.

What about eligibility for others?

Carers other than the biological or formal adoptive parents sometimes play a key role in the rearing of children. For instance, the Western Australian Department for Communities, Office for Women’s Policy (sub. DR371, p. 4), and supported by Indigenous women’s groups, observed the major part played by grandmothers and ‘aunties’ in caring for children in Indigenous communities. The Office of Women’s Policy in the Northern Territory Government (sub. DR414, p. 4) reiterated this observation, and argued that if the primary care giver was not the mother, then the paid parental leave should be extended to that person.³² Outside the Indigenous area, there may be other circumstances when a party other than the parents exercise a primary caring role (for example, where there is no responsible father and the mother is very ill). The Victorian Child Safety Commissioner (DR trans., pp. 126ff) indicated that relative carers often acted as the primary carers of children, but could face major financial difficulties in undertaking this role because of inadequate support from government.

There is already some capacity under the proposed National Employment Standards (clause 97) for paid leave for care of ‘immediate family’ in the event of an emergency, which could encompass care by a grandparent of a grandchild.³³ A non-casual employee is entitled to 10 days of paid personal/carer’s leave for each year of

³⁰ Standing Committee of Attorneys-General, Communique, 28 March 2008.

³¹ Joint Working Group of the Standing Committee Of Attorneys-General, Australian Health Ministers’ Conference, and Community And Disability Services Ministers’ Conference 2009, *A Proposal for a National Model to Harmonise Regulation of Surrogacy*, January.

³² Others also argued for an extension of eligibility of this kind (for example, National Women’s Centres, sub. DR310, p. 5).

³³ Given the definitions set out in clause 12, care of babies by other relatives is effectively excluded. There is also some ambiguity about what would constitute an emergency (Association for Payroll Specialists 2008). However, there may be some circumstances — say the sudden death of a single parent that leaves a baby without a primary carer — which could easily be deemed an emergency.

service with his or her employer (and under clauses 102 and 103 there are additional, but limited, provisions for unpaid carer's leave available to all employees). These provisions are relatively narrow in their reach and would not cover all of the circumstances where a primary care role for a child might desirably be exercised by a relative.

Accordingly, the Commission proposes that statutory paid parental leave (or the balance not taken by the mother) could be allocated to a non-parental primary carer, but only if:

- there are genuine problems in the parents fulfilling that role (such as a child protection issue or death of the parents), *and*
- the relevant primary carer meets the work tests for eligibility *and*
- the carer has long-term responsibility for the daily primary care of the child *and*
- the carer is not making use of the carer's leave entitlements under the National Employment Standards if these apply to them.

FaHCSIA would need to determine the appropriate definition of a formal primary carer, noting that:

- the provision would typically only apply to relatives of the child or people with a kinship connection (an 'auntie'). It is not intended that paid parental leave be a substitute for foster care arrangements
- the rules relating to these special arrangements would need to ensure they were not used as a way of funding child care (such as when a grandmother cared for a child while the mother went back to work).

The above approach would cover care by relatives generally and apply to 'aunties' and other kinship-connected carers in Indigenous communities, but only where the above criteria were met.

There may be other special circumstances when it will be appropriate to transfer paid parental leave to another party. In those cases, the Commission proposes that, as in various other 'special circumstances' clauses in the *Social Security Act 1991*,³⁴ the relevant departmental secretary be able to make an administrative determination.

It should be noted that under the above proposals, there would only be a limited capacity for a non-parental carer to take statutory paid parental leave and get a job return guarantee under the proposed National Employment Standards. The

³⁴ For example, the secretary has the capacity to waive the work participation requirement for eligibility for parenting payments in special circumstances.

Commission does not propose amendment of the National Employment Standards to address this as that would raise a raft of additional questions outside the scope of this inquiry. (For instance, it would raise the question of why emergencies other than those associated with caring for a child would not trigger an entitlement to long-term unpaid leave.)

What about parents who are ineligible for paid parental leave?

Employees who do not meet the Commission's proposed eligibility criteria and those not in paid work would be ineligible for statutory paid parental or paternity leave. Nevertheless, given the community's desire to support all parents of newborn children, those not eligible to statutory leave payments would be entitled to financial support through the social transfer system. There are a plethora of such support measures, including the baby bonus, which cumulatively provide substantial assistance to families with one parent staying at home to care for children (chapters 6 and 9 and appendix F).

In the draft report the Commission proposed elimination of the current means test³⁵ on the baby bonus, so all families not on statutory paid parental leave could access this payment. This would be consistent with the absence of income testing in the proposed statutory paid parental leave scheme and could promote (horizontal) equity between women in and out of paid work, but with similarly highly earning partners. However:

- the baby bonus more resembles a range of other family welfare benefits, such as family tax benefit (A and B), that are subject to income tests. Payment of the same level of welfare payments to high and low income families would raise legitimate (vertical) equity questions. (In contrast, the absence of a means test on statutory paid leave reflects its status as a work entitlement.)
- eliminating the means test would entail significant additional budgetary impacts. In the 2008-09 budget estimates, FaHCSIA estimated that around 16 000 families each year will not be eligible for the baby bonus due to the means test (so that income testing saved taxpayers around \$80 million). Reversing income-testing for parents not using statutory paid parental leave would cost taxpayers around \$45 million.
- eliminating the means test would make it attractive for women with strong labour force attachment to take the baby bonus and return to work early. In contrast, income testing of the baby bonus would make paid parental leave a more attractive option for this group, and given its 'use it or lose it' nature,

³⁵ Eligibility for the baby bonus became income-tested from 1 January 2009.

encourage longer periods of leave away from work, with accompanying child and maternal welfare benefits.

Accordingly, the Commission is not recommending removal of the current means test for the baby bonus for parents of newborn children.

All those using statutory paid parental leave would be ineligible for the baby bonus, with the exception of parents with multiple births. The draft report proposed another exception — the Commission recommended that women who interrupted their statutory paid leave would be paid any residual value of the baby bonus, so that they could not be any worse off in gross terms than had they opted out of statutory paid parental leave in the first place. There are some in-principle grounds for this exception since it would be more equitable and would avoid circumstances in which a would-be parent, facing a *risk* that they may need to interrupt paid parental leave, decides to opt out, losing the benefits to their children and themselves of longer absences from work. However:

- an early unanticipated return to work is likely to be uncommon
- one of the intentions of the scheme is to deter early re-entry to work by having a ‘use it or lose it’ provision in the statutory paid parental leave scheme
- feedback to the Commission suggests that the residual reimbursement proposal would involve considerable administrative complexities and costs.

Accordingly, in the final report, the Commission does not favour reimbursement of any residual value of the baby bonus for those parents who interrupt their statutory paid parental leave.

How would leave be allocated within families?

In some circumstances — such as with estranged couples — there may be disagreements between carers about who should act as the primary carer. The Commission aimed to avoid a complex bureaucratic approach for resolving this, with the guiding principles being the best interests of the child and administrative pragmatism.

In most situations, the Commission’s proposal would *initially* grant paid parental leave to the (eligible) mother. This is because of the unique capacity of the mother to breastfeed her baby, with the health and other benefits this has for the mother and baby (chapter 4).

