



INDEPENDENT EDUCATION UNION OF AUSTRALIA

Ground Floor, 120 Clarendon Street, Southbank, Victoria 3006

PO Box 1301, South Melbourne, Victoria 3205

Ph: (03) 9254 1830

Fax: (03) 9254 1835

Email: ieu@ieu.org.au

2 August 2002

The Secretary
Senate Employment, Workplace Relations and Education
Legislation Committee
Suite S1.61
Parliament House
Canberra ACT 2600

Attention: Mr John Carter

By email: iet.sen@aph.gov.au

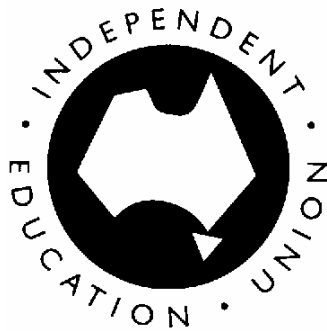
Dear Mr Carter,

Please find attached the Independent Education Union's submission to the Workplace Relations Amendment (Paid Maternity Leave) Bill 2002.

Many thanks for your assistance.

Yours sincerely,

Lynne Rolley
Federal Secretary



INDEPENDENT EDUCATION UNION OF AUSTRALIA

**SUBMISSION TO THE WORKPLACE RELATIONS
AMENDMENT (PAID MATERNITY LEAVE) BILL 2002**

AUGUST 2002

EXECUTIVE SUMMARY

1. **The IEU strongly supports the establishment of a national system of 14 weeks paid maternity leave funded by government and employers. The IEU supports this proposed legislation, although urges the need to consider amendments as indicated in the submission.**
2. **The Union supports the intention of the legislation is not to replace, reduce or affect any other entitlement that employees may have under the terms of other laws, agreements or awards.**
3. **The IEU strongly supports the stated intention of this Bill to give effect, or further effect, to a number of international conventions and recommendations.**
4. **The IEU supports a model of paid maternity leave at the level of salary at the time at which the leave is taken or at the federal minimum wage, whichever is the greater; an employer levy to at least Average Weekly Earnings; with the industrial parties negotiating further to 14 weeks paid leave in enterprise bargaining. In the non-government sector this would ensure a maternity leave safety net for employees who currently have no access to paid maternity leave, while providing the opportunity to enhance provisions for those who currently have access to paid leave entitlements.**
5. **The IEU believes there should be a contribution by all employers to a system of paid maternity leave, including those which might be defined as "small business". Phase-in arrangements over a period of time would allow all business to factor the costs of their contribution to the national scheme into the operation of their enterprise. The Union is strongly of the view that there are economic and social benefits for business and the community in supporting women's equal participation in the workforce through higher levels of female employment and the retention of their skills in the workforce.**
6. **The IEU opposes the concept of an employee contribution (or loss of salary during the period of paid maternity leave) to a paid maternity leave scheme, believing that women and their families already contribute a significant amount in terms of actual expenditure and foregone earnings.**
7. **The IEU believes that the method and timing of the payment should replicate as far as possible the employee's pay arrangements at the time of commencing leave. However, the union supports flexible options (such as double the period of leave at half the pay) which recognise women's needs at the commencement of leave and rejects any proposal that full or part payment of the leave be dependent upon return to work.**
8. **In relation to eligibility, the IEU believes there should be no artificially imposed qualifying periods. The IEU believes that a woman's entitlement to paid maternity leave should rely only on evidence of the existence of an employment relationship**

(ie without a specified qualifying period of employment). The proposed legislation needs to be framed so that it provides eligibility to the very substantial number of women who are employed on short term contracts or are employed casually over sustained periods of time, particularly when this kind of employment relationship is burgeoning in Australia.

