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The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Workplace Relations (Guaranteeing Paid
Maternity Leave) Amendment Bill 2007**

No. , 2007

(Senator Stott Despoja)

**A Bill for an Act to guarantee paid maternity leave,
and for related purposes**

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1 **A Bill for an Act to guarantee paid maternity leave,**
2 **and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Workplace Relations (Guaranteeing*
6 *Paid Maternity Leave) Amendment Act 2007*.

7 **2 Commencement**

8 This Act commences on the day after the day on which it receives
9 the Royal Assent.

10 **3 Application**

11 This Act applies to an employee who takes maternity leave from
12 her employment in respect of a child, if:

- 13 (a) the child is born on or after 1 September 2007; or
14 (b) in the case of an adoption, the date on which the employee,
15 with a view to adoption, first assumes the care of the child on
16 or after the date of commencement of this Act.

1 **4 Objects**

- 2 (1) The object of this Act is to give effect, or further effect:
- 3 (a) Article 11.2(b), Convention on the Elimination of All Forms
- 4 of Discrimination against Women, 1979; and
- 5 (b) the Family Responsibilities Convention; and
- 6 (c) the Workers with Family Responsibilities Recommendation,
- 7 1981, which the General Conference of the International
- 8 Labour Organisation adopted on 23 June 1981 and is also
- 9 known as Recommendation No. 165;
- 10 to guarantee government funded paid maternity leave to all women
- 11 in the workforce whether employed on a full-time, part-time or
- 12 casual basis.

13 **5 Schedule**

14 Each Act that is specified in a Schedule to this Act is amended or

15 repealed as set out in the applicable items in the Schedule

16 concerned, and any other item in a Schedule to this Act has effect

17 according to its terms.

1
2 **Schedule 1—Amendment to the Workplace**
3 **Relations Act 1996**

4 **1 At the end of section 265**

5 Add:

6 (5) An employee who is eligible for maternity leave under this section
7 or who is eligible for adoption leave under subsection 300(1) of
8 this Act is entitled to receive an additional payment of the
9 equivalent of the amount of the Federal Minimum Wage for a
10 period of up to 14 weeks (this additional payment to be known as
11 ***paid maternity leave***), as determined by the Australian Fair Pay
12 Commission from time to time, in addition to the wages or salary
13 of the eligible employee.

14 Note: As at August 2007, the minimum wage is \$511.76 per week. From
15 October 2007, the minimum wage will be \$522.12.

16 (6) For the purposes of subsection (5), an employee means an eligible
17 employee, an eligible casual employee or a regular part-time
18 employee.

19 (7) For the purposes of subsection (5), the amount of paid maternity
20 leave granted to an employee must be not more than the amount
21 which is pro-rata in accordance with the amount of time worked by
22 the employee in accordance with subsection (6).

23 Example: If an employee works part-time at a rate of 50% at the time of a
24 full-time employee, that part-time employee is eligible for 50% of the
25 paid maternity leave entitlement.

26 (8) An employee may elect to convert the entitlement provided for in
27 subsection (5) to the equivalent of the amount of one half of the
28 Federal Minimum Wage for a period of not more than 28 weeks.

29 (9) The paid maternity leave provided for in subsection (5) is payable
30 to eligible employees by means of a payment which must be made
31 by the Commonwealth to the employers of eligible employees.
32 Employers must then make the payment directly to their employees
33 through established payment systems.

34 (10) The paid maternity leave provided for in subsection (5) does not
35 affect or reduce any other entitlement that the employee may have
36 under the terms of any other employment agreement, award or law.

- 1 (11) Notwithstanding other provisions of this section, Commonwealth,
2 State or Territory government employees who are eligible for paid
3 maternity leave otherwise than in accordance with this section are
4 not eligible for a paid maternity leave provided for in
5 subsection (5). It is payable to other employees who meet the
6 eligibility requirements.
- 7 (12) The paid maternity leave provided for in subsection (5) is for
8 mothers in recognition of the physical demands of the later stages
9 of pregnancy, birth, recovery from birth, and establishment, where
10 possible, of breast feeding. It is not intended as a transferable
11 payment between employee and spouse except in exceptional
12 circumstances.
- 13 (13) The paid maternity leave provided for in subsection (5) is to be
14 treated as wage and salary income for the purposes of taxation,
15 superannuation and other relevant laws and agreements.
- 16 (14) The provisions of subsections (5) to (15) do not derogate from
17 existing paid maternity leave provisions of enterprise or workplace
18 agreements, nor will they derogate from the employee's
19 entitlement to any related Commonwealth maternity payments.
- 20 (15) Workplace paid maternity leave provisions established before the
21 commencement of this section may be extended by the provisions
22 of this section with the consent of the employer and employee.

23 **2 After section 316**

24 Insert:

25 **Subdivision L—Inquiry and review**

26 **316A Inquiry into paid maternity leave**

- 27 (1) The Minister must give the Department a written direction to hold
28 a public inquiry about a specified matter concerning:
29 (a) the cost of providing paid maternity leave to self-employed
30 women including farming women;
31 (b) the feasibility of extending the eligibility for paid maternity
32 leave to self-employed women including farming women.

- 1 (2) When the Minister gives a direction under subsection (1) about a
2 particular public inquiry, the Minister may direct the Department
3 to:
4 (a) consult with one or more specified persons, bodies or
5 agencies in connection with the conduct of the inquiry; and
6 (b) have regard to one or more specified matters in connection
7 with the conduct of the inquiry, one of which matters must be
8 the possibility of extending paid maternity leave to
9 self-employed women including farming women.

10 **316B Review of operation of subdivision**

- 11 (1) The Minister must initiate, by the third anniversary of the day on
12 which this subdivision commences, a review of the operation and
13 effectiveness of this subdivision, including:
14 (a) an analysis of the effectiveness of the scheme whereby
15 employers may make voluntary contributions to employees to
16 support their paid maternity leave which are in addition to the
17 minimum government paid maternity leave; and
18 (b) an analysis of the scope and impact of the circumstances
19 when an employee's remuneration has been increased from
20 the minimum wage to a greater agreed amount.
- 21 (2) The Minister must cause to be tabled in both Houses of the
22 Parliament a copy of the report of the review within 15 sitting days
23 of receiving the report.