Fathers meeting the employment test, and who share in the daily primary care of the baby, would still receive a short period of paternity leave, even if the mother was

not eligible for statutory paid parental leave. (This proposal met with widespread support from participants.) Only the father, or other eligible partner, could take this leave. If he did not use it, he would lose it, hence the popularly used description of such paternity arrangements as ‘use it or lose it’. Such a provision creates incentives for fathers to exercise greater caring responsibilities, consistent with currently stated social norms, and to signal to employers and colleagues that fathers’ roles in caring for babies are important. ‘Paternity’ leave would also be available to eligible same sex partners who share the primary care with the mother.

The Commission envisages some degree of flexibility, as outlined below, but we emphasise that complete flexibility involves costs as well as benefits.

Leave would not be mandatory

There would be no requirement that the parent take any given period of parental leave, as is mandated in some countries (such as Canada, Italy, Germany, Belgium and Estonia — Moss and Korintus 2008). While children and mothers typically benefit from a period of leave — and overwhelmingly most parents take at least a month off — there are circumstances when this might not be true. The Commission’s scheme provides incentives for people to take time off, but allows them the final say about what they wish to do.

Transfer of leave should sometimes be permitted

There may be reasons why the mother may not be best suited to caring for the child. For example, a mother may suffer from post-natal depression, or the mother may be a very high earner, whose income is critical for meeting mortgage repayments.

Accordingly, we propose that, as in New Zealand, she would have the power to transfer the leave to the father (or same sex partner) — so long as they assume the role of the primary carer *and* meet the employment eligibility criteria. This would allow carers to share the parental leave period of 18 weeks. For example, a mother might take the leave for the first 14 weeks after birth and then the father for the remaining 4 weeks. For practical reasons, employers would need adequate leave notices so that they knew who would be caring for the child and when (as is required under the proposed National Employment Standards) and so that FaHCSIA would have sufficient time to organise prepayment for the employer. In practice, the burdens on employers of transferability is not, in any case, likely to be great, since the New Zealand experience showed only that around 1 per cent of mothers transferred their leave to fathers.³⁶

³⁶ Australian Human Rights Commission (sub. DR377, p. 16).

Access to paid parental leave without the mother's consent

The Commission's proposed scheme is more flexible than those of many of the maternity-only schemes applied overseas, recognising the critical role of fathers by granting him a period of leave he alone can take and allowing him to benefit from parental leave if the mother consents. In addition, the Commission proposes that in some special cases a father who meets the employment eligibility criteria would receive paid parental leave without the need for a mother's consent, for instance:

- the father may be a sole parent of the new baby (for example, due to the death of the mother)
- where the mother refuses consent for the father to get statutory paid parental leave, but where a court has ordered joint custody arrangements
- the mother may be unable to give consent for medical reasons, when reasonably it would be expected that she would do so.

Some of these circumstances could be incorporated into the legislation covering a paid parental leave scheme (and others covered by the special administrative arrangements discussed in the next section).

Gender equality

The Commission's proposal does not give mothers and fathers equivalent access to paid parental leave in that:

- only the father can get a period of ring fenced paternity leave (for the reasons discussed above) irrespective of the mother's eligibility
- where both parents are eligible, it is the mother who decides who can take paid parental leave. This avoids the need to arbitrate where there is disagreement between parents about leave arrangements
- an eligible father cannot access paid parental leave if the woman is ineligible, for example, if she is not in the labour force or has insufficient employment tenure. This restriction is appropriate because where the mother is ineligible, the most likely outcome is that she would be the primary carer of the child, thus disqualifying the father anyway. Where she was ineligible and was not the primary carer, the 'special circumstances' provisions described above could be applied where appropriate. The discretionary use of these provisions would avoid the potentially difficult task of substantiating that the father on paid leave was genuinely the primary carer when a mother was outside the labour force.

In New Zealand, similar eligibility restrictions to those above were subject to a complaint of unlawful sexual discrimination to the New Zealand Human Rights

Commission (Father and Child Society 2003). While that New Zealand Human Rights Commission did not resolve the matter, the asymmetric treatment of men and women might raise concerns about gender equity in the Australian context too. This concern is accentuated by the fact that the proposed National Employment Standards provides parental leave entitlements in a gender neutral way. However, the Standards are for unpaid leave, so the risks of abuse of the provisions are low. The Commission's approach is pragmatic, balancing the goal of flexibly meeting the needs of all family members, particularly the child, with the goal of an administratively effective scheme.

Nevertheless, over the longer term, there may be scope to give men more equal effective access to paid parental leave.

One potentially significant step would be to allow parents to share leave on a part-time basis, so long as the child receives care exclusively from the parents in one block of time. For instance, the mother might take paid parental leave four days a week and the father one day a week. This would allow couples to have more flexible care arrangements, while maintaining the exclusive parental care that is important for child welfare. It would also give men a greater practical capacity for caring for their children, and allow both parents to maintain connections to the labour market.

In this vein, Australian Women Lawyers observed that:

... if the system acts as a barrier to shared care of children this will reinforce the outdated stereotype that it is a woman's role to stay at home with her children (DR389, p. 3).

As noted by the Public Service Association and Professional Officers Association Amalgamated Union of New South Wales (PSA) (sub. DR380, p. 16), allowing shared part-time care would also help women maintain connection with their careers.

While many participants supported a flexible arrangement of this type, others argued it might actually undermine the child and maternal welfare goals of the scheme (chapter 4). That would certainly be a concern were shared part-time care to be mandated, but is less clearly so when parents choose the option that best suits their individual, and highly varying, needs.

However, shared part-time parental leave raises other concerns, such as its potential disruption costs for employers. Some of these costs (and some of the concerns raised by employer groups) may be largely resolved by requiring employer consent for the use of this flexible option. Even then, employers might still feel obliged to

give consent, especially under the right for employees to request flexible working arrangements under the proposed National Employment Standards.

Given these concerns, the Commission has not recommended provision for part-time paid parental leave in the initial implementation of a statutory paid parental leave scheme. That said, when there is greater clarity about the operation of the ‘right to request’ provision in the proposed National Employment Standards and when business has adapted to a statutory paid parental leave scheme, it is appropriate to revisit shared part-time paid parental leave as part of the mooted three year review.

Another option for greater involvement by men in the care of their children could be an extension to paternity leave, as advocated by several participants, or a more general lengthening of parental leave, with more flexible sharing arrangements than those proposed by the Commission. The Australian Human Rights Commission argued for the latter as part of a second stage of reforms (sub. DR377, pp. 15–16). Such options could be considered after any initial scheme has been in place for some time.

RECOMMENDATION 2.6

The Australian Government should require that, in order to be eligible for the statutory paid parental leave, a parent must have worked:

- ***‘continuously’ for at least 10 months (the ‘qualifying’ period) of the 13 months prior to the expected date of the birth or adoption, though not necessarily with the same employer, and***
- ***for at least 330 hours in the qualifying period.***

In addition, to be eligible for:

- ***statutory paid parental leave, a parent must be the primary carer of the child***
- ***statutory paid paternity leave, the father or relevant partner must share in the daily primary care of the child.***

Eligibility should include the self-employed (including employers and contractors), subject to independent assessment that they have met the eligibility criteria.

