



23 Marcus Clarke Street
Canberra ACT 2601
GPO Box 3131
Canberra ACT 2601
tel: (02) 6243 1111
fax: (02) 6243 1199
www.accc.gov.au

4 February 2022

Maternity Leave (Commonwealth Employees) Act 1973 Review Team – Consultation
Australian Public Service Commission
GPO Box 3176
CANBERRA ACT 2601

By webform: <https://app.converlens.com/apscom/ml-act-review/submissions>

Dear Review Team

***Maternity Leave (Commonwealth Employees) Act 1973* review.**

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to make a submission to the *Maternity Leave (Commonwealth Employees) Act 1973* (the Act) review (the Review).

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading, and product safety for the benefit of consumers, businesses, and the Australian community. The ACCC's primary responsibilities are to enforce compliance with the competition, consumer protection, fair trading, and product safety provisions of the *Competition and Consumer Act 2010*, regulate national infrastructure and undertake market studies.

The matters subject to the Review do not relate directly to the ACCC's statutory roles and functions but instead we make this submission from the perspective of a public sector employer. Our interest lies in supporting gender equity and diversity in our workplace and the capacity to provide terms and condition of employment and workplace culture that attracts and retains the highly skilled workforce necessary to deliver our statutory roles and functions in the public interest. The highly competitive employment market that the ACCC and other public sector organisations compete in elevates the importance of this endeavour.

Supporting gender equity and diversity in our workplace

The ACCC has several strategies, policies and initiatives that support gender equality and diversity. These have made senior leadership positions more accessible to persons balancing caring responsibilities and increased representation of women in senior roles. The agency has benefited from increased diversity and inclusion that these initiatives have delivered. We consider that changes to the Act will provide further opportunity to support equity in our workplace further enhancing our capacity to capture further benefits.

In 2016 the ACCC introduced our Building Inclusion: Advancing Gender Balanced Leadership strategy.¹ This strategy included improving flexibility in our work practices and setting a target for women representation in our Senior Executive Service (SES). Our target was for our SES to be at least 40% women, 40% men and for flexibility with the remaining 20%.

To facilitate workforce and workplace flexibility we adopted an ‘if not, why not’ approach to flexibility in 2016. This has included all employment opportunities being advertised as full-time, part-time or job-share as a default. The vast majority of roles can be performed from any ACCC location and with access to remote working arrangements. Additionally, we introduced contemporary inclusion strategies and a recruitment policy that has systemic controls to reduce bias. We have defined the leadership expectations for our SES roles and use contemporary assessment tools to measure applicants’ proficiency with these qualities.

Our people, policies, and practices, such as our annual salary progression review process, have been reviewed to remove unintended barriers to gender equality.

We are one of the few APS employers that measure and report its gender pay gap. In 2020 we introduced our *Narrowing the pay gaps strategy*.² This strategy details our aspirations to reduce our average gender pay-gap to less than 5% for 2 years by 2025, and less than 3% for 2 years by 2030. In early 2022 we launched our Gender Equity Plan.

At least in part due to these initiatives, representation of women in the ACCC’s SES has almost doubled from 27% in 2016 to 50% on 30 June 2021 and we have reduced our average gender pay-gap from 9.3% in 2018 to 5.4% in 2020.

Despite these initiatives and gains, we consider further effort is required to continue to address gender equity in the workplace with efforts to further reduce the gender pay gap and effect greater representation at the higher SES levels. We consider that addressing structural barriers to equality from our external environment are important to assist in this endeavour. This includes amendments to the Act following this Review and corresponding amendments to the Public Sector Workplace Relations Policy 2020.

The ACCC’s *Narrowing the pay gaps strategy* specifies the importance of industrial / workplace instruments that facilitate contemporary employment conditions. Expert research has identified that up to 39% of Australia’s national gender pay-gap is attributed to caring responsibilities being disproportionately undertaken by women.³ This was evident at the ACCC where women accounted for 99.5% of all parental leave taken in 2015/16 and 99.6% of all parental leave taken in 2020/21.

Beyond formal strategies, policies, and initiatives, we have also committed through our *Narrowing the pay gaps strategy* to publicly advocate for industrial instruments that facilitate contemporary employment conditions. In November 2021, the ACCC made a submission to the review of the *Workplace Gender Equality Act 2012*. This made several recommendations to, for example, reduce the gender pay-gap across the public service, provide WGEA greater capacity to drive change to remove structural barriers to equality, and collect diversity data in addition to gender. We are committed to taking opportunities to contribute to policy debates

¹ *Building inclusion: advancing gender balanced leadership*. Australian Competition and Consumer Commission, viewed 4 February 2022.

