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8 February 2022

Maternity Leave Act Review Committee
mlreview@apsc.gov.au

Review of the Maternity Leave (Commonwealth Employees) Act 1973

Dear Committee Secretary,

Thank you for the opportunity to provide a submission in response to the review of the *Maternity Leave (Commonwealth Employees) Act 1973 (ML Act)*.

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace. We have a wealth of experience providing advice to our members on the business benefits of diversity and inclusion.

We believe this review of the ML Act is an important opportunity to ensure that Australian Public Service employees have access to leading practice parental leave. Having a leading practice scheme will help to maximise the benefits of parental leave for employees, families and for business.

Our submission and recommendations are based on two main leading practice principles: shared care (where employers provide the same parental leave provisions and access to paid parental leave to all new parents, irrespective of their gender identity and without reference to 'primary' or 'secondary' carer status); and flexible parental leave policies that empower parents to take paid parental leave in a manner that best suits their circumstances.

Please feel free to contact myself or Cathy Brown, Director of Communications and Advocacy, on 0424 578 698 or advocacy@dca.org.au, should you require any further information about this matter.

Yours sincerely

Lisa Annese
Chief Executive Officer

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I. ABOUT DIVERSITY COUNCIL AUSTRALIA

Who we are

Diversity Council Australia (DCA) is the independent not-for-profit peak body leading diversity and inclusion in the workplace. We provide unique research, inspiring events and programs, curated resources and expert advice across all diversity dimensions to a community of member organisations.

DCA's Membership covers over 20% of the Australian workforce

DCA's prestigious group of 1000 members is drawn from business and workplace diversity leaders and includes some of Australia's biggest employers. Our membership reaches over **20%** of the Australian labour market.

About our members

- 1000 member organisations, including almost 40 ASX100 Listed companies.
- Our members are drawn from across the corporate, government and not-for-profit sectors and vary from small to large workforces in size.
- Our founding members include ANZ, AMP, BHP, Boral, Coles, IBM Australia, Myer, Orica, Rio Tinto and Westpac.

DCA's Members are listed on our website here: <https://www.dca.org.au/membership/current-dca-members>.

Our belief, vision and mission

- Our **belief** is that diversity and inclusion is good for people and business.
- Our **vision** is to create a more diverse and inclusive Australia.
- Our **mission** is to encourage and enable Australian organisations to create diverse and inclusive workplaces.

What we do

DCA, formerly known as the Council for Equal Opportunity in Employment Ltd, was established in 1985 as a joint initiative of the Australian Chamber of Commerce and Industry and the Business Council of Australia to demonstrate the business community's commitment to equal opportunity for women.

Our focus since then has expanded to cover all aspects of diversity in employment, reflecting changes in practice to embrace all areas of the diversity of human resources.

DCA is not government funded - its income is generated from membership fees, sponsorships and services to business/employers.

Our Research

DCA works in partnership with members to generate ground-breaking evidence-based diversity and inclusion resources that enables Australian organisations to fully leverage the benefits of a diverse talent pool.

- **DCA research is grounded in the contributions of people with lived experience.** DCA projects use expert panels, focus groups, think tanks and surveys to make people with lived experience central to the project findings.
- **DCA resources are ahead of the curve.** They establish leading diversity thinking and practice, enabling Australian organisations to re-imagine and reconfigure the way they manage talent in today's dynamic operating environments.
- **DCA resources drive business improvement.** They are high impact, driving business improvement through providing evidence-based guidance on how to fully leverage the benefits of a diverse talent pool.
- **DCA resources are practice focused.** They respond to the information needs of industry leaders and the people they employ.
- **DCA resources speak to the Australian context.** DCA projects generate leading diversity thinking and practice that speaks to Australia's unique and distinctive institutional, cultural and legal frameworks.
- **DCA resources considers all diversity dimensions.** The full spectrum of diversity dimensions are investigated including age, caring responsibilities, cultural background and identity, disability, Aboriginal and/or Torres Strait Islander status, sexual orientation, gender identity, intersex status, social class and work organisation.