RECOMMENDATION 2.7

A statutory paid parental leave scheme should cover:

- ***the parents of newborn children, including surrogate mothers***
- ***mothers of a stillborn baby, where the baby meets the requirement for birth registration***

-
- *parents of non-familial adoptions of children aged under 16 years old from the time of placement*
 - *custodians of surrogate children, subject to its compatibility with an impending uniform framework for surrogacy across Australian jurisdictions*
 - *those in special circumstances as determined administratively (recommendation 2.8).*

RECOMMENDATION 2.8

The Australian Government's scheme should allow a non-parental primary carer access to statutory paid parental leave (or the balance left), but only if:

- (i) - there are genuine problems in the parents fulfilling that role, and*
- *the relevant primary carer meets the work tests for eligibility, and*
 - *the carer has long-term responsibility for the daily primary care of the child, and*
 - *the carer is not making use of the carer's leave entitlements under the National Employment Standards if these apply to them*

or

- (ii) the relevant departmental secretary makes an administrative determination on the basis of 'special circumstances'.*

RECOMMENDATION 2.9

Subject to the eligibility requirements of recommendation 2.6, the paid parental leave scheme should give:

- *eligible mothers the initial parental leave entitlement, but allow them to transfer the entitlement to eligible partners who take on the role of the primary carer*
- *fathers access to paid parental leave if the mother is not eligible, but only where (a) the fathers meet the employment and primary carer eligibility requirements and (b) there are special circumstances, which would be determined administratively*
- *fathers or other eligible partners who share in the daily primary care of the child, a two week period of exclusive paternity leave on a 'use it or lose it' basis, even if the mother is not eligible for statutory paid parental leave.*

2.6 The duration and timing of leave

One of the most vexing elements of a paid parental scheme is its appropriate duration, as was apparent from the diversity of participants' views in this area (chapter 4). Many factors are relevant to the choice and different groups of parents need different amounts. There is no exact science to this choice. The Commission proposes a paid parental leave period of 18 weeks of care (with some special cases discussed below). We also propose an additional two weeks of 'paternity' leave, which would be reserved for the father (or in same sex couples, to the other eligible partner).

For what period would leave be available?

Parents would have to complete statutory paid parental leave within 12 months after birth as part of a continuous period of parental care commencing at birth, with no provision for prenatal leave. The block of statutory leave could commence at any time in that continuous period. The 12 month limit is consistent with the evidence on the child welfare gains from exclusive parental care (chapter 4).

The Commission proposes exclusion of the prenatal period from the statutory scheme because, among the other factors discussed in chapter 4, many pregnant women can safely continue to work until shortly before birth without risk, so that the Australian Government should not prescribe a minimum period of prenatal leave, as do some other countries.

In addition, there is no evidence that there are systemic problems of women taking excessively short prenatal leave periods because of the absence of leave. Under the Australian Government's proposed National Employment Standards, women are entitled to unpaid parental leave up to six weeks prior to the expected birth date, so that they do not lose access to the job return guarantee if they leave work during this period. Employers are also legally obliged to transfer a pregnant women, where necessary, to a safe job in the prenatal period, while preserving pay and conditions, and where that is not possible to be paid 'no safe job' leave (clause 81 of the proposed Standards).

Under the Commission's new '10-13' eligibility test, a woman who needed a period of prenatal leave for health reasons could do so without putting at risk her subsequent eligibility for post-natal statutory paid parental leave.

A major advantage of not incorporating a prenatal leave period in a statutory scheme is the objective of extending post-birth leave for maternal and child health reasons — 'additionality' (chapter 1). Factors other than the existence of paid

parental leave appear to determine the length of time women take prenatally. Accordingly, any payment during this period would cost taxpayers money, without changing behaviour. The implication is that for any given budget, a longer period of postnatal leave — where behaviour is susceptible to change — would be preferred to a scheme that allocated leave over both the pre and postnatal periods.

The issue of concurrent use of leave

In the draft report, the Commission proposed that concurrent use of statutory paid parental leave and other private leave (such as privately negotiated private paid parental leave or recreation leave) should not be permitted. This reflected our concerns to maximise additionality and cost effectiveness. For instance, a woman who had ten weeks of full replacement private paid parental leave and who intended to return to work at the end of that period would not benefit at all from statutory paid parental leave – increasing cost effectiveness of the scheme. In contrast, concurrence would mean that she would have received around \$5000 gross from the Government – an apparent deadweight cost to the scheme.

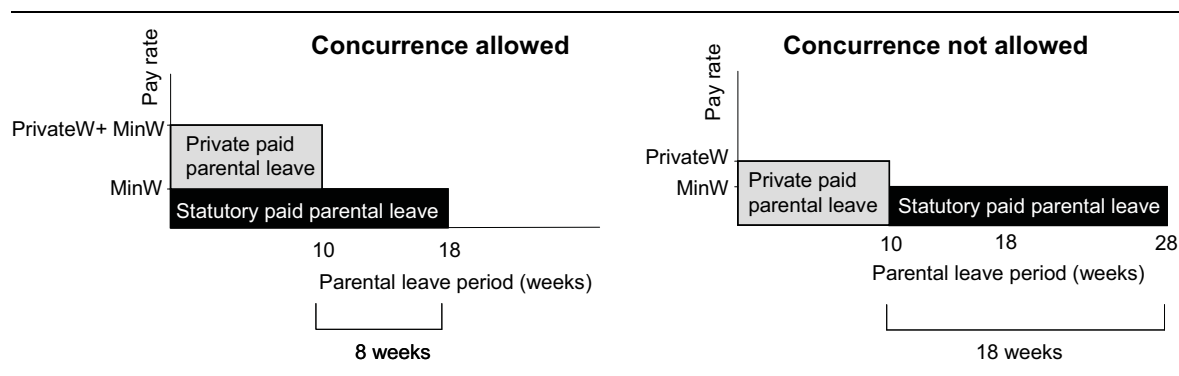
On the other hand, not many women who intend to return early to work would elect to take statutory paid parental leave, since the baby bonus and other welfare payments would be more attractive (so long as their income is not too high to trip the means test on the baby bonus). Even if they did take statutory paid parental leave during the relevant period, the marginal deadweight costs would often be low because they would forgo the baby bonus and other welfare payments. (Our changed view about reimbursement of the baby bonus significantly reduces the risks of deadweight costs associated with women who intend to return to work early anyway.)

The picture regarding additionality is even more complicated:

- Where a private scheme did not pay full replacement wages, allowing concurrence would provide stronger incentives not to return to work during the overlapping periods of private and statutory paid parental leave than a requirement for parents to use leave sequentially. In the example in figure 2.2 below, these stronger incentives to stay away from work persist until the end of week 10. However, the effect on additionality during this period must be small since it is a time when most women are strongly inclined to stay at home.
- The concurrence and non-concurrence approaches provide the same incentives for leave taking in the overlapping period (weeks 10 to 18 in the chart below).
- It is only in the period from 18 to 28 weeks that the ‘no concurrence’ model provides a stronger incentive to stay on leave. This is important because it

provides stronger incentives for women to take off the period that gets them to six months.

