

# 2.3

## Australia

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Population (UNDP)	2005	20.3 million
Total Fertility Rate (UNDP)	2000/5	1.8
GDP per capita (UNDP)	2005	31,794 PPP US\$
Female economic activity, 15+ (UNDP)	2005	56.4 per cent
As % male rate (UNDP)	2005	80 per cent
% of employed working part time (OECD/F)		
Men	2007	12.4 per cent
Women	2007	38.5 per cent
Gender employment gap (OECD/BB)	2004	20% points
Employment rate for mothers (OECD/BB)		
With child from birth to 5 years	2005	48.3 per cent
Global gender gap (WEF)	2008	21st
Attendance at formal services (ECB)		
Children under 3 years	2006	No data
Children 3-5 years (inclusive)	2006	No data
NB Australia is a federal state		

### 1. Current leave and other employment-related policies to support parents

*Note on federal and State industrial relations systems and awards:* in Australia, the employment conditions of employees have traditionally been detailed in *awards*, which are usually occupational or industry- based prescriptive documents determined by industrial tribunals. Historically, Australia had a different state-based industrial relations system for each of its six States, as well as a federal system. Federal awards applied to employees working in the federal public sector and for companies with similar operations in more than one State, while State awards covered the State public sector and company operations operating in a single State. Traditionally, the federal system had set the standard for conditions, with State systems usually ratifying federal decisions shortly afterwards.

In December 2005 the federal *Workplace Relations Act 1996* was amended (referred to as the 'Work Choices' amendments) to reduce the coverage of the State systems, bringing into the federal sphere all employees working for incorporated businesses (i.e. those falling within the federal government's Constitutional power over 'corporations'). In addition, these changes and the associated 'award rationalisation' process was designed to reduce the number of awards and the matters they are able to address, as well as reduce award coverage through prioritisation of individual and collective bargaining and removal of overlapping coverage of awards and agreements.

Following the election of the Australian Labor Party at the federal level in November 2007, legislation has been passed that will repeal the *Workplace Relations Act 1996* (and with it, much of the Work Choices agenda) and replace it with a new system of employment regulation entitled the *Fair Work Act 2009*. These new employment regulations are due to come into effect on 1 January 2010 (see part 2 for a discussion of their impact on parental leave arrangements). Until then the previous *Workplace Relations Act 1996* still applies (in most respects) and is what is described in the rest of this part.

### **a. Statutory Maternity leave**

Maternity leave in Australia is conflated with the statutory entitlement to 52 weeks unpaid Parental leave that can be shared between a mother and her spouse (see below). The portion of this Parental leave entitlement taken by the mother is referred to in the legislation as 'Maternity leave' (*Workplace Relations Act*, s.265-s.281). Since amendments to the Act in 2005, the mother must take six weeks 'Maternity leave' immediately following the birth of her child (s.273).

While there is currently no general entitlement to paid Maternity leave, some employees have access through industrial awards, workplace agreements, company policies, or legislation covering public sector employees. In a national survey conducted in August 2008, 45 per cent of female employees indicated they had access to paid Maternity leave in their main job, with prevalence considerably higher in public sector employment: 74 per cent compared with 35 per cent in the private sector (*ABS Employee Earnings, Benefits and Trade Union Membership Survey*, August 2008, Cat. No. 6310.0, Table 17). Organisational data indicate that the prevalence of paid Maternity leave has been increasing over recent years, with 46 per cent of large organisations surveyed by the Equal Opportunity for Women in the Workplace Agency (EOWA) in 2005 providing paid Maternity leave, compared with 23 per cent in 2001 (*Equal Opportunity for Women in the Workplace Survey 2005: Paid Parental leave*, available through EOWA website, <http://www.eowa.gov.au/>). The amount of paid leave granted by these organisations varies significantly across employers (see later comments).

### **b. Statutory Paternity leave**

As with Maternity leave, Paternity leave in Australia overlaps with the statutory entitlement to 52 weeks unpaid Parental leave that can be shared between a mother and her spouse. The portion of this Parental leave entitlement taken by a man when his spouse gives birth is referred to in the legislation as 'Paternity leave', and is formally divided into 'short Paternity leave' (up to one week at the time of the birth) and 'long Paternity leave' (leave-taken as the child's 'primary carer') (*Workplace Relations Act*, s.282-s.297). While short Paternity leave can be taken simultaneously with the mother's Maternity leave, long Paternity leave cannot, and the total period of Parental leave shared between the parents cannot exceed 52 weeks. Following amendments that require a mother to take six weeks Maternity leave immediately following the birth of her child, the maximum period of leave available to her spouse to use as Paternity leave has been reduced.