II. POSITIONING

The importance of taking an intersectional approach

Intersectionality refers to the ways in which different aspects of a person's identity can expose them to overlapping forms of discrimination and marginalisation. It is therefore critical when drafting and implementing parental leave policy that legislators, policymakers and those implementing such policies, understand intersectionality, and take an intersectional approach to implementing such policies.

Explanatory note on language

DCA is committed to inclusive language at work – that is, language that is respectful, accurate, and relevant in the workplace. At the same time, we know that what constitutes inclusive language is an evolving discussion and one characterised by multiple views.

DCA recognises that gender does not only exist in binary categories and that many people do not identify or fit comfortably with these labels. We acknowledge that there are people whose experiences and identities cannot be captured by this binary language.

At DCA we aim to use language that includes, and addresses marginalisation of, all genders where possible.

However, this submission sometimes uses binary language. This occurs because using binary language is sometimes necessary to convey the gendered nature and dynamics of society, and the very real effects these categories can have on people's lives.

A note on inclusive language

- **Parental leave:** We use the gender-neutral term 'parental leave' to refer to all leave (paid or unpaid) taken by new parents whether for the birth of a child, adoption or after a stillbirth (however, some people who have experienced still birth may not want to use this language, and personal preferences should be respected). Please note that at times this submission uses 'maternity' leave because that is how the act is currently drafted.
- **New parents:** Following [Advancing Parental Leave Equality Network's](#) (APLEN) recommended approach, where possible we refer to 'new parents' rather than 'primary' and 'secondary' carers. Traditionally the term 'primary carer' has been used to describe a parent who is at home with a child, and 'secondary carer' has been used to describe a parent in the workforce. While these terms are still commonly used, feedback from parents, particularly new dads, is that the terms 'primary' and 'secondary' suggest that parents who are at work are less interested and involved in care for their children. The term 'new parents' normalises care by both parents and better reflects the realities of care in working families.

RECOMMENDATION 1: DCA recommends that the ML Act is reviewed and updated to use language that is inclusive and gender neutral.



III. SUMMARY

DCA welcomes the opportunity to make this submission. Parental leave is an issue of significant interest to DCA and to our member organisations.

Recently, we have seen a number of DCA member organisations lead the way when it comes to parental leave offerings in Australia. We have also seen an increase in requests for resources and support from members regarding how to implement best practice parental leave policies. Our submission is based on what the research says about best practice parental leave, and our experience advising our members on parental leave policy.

Our submission and recommendations are based on two main leading practice principles for parental leave:

- **Shared care:** where employers provide the same parental leave provisions and access to paid parental leave to all new parents, irrespective of their gender identity and without reference to 'primary' or 'secondary' carer status.
- **Flexibility:** where parental leave policies empower parents to take paid parental leave in a manner that best suits their circumstances.

Based on these leading practice principles and in response to the terms of reference, DCA therefore makes the following recommendations:

1. DCA recommends that the ML Act is reviewed and updated to use language that is inclusive and gender neutral.
2. DCA recommends that the ML Act is updated to enable flexible parental leave policies that allow employees to take parental leave in a manner that best suits their circumstances.
3. DCA recommends that the ML Act is updated to provide for shared care, meaning making parental leave available for all new parents, regardless of their gender identity and without reference to 'primary' or 'secondary' carer status.
4. DCA recommends that the ML Act is revised so that it applies to all parents, regardless of family formation, including birth, adoption, foster care, surrogacy, or welcoming a young stepchild into a family.
5. DCA recommends that the Australian Public Service consider offering superannuation contributions on paid and unpaid parental leave.
6. DCA recommends that the ML Act is revised to enable leave to be taken more flexibly, including taking leave in one block, in multiple blocks, or using parental leave to facilitate part-time work.
7. DCA recommends that the ML Act is revised to enable parents to take parental leave over a longer period than 52 weeks.