Figure 2.2 Incentive effects of allowing concurrence or not



In reaching a judgment about the benefits of permitting concurrence versus no concurrence, it is important to note that:

- a large share of mothers have no access to private paid parental leave, including all of the self-employed and many low-income employees. For these parents, there are no obvious differences in the incentives posed by permitting or not permitting concurrence
- the major reason parents give for going back to work ‘early’ are financial constraints of some kind. Both ‘concurrence’ and ‘no concurrence’ models provide the same gross payments to week 28 in the example above and so, subject to a woman wanting to take leave until at least this time, provide an equal financial capacity to do so (subject to some qualifications associated with the differential tax/welfare implications associated with the different bunching of payments).

Quite apart from the issue of additionality, other considerations affect the choice between the alternatives.

- A concurrence model is more amenable to voluntary employer top ups without complex administrative arrangements. For instance, an employer might top up the statutory scheme to full replacement wages, but this would mean that there would be concurrence of statutory and privately negotiated paid parental leave. The law could probably get around this by creating exception clauses to ‘no concurrence’, but auditing these in practice might be quite difficult.
- Were concurrent use of leave to be barred, employers and employees would probably restructure private paid parental leave arrangements to achieve an effect similar to that resulting had concurrent leave been permitted. For instance, firms might offer cashed out paid parental leave benefits that could then be used

by employees to finance a flow of private income concurrent with any statutory paid leave.

- There will often be incentives for parents to take private and statutory paid parental leave sequentially anyway because it would reduce the tax burdens and increase access to welfare benefits.
- It would give parents the option of getting above-replacement wages for a given period, which may relieve the early financial stresses associated with having a baby. (Some may perceive such a period of above-replacement wages as ‘unfair’, but someone getting the baby bonus instalment on top of existing privately negotiated leave would also get such above-replacement wages currently. In any case, the capacity for concurrence would not usually change the quantum of funding, just its timing.)
- Allowing concurrence would give employers and employees maximum flexibility in how they wished to arrange their leave, (and combined with the Commission’s 12 month limit, allow parents better scope to take privately negotiated leave on a part-time basis at the same time as taking statutory paid leave).
- It would also more often permit women to take a period of paid prenatal leave. If an employee is earning a weekly amount below the minimum wage then in general they would prefer to take the statutory paid parental leave first. However, in doing that they might forgo any period of paid prenatal leave in a private scheme (and these are often a feature of such schemes) because of the usual requirement that such leave be taken in one block. Concurrence would allow them to get access to the prenatal paid leave in such private schemes.

Accordingly, the Commission recommends that employees can take statutory paid parental leave at the same time as other privately negotiated leave if they wish to.³⁷ However, this should not relate to paternity leave, where a ‘non-concurrence’ rule should apply. Otherwise, given the current leave taking behaviour of men around the birth of their child, there is a substantial risk that many men would not alter their overall leave duration, but merely combine the statutory leave with a few weeks of full-replacement private leave they were going to take anyway.

Continuity of care

While there may be benefits from allowing parents to stop and then subsequently recommence their parental leave care to meet the needs of their small business, to

³⁷ It should be noted that concurrent use of leave is permitted in the New Zealand scheme, and so is not an exceptional provision.

study, or to strengthen links to the workplace, this could run against the child welfare benefits of continuous exclusive parental care. Accordingly, the Commission proposes that (collectively) parents would have to take leave in one block (with the single exception of the limited capacity for interruptions under the ‘keeping in touch provisions’ discussed later). The requirement for continuity of care would not preclude one parent from taking time off from a caring role if the other parent (see below) then took up that role.

An additional requirement to ensure continuity of parental care is that statutory paid parental leave would need to commence at birth, or after a period of other continuous leave that commences at the birth of the child.

Switching between carers

Another potential timing issue relates to how many times parents can switch as primary carers when taking paid parental leave. Some families might want to take complexly structured periods of leave. For example, the mother might take the initial 12 weeks, the father the next two, the mother the next two weeks and the father the final two weeks. The existence of a separate right to paternity leave for fathers alone would add to the potential complexity of leave periods.

While flexibility in the use of the various leave entitlements is inherently desirable, it would involve compliance burdens for employers, administrative costs for governments and may begin to undermine the advantages to children of uninterrupted care. Accordingly, the Commission proposes that:

- fathers (or other eligible partners) must complete their paid paternity leave in the 12 months after the birth of the child in one block
- in order to maximise the period of exclusive parental care, both parents could not take statutory paid parental leave at the same time. A father or mother would still be eligible to take three weeks of concurrent *unpaid* leave after the time of birth (or adoption placement) under the proposed National Employment Standards (clause 72(5)). In many instances, fathers would probably elect to take recreational leave for this period or to use their paid paternity leave. (The Commission proposes that men cannot take paid paternity leave at the same time as other forms of paid leave, but that there would be full scope to take paternity leave while on unpaid leave.) The capacity for involvement by both parents in this early period recognises the importance for both parents of developing a relationship with a new baby, as well as the special demands on families at this time
- only one transfer between parents of parental leave would generally be permitted. So, in the example above, if a mother wished to take the first 12

weeks of leave, then the father or eligible partner would have access to the remaining six weeks of leave, but without the capacity to pass it back to the mother. Some participants³⁸ expressed the concern about just one transfer, given the possibility of sporadic illness in the primary carer or of complex shared arrangements for taking leave. However, there are tradeoffs between flexibility and complexity. As suggested by the Australian Nursing Federation, the Commission proposes scope to allow more than one transfer in ‘special circumstances’ to be judged administratively.

Why 18 weeks?

The Commission’s choice of a postnatal leave period of 18 weeks (as in the draft report) is mainly a reflection of concerns to improve child and maternal health and welfare outcomes, which are strongly duration-related:

- The evidence is most compelling that there are child health and wellbeing benefits from exclusive parental care in the first six months of life. Longer periods of nine to 12 months may also be beneficial. However, beyond that, the evidence suggests that many of the risks of non-exclusive parental care become progressively less evident as the age of the child increases (although this is dependent on the quality of, and hours spent in child care and the extent to which the parents continue to play an active role in the care of the child). It should be emphasised that these are ‘average’ effects across whole populations of families, and that outcomes for specific families can be very different.
- There is also evidence of gains from a father participating in care in the early period of an infant’s life.
- A leave period for maternal recovery after birth should generally be longer than 12 weeks and could potentially be up to six months.

Why is it not just up to parents to choose the most beneficial duration of care for their children? In many instances, despite a preference for staying home longer for their baby’s wellbeing, many women find it hard to manage financially without working. (And, given the complexity of the emerging science underlying child welfare, some parents may not be aware of the gains associated with longer periods of absence from work.) The available evidence shows that a majority of formerly employed women return to work earlier than one year (around 60 per cent); around 30 per cent return within six months; and about 10 per cent return within three months (chapter 3). Society also has a stake in healthier children — mainly for

³⁸ Such as the PSA (sub. DR380, pp. 15–16), The Australian Nursing Federation (sub. DR347, p. 7) and the Finance Sector Union of Australia (sub. DR306, p. 11).

ethical reasons, but also because it may lower subsequent social and fiscal costs, such as through the health budget.