9. **The IEU therefore rejects the current requirement for "continuous service" as defined in the proposed Bill in order to be eligible for the paid maternity leave . The IEU strongly urges that the Bill be amended to accommodate the employment arrangements of a very substantial number of women in the workforce as being ongoing casual employees or who may have short term/part time contracts with multiple employers**
.
10. **The IEU supports the right to access accrued long service leave or annual leave in conjunction with any paid maternity leave and for improved paternity leave provisions for the spouse, de facto spouse or same sex spouse.**
11. **The IEU believes that the practical operation of the scheme needs to be administratively simple and that the payment for maternity leave should be linked to the workplace without onerous requirements by either the employee or employer. The Union supports the proposed legislation which provides for federal government funding of the scheme through the taxation system and the remainder paid by the employer either as a levy or negotiated through enterprise bargaining .**
10. **The IEU strongly supports the requirement that paid maternity provisions be treated as wage and salary income and therefore attract accrual for leave entitlements, count for incremental salary progression and for the payment of superannuation and any other entitlements under Awards and Agreements.**
11. **The IEU believes there should be provision for women to transfer part of the maternity leave payment to a partner but that the mother should be the primary recipient, for example, for at least six weeks of the payment.**
12. **The IEU supports provisions for women to have greater access to periods of unpaid maternity leave and for either parent to be entitled to access unpaid family leave in blocks of time up to the time their child is 6 years of age.**
13. **The IEU urges recognition of the significant issues associated with women's return to work after maternity leave. These include access to flexible arrangements such as part-time work and job share or other options which enable women and their partners to balance work and parenting commitments.**

1. INTRODUCTION

- 1.1 The Independent Education Union of Australia (IEU) welcomes the opportunity to contribute to the Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Inquiry.
- 1.2 As the federally registered union representing over 55,000 teachers and other education staff in the non-government education sector, over 70 per cent of whom are women, the IEU is responsible for negotiating awards and agreements which include the provision of entitlements such as parental leave, family leave, carers' leave and maternity leave. These are entitlements which are central to a worker's capacity to balance their work and family commitments.
- 1.3 The IEU has made a submission the HREOC Discussion Paper "Valuing Parenthood: Options for Paid Maternity Leave: Interim Paper 2002" initiated by Sex Discrimination Commissioner Ms Pru Goward. This submission has informed the comments and recommendations now made to this Senate Inquiry.
- 1.4 In preparing both the HREOC submission and this submission, the IEU Women's Committee has consulted with its Women and Equity Committees at State and Territory levels and has drawn upon the experiences of many women who have contacted the union with concerns in relation to pregnancy and work. The submission is also informed by the process and outcomes of negotiations with non government employers in relation to the inclusion of paid maternity leave into Enterprise Agreements.
- 1.5 **The IEU strongly supports the establishment of a national system of 14 weeks paid maternity leave funded by government and employers. The IEU supports this proposed legislation, although urges the need to consider amendments as indicated below.**

2. THE NON GOVERNMENT EDUCATION SECTOR

- 2.1 The non government education sector is a diverse one. There are approximately 2,650 non government schools across the country employing over 100,000 teachers and support staff. The sector also comprises early childhood centres, pre schools, long day care centres, English Language Colleges and private training providers.
- 2.2 A large majority of non government schools are affiliated with and operated by particular religious groups, the largest of which is the Catholic church which employs over 70% of staff in the sector.

There are over 800 employing authorities in the non government sector including those schools which form part of the Catholic, Anglican and Lutheran systems and also over 780 separate independent school authorities.
- 2.3 The size and diversity of the sector impacts on the industrial context and the salary and conditions which have been negotiated into awards and agreements across the schools and systems in all states and territories reflects a similar complexity and diversity.

- 2.4 An analysis of the provisions across Australia shows that the Union has had some success in negotiating paid maternity/family leave on behalf of its members, however coverage is uneven and the provisions are varied in terms of the length of the period of leave and the conditions applying to it such as the length of service required before qualifying for the leave. There remains a substantial number of staff in non government educational institutions who have no access to paid maternity/parental leave.

An important aspect of this proposed legislation which is supported by the Union is that it is not intended to replace, reduce or affect any other entitlement that employees may have under the terms of other laws, agreements or awards.

- 2.5 The data at **Attachment 1** provides a summary of the maternity/family leave provisions, both paid and unpaid, across the non government sector in Australia.

