

Review of the Maternity Leave (Commonwealth Employees) Act 1973

4 February 2022

Science & Technology Australia welcomes the opportunity to provide input to [the Australian Public Service Commission's Review of the Maternity Leave \(Commonwealth Employees\) Act 1973](#).

STA is the peak body representing more than 90,000 scientists and technologists in Australia.

Our membership includes 94 organisations that represent or employ scientists. It covers scientists working in the Commonwealth public service including in federal Departments and for the CSIRO, ANSTO, BOM and Geoscience Australia.

STA strongly supports measures to improve equity, diversity and inclusion across the workforce. This is crucial for Australia to draw on our full talent pool, and for excellence in teams.

In 2022, a strong, flexible and modern parental leave scheme is essential to be an employer of choice. A best practice parental leave scheme is now a key asset to recruit and retain high quality staff of all genders. We commend the Australian Public Service for undertaking this review in the lead-up to the 50th anniversary of the Maternity Leave (Commonwealth Employees) Act 1973.

Since the passage of this Act in 1973, successive Enterprise Bargaining Agreements and policies adopted by individual Commonwealth Departments and Agencies have extended and modernised from the Act's baseline provisions. This review is an opportunity to draw on the best practice of those subsequent agreements. It also presents an opportunity to lift parental leave conditions across the public service to those of the leading Commonwealth agencies and other employers.

Response to Terms of Reference

Reducing administrative burden

1. **How to draft terms in plain, modern language.**
2. **How to reduce unnecessary prescription, process and complexity.**

While groundbreaking in its time, when the Act was drafted prior to its passage in 1973, it was a product of the language and assumptions of the era. This review is a timely opportunity to modernise the language and reflect today's broad diversity of families and parenting situations, including same-sex parents, adoptive parents and carers.

We commend the Fair Work Commission's [Best Practice Guide to Parental Leave](#) entitlements as a useful starting point on more modern terminology and practice. The Australian Human Resources Institute also offers practical [guidance on more inclusive contemporary terms and provisions](#).

In particular, we recommend the review consider the following changes:

- modernise references to 'maternity leave' to 'parental leave';
- update references to 'confinement' (used to describe the period immediately before and after a parent has given birth) to an employee being 'on parental leave';
- modernise references to employees being 'absent from duty' to 'being on parental leave'; and
- broaden references from the 'birth of a child' or 'childbirth' to include becoming an adoptive parent or a legal guardian/carer.

We commend a desire to reduce unnecessary prescription, process and complexity in the legislation. Given the evolution in overarching employment law for all Australian workers over the past decade in particular, the commission could consider referencing the general provisions as a baseline, on which the Commonwealth public service parental leave provisions build. This should be approached mindful that individual policies and the Enterprise Bargaining Agreements of Departments and Agencies may also build further on the universally-applicable legislation.

The prescriptiveness of the current Act should be rethought to strengthen flexibility. The provisions requiring a pregnant employee to start parental leave six weeks before the due date of a child's birth, for instance, should be made more flexible. In 2022, many women continue to elect to work until much closer to the expected due date of a child's birth, informed by medical advice.

Provision of appropriate support to new parents

3. **Whether current entitlements are consistent with Government Policy.**
4. **How current entitlements compare to those offered by private sector employers, state and territory public services.**
5. **Whether to take a holistic approach in providing other parental leave entitlements and arrangements, such as:**
 - a. **provisions for parents other than birth mothers – such as adoptive parents, long-term foster parents, supporting partners and other permanent carers**
 - b. **consideration of enterprise agreement terms which impact on people on parental leave, or preparing to go on parental leave, including arrangements for salary increments and availability of leave for obstetric appointments, and**
 - c. **payment of superannuation during maternity or parental leave.**

Government policy on parental leave has evolved significantly since the Act was passed in 1973. The most recent changes to provisions for Australian Public Service employees were [made in July 2020](#), ushering in more flexibility and wider options in taking entitlements to parental leave pay. Today, all Australian workers are covered by minimum standards and entitlements under the provisions of the [Paid Parental Leave Act 2010](#) and the [Paid Parental Leave Amendment \(Flexibility Provisions\) Act 2020](#). The entitlements and flexibility outlined in these more recent Acts (the most recent expressions of Government Policy) is significantly more modern than the Maternity Leave Act 1973. Above the baseline, additional entitlements have been negotiated in Enterprise Bargaining Agreements and policies. The Department of Prime Minister & Cabinet notes it offers [14 weeks of paid parental leave for primary carers](#), and an APS-leading 7 weeks of paid supporting partner leave.

Many Australian State Governments now offer [14 weeks paid parental leave](#) to state public servants, and flexibility to take the leave within the first 12 months of a child's birth, adoption or arrival into care. In the private sector, Deloitte Australia offers [18 weeks paid leave to all new parents, regardless of gender](#). From 2017, Deloitte gave their employees the opportunity to take paid parental leave flexibly. An employee could work three days per week and take two days of parental leave for an agreed period or until their entitlement was fully used. Employees can choose to take their paid parental leave flexibly over three years.

It may be timely for this review to consider the benefits of offering return-to-work incentives linked to parental leave. Some [university EBAs](#)¹ include a return-to-work bonus to bring people back into their careers after a period of parental leave. The bonus can be used towards childcare, taken as a lump-sum payment, or used to extend parental leave into a part-time option by a few months. If a key objective of parental leave is to support and retain a highly-skilled workforce, such incentives to return to the workplace can play a powerful role.