Many early-returning women are paid relatively low weekly wages when in work because of part-time hours and/or low hourly rates. Accordingly, a reasonable level of payment in a parental leave scheme is likely to extend their leave by the full period of paid parental leave.

The effect is likely to be smaller for families that have less financial difficulties or where women get higher wages. Nevertheless, by altering the balance of returns from paid employment compared with full-time caring for children, longer average care periods are also likely for this group. (For many people, of course, paid leave will not alter the duration of leave taken during the critical period of a child's development. In these cases, a paid parental leave scheme is unlikely to produce many child welfare benefits, except those arising from the financial assistance component of a paid scheme.)

Many participants argued that leave should be a full six months to get to the 'ideal' leave absence. However, the duration of any *paid* statutory scheme does not have to be equal to the period of absence that most helps parents and their children. Parents can (and do) use many options to fund a period of leave from work to care for their children. So, if a period of around six to nine months is around the 'right' period of absence, then a paid parental leave scheme that gave parents around 18 weeks of postnatal leave would entail co-funding by parents of around two to five months, which most families would find affordable.

- Most women already take more than 26 weeks of leave, but the scheme enables a significantly greater number to reach this duration and will also allow many of those taking around six months to increase their leave duration to nine months.
- The Commission found that the impact of the scheme on leave durations (of those families taking less than 26 weeks) is greater for lower income, more financially constrained families. They are a particular target of this policy since they often have low representation in privately negotiated paid parental leave schemes.
- Overall, eligible employed mothers would increase their absence from work by about an average additional 9.8 weeks or to 55 per cent of the proposed length of statutory paid leave.
- Co-funding would recognise that both society and families have responsibilities to assist in the upbringing of children.

A period of paid parental leave much shorter than the proposed 18 weeks would require too much co-funding by parents. This would mean that poorer families in particular would require the main carer to go back to work earlier than desirable. And, to the extent that parents run down their reserves of recreation and carer's

leave, they would have reduced scope to care for their child at later ages — such as during seasonal breaks in child care provision or when the child was sick — amplifying family stresses. (Some also see running down all leave reserves to care for newborn children as unfair, especially as the burden commonly falls on mothers.)

Given the empirical evidence considered by the Commission, a period of statutory paid parental leave much longer than 18 weeks would produce diminishing benefits for children and parents for each additional week, and the costs would of course be higher.

There are other arguments for reasonable leave periods

First, up to a certain point, longer (combined pre and postnatal) leave periods probably stimulate *lifetime* labour supply:

- For a given rate of weekly payment, longer durations of leave increase the overall value to employed women of a statutory scheme. This value acts like a wage increase, and bigger wage increases elicit bigger labour supply responses (chapter 5).
- Women with no entitlements to paid leave often leave their jobs while pregnant or around the birth of their children, while those with long paid leave entitlements maintain a link to their employer — increasing their lifetime labour force engagement. It is likely that women with very short paid leave periods may respond in a similar way to those with none.
- However, long durations of care are likely to erode a primary carer's work skills, with consequences for subsequent job quality and career prospects. In addition, long leave may make staying at home the customary state, decreasing the likelihood that carers will seek re-employment. Chapter 5 finds some evidence that the labour supply effects of paid leave peak at around 20 weeks.

Second, many participants in this inquiry have argued that paid parental leave serves important social goals, such as affirming the appropriateness, and value of, time off from paid employment to care for infants. A short period of leave would not credibly recognise this value, and indeed would do the opposite. To meet the stated social goals suggests a total paid leave period of at least 12 to 14 weeks, given this was the minimum leave amount proposed by past inquiries and representations by participants, and the most common minimum in overseas schemes.

Third, for a given level of weekly payment, the aggregate leave period has to be long enough to make paid leave a more attractive option than the baby bonus paid to parents at home. In theory, this could also be achieved by paying the same

aggregate value of the statutory paid parental leave scheme as proposed by the Commission, but over a short period. But a short period has potentially perverse consequences that make it an unattractive option:

- Under the Commission’s proposal, eligible carers in a family would collectively receive \$1088 for nine fortnights, amounting to \$9788 of gross income. The same aggregate gross amount could be achieved by paying \$1398 over seven fortnights of leave. However, as experience with the baby bonus has shown, large payments can have perverse impacts on the behaviour of some sub-groups. The Australian Government introduced payment of the baby bonus in 13 fortnightly instalments of \$384.62 per fortnight to overcome such perverse outcomes. It would sit oddly with that policy to introduce a fortnightly payment nearly four times that amount.

This suggests reasonably prolonged leave periods as the best way of paying the required aggregate amount. (That does not mean that there is never scope for trading off payment rates and duration.)

Finally, disruption and other burdens to employers probably rise initially with duration, while eventually falling. It seems plausible that an 18 week leave period would entail lower costs for employers than shorter leave periods because there are a wider range of options to cover the absence of the employee and the capacity to spread any transaction costs over a longer period. However, this may vary across employers.

Fiscal costs constrain the duration of paid leave

Some participants proposed paid leave of six months to one year. However, while there would probably be some gross benefits from longer leave periods, they entail a substantial increase in the financial burden on those funding the scheme or displace other expenditures by government, including spending on other facets of child welfare and health. Each additional week of leave would cost taxpayers around a net \$50 million after taking account of increased income tax receipts and reduced income-tested welfare payments (and \$115 million for each additional week *before* clawback of such offsets). At some point, the incremental gross benefits would not be worth the additional costs of forgone spending in other areas — such as higher quality child care or a better health system.

Accordingly, the role for government should be in that period where the evidence of gains is most apparent. (Potential future add-ons to leave and how these might be funded is addressed in chapter 8.)

Durations other than 18 weeks

Special groups

Some babies are born in contexts where different considerations may determine the appropriate duration of leave. Unless otherwise stated, such special groups would still have to meet the employment and primary carer eligibility requirements set out by the Commission.

Surrogacy: The surrogate mother of a baby should be eligible for paid parental leave of shorter than 18 weeks since the prime objective would be a reasonable period of leave for adequate postnatal maternal recovery. The Commission proposes 12 weeks, in line with the existing scientific evidence (chapter 4).

Babies with a disability: Children with disabilities have special needs for parental care. Reflecting this, in the United Kingdom, parents of disabled children are eligible for a longer period of paid leave. However, the Commission does not propose longer paid parental leave entitlements for parents of babies born with a disability. This is because there is already an existing suite of disability services and support payments. These aim to flexibly provide services — medical, counselling, financial, and respite, among others — that reflect the particular circumstances of the family and child. A fixed, longer period of paid leave would fail to take account of those circumstances. If the existing disability services are not adequate, Australian governments should reform these, rather than using paid parental leave as a way of alleviating any such inadequacies.

Should there be scope to extend leave by getting half-pay?