There is no general entitlement to paid Paternity leave, but some company policies and industrial agreements provide a period of paid leave for fathers. In response to a national survey in 2008, 35 per cent of male employees indicated they had access to paid Paternity leave in their main job. As with paid Maternity leave, prevalence was higher in public sector employment; 59 per cent of male employees in the public sector indicated that they had access, compared with 31 per cent in the private sector (*ABS Employee Earnings, Benefits and Trade Union Membership Survey*, August 2008, Cat. No. 6310.0, Table 17). Organisational data indicate that the prevalence of paid Paternity leave has been increasing over recent years: 32 per cent of large organisations responding to the 2005 EOWA survey mentioned above provided paid Paternity leave, compared with 15 per cent in 2001. The amount of paid leave that is granted varies significantly across employers (see later comments).

### **c. Parental leave**

*Note:* as discussed above, Parental leave in Australia is a shared entitlement that overlaps with Maternity and Paternity leave; all three terms refer to the one entitlement.

#### *Length of leave*

- Fifty-two weeks per family around the birth or adoption of a child. A woman can start to take leave up to six weeks before her baby is due. Except for the week following the birth of the child when both parents may take Parental leave, the remainder of the leave may only be taken by one or other parent (the child's nominated primary care provider). Under 2005 legislative amendments, a mother must take six weeks of the 52-week entitlement immediately following the birth.
- Parental leave can be taken sequentially with other types of paid leave, such as annual leave or long service leave (or paid Maternity/Parental leave, if it is available to the employee through their employment conditions). However, for each period of paid leave used, the unpaid Parental leave entitlement is reduced by the same amount so that the maximum time available for Parental leave is still 52 weeks.
- A decision of the Australian Industrial Relations Commission on 8 August 2005 in the Family Provisions Test Case provided employees on federal awards with the right to request from their employer the following extensions to the above entitlements:
  - a period when both parents may take simultaneous unpaid Parental leave up to a maximum of eight weeks (currently one week);
  - a further continuous period of unpaid Parental leave not exceeding 12 months (in addition to the current 12 months) – that is, a maximum of two years in total;
  - return to work from a period of Parental leave on a part-time basis until the child reaches school age.
- While the 2005 Work Choices amendments to the federal *Workplace Relations Act* did not adopt these extended entitlements, they were passed on to some employees through state-based award systems or enacted in relevant state-based legislation (see above 'note on federal and State awards'). However, the Work Choices changes to the federal Act also restricted the scope of state-based benefits, as most employees previously covered by State awards were

brought into the federal jurisdiction. As discussed in part 2, the federal legislation is currently under review.

#### *Payment and funding*

- None for statutory provisions under the federal Act. Where paid leave is offered (for example, under company policies, industrial agreements or legislative provisions for public sector employees) duration of leave varies, with the most common provisions for paid Maternity leave being six or 12 weeks and for paid Paternity leave one or two weeks. Payment is typically the employee's normal pay rate, although in some cases there are provisions to double the duration by taking the leave at half pay.

#### *Flexibility in use*

- None for statutory provisions under the federal Act. See above for possible variations in duration and pay where a period of paid leave is available.

#### *Eligibility (e.g. related to employment or family circumstances)*

- Employees in permanent positions (full- or part-time) are eligible for these entitlements provided they have 12 months continuous service with the same employer by the expected date of delivery.
- Casual employees are also eligible for the above entitlements provided that they have been engaged by a particular employer for a sequence of periods of employment during a period of at least 12 months and, but for the birth or adoption of a child, would have a reasonable expectation of continuing engagement. Since amendments to the *Workplace Relations Act* in 2005 all such 'eligible casuals' have a statutory right to unpaid Parental leave. In the States of New South Wales and Queensland, this right preceded the changes made to the federal Act for those meeting the relevant States' eligibility criteria and falling under the jurisdiction of those States' industrial relations laws.
- Parental leave is not available to self-employed workers. According to *The Parental Leave in Australia Survey* (2005), 11 per cent of mothers in employment prior to the birth of their child were self-employed, while the comparable figure for fathers was 20 per cent.