<https://www.accc.gov.au/system/files/ACCC%20Building%20inclusion%20-%20advancing%20gender%20balanced%20leadership.pdf>

² *Narrowing the pay gap strategy*. Australia Competition and Consumer Commission, viewed 4 February 2022.

<https://www.accc.gov.au/system/files/ACCC%20Building%20inclusion%20-%20advancing%20gender%20balanced%20leadership.pdf>

³ *She’s Price(d)less. The economics of the gender pay gap—summary report 2019*, KPMG, viewed 24 December 2021. https://www.wgea.gov.au/sites/default/files/documents/She%27s-Price%28d%29less-2019-Summary-report_0.pdf.

that impact our employees. This Review provides another opportunity to deliver on that commitment.

Amending the Act to ensure that the Commonwealth Public Service offers gender neutral, sufficient and flexible parental leave and related amendments of the Public Sector Workplace Relations Policy 2020 would greatly assist our efforts.

Attracting and retaining a highly skilled workforce in a competitive market

It is critical to the long-term success of APS agencies, including the ACCC, that we offer our people suitable conditions. Suitable conditions help attract, retain, and motivate a diverse range of skilled people. For persons wishing to start and raise families, suitable conditions must also support gender equality and contemporary parenting arrangements. Ensuring our conditions promote and support a positive and inclusive workplace culture is fundamental to our status as an employer of choice.

The ACCC competes with a range of public and private sector companies to recruit and retain skilled people. Our employees are critical to the ACCC's ability to deliver our objectives of enhancing the welfare of Australians by promoting competition and fair trading and providing for consumer protection.

While Commonwealth employees are supported by leading employment conditions in many respects, several private sector companies offer certain conditions that better support employees starting and raising families and allow diverse families more flexibility and support to adopt the caring strategies that work best for them.

In 2021, 70% of all ACCC new starters came from outside the APS (private sector and state government). We compete with law and consulting firms, banks, utility providers, universities, and numerous other employers for skilled employees. We also compete internationally, as many qualified employees pursue overseas opportunities.

A key component of the ACCC remaining an attractive place for current and future employees involves fostering a welcoming and supportive culture and offering conditions that are the same as or superior to key competitors. In important respects, Commonwealth employers are not keeping pace with employment conditions that support employees starting and raising families.

For example, the Act provides 12 weeks paid leave to eligible people who are pregnant or who have given birth. Adding to this, the ACCC Enterprise Agreement provides employees who are covered by the Act an additional four weeks paid leave. The Enterprise Agreement also provides comparable leave to primary carers and 15 days paid leave to supporting partners. The Enterprise Agreement is hindered from offering more generous conditions by terms such as those in the Public Sector Workplace Relations Policy 2020 (see below).

By contrast, King & Wood Mallesons⁴, Ashurst⁵, Gilbert and Tobin⁶, KPMG⁷ all provide flexible, gender-neutral parental leave up to 26 weeks at full pay. Deloitte, EY, Accenture,

⁴ *KWM launches market leading paid parental leave policy*, King & Wood Mallesons, viewed 20 January 2022.

<https://www.kwm.com/au/en/about-us/media-center/kwm-launches-market-leading-paid-parental-leave-policy.html>

⁵ *Ashurst launches landmark global parental leave policy – strengthens supports for working parents*, Ashurst, viewed 20 January 2022. <https://www.ashurst.com/en/news-and-insights/news-deals-and-awards/ashurst-launches-landmark-global-parental-leave-policy>

⁶ *Benefits for our people*, Gilbert & Tobin, viewed 20 January 2022. https://cdn.brandfolder.io/3RTTK3BV/as/pwvwfq-141j28-7skujp/GT_Our_Benefits_Flyer.pdf

⁷ *Why this CEO revolutionised paid parental leave on his first day in the job*, women's AGENDA, viewed 20 January 2022.