The Commission considers that a statutory paid parental leave scheme should *not* give carers the capacity to be paid at half the rate for 36 weeks. Allowing half pay would complicate payments for government and for those employers acting as paymasters for government. While probably a lower risk, a capacity for half-pay might also allow tax planning, where parents would choose a payment regime that reduced their tax obligations or maximised their receipt of social welfare benefits.

This limitation would not preclude flexible arrangements. Under the new proposed National Employment Standards, an eligible employee would be entitled to unpaid leave of up to two years (subject to employer consent). This would allow an employee to put aside some or all of the payments received while on statutory paid parental leave and, combined with any other income or savings, use this money to fund a longer leave period. For instance, an employee might decide to spend half of their paid entitlement over 18 weeks and save the rest, subsequently running down

those savings over an additional 18 weeks. This is a desirable form of flexibility — and indeed shows how the entitlement to unpaid leave is likely to complement the impacts of the Commission’s proposed paid leave scheme on the duration of care for children (chapter 5).

RECOMMENDATION 2.10

The Australian Government’s statutory paid parental leave scheme should provide a total of 18 weeks of paid parental leave for a primary carer who meets the employment test, subject to the requirement that:

- *the primary carer complete paid parental leave within 12 months after birth (or eligible adoption) as one block in a continuous period of parental care, with the parental care, but not necessarily the statutory paid parental leave, commencing no later than birth*
- *leave would be taken at the full-time rate*
- *only one transfer of paid parental leave would generally be permitted between parents, except in special circumstances to be determined administratively.*

There should be provision for 12 weeks of paid parental leave to a surrogate mother meeting the employment tests.

The scheme should allow:

- *statutory paid parental leave to be taken concurrently with any other leave*
- *parents to take any paid parental leave remaining if their child died*
- *the transfer of any outstanding leave to the partner if the primary carer died.*

The Government should require paternity leave to be completed as one block within 12 months after birth (or eligible adoption). Paternity leave should:

- *be able to be taken at the same time as the primary carer’s paid parental leave*
- *not be able to be taken concurrently with other forms of the father’s paid leave.*

2.7 Measures to reduce business burdens

The Commission has been conscious of the burdens any new set of obligations can have on employers, especially small business. In responding to the draft report, some employers were concerned that all employees eligible for statutory paid parental and paternity leave would also get super payments from their employers (Motor Trade Association of SA, sub. DR338, p. 2). This is not so. It is important to emphasise that where an employee had limited tenure with an employer, that employer would not have to pay a super contribution, and nor would the employer

need to provide a job return guarantee or act as paymaster. The scheme is designed to ensure that where it entails burdens for employers, it also encourage employees to meet the tenure element of the work test, with benefits for employers.

The Commission has also considered measures specifically aimed at lessening burdens for business. The first relates to the leave notices that employees must give employers that they are leaving and returning to work. This, more than the total leave period, may be the decisive factor in determining employer costs. The Australian Government's proposed National Employment Standards stipulate periods of notice for unpaid leave:³⁹

- (a) generally 10 weeks prior notice is required for taking parental leave (clause 74), if not practicable (say for a premature birth), as soon as is practicable
- (b) notice must stipulate the starting and end date (clause 74(3))
- (c) employees can extend their leave beyond the originally indicated period, but must give at least four weeks notice (clause 74(4))
- (d) employees on parental leave may return to work earlier if the employer agrees (clause 77), which implies that the employer can determine when that occurs.

A period of 18 weeks of paid leave, combined with (a), (b) and (d), decreases the likelihood of significant disruption burdens for employers. Moreover, it is possible that carers will less frequently seek extensions to leave if the paid period is sufficiently long, reducing the disruption burdens posed by the short notice required in (c).

However, the Commission considers there are grounds for extending the notice required under clause 74(4) of the proposed National Employment Standards to six weeks, since employers may well face significant costs if they have to re-arrange contracts with substitute employees.⁴⁰ Anything that reduces disruption burdens associated with parental leave has the added benefit of lowering the likelihood of discrimination against potential parents, particularly would-be mothers. It should be noted that an amended clause 74(4) would still permit some flexibility about notice where such notice is not practicable (for example, death of a spouse). Accordingly, amendment of the clause would not prevent leave being taken in the event of unforeseen circumstances, a concern raised by the Financial Services Union (sub. DR306, p. 13).

Another related initiative is evidence-based guidance to employers — especially aimed at small business — on how to adapt business practices to minimise

³⁹ Which also applies to any paid leave (clause 25 of the Standards).

⁴⁰ The Commission understands that following the experiences of their fledgling paid parental leave scheme, there is some consideration in New Zealand to increase the period of notice for return to work to reduce disruption costs.

disruption burdens. The New Zealand Department of Labour sought advice from employers on successful practices to reduce such costs and provided an online guide to employers.⁴¹ The Australian Government could combine such guidance with other information for employers associated with the introduction of a statutory paid parental leave scheme. The Australian Government should develop a web-based calculator that would show which employees would be eligible, what they would get and that would set out any obligations by employers. This would be useful for both employers and employees.⁴²

Finally, as in the United Kingdom (and as advocated in New Zealand by the National Advisory Council on the Employment of Mothers 2008), there are grounds for a ‘keeping in touch’ (KIT) provision. This would allow parents on statutory paid parental leave to work up to 10 days while on leave, but only if the employer and employee mutually consented. For example, parents could participate in training or planning and strategy days, or undertake any other activities that maintain contact with the firm or that facilitate an orderly return. Involvement would be strictly voluntary for both parties (a point worth noting given many concerns raised by participants).⁴³ Some privately negotiated schemes already incorporate such arrangements, such as the YWCA Canberra’s (sub. DR410, p. 4) staying-in-touch provision, ‘which has played an important role in increasing workforce attachment’.

The provisions in the UK statute could provide a template for these arrangements.⁴⁴ As in the United Kingdom:

- for practical administrative reasons, whether a parent goes in for one hour or a whole day would still count as a day for ‘keeping in touch’ purposes
- any ‘keeping in touch’ day would be counted as part of paid parental leave and would not extend the total duration of the statutory paid parental leave period.

The Commission understands that the majority of UK employers using the provision pay normal rates for the KIT days.

A KIT provision would be likely to improve employee retention for businesses, decrease any productivity loss associated with a parent’s absence from work and enhance the career prospects of the relevant parent.

⁴¹ See <http://www.dol.govt.nz/worklife/resources/making-it-work.asp#3>.

⁴² Several participants supported this measure, for example, the Tasmanian Women’s Council, sub. DR307; Australian Nursing Federation, sub. DR347; and the PSA, sub. DR380, while none opposed it.

⁴³ For example, the Shop Distributive and Allied Employees Association, sub. DR330; PSA, sub. DR380; Lisa Jeffrey, sub. DR357; Angela Budai, sub. DR329; National Women’s Centres, sub. DR310; and the Finance Sector Union, sub. DR306.

⁴⁴ Statutory Instrument 2006 No. 2014, *The Maternity and Parental Leave etc. and the Paternity and Adoption Leave (Amendment) Regulations 2006*.

This arrangement should also be extended to the self-employed/employers so that they can maintain a degree of oversight of their businesses. Such a provision is included in the New Zealand statutory scheme.