#### *Variation in leave due to child or family reasons (e.g. multiple or premature births; poor health or disability of child or mother; lone parent); or delegation of leave to person other than the parents*

- Special Maternity leave may be taken in cases of pregnancy-related illness or miscarriage within 28 weeks of the expected date of delivery. Any leave-taken for a pregnancy-related illness must be subtracted from the total entitlement to Parental/Maternity leave.

*Additional note (e.g. if leave payments are often supplemented by collective agreements; employer exclusions or rights to postpone)*

- Paid Parental leave, usually specified as Maternity or Paternity leave, is available in some awards or workplace agreements and/or company policies. In these situations conditions might be attached, such as a requirement to return to work before receiving some or all of the payment or a guarantee to return for at least a period equivalent to the leave-taken. Such conditions do not appear to be common. For example, among respondents to the 2005 *Parental leave in Australia Survey* who had taken some paid Maternity leave, around five per cent reported that some or all of their pay was delayed until their return to work.

#### **d. Statutory childcare leave or career breaks**

- No general statutory entitlement.

#### **e. Other statutory employment-related measures**

##### *Adoption leave and pay*

- The same statutory rights apply as to Parental leave when a child under five years old is adopted.

##### *Time off for the care of dependants*

- All employees have access to a period of paid personal/carer's leave equivalent to one twenty-sixth of their nominal annual hours (10 days leave for a regular full-time employee). In addition, employees can access up to two days unpaid carer's leave for each 'permissible occasion' provided paid personal leave has not been exhausted. Personal/carer's leave includes 'sick' leave and may be taken because of a personal illness, or to provide care or support to a member of the employee's immediate family or household who is ill or injured, or in the case of an unexpected family emergency.

##### *Flexible work arrangements*

- Some parents covered by State provisions have a right to request part-time work upon returning to work from Parental leave until their child reaches school age.

## **2. Changes in leave policy since 2006 and other related developments (including proposals currently under discussion)**

On 7 April 2009, a new *Fair Work Act 2009* came into effect. The *Fair Work Act* establishes a new system of employment regulation in Australia and was a key election commitment of the Australian Labor Party, elected to office in November 2007 after nearly 12 years of Liberal and National Party Coalition rule. The new employment regulations, which come into effect on 1 January 2010, repeal significant aspects of the previous *Workplace Relations Act 1996*, including many of the amendments introduced in December 2005 (known as 'Work Choices'). They also

contain an expanded set of national employment standards, which include the ability for parents of children under school age to request flexible working arrangements, as well as an extension of the maximum period of unpaid Parental leave from 12 to 24 months.

*Requests for flexible working arrangements:* this new national employment standard is based on arrangements that are similar to those operating in the United Kingdom, providing a right for parents who have responsibility for the care of a child under school age (or a child under 18 with a disability) to request a change in work arrangements to assist the employee to care for the child. An employer can accede to the request, offer an alternative set of arrangements, or refuse the request on reasonable business grounds. Both 'flexible working arrangements' and 'reasonable business grounds' are deliberately not defined to avoid limiting the options available or applying to the parties, although general information and assistance will be provided to facilitate agreement. The request is ultimately not enforceable by any third-party body.

*Parental leave entitlement:* the new Parental leave employment standard provides *each* parent with an entitlement to be absent from work for *separate* periods of up to 12 months of unpaid Parental leave; previously, the 12-month period of leave was a joint entitlement. Unpaid Parental leave must be taken in association with the birth of a child to an employee or their spouse or the adoption of a child below school age. Following the first 12-month period of unpaid leave, a parent can request to take up to another 12 months (of their spouse's unused leave period), although in this case an employer can refuse the request on 'reasonable business grounds'. Any agreement for an additional period of leave beyond the first 12 months will reduce the spouse's entitlement by an equivalent amount.

As is currently the case, only one parent is entitled to access unpaid Parental leave at any particular point in time (except for the period immediately following the birth (or adoption) of the child) and each parent must take their period of leave in one continuous block. Following the birth (or adoption) of the child, however, parents may take concurrent unpaid leave for up to three weeks (an increase from the current one week).