IV. Leading Practice Parental Leave

There are two main leading practice principles for employer-funded parental leave that we would urge the review committee to consider when reviewing the ML Act: flexibility and shared care.

Having a leading practice parental leave scheme is important because parental leave is a key driver of employment decisions for parents of all genders.¹ Having access to suitable parental leave benefits all parents and their children. Parental leave schemes also have organisation benefits for recruitment, productivity, retention.²

At DCA, through our work advising our member organisations, we have noticed an increased focus in recent years for employers seeking to improve their parental leave offerings. These employers are seeking to go above what is required or what is 'standard' in order to reap the important benefits for parental leave for their employees and their business.

Flexible parental leave

Flexible parental leave policies empower parents to take paid parental leave in a manner that best suits their circumstances. Paid parental leave that is flexible in application includes letting employees take leave at any point during the first few years of a child entering the family and/or enabling parents to take leave in single chunk or by working part-time for a set period, taking it together or separately.

At the same time, it is important to recognise that parental leave policies play an important role in maternal and child health, and while we support not being prescriptive about how and when parental leave is taken, we strongly recommend that policy makers follow health advice around the minimum period for recovery for employees who have given birth.

RECOMMENDATION 2: DCA recommends that the ML Act is updated to enable flexible parental leave policies that allow employees to take parental leave in a manner that best suits their circumstances.

Shared care

Shared care, or gender-neutral parental leave, is where employers provide the same parental leave provisions and access to paid parental leave to *all new parents*, irrespective of their gender identity and without reference to 'primary' or 'secondary' carer status.

Gender-neutral parental leave is inclusive for men, women and the LGBTIQ+ community, and better reflects the reality of work and care arrangement for many working families.

Shared care has benefits for women's economic participation, and also has benefits for men and children.

The economic case

Parental leave is important for economic development.³ More gender-equal parental leave can boost economic activity through increasing workforce participation. The international

evidence suggests that more generous gender-equal leave for both parents increases workforce participation for mothers, and reduces it for fathers, with a net overall increase of hours in paid work.⁴ Further, researchers have linked fathers' use of leave with increased earnings for the mother,⁵ reduced absenteeism due to sickness for mothers,⁶ and higher female employment in private firms.⁷

Australian women rank highest in the world for education attainment, yet we are lagging behind when it comes to women's workforce participation. It is estimate that if female workforce participation were equal to that of males, this could GDP by 8.7 percent or \$353 billion by 2050⁸

The child development case

Children also stand to benefit from more shared care. Father's use of parental leave is linked to a mother's decision to breastfeed, and when fathers take parental leave children benefit from better relationships with their fathers. Children also experience the benefits of higher household income when both parents work, and therefore have increased access to better health services and education.⁹

RECOMMENDATION 3: DCA recommends that the ML Act is updated to provide for shared care, meaning making parental leave available for all new parents, regardless of their gender identity and without reference to 'primary' or 'secondary' carer status.

V. DCA'S RESPONSE TO TERMS OF REFERENCE

Below we have responded to the terms of reference that are most relevant to our experience in providing advice to members and our expertise as a diversity and inclusion body.

Reducing administrative burden

2. How to reduce unnecessary prescription, process and complexity

At DCA, we believe the best way to reduce unnecessary prescription, process and complexity is to create flexible parental leave policies. When a policy enables flexibility there is less need to be overly prescriptive about rules and anticipating every scenario that could arise.

At DCA we regularly review and provide feedback on parental leave policies for our members. Leading practice policies avoid unnecessary prescription by being flexible and making parental leave entitlements available for all new parents, without distinguishing between 'primary' and 'secondary' carers.