<https://womensagenda.com.au/business/why-this-ceo-revolutionised-paid-parental-leave-on-his-first-day-in-the-job/#:~:text=On%20his%20first%20day%20in%20the%20job%20as%20CEO%20of,%E2%80%9D%20or%20%E2%80%9Csecondary%E2%80%9D%20status.>

PwC⁸ and Allens⁹ all provide 18 weeks of gender-neutral parental leave with various flexibility to access the leave up to 36 months from the child's birth. ANZ¹⁰, Westpac¹¹, the Commonwealth Bank of Australia¹² and Telstra¹³ provide gender-neutral parental leave between 12 and 16 weeks. The NSW Government provides 14 weeks gender-neutral parental leave.¹⁴ Sydney University provides up to 22 weeks of gender-neutral parental leave.¹⁵

We expect raising conditions for ACCC employees to levels comparable to these employers will improve retention, productivity, and diversity.

To assist the Commonwealth Public Service and, in particular, the ACCC to remain an employer of choice we recommend:

1. The Act be amended to ensure that parental leave conditions are gender neutral and facilitate workplaces achieving gender equality.
2. The Act be amended to ensure parental leave conditions are sufficient and flexible enough to suit different family configurations and give parents the freedom and flexibility to care for their children in the manner that best fits their personal circumstances.
3. The Government undertake a holistic review of public sector conditions, which includes considering the Public Sector Workplace Relations Policy 2020, enterprise agreements, and a range of legislation, as contemplated by the APS Gender Equality Strategy.¹⁶

⁸ *The leave scheme that makes consultants 70pc more likely to stay*, Financial review, viewed 20 January 2022. <https://www.afr.com/companies/professional-services/the-leave-scheme-that-makes-consultants-70pc-more-likely-to-stay-20210719-p58b2d#:~:text=This%20means%20that%20Accenture%2C%20Deloitte,weeks%20of%20paid%20parental%20leave.&text=The%20federal%20government's%20parental%20leave.pay%20for%20just%20two%20weeks.>

⁹ *Allens announces comprehensive package to balance work and family*, Allens, viewed 20 January 2022. <https://www.allens.com.au/insights-news/news/2019/10/Allens-announces-comprehensive-package-to-balance-work-and-family/>

¹⁰ *Family friendly workplaces*, ANZ, viewed 20 January 2022.

<https://www.anz.com/aus/about/People/workplaces.asp#:~:text=Parental%20leave%20is%20available%20to,irrespective%20of%20length%20of%20service.&text=Parental%20leave%20can%20be%20taken,to%20an%20additional%2012%20months.>

¹¹ *Westpac enhances parental leave policies for employees, introduces premature birth leave*, Westpac, viewed 20 January 2022.

<https://www.westpac.com.au/about-westpac/media/media-releases/2021/8-september/>

¹² *CBA increases parental leave support for employees*, Commonwealth bank of Australia, viewed 20 January 2022.

<https://www.commbank.com.au/articles/newsroom/2020/08/cba-increases-parental-leave-support.html#:~:text=CBA%20provides%20increased%20paid%20leave,experience%20stillbirth%20to%2012%20weeks.&text=Primary%20carers%20will%20have%20access,for%20weeks%20of%20paid%20leave.>

¹³ *Creating equality for new parents*, Telstra, viewed 20 January 2022. <https://exchange.telstra.com.au/creating-equality-for-new-parents/>

¹⁴ *NSW Government expands parental leave*, NSW Government, viewed 20 January 2022. <https://www.nsw.gov.au/media-releases/nsw-government-expands-parental-leave#:~:text=NSW%20public%20sector%20employees%20who,leave%2C%20regardless%20of%20their%20gender.&text=This%20is%20an%20increase%20of%20one%20week%20from%20the%20existing%20condition.>

¹⁵ *University of Sydney Enterprise Agreement (2018-2021)*, Sydney University, viewed 20 January 2022. <https://www.fwc.gov.au/documents/documents/agreements/fwa/ae428081.pdf>

¹⁶ *Realising the benefits for all. Australian Public Service Gender Equality Strategy 2021-26*, Australian Public Service Commission, viewed 28 January 2022.

<https://www.apsc.gov.au/sites/default/files/2021-12/APSC%20-%20Gender%20Equality%20Strategy.pdf>

ACCC recommendations

Parental conditions should be gender-neutral

We recommend that parental leave conditions be gender neutral. This means:

- providing any parent wishing to care for their child the same opportunity to do so as another parent. We note that use of the terms primary and secondary caregivers may be associated with entrenched notions around gendered roles which may be a contributor to the low take up of leave by men even when it is available to them. “Parent” or “carer of child” may be preferable terms to include in the Act.
- removing barriers to parents sharing parenting responsibilities more flexibly, which can disproportionately impact women’s participation in the workforce, as well as impacting men’s ability to contribute to their family life.