*New Paid Parental leave scheme:* on 12 May 2009, as part of its 2009-10 budget announcements, the government announced its intention to introduce a Paid Parental Leave Scheme to commence on 1 January 2011. The main features of the scheme are:

- Tax payer funded paid Parental leave of 18 weeks duration at the federal minimum wage (currently AU\$543.78 (€305) per week, or 52.7 per cent of full-time average ordinary time female earnings).
- Where possible, the benefit would be paid by employers, with the government pre-paying employers for the cost.
- To be eligible for the paid parental leave scheme, the primary carer (usually the mother) must be in paid work and have: been engaged in work continuously for at least ten of the 13 months prior to the expected birth or adoption of the child; and undertaken at least 330 hours of paid work in the ten month period.

- The benefit would be restricted to those earning less than AU\$150,000 (€84,560) per year or approximately four times average female annual earnings (or 2.7 times average female full-time earnings).
- The benefit can be taken in conjunction with other forms of paid leave to which the employee may be eligible (recreational leave, long service leave, employer-funded parental leave) but must be taken before the employee returns to work.
- Any unused portion of the leave benefit can be transferred to another primary care-giver (usually the father) in the event that they also meet the eligibility criteria.
- Where employees are covered by an existing industrial award or enterprise agreement that includes paid Parental leave, that entitlement cannot be withdrawn; the government-funded Parental leave scheme is in addition to any existing employment conditions.
- Those mothers not working (or not working for a sufficient period or hours) prior to the birth of a child would still be eligible for the existing baby bonus of AU\$5,000 (€2,820) and have access to family tax benefit B (primarily payable to single income families). These benefits of the social security system would no longer be available to those claiming the paid Maternity leave benefit.

The implementation of this scheme follows an earlier public inquiry into the social costs and benefits of providing paid Maternity, Paternity and Parental leave in Australia, conducted by the Productivity Commission. The government has implemented all but two key recommendations of the Commission's final report. These additional recommendations were for: Paternity leave of two weeks payable primarily to fathers (or other care-giver in other circumstances) within the first 12 months of the birth of the child; employers to pay superannuation contributions (at the statutory amount) for the period of the Parental leave benefit. The government has committed to reviewing the operation of the scheme by the end of 2014, including the appropriateness of introducing these two recommendations.

## 2. Take-up of leave

Until recently, Australia has had limited data on who has access to various types of leave, and even less information on who is accessing their entitlements and in what manner. This situation has now been addressed with the release in 2006 of figures on the availability and take-up of different leave arrangements around the birth of a child, based on two surveys:

- The *Parental Leave in Australia Survey*, conducted as part of Wave 1.5 of the Australian government-funded *Growing up in Australia – the Longitudinal Study of Australian Children*, collected information from parents with a child born between March 2003 and February 2004, focusing in particular on employment and leave arrangements prior to and following the child's birth. (This longitudinal study is managed by the Australian Institute of Family Studies – see <http://www.aifs.gov.au/growingup/>, and for an overview of the survey findings, see <http://www.uq.edu.au/polsis/parental-leave>).
- A supplementary labour force survey conducted by the Australian Bureau of Statistics in 2005 (*Pregnancy and Employment Transitions*, Cat. No. 4193.0)

collected information on employment and leave from mothers of children under two years of age.

### **a. Maternity leave**

Data from the *Parental Leave in Australia Survey* show that 37 per cent of mothers who worked as employees in the 12 months prior to the birth of their child used some paid Maternity leave following the birth (sometime between March 2003 and February 2004), although very few leave-takers (around four per cent) used paid Maternity leave only. Close to 60 per cent of mothers working as employees in the lead up to the birth used some unpaid Maternity/Parental leave, with around one-quarter of leave-takers relying solely on this form of leave. Most of those who took leave combined paid and unpaid forms, often combining unpaid Maternity leave with other forms of leave such as paid annual leave. The overall average duration of leave-taken by mothers who worked as employees prior to the birth was 40 weeks. Of the total Maternity leave-taken by this group, around 27 per cent was paid. A small proportion of this paid Maternity leave was taken at less than full-time pay: 18 per cent of mothers taking some paid Maternity leave took their leave at a different pay rate, commonly at half pay in order to double the leave time available. If all forms of leave are taken into consideration (that is, including 'non-maternity' forms of leave), around 29 per cent of the total leave-taken was paid leave.