Having an inclusive policy for all new parents can make it simpler for human resources and for parents and parents-to-be to navigate.¹⁰

Provision of appropriate support to new parents

4. How current entitlements compare to those offered by private sector employers, state and territory public services.

Many DCA members are leading the way when it comes to leading practice parental leave, i.e., offering leave that is flexible, gender-neutral, and available to all new parents. Here are just some examples of the parental leave offered by DCA members:

- [Deloitte](#): Deloitte offers 18 weeks paid leave to all new parents, regardless of gender. That leave can be taken over three years, broken up in a range of flexible ways to suit each family's unique needs. Since the introduction of the new parental leave policy in 2019, Deloitte has seen a 20% increase in the utilisation of the policy by its male workforce, with 40% of Deloitte dads now accessing the policy.¹¹
- [Medibank](#): All eligible prospective parents, regardless of whether they are the primary or secondary carer, will be able to take 14 weeks of paid leave within the first 24 months. This includes taking leave at the same time as their partner. This policy encourages equal and shared parenting responsibilities.
- [QBE](#): QBE's Share the Care initiative eliminates the gendered terms of "primary" and "secondary" carer, instead now offering its existing 12-weeks paid parental leave to every new parent – acknowledging the important roles all parents play within a working family.
- [KPMG](#): In 2021 KPMG announced changes to their paid parental leave offering, extending it to 26 weeks of flexible paid parental leave regardless of gender, and with no tenure-based requirements. The leave can be taken within the first 24 months of the child's arrival, inclusive of adoption, surrogacy, and foster care.

This list is not exhaustive, but we believe it is representative of the many leading practice parental leave policies within our membership base.

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

Best practice parental leave policies apply to all parents, including situations of birth, adoption, foster care, surrogacy, or welcoming a young stepchild into a family.

RECOMMENDATION 4: DCA recommends that the ML Act is revised so that it applies to all parents, regardless of family formation, including birth, adoption, foster care, surrogacy, or welcoming a young stepchild into a family.

DCA believes further clarification is needed regarding the use of the term ‘supporting partners’ as it is unclear who this term includes.

As detailed above, DCA recommends amending the ML Act so that it provides for a shared-care model of parental leave, accessible to all parents irrespective of gender.

b. payment of superannuation during maternity or parental leave.

Currently, Australian women retire with 47% less superannuation than men, and this is due in large part to time taken out of the workforce to care for children or family.¹² As part of efforts to address this inequality, at DCA we have seen a trend towards members offering superannuation payments on unpaid parental leave, for example:

- [Lion](#): now provides an additional six weeks’ superannuation on unpaid parental leave, taking total coverage to 18 weeks.
- [Gilbert & Tobin](#): pays superannuation paid on unpaid parental leave up to 12 months.
- [Commonwealth Bank](#): pays superannuation to primary carers for up to 52 weeks.

RECOMMENDATION 5: DCA recommends that the Australian Public Service consider offering superannuation contributions on paid and unpaid parental leave.

Promotion of gender equality and inclusion

6. How to provide parents with more choice in dividing their caregiving roles.

Shared care is important to enable parents to divide caregiving roles more equally. According to the Workplace Gender Equality Agency, when each parent has access to paid parental leave, this “fosters an equal division of unpaid care and improves family work-life balance.”¹³ Conversely, as Baird et al (2021) argue, distinguishing between ‘primary’ and ‘secondary’ carers entrenches gender stereotypes about care, and reinforces “normative

standards of fathers as ‘supporters’ rather than recognising substantive involvement in care.”¹⁴

When fathers spend more time with their children in early childhood, it is more likely that housework and care is more evenly shared.¹⁵ Evidence from Sweden shows that when men take longer parental leave, both parents shared housework and childcare more equally after the leave period.¹⁶