Where these changes have been made internationally and combined with ‘use-it-or-lose-it’ conditions, parental leave uptake has been maximised.¹⁷

Parental conditions should be sufficient and flexible to suit different families

Any increase to parental leave conditions should allow Commonwealth agencies the choice to offer employees longer periods of unpaid and paid leave. Increasing paid leave conditions to six months would match key private sector competitors.

Making leave more flexible could involve allowing parental leave to be used up to 24 months after the child’s birth, adoption, or placement into permanent foster care, taken continuously or in portions with the employer’s agreement, and taken simultaneously or separately to the other parent’s leave.

Measures such as providing parental leave to people seeking to use fertility support services, such as in vitro fertilisation (IVF), are also worth considering. The demand for these services increases as prospective parent’s age rises. Supporting families in this way is likely to become more important in the future.

We encourage the Review to consider a broad range of measures that could allow Commonwealth employers to address barriers to employees taking parental leave. This could include considering offering superannuation for up to 12 months to people taking parental leave with or without pay. We also support the Review considering measures that support and encourage greater equality of caring responsibilities and that remove non-structural barriers to all genders sharing caring responsibilities.

A holistic review of public sector conditions should be undertaken

Allowing Commonwealth agencies to offer competitive conditions to employees starting and raising families may involve changes to several legislative instruments and policies. A holistic review is necessary to ensure any changes to the Act are supported across other policies and instruments. An initial first step may involve revisiting the Public Sector Workplace Relations Policy 2020. In addition to capping annual remuneration adjustments, this Policy states conditions of employment cannot be enhanced overall, but only traded with other conditions or conditions of similar values. We suggest this Policy be reconsidered, recognising the benefits that we consider will arise from more competitive conditions.

Other considerations for the Review

We encourage the Review to also consider measures that may assist Australia in offering conditions that are considered international best practice.

Measures that support the take up of parental leave conditions by men to overcome historical barriers to men accessing leave (even when it is available) should also be considered. One example is the model adopted in Iceland in 2000, which has seen males' share of parental leave days increase from 3% to 34% by 2015.¹⁷ This model included a 'use it or lose it' component for both parents. As of January 2021, this component involved each parent having 6 months of paid leave (which is higher than the leave offered under the Act), with each parent able to transfer one month of this leave to the other. Transfers of additional parental leave were possible in certain circumstances so that families were not disadvantaged when one parent was unable to take leave.¹⁸

Germany and Norway have introduced similar parental leave conditions, and an additional documented outcome from these measured was that their fertility rates increased.¹⁷ According to recent research from the Workplace Gender Equality Agency, sharing child raising between parents can provide several benefits to child-parent relationships and attitudes to gender issues in all settings, including the workplace.¹⁹

Flexible parenting arrangements also help workplaces to achieve greater gender balance. In the ACCC's experience, achieving greater gender balance, especially among senior employees, leads to increased productivity, better decision making, and a range of cultural improvements that assist workplace to attract and retain expertise.

As a Commonwealth employer, we look forward to the benefits that will come from improved parental leave conditions. We appreciate that some measures may increase costs of employment but consider these will be offset through increased productivity and performance through the benefits of diversity and importantly the ability to attract and retain skilled employees.

We appreciate the opportunity to have contributed to the Review.

If the ACCC can provide any further information regarding the submission, please contact Gina Dolan, our General Manager of People & Culture, on 02 6243 4977.

Yours sincerely



Scott Gregson
Chief Executive Officer
ACCC

¹⁷ *Towards gender balanced parental leave. Australian and international trends. Insight paper*, Workplace Gender Equality Agency, viewed 10 January 2022.

<https://www.wgea.gov.au/sites/default/files/documents/gender%20balanced%20parental%20leave.pdf>

¹⁸ See, e.g. <https://www.norden.org/en/info-norden/parental-benefit-iceland#:~:text=Changes%20to%20parental%20leave%20took%20effect%20in%20Iceland%20on%201%20January%202021.&text=The%20independent%20condition%20of%20each,leave%20and%20the%20other%20five.>

¹⁹ *Designing and supporting gender equitable parental leave*, Workplace Gender Equality Agency, viewed 10 January 2022. https://www.wgea.gov.au/sites/default/files/documents/Insight_paper_designing_and_supporting_gender_equitable_parental_leave.pdf