### **b. Paternity leave**

Use of Paternity leave was considerably lower than use of Maternity leave. Around one-quarter of fathers of young children who worked as employees in the 12 months prior to the birth of their child used some *paid* Paternity leave, but less than 10 per cent used any *unpaid* Paternity/Parental leave. Fathers relied very heavily on the use of non-parental forms of leave, the most prevalent being paid annual leave. Fathers were much less likely than mothers to combine different forms of leave, and their overall average duration of leave across all leave types was two weeks. Of the total leave-taken by fathers working as employees, around 88 per cent was paid.

### **c. Parental leave**

Among respondents to the *Parental Leave in Australia Survey*, around 80 per cent of employees met the basic eligibility criterion for access to Parental leave. Overall, 68 per cent of mothers of children born between March 2003 and February 2004, who worked as employees in the 12 months prior to their child's birth, used some leave designated as 'Parental' or 'Maternity' leave; while the corresponding figure for fathers was 30 per cent. For fathers in particular, usage of Parental leave thus falls well below access and eligibility.

### **d. Other employment-related measures**

According to the Household, Income and Labour Dynamics in Australia (HILDA) survey, access to carer's leave currently stands at 72 per cent of employed persons (those without access are mainly self-employed and casual workers). In terms of usage, the *Parental leave in Australia Survey* suggested that around 13 per cent of mothers who returned to work as employees after the birth of their child reported

using some carer's (or 'family' or 'special') leave. In addition, around 16 per cent of this group reported using some of their own sick leave to care for their child (*Parental Leave in Australia Survey*). Overall, around 24 per cent used at least one of these forms of leave. Among fathers working as employees after the birth of the child: 21 per cent used some of their own sick leave to help care for their child; 15 per cent used some carer's (or 'family' or 'special') leave; and around 30 per cent used at least one of these forms of leave. As discussed earlier, entitlements to carer's and sick leave are now combined in the personal leave entitlement under Australia's current legislation.

#### **4. Research and publications on leave and other employment-related policies since January 2006**

##### **a. General overview**

There has been some research around the issue of Maternity leave specifically and family-friendly policies generally in Australia since 2001. Much of this has been generated as a result of the work and family test case brought before the Australian Industrial Relations Commission in 2004, and also by the inquiries into paid Maternity leave and into the gender division of paid and unpaid work conducted by the Sex Discrimination Commissioner (and published by the Human Rights and Equal Opportunity Commission) and the Productivity Commission's Inquiry into Paid Maternity, Paternity and Parental Leave conducted in 2008-09. In addition, as noted above, new surveys have been conducted on the use of Parental leave; and Wave 5 of the HILDA survey has also included a greater number of questions on Parental leave compared to earlier waves.

##### **b. Selected publications from January 2006, including results from research studies**

Pocock, B. (2006) *The Labour Market Ate My Babies*. Annandale, NSW: Federation Press.

This book examines the impact of current labour market arrangements on families and children, arguing that Australians' capacity to care is undermined by the pressures of paid work. The author argues that a sustainable future needs new policy approaches to work and family life that incorporate the perspectives of children as well as adults.

Human Rights and Equal Opportunity Commission (2007) *It's about Time: Women, Men, Work and Family*. Sydney: Human Rights and Equal Opportunity Commission. The final report from an inquiry into how gender roles in unpaid caring work impact on the ability of men and women to participate in paid work.

Whitehouse, G., Diamond, C. and Baird, M. (2007) 'Fatherhood and the use of leave in Australia', *Community, Work and Family*, Vol.10, No.4: 387-407.

This paper examines Australian fathers' use of leave at the time of the birth of a child. Although most Australian fathers take some leave for parental purposes, use of formally designated Paternity or Parental leave is limited within the Australian policy framework, which lacks legislative provision for paid Paternity or Parental leave. The

analysis uses survey data to identify factors influencing leave-taking, as well as an organisational case study illustrating some of the practicalities of implementing a comparatively generous paid Parental leave scheme.

Special issue of the journal *Australian Bulletin of Labour*, 33(2) (2007).