7. How to balance women’s economic empowerment and choice with considerations around maternal and child health.

Parental leave is important both for women’s economic empowerment (as it contributes positively to women’s workforce participation¹⁷), and for maternal and child health. There is strong evidence to show that providing paid leave to mothers after the birth of a child has significant benefits for maternal and child health.¹⁸ For example, adequate paid leave can lead to lower infant mortality rates, decreasing postpartum depression, improving maternal mental health, and improving child health through increasing breastfeeding rates.¹⁹

The World Health Organisation recommends that infants are exclusively breastfed for the first six months of their lives.²⁰ Further, the *Australian National Breastfeeding Strategy: 2019 and Beyond* affirms this recommendation, and states that breastfeeding benefits mothers, children, and society and the environment. This strategy states that not breastfeeding increases health risks for children and mothers:

Children

Infants who are not breastfed are at increased risk of the following:

- *Sudden infant death syndrome (SIDS)—Breastfeeding is an independently protective factor, with infants who have received no breastmilk being at highest risk (when other risk factors are adjusted).*
- *Respiratory and gastrointestinal infections—For term babies, not breastfeeding increases the risk of illnesses such as pneumonia, diarrhoea and vomiting. Preterm infants are also at increased risk of necrotising enterocolitis (NEC).*
- *Acute ear infection—The risk of acute ear infection (otitis media) is 100 per cent higher among exclusively formula-fed infants than among those who are exclusively breastfed during the first six months.*
- *Asthma—Infants who are not breastfed may experience higher rates of asthma and childhood wheeze.*
- *Type 1 and type 2 diabetes—Formula-fed infants are more likely to develop type 1 and type 2 diabetes later in life and have also been shown to have higher serum insulin concentrations in adulthood.*
- *Overweight and obesity—Longer periods of breastfeeding are associated with a reduction in overweight and obesity. In a large study among low-income children in the United States, those who were breastfed for at least 12 months were 28 per cent less likely to be overweight at 4 years of age than those who were never breastfed.*
- *Leukaemia—Based on current meta-analyses, 14 per cent to 19 per cent of all childhood leukaemia cases may be prevented by breastfeeding for six months or more.*

Breastfeeding provides much more than just good nutrition for the developing infant. It provides direct skin-to-skin contact between mother and child, encourages early mother-child social exchanges, and calms the infant by triggering their natural sucking reflex.

Emerging research also suggests that exposure to bioactive hormones through breastmilk may shape infant temperament.

Mothers

Breastfeeding also contributes to better health for mothers. In particular, breastfeeding reduces the risk of chronic diseases.

Mothers who breastfeed experience:

- *longer periods of amenorrhea, leading to greater spacing between pregnancies*
- *reduced risk of invasive breast cancer*
- *reduced risk of ovarian cancer*
- *reduced risk of hyperlipidemia, hypertension and cardiovascular disease*
- *lower postpartum weight retention*
- *reduced risk of type 2 diabetes*
- *reduced maternal depression.*

Breastfeeding is associated with increased maternal sensitivity, reduced reactivity to stress, enhanced slow-wave sleep and reduced risk of postpartum depression.

While providing parental leave is important to support the health and wellbeing of mothers and children, it is also important to recognise that providing parental leave **exclusively to mothers** can have detrimental effects on women's workforce participation. That is why DCA supports a model of parental leave that is accessible to both parents of a child ('shared-care'). Further, evidence from Sweden suggests that longer shared parental leave is associated with breastfeeding for longer.²¹

Providing flexibility

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.

DCA strongly supports changes to the ML Act that would enable agencies to use greater discretion when applying entitlements to suit individuals' circumstances, including situations of miscarriage, stillbirth, premature birth and other circumstances of serious neonatal health concerns.

In regard to leading practice for supporting employees in cases of stillbirth, DCA recommends:

- Parental leave entitlements remain the same, including the paid parental leave component;
- Should the individual want to return to work earlier than they would have, had there been a live birth then they should be able to, providing the items outlined under the FWA (above) are met;
- The organisation should provide access to their Employee Assistance Program to the parent and their family;
- The organisation should have a conversation with the employee when they are ready about how they want to execute the remainder of their parental leave;
- The organisation should have a conversation with the employee regarding how they would like the information discussed, shared with other employees, should they want contact or zero contact and anything else of a practical nature.