3. CONTEXT

- 3.1 The IEU believes that the raft of legislation currently in place in Australia which addresses issues of equity, anti discrimination and equal opportunity in the workplace have ethical, moral and symbolic significance for the Australian and international communities. The IEU believes that paid maternity leave has ethical and social justice significance and requires strong support from governments. The IEU strongly supports the stated intention of this Bill is to give effect, or further effect, to a number of international conventions and recommendations.
- 3.2 Substantial national and international research exists which argues that a nation's economic and social interests and the strategic competitive edge for business are advanced by ensuring that public policy supports what is fair and just for women in the workforce. The IEU believes that a commitment to paid maternity leave as part of a raft of policy and legislative measures which support women and their families has the capacity to make the Australian economy more productive and efficient and its society more equitable and just.
- 3.3 The Union believes that if students attending non-government schools are to receive positive messages about the value of women in our society, governments must contribute to that message by providing the necessary legislative and regulatory frameworks to assist in the process. A positive commitment to paid maternity leave represents such a message.

At the moment, Australia and the United States are the only two OECD countries without government supported paid maternity leave and this gives the clear impression that federal and state governments in Australia do not support women's equal participation in society and are not committed to higher levels of female employment and the retention of their skills in the workforce. It further signals that they do not have a sufficient appreciation of the competing demands on the majority of women and their families - the financial necessity for women to remain in the workforce following the birth of their child/children, the loss of skill and career/employment advantage if they leave the workforce to stay at home with their children and the difficulty of balancing work and family responsibilities.

It certainly makes clear to young women that they will be significantly disadvantaged financially and in terms of their participation in the workforce if they leave it to have children. This must be considered as a contributing factor to the declining birth rates in this country at present.

4. STRUCTURE AND ORGANISATION OF A PAID MATERNITY LEAVE SCHEME

4.1 Eligibility Requirements

- The IEU supports access by all employed women to 14 weeks paid maternity leave at the rate of pay which they received prior to commencing their maternity leave. This is consistent with ILO Conventions and Recommendations, ACTU policy and IEU policy.
- This payment should be available to all working women who take leave to give birth or adopt a baby, with no artificially imposed qualifying periods. The IEU believes that a woman's entitlement to paid maternity leave should rely only on evidence of the existence of an employment relationship (ie without a specified qualifying period of employment).

For example, while most Awards/Agreements have a 12 month qualifying period for access to unpaid maternity leave, the IEU is concerned that some employers, such as some independent schools in South Australia, require three or four years of service to be eligible for paid maternity leave. Further, many women have a number of short term contracts or are employed casually over sustained periods of time. The proposed legislation needs to be framed so that it provides eligibility to these workers, particularly when this kind of employment relationship is burgeoning in Australia.

- There are significant social policy and equity reasons for the coverage of women who work in casual and temporary/sessional positions, as well as those who are in permanent full-time or part-time roles.

In the non-government education sector, there are many women who for a variety of personal or family circumstances, or because of the nature of their particular employer/employment in the industry (for example, in the ELICOS sector, or as Indigenous Education Workers, or ESL teachers) work in casual or temporary/sessional positions, often with the same employer for many years.

The IEU believes these women should have access to paid maternity leave at the salary level prior to their commencing the leave. The IEU therefore rejects the current requirement for "continuous service" as defined in the proposed Bill in order to be eligible for the paid maternity leave. The IEU strongly urges that the Bill be amended to reflect the employment arrangements of a very substantial number of women in the workforce as being ongoing casual employees or who may have short term/part time contracts with multiple employers.

The Union notes that in its definition in relation to unpaid maternity leave for casual employees, the NSW IR Act refers to "regular and systematic basis" of employment and "reasonable expectation of ongoing employment". In terms of implementation, the NSW Department of Industrial Relations advises that in relation to successive periods of temporary employment, the "reasonable expectation" issue is the real test, ie if the

employee had not been pregnant, would she have had another contract? Similar definition and test for women so employed should be included in this proposed legislation for paid maternity leave.