This special issue, entitled 'Taking care: work and family policy issues for Australia', includes five articles on aspects of work/family balance in Australia. The first two focus on Parental leave policies and practices at the organisational level; the third examines the impact of part-time work on women's wages; the fourth tests the relationship between job quality (including access to paid Parental leave) and parental well-being; while the fifth critically evaluates selected work and family policy initiatives implemented by the 1996-2007 Australian government.

Baxter, J. (2008) 'Breastfeeding, employment and leave: an analysis of mothers in *Growing up in Australia, Family Matters*, No.80: 17-26.

This article explores the relationship between breastfeeding and employment, paying particular attention to the fact that some women do manage to combine employment and breastfeeding: a return to work does not always result in a stop to breastfeeding. The analyses explore which job and other characteristics are associated with a higher likelihood of continuing to breastfeed. The paper also compares the breastfeeding rates of women on leave with women who are back at work, and those not working but not on leave.

Baxter, J. (2008) 'Is money the main reason mothers return to work after childbearing?', *Journal of Population Research*, Vol.25, No.2: 141-160.

This paper explores women's reasons for returning to work after childbearing, using quantitative techniques to analyse how reasons for return to work vary with factors such as women's timing of return to work, type of job previously worked in, or returned to, and what type of leave they used. This enables an examination of which women feel more constrained in their labour market options by returning to work sooner than preferred, and also their reasons for returning.

Baxter, J. (2008) *Timing of mothers' return to work after childbearing: variations by job characteristics and leave use (Research Paper No. 42)*. Melbourne: Australian Institute of Family Studies.

This paper explores the timing of mothers' return analysing whether leave use, employment characteristics prior to the birth and other factors are associated with differences in the timing.

Baxter, J. and Gray, M. (2008) *Submission from the Australian Institute of Family Studies to the Productivity Commission Inquiry into Paid Maternity, Paternity and Parental Leave*. Melbourne: Australian Institute of Family Studies.

This submission provides background information on Parental leave in Australia, and on related issues on mothers' and fathers' employment more generally, on mothers' return to work after having a child, on breastfeeding, and aspects of parental well-being. Some of the analyses are based on existing AIFS research, while some are new. This paper provides a useful snapshot of employment and leave-taking around the birth of a child, as it stands at this time.

Charlesworth, S. and Campbell, I. (2008) 'Right to request legislation: two new

Australian models', *Australian Journal of Labour Law*, Vol.21, No.2: 116-136.

A 'right to request' access to flexible work arrangements as a way of balancing work and family responsibilities has recently become policy for the federal and Victorian Labor governments. This article analyses the distinct features of the federal industrial relations model, and the Victorian model that now forms part of that state's anti-discrimination law. It canvasses the potential of such regulation to assist workers to balance their paid work and family responsibilities and the ways in which such potential might best be realised.

Productivity Commission (2008) *Paid Parental Leave: Support for Parents with Newborn Children*. Available at:

<http://www.pc.gov.au/projects/inquiry/parentalsupport/report>.

Final report on the inquiry into paid Maternity, Paternity and Parental leave in Australia, and the basis for the government's new scheme.

Whitehouse, G., Hosking, A. and Baird, M. (2008) 'Returning too soon? Australian mothers' satisfaction with maternity leave duration', *Asia Pacific Journal of Human Resources*, Vol. 46, No. 3: 288-302.

This paper examines the question of optimal duration of Maternity leave through the lens of Australian mothers' satisfaction with their leave: specifically, whether and why they returned to work earlier than they would have liked. Overall, the analysis highlights the financial pressures underpinning women's decisions, and suggests that enhanced availability of paid leave is more likely to be welcomed than further extension of leave duration.

Brennan, D. (forthcoming 2009). 'A late delivery? The politics of Maternity leave in Australia', in: S. Kamerman and P. Moss (eds.) *The Politics of Parental Leave*, Bristol: Policy Press.

This chapter explores the history and politics of Maternity and Parental leave in Australia, emphasising the distinctive features of the Australian approach to social protection and industrial relations that prevailed throughout the first three-quarters of the twentieth century. It focuses on the politics of paid leave, examining the ways in which political parties, women's groups, trade unions and employer groups have framed the issue of financial support for new mothers (and, more recently, fathers).