The Stillbirth foundation of Australia made the following call to corporate Australia in October 2017:

Corporate parental policies need to be reviewed to ensure that a company extends paid parental leave in the case of stillbirth for the following reasons:

- *It removes additional financial pressure from the family during an already traumatic period as they would have anticipated having paid leave had it been a live birth.*
- *Accessing paid parental leave recognises the birth of a child and the role of the parents.*
- *It allows time for the female employee to physically and emotionally recover from the experience of birth.*
- *A company would (or at least should) have already factored in the cost of parental leave for a live birth, so it does not effectively add to the company's costs.*
- *The employee would not be fully effective if they had to return to work for financial reasons (a Stillbirth Foundation/PwC study into the economic cost of stillbirth indicates that productivity after a stillbirth is only at 26 percent after 30 days).*
- *It is simply the right thing to do.²²*

More employers are also offering additional bereavement leave for parents who suffer the loss of a child through miscarriage.²³

11. Whether steps could be taken to make using leave more flexible, including to whether leave could be used to facilitate part-time work arrangements, or taken in broken periods over a longer period than 52 weeks.

At DCA we are seeing more employers implement flexible parental leave policies that enable employees to take their parental leave in a way that suits their families. Many employers are starting to offer flexible options such as taking leave in one block, in multiple blocks, or using parental leave to facilitate part-time work.

We have also seen a trend towards extending the period in which parents can take leave, for example by allowing employees to take parental within first three years of a child's life.

These policies enable parents to take parental leave at a time that suits the needs of their



family, for example to take leave when the other parent returns to work from a period a leave. For example, Deloitte's [parental leave offering](#) allows employees to use their parental leave over three years.

RECOMMENDATION 6: DCA recommends that the ML Act is revised to enable leave to be taken more flexibly, including taking leave in one block, in multiple blocks, or using parental leave to facilitate part-time work.

RECOMMENDATION 7: DCA recommends that the ML Act is revised to enable parents to take parental leave over a longer period than 52 weeks.

VI. CONCLUSION & RECOMMENDATIONS

Thank you for the opportunity to provide a submission in response to the review of the *Maternity Leave (Commonwealth Employees) Act 1973 (ML Act)*. This review is an important opportunity to ensure that Australian Public Service employees have access to leading practice parental leave. As outlined in our submission, having a leading practice scheme will help to maximise the benefits of parental leave for employees, families, and for employers.

Therefore, we make the following recommendations:

RECOMMENDATION 1: DCA recommends that the ML Act is reviewed and updated to use language that is inclusive and gender neutral. **6**

RECOMMENDATION 2: DCA recommends that the ML Act is updated to enable flexible parental leave policies that allow employees to take parental leave in a manner that best suits their circumstances..... **8**

RECOMMENDATION 3: DCA recommends that the ML Act is updated to provide for shared care, meaning making parental leave available for all new parents, regardless of their gender identity and without reference to ‘primary’ or ‘secondary’ carer status. **9**

RECOMMENDATION 4: DCA recommends that the ML Act is revised so that it applies to all parents, regardless of family formation, including birth, adoption, foster care, surrogacy, or welcoming a young stepchild into a family..... **11**

RECOMMENDATION 5: DCA recommends that the Australian Public Service consider offering superannuation contributions on paid and unpaid parental leave. **11**

RECOMMENDATION 6: DCA recommends that the ML Act is revised to enable leave to be taken more flexibly, including taking leave in one block, in multiple blocks, or using parental leave to facilitate part-time work. **15**

RECOMMENDATION 7: DCA recommends that the ML Act is revised to enable parents to take parental leave over a longer period than 52 weeks..... **15**

VII. ENDNOTES

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