RECOMMENDATION 2.11

The Australian Government should:

- ***amend clause 74(4) of the proposed National Employment Standards to require an employee on parental leave to provide six weeks notice for an extension to leave, unless an employer agrees to a shorter period***
- ***ensure that unpaid leave entitlements under the proposed National Employment Standards apply to eligible adoptive parents of children aged under 16 years.***

RECOMMENDATION 2.12

In addition to publicly provided information on the workings of a statutory paid parental leave scheme, the Australian Government should provide:

- ***evidence-based advice to employers on how to reduce the disruption burdens associated with increased average durations away from work by carers, with this information especially directed at small business***
- ***a web-based calculator that shows which employees would be eligible and the net benefits they would receive, and that sets out any obligations by employers.***

RECOMMENDATION 2.13

The Australian Government's statutory paid parental leave scheme should include:

- ***a 'keeping in touch' provision that — subject to employer and employee consent — allows the employee to work up to 10 days while on paid parental leave, where that work strengthens the connection to their workplace***
- ***scope for eligible self-employed parents to maintain some oversight of their businesses while on leave.***

2.8 Complementary policies

The main goal of paid parental leave is the wellbeing of the newborn children and their parents. The Government also requested the Commission to consider complementary policies that would improve support for parents with newborn children.

It is possible that two policies produce more effective outcomes than each on its own. For instance, the benefits of paid parental leave are more fully realised if there are complementary support services that encourage Australia women to continue breastfeeding after initiation. Currently Australian women have relatively low rates of sustained breastfeeding (chapter 4).

In the draft report, the Commission recommended that the Australian Government should provide more resources to allow effective support for breastfeeding during the first six months of an infant's life. However, in December 2008, the Australian Government responded to a House of Representatives Standing Committee on Health and Ageing report on breastfeeding, agreeing to a national strategy with state and territory governments (chapter 4). That strategy should be the basis for more effective breastfeeding support — and if warranted over time — for more resourcing.

The Commission is uncertain of the benefits of other support services for children aged less than two years old.⁴⁵ There appears to be a wide spectrum of programs that deliver services to many family types and children. There have been dozens of pilot programs or small-scale state or national programs that provide funding for support of families, including those with babies (for example, the National Good Beginnings Volunteer Home Visiting Program and the Families First Program and the Victorian Best Start program). Community groups funded by specific short-term grants often deliver services. Many programs target disadvantaged families though some at least aspire to have universal reach.

The patchwork of programs and varying evaluation methodologies make it hard to detect gaps and to work out what works well (Wise et al. 2005). The Commission's initial impression is that government programs supporting parents with children under age two years are more fragmented and more poorly resourced than those aimed at older children. But the apparent 'messiness' of arrangements may not be a problem. Different communities may need different services, and variations in resourcing and program types across Australian jurisdictions may well be the kind of experimentation that reveals the best programs. Reconsideration of the issue since the draft has not changed this position. It is not appropriate to specify additional resourcing requirements or directions for policy without a robust evidential base.

⁴⁵ In June 2008, the Australian Government announced a comprehensive early childhood education initiative but this is aimed at older children. The initiative will ultimately provide all Australian children with access to 15 hours a week, 40 weeks a year of 'high quality, play based learning and development programs' in the year before school.

2.9 The cost of the scheme

The Commission's proposal for a statutory paid parental leave scheme will produce considerable benefits. However, it will also involve significant costs (figure 2.3 and appendix B). The annual gross costs of a statutory paid parental leave scheme (before the potential implementation of employer superannuation contributions at a later stage) would be around \$1.3 billion for government and ultimately taxpayers.

The net costs would be substantially lower than this. The Australian Government would save around \$580 million alone from savings to payments of the current baby bonus, so just taking account of that, the incremental monetary costs for taxpayers would be around \$700 million.

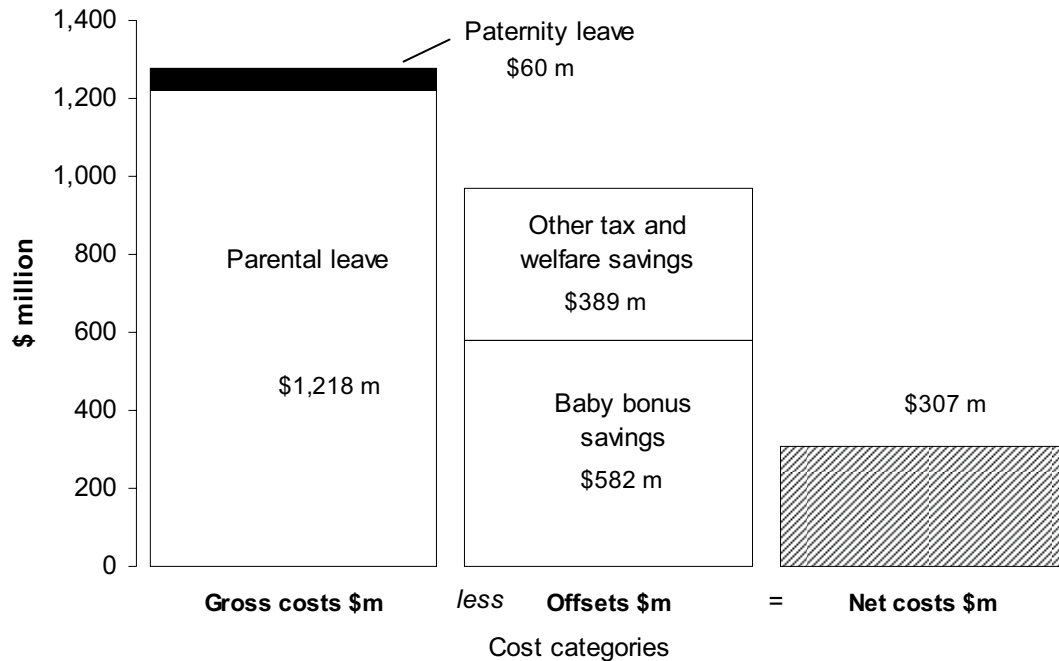
The ultimate net cost to the economy would be lower again, but is harder to calculate with accuracy since the calculations need to take account of taxes on paid parental leave and reductions in other income-tested family benefits (such as family tax benefits and child care rebates). The Commission estimates the net costs to be around \$310 million. (The cost estimates in the Commission's final report are lower than in the draft report. This is because they rely on a more sophisticated model of the welfare and tax system, take better account of those families that do not use their entitlement to statutory paid parental leave, and include budget savings from moving away from the Commission's draft proposal to eliminate income testing for the baby bonus.)

If superannuation contributions were included in the scheme at a later stage, they would entail additional gross costs of around \$85 million in today's dollars, which employers would bear. The net costs to employers would be \$60 million after taking account of the tax deductibility of business expenses and the overall net economy-wide costs of the scheme would be around \$380 million.

(These calculations and the implications for costs of different design elements of a scheme are set out in appendix B.)

Figure 2.3 How much will a scheme cost?

Estimated gross and net costs of the Commission's proposed scheme



Data source: Productivity Commission calculations described in appendix B.