- As is evident from the range of paid maternity leave entitlements available in the non-government education sector (from nil to twelve weeks on full pay), the IEU supports the introduction of a scheme which will provide access to paid maternity leave for all women. Access to paid maternity leave should not be dependent upon the vagaries of geographic location or size of employer. (For example, why should a teacher in a Catholic school in Sydney have nine weeks paid leave, while a teacher in a similar school in Melbourne has six weeks and in Adelaide only four weeks and many others have no paid maternity leave?)
- The IEU is concerned about and would want clarification as to the meaning of the exclusion for employees employed by "Commonwealth, State or Territory governments (including government departments, non-market non profit institutions that are controlled and mainly financed by government and corporations and quasi-corporations that are controlled by government)". While not controlled by government, a majority of non government schools are mainly financed by government. Similar issues arise for universities and for what were previously government enterprises but which have now become corporatised.

Legislation should not discriminate on the basis of who is the employing authority but should stand as a statement of entitlement for all women employees in the workplace. While most government employees may have access through industrial awards and agreements to some paid maternity leave, not all do and neither are there consistent provisions across the country. Similarly, in the non government sector there is great disparity across the multitude of employers as to their employee entitlements to paid maternity leave as evident in attachment 1. The IEU believes that it is important that there is general consistency of conditions such as paid maternity leave across the public and private sectors and one of the purposes of this legislation should be to make this clear.

4.2 Funding Models

- Given the shared responsibility of government and society to protect the health and safety of the mother and child and the overall social and economic benefits to the national interest and to individual employers of a paid maternity leave scheme, the union supports a model which combines a government contribution, an employer levy and a further employer top up through collective bargaining to 14 weeks on full pay.
- The IEU supports a model which requires a government contribution to Federal minimum wage, an employer levy to at least Average Weekly Earnings, with the industrial parties negotiating further to 14 weeks paid leave in enterprise bargaining. In the non-government sector this would ensure a maternity leave safety net for employees who currently have no access to paid maternity leave, while providing the opportunity to enhance provisions for those who currently have access to paid leave entitlements.
- The IEU supports the Bill in its opposition to the concept of an employee financial contribution to a paid maternity leave scheme, believing that women and their families

already contribute a significant amount in terms of actual expenditure and foregone earnings.

In figures compiled by the National Pay Equity Coalition, foregone earnings for having a child are shown as \$239,000 for a woman with high levels of education, \$201,000 for a woman with average education and \$157,000 for a woman with a lower level of education. Such figures perhaps help explain why the average number of children per woman in Australia is now below 1.7.

4.3 Practical Payment Arrangements

- The method and timing of the payment should replicate as far as possible the employee's pay arrangements at the time of commencing leave. The current practice in most awards and agreements covered by the IEU is for the leave to be paid as fortnightly salary. In some instances, provision is made for payment as a single lump sum or for payments to be extended over a longer period on half pay.
- The union supports flexible options which recognise women's needs at the commencement of leave and endorses the Bill's rejection that full or part payment of the leave be dependent upon return to work.
- The IEU considers it essential that the payment for maternity leave be linked to the workplace without onerous requirements by either the woman or the employer. The practical operation of the scheme needs to be administratively simple and the union supports the proposal that the federal funding operate through the taxation system.
- The IEU strongly supports the requirement that paid maternity provisions be treated as wage and salary income and therefore attract accrual for leave entitlements, count for incremental salary progression and for the payment of superannuation and any other entitlements under Awards and Agreements. The issue of superannuation is especially important given the recent ABS Social Trends 2002 data which showed that the average super account balance is \$7,000 for Australian women as compared with \$14,800 for men. This has significant implications for women's retirement income and is consistent with social policy measures to foster and maintain women's participation in paid employment.
- The IEU believes that there could be circumstances where there is a need for a partner to receive a payment and supports the Bill's provision which allows the woman to transfer part of the maternity leave payment to her partner. Nevertheless, the IEU believes that the mother should be the primary recipient, for example, for at least six weeks of the payment.

4.4 Other Related Issues

- There are also significant issues associated with women's return to work after maternity leave. These include access to flexible arrangements such as part-time work and job share or other options which enable women and their partners to balance work and parenting commitments. All too often, the IEU has had to protect its members in situations where they have been told to return to work full time after maternity leave or resign or that part-time work was incompatible with holding a promotions position.