Science & Technology Australia supports taking a holistic approach to parental leave provisions to better reflect the diversity of modern families. This is important given the many types of family structures and circumstances in which people parent. Supporting partners, adoptive and foster parents and legal guardians and carers should be covered by parental leave entitlements. A compassionate and flexible approach is especially imperative in pregnancy loss and babies with specific neonatal needs.

As part of this review, STA recommends the APSC survey parental leave provisions and policies in Department and Agency EBAs to assess variations and gaps and publish the findings. This would assist to ensure all Commonwealth employees have access to comparable parental leave provisions. Consideration should be given to a public service wide benchmark of 14 weeks of paid leave. Many private sector organisations offer more than 12 weeks, and several universities in Australia provide up to 26 weeks of paid parental leave for primary carers. OECD research indicates that on average, primary carers are entitled to just over 18 weeks of paid parental leave across the OECD countries.²

STA supports paying superannuation contributions on parental leave. The Australian real estate agency Dexus adopted this policy in 2017, [spurred by stark differentials in women's superannuation accumulations relative to its male employees](#).

¹ RMIT University EBA 2018, page 23.

² https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf

Promotion of gender equality and inclusion

6. **How to provide parents with more choice in dividing their caregiving roles.**
7. **How to balance women's economic empowerment and choice with considerations around maternal and child health.**

As a beacon scheme for other employers, the Australian Public Service provisions can play a leadership role in encouraging greater equality both in the workplace and in caregiving for children. Despite some change in recent decades (albeit at a slow pace), men remain significantly less likely to take longer periods of paid parental leave, assume a primary carer role and work part-time. Many parental leave systems in other nations have grappled with this challenge, which undermines equality and lifetime earnings, and addressed it by offering equal amounts of non-transferable leave to both parents. In Finland, for example, its Government has [pledged](#): “Obsolete legislation will be [modernised] and its language will become gender-neutral and suitable for all families. For example, the reform would give up gender-tied daily allowances. Instead, both parents would receive an equal number of daily allowance days and equal flexibility in their use.”

Careful consideration should be given to language used to draft the legislation, removing gendered language wherever possible. Using the term ‘parental leave’ rather than ‘maternity leave’ or ‘paternity leave’ is more inclusive and will help to shift cultural expectations about a more equal share of responsibility for caregiving for children.

Providing flexibility

8. **How to facilitate flexible interaction of entitlements provided by the Maternity Leave (Commonwealth Employees) Act 1973 with agency industrial instruments, the National Employment Standards, the Paid Parental Leave scheme and other relevant legislation.**
9. **How to provide agencies with greater discretion to apply entitlements in individual circumstances, including situations of miscarriage, stillbirth, premature birth and other circumstances of serious neonatal health concerns.**
10. **How eligibility criteria for Commonwealth employee entitlements interact with part-time and casual work and periods of leave without pay.**
11. **Whether steps could be taken to make using leave more flexible, including whether leave could be used to facilitate part-time work arrangements, or taken in broken periods over a longer period than 52 weeks.**

One way to facilitate flexible interaction of entitlements provided by this Act with other industrial instruments, the National Employment Standards and the Paid Parental Leave Scheme could be to have this Act reference the other instruments with a ‘higher of the two’ approach. This Act could potentially operate as a baseline set of provisions across the Australian public service. Where a higher entitlement is under another instrument such as an agency EBA, it could note the employee would be entitled to the higher of the two provisions.

The Act could include provision for a delegation of authority to agency decision makers to grant additional entitlements in compassionate circumstances, including miscarriage, stillbirth, premature birth and other circumstances of serious neonatal health concerns.

The Australian Human Resources Institute notes 103,000 Australian couples experience an [early pregnancy loss](#) each year. Support networks [Pink Elephants](#) and [Stillbirth Foundation Australia](#) have resources to inform this aspect of parental leave legislation. AHRI further notes: “Last year [Commonwealth Bank](#) introduced leave for parents who experience a stillbirth. Primary carers can access 12 weeks of paid leave while secondary carers can access two weeks. Under the *Fair Work*

Act 2009 pregnant people are entitled to unpaid [special maternity leave](#) if they experience early pregnancy loss after 12 weeks. Pink Elephants advocate to include two days of bereavement leave for those who experience a miscarriage before 12 weeks. According to the organisation's [website](#), 98 percent of losses happen prior to the 12-week mark."³

Eligibility for Commonwealth employee entitlements should include part-time employees and long-term casual employees. Consideration should also be given to removing the minimum service requirement to be eligible for some parental leave provisions. Reciprocal arrangements could be developed for recognition of service across STEM sector organisations – i.e. the Commonwealth, higher education (university and VET) and publicly funded research agencies to improve career security for women in STEM. One potential model for this is the ACT's [portable long service leave scheme](#) covering the building and construction industry, contract cleaning industry, community sector industry and security industry.

STA supports a maximum flexibility approach that enables staff to take parental leave provisions at half pay, access part-time work arrangements, and/or take periods of parental leave in broken periods over a longer period than 52 weeks.

³ <https://www.hrmonline.com.au/parental-leave/six-features-of-a-progressive-parental-leave-policy/>