Of course, as several submissions to this inquiry have pointed out, the aggregate costs look much smaller when:

- spread over many people. A scheme costing a net \$310 million represents around 6 cents in every \$100 of annual employee compensation or around \$30 per employee per year (in 2007-08 terms) and would represent a tax impost of around \$22 per taxpayer per year
- looked at in the context of the overall package of taxpayer-financed family assistance measures. Net taxpayer funding of the statutory paid parental leave scheme represents about a 1.2 per cent increase in existing outlays by government on family assistance measures.⁴⁶

So long as the government spreads the tax burden widely, the implication is that taxpayers would not experience any significant ‘hip-pocket’ effects from (modest) increases in the duration of paid leave, compared with other contemporary pressures on people’s living standards — like petrol and mortgage costs.

⁴⁶ The expenditure includes family tax benefits, parenting payment, child care benefits, child care rebate and the baby bonus for 2006-07 (FaHCSIA 2008, *Pension Review Background Paper*, August), but does not cover a sundry range of other benefits (such as the immunisation allowance). Accordingly, the estimated share will slightly overstate the relative budgetary impact of the proposed scheme.

However, while such affordability is an important consideration, it does not, by itself, justify more generous schemes. Broken down sufficiently into their parts, all items of government spending could be represented as an apparently tiny increment to taxpayer burdens, but their cumulative impact would clearly be very substantial. The important question is whether there are sufficient benefits to offset the costs of more generous schemes, regardless of how small these costs are at the individual level.

In addition, more generous schemes can generate quite large individual burdens. For instance, an alternative scheme might provide full income replacement for employees, with a minimum wage floor to ensure that there are appropriate work incentives for the lower-paid. Back of the envelope estimates suggest that this scheme would cost around \$1.9 billion after savings from the baby bonus, but before offsets from tax and income-tested welfare payments. (The comparable number for the Commission's scheme is \$700 million.)

Were leave extended to 52 weeks, then under a full income-replacement model, the comparable cost would be around \$7.2 billion after savings from the baby bonus. This indicates the significant budgetary implications of 'European-type' models. Were the Government to be the sole funder of such a generous scheme, individual taxpayers would face an additional burden of around \$500 per year (again, after savings from the baby bonus but before offsets from tax and income-tested welfare payments). Given a progressive tax system, many taxpayers would make only a small contribution, implying very significant contributions by higher income households.

Other costs?

While the monetary costs of the Commission's proposal are the most visible, other costs are also important and also need to be set against the benefits of the scheme. These costs include:

- compliance and administrative burdens for businesses and government
- potential disruption burdens to business associated with longer absences of women from work
- the disincentive, administrative and compliance costs associated with financing the expenditure through the tax system (though see Kaplow 2004)
- any risks of greater discrimination against women of reproductive age
- the social costs to that part of the community that believes it is not right to provide taxpayer funding to particular groups of families

-
- the slightly slower wage growth for women associated with greater female labour supply.

The Commission has not attempted to measure the net benefits of its proposals. It is hard to value the diverse health and welfare benefits for mothers and children, and the considerable social impacts of the scheme. The difficulty of valuing such factors is ubiquitous in social policy. Ultimately, it is up to the community — through the political process — to determine whether the kind and size of the benefits identified by the Commission are worth the costs.

2.10 Review

A statutory paid parental leave scheme represents a major and complex policy initiative. It has significant interactions with the tax, welfare and industrial relations systems. Its actual impacts will depend on the behaviour of employees and employers and on any unintended impacts. Accordingly, any scheme should be subject to staged assessment and formal evaluation.

On an ongoing basis, the Government will need to monitor the interactions of the paid parental leave scheme with an evolving tax and welfare system. As we have shown in this report (chapter 9), the impacts of a leave scheme depend on it being more attractive than welfare payments, and this will need to be preserved as family policy and taxes change.

There should also be a review of the scheme's design and operation three years after program inception.

The broad goal of that review should be the scheme's capacity to cost-effectively achieve its objectives, and in particular,

- child and parental well being
- workforce and workplace attachment
- the status and rights of women and men as both parents and members of the paid workforce.

More particularly, such a review should consider the effectiveness of the scheme in a range of areas:

- whether employees with existing privately negotiated leave have lost part or all of their privately negotiated paid parental leave benefits without adequate compensation (the 'no disadvantage' issue), and if they have to any systematic extent, the appropriate policy response

-
- its administrative ease for government and business
 - assessment of who is getting access to the scheme and whether the eligibility criteria are appropriate
 - interactions with the welfare system
 - the impacts of the scheme on leave duration and the adequacy of the 18 week leave period and/or the generosity of the scheme
 - the use of the minimum wage as the benchmark payment
 - the extent to which employers or employees have abused any features of the scheme and the appropriate risk management approaches to mitigate these
 - any major unintended impacts.

In addition, this report has mooted some features of a statutory paid parental leave scheme that could be implemented at a later stage if appropriate. The most important of these is a mandated employer superannuation contribution, which the Commission proposes be implemented contingent on compliance and other costs at that time. Some other, less presumptively desirable, future policy options that should also be considered are:

- the potential for parents to share part-time statutory paid parental leave and for other flexible arrangements, such as taking leave at half-pay over double the period
- reconsideration of the potential for inclusion of accrued leave entitlements in a future statutory paid parental leave scheme subject to (i) changes in the IR environment that made its inclusion more in line with the treatment of privately funded paid parental leave, (ii) less difficulties in dealing with multiple IR arrangements across jurisdictions and (iii) ways of reducing compliance burdens for firms associated with the need to track such entitlements over long periods.

To underpin this review, the Commission proposes that surveys be undertaken to assess the impacts of the scheme on parents' behaviours, what happens to existing voluntary schemes, and the health and welfare of parents and children. Some aspects of this can exploit existing ongoing collections — such as the ABS Pregnancy and Employment Transitions survey — while in other cases (such as the welfare area), a longitudinal approach may be necessary.

In recommending a future review, it should be emphasised that the Commission is not proposing that the Australian Government, as a matter of course, should increase its funding contributions to a statutory paid parental leave scheme by increasing payment rates or leave duration.

The Australian Government should undertake:

- *ongoing assessments of the interaction of the statutory paid parental leave scheme with the tax and welfare system and of the extent to which employers have changed their privately negotiated arrangements in response to the statutory scheme*
- *a review of the scheme three years after its inception, including:*
 - *its effectiveness in meeting its main objectives*
 - *assessment of the impacts of the scheme on leave taken by parents, and of any modest changes to the duration of the statutory scheme that may be required*
 - *the viability of implementing mandated superannuation contributions by employers at that time*
 - *the potential for more flexible arrangements, including a capacity for parents to share their statutory parental leave on a part-time basis and to take leave at half-pay for double the period*
 - *whether employer-funded accrued leave or other entitlements should still be outside the scope of the statutory scheme.*

To underpin the review proposed in recommendation 2.14, the Commission proposes that the Australian Government should commission or otherwise ensure that surveys are undertaken to assess the impacts of the Government's statutory paid parental leave scheme on parents' behaviours, what happens to existing voluntary schemes, and the health and welfare of parents and children.