- The IEU therefore supports enhanced provisions in awards and agreements, carer's responsibilities legislation and judicial decisions (such as the Schou case in Victoria and the Bogle case in Western Australia) which recognise the importance of flexible arrangements to enable women to return to work after maternity leave and continue their careers with appropriate recognition of their parenting role.
- The IEU supports the right to access accrued long service leave or annual leave in conjunction with any paid maternity leave and for improved paternity leave provisions for the spouse, de facto spouse or same sex spouse.
- The IEU also urges the Inquiry to consider provisions for women to have greater access to periods of unpaid maternity leave and for either parent to be entitled to access unpaid family leave in blocks of time up to the time their child is 6 years of age.

5. Conclusion

- 5.1 The IEU welcomes the intentions of this Bill to provide support to employees in managing their work and family responsibilities and to strengthen existing legislation in line with international conventions. This legislation also provides important leadership to the employer community about the need for family friendly employment conditions and is important in establishing a climate in which constructive negotiations can take place between the industrial parties to achieve such an outcome.
- 5.2 However, the Union reiterates its particular concern about the limitations in the legislation in relation to women employed in casual, sessional and short term contract positions.

The pattern of employment in non-government education institutions reflects that which is evident across the Australian labour market - that is, a growth in the number of women employed in part time, casual and short term contract positions. Under current legislation and industrial awards, most are not eligible to access unpaid and paid maternity leave. The IEU urges legislative mechanisms which redress this situation and which provide the right for all women workers to access unpaid and paid maternity leave entitlements.

UNPAID MATERNITY LEAVE

	NSW	VIC		QLD	SA	
	Cath/Ind	Cath	Ind	Cath/Ind	Cath	Ind
Entitlement	1 year	2 years	Schools covered by the Award which covers Teachers and School Assistants – 1 year. Clerical, admin and maintenance (not covered by award) – 1 year Award free schools – 1 year	1 year	1 year for all categories of staff	1 year for all categories of staff
Qualifying Period	12 months service	12 months service	12 months service	12 months service	12 months service	12 months service
Conditions	There is a general requirement under the NSW IR Act for 10 weeks written notice prior to commencing the leave			6 weeks compulsory leave following confinement	6 weeks notice prior to confinement. Can be required to commence mat leave 6 weeks prior to confinement.	10 weeks notice prior to confinement

	WA	TAS		NT	
	Cath/Ind	Cath	Ind	Cath award	Ind award
Entitlement	1 year	1 year	1 year	1 year	1 year Essington has 104 weeks unpaid parental leave
Qualifying Period	12 months service	12 months service	12 months service	40 consecutive school weeks continuous service	40 consecutive school weeks continuous service
Conditions	Leave starts 6 wks prior to birth			10 weeks notice prior to confinement. Compulsory 6 weeks leave immediately following confinement	10 weeks notice prior to confinement. Compulsory 6 weeks leave immediately following confinement

PAID MATERNITY LEAVE

	NSW		VIC		QLD		SA	
	Cath/	Ind	Cath	Ind	Cath	Ind	Cath	Ind
Entitlement	9 weeks paid mat leave paid as salary during the leave to all teachers and support staff	9 weeks paid mat leave paid as salary during the leave to all teachers and support staff Early Childhood Sector Staff in Early Childhood Centres employed by Kindergarten Union, Sydney Day Nursery and Catholic Centres have or are phasing in paid maternity leave of 9 weeks. Private and community based long day centres and pre-schools do not have access to paid maternity leave. ELICOS 1 College has access to paid mat leave.	6 weeks paid mat leave at the time of taking the leave	According to the employer body, AISV survey <ul style="list-style-type: none"> 21% of schools offer paid mat leave from 2-12 weeks and of the 21%, half provide for 6 weeks 62% schools have no paid mat leave School Assistants and clerical admin, 70% have no paid mat leave, 18% have 6 weeks, 4% have 12 weeks and 8% have other ELICOS 16 in total – no paid mat leave Business Colleges 62 in total – no paid mat leave	6 weeks paid leave with entitlement paid as salary at the time of taking leave	Anglican 6 weeks paid leave with payment as a lump sum at the time of taking leave PMSA Up to 6 weeks paid leave Anglicans/ Lutherans 6 weeks paid leave with 4 weeks paid on taking the leave and 2 weeks on return to work.	4 weeks paid mat leave paid prior to taking leave for all employees	Lutherans – 4 weeks for all employees with 2 weeks paid before taking leave and 2 weeks on return to work Other Ind schools A - 4 schools which provide 4 weeks paid leave, paid prior to taking leave B – 5 schools which provide 4 weeks paid leave, paid prior to taking leave C – 3 schools which provide 4 weeks paid prior to taking leave D - 3 schools which provide 4 weeks prior to taking leave E – 1 school which provides 4 weeks with 2 wks paid prior to taking leave & 2 wks on return to work F – 1 school which provides 3 weeks paid maternity leave G – 2 schools which provides 2 weeks paid on taking leave H – 1 school which provides 2 weeks paid on taking leave I – 1 school which provides 2 weeks paid prior to taking leave J – 1 school which provides 6 weeks paid on taking leave K – 26 schools no paid maternity leave ELICOS There is no paid mat leave for employees in ELICOS Colleges and Business Colleges.
Qualifying Period	12 months service	12 months service	12 months service	12 months service	12 months continuous service (casual employment does not count as service) or in some diocese will be paid as a lump sum	12 months continuous service Lutherans 2 years service, paid mat leave does not count	12 months service	Lutherans –3 years continuous service Other Ind schools 12 months service A – 1 years B – 2 years C – 3 years

	NSW		VIC		QLD		SA	
	Cath/	Ind	Cath	Ind	Cath	Ind	Cath	Ind
						<p>as service for incremental purposes or the accrual of leave</p> <p>2 schools provide 2 weeks paid leave (1 of which provides 4 weeks at half pay) 1 school provides 6 weeks paid leave or 12 weeks at half pay</p> <p>76 schools provide no paid leave</p> <p>83.6% have an entitlement to paid maternity in QLD</p>		<p>D – 4 years E – 3 years F – 3 years G – 1 year H – 2 years I – 3 years J – 1 year K – no paid maternity leave</p>
Conditions	Paid leave does not count as service for salary progress or accrual of entitlements or superannuation Available to temp employees during the appointment	Paid leave does not count as service for salary progress or accrual of entitlements or superannuation Available to temp employees during the appointment	With employer agreement employee is entitled to work part time until the child's 4 th birthday on return to work				Paid mat leave does not count for calculation of holiday pay/annual leave/loading/ls/ sick leave	Lutherans – 2 weeks paid before taking leave and 2 weeks on return to employment paid at the pay rate applying at the time that the employee took leave.

PAID MATERNITY LEAVE

	WA		TAS		NT	
	Cath	Ind	Cath	Ind	Cath	Ind
Entitlement	4 weeks paid mat leave to increase to 6 weeks in 2003 paid at the time of taking leave	Of the 120 schools 3 provide some paid mat leave to teachers and 1 to non-teaching staff	6 weeks paid mat leave, as of the 1/7/02 paid as a fortnightly salary. 7 weeks from 1/2/03 on the understanding that it will increase by 1 week every 6 months up to 10 weeks	70% of all teaching staff in ind schools have some form of paid maternity leave. The majority have 6 weeks paid maternity leave with payment made as salary or as a lump sum prior to taking leave. A number of schools have a combination of less than 6 weeks paid mat leave but have access to sick leave to be used in conjunction with paid mat leave.	6 weeks paid mat leave paid either as a lump sum or fortnightly	<i>Kormilda College</i> 12 weeks paid leave full pay or 24 weeks half pay <i>Yipirinya School</i> 12 weeks paid leave <i>Nyangatjatjara College</i> 12 weeks paid leave Christian and Lutheran Schools have no access to paid leave
Qualifying Period	2 years service	For 1 of the 3 schools there is a qual period of 4 years service	12 months continuous service	12 months continuous service	12 months continuous service	12 months continuous service
Conditions					10 weeks notice prior to taking leave	