

An Analysis of Collective Bargaining for Paid Parental Leave – Sector and Context Effects

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Introduction

There is considerable research about the provision of work-family policies through different means. One stream focuses on legislative means, much of this with a European focus, where welfare state policies and later European Union mandates have introduced a suite of work-family entitlements. A separate body of research relating to the delivery of work and family policies through organisational means in order to address employer and employee needs for flexibility also exists. A third stream, but less researched, relates to trade union capacity to deliver work-family provisions in collectively bargained agreements. Each of these streams tends to be considered separately, generally with little recognition of the possible relationship between the streams. This paper takes an approach that examines the possible link between the legislative context and union bargaining. That is, the paper considers the following questions: Does the legislative context influence bargaining outcomes? Would we expect more work-family entitlements in union agreements when the state does not provide them?

Work-family entitlements are generally understood to include time flexibility and special leaves, with one of these being paid parental leave. In Australia, paid parental leave (PPL) is the generic term used to refer to the period of leave taken by the parent around the birth or adoption of a child. In other national contexts, paid parental leave often refers to leave available to working parents for the care of children until children reach school age. The terminology 'paid parental leave' has been adopted in the Australian legislation to signal gender equality in the policy discourse, but as previous research has demonstrated it is widely acknowledged and understood as leave taken by the mother at and around the time of birth (Whitehouse et al 2006). By contrast, paid maternity leave (PML) refers specifically to leave taken by the mother at or around the birth or adoption of a child. Paid paternity leave (or paid partner leave) refers to leave specifically set aside for the father, or partner of the mother.

Australia did not have a paid parental leave scheme until 2011. The new scheme, which provides 18 weeks paid parental leave at federal minimum wages for a working parent, set a new public policy platform for work and family policy in Australia. The preceding five years however were marked by concerted campaigning from various interest groups, including unions, to introduce a government funded scheme. This unique period, marked by the absence of a universal paid maternity leave scheme combined with significant public debate about the issue, allows us to examine the interaction of the legislative and political contexts with the outcomes in collective agreements.

In this paper we analyse the spread of collective bargaining for paid maternity (primary carer) leave against this backdrop. The period under examination, December 2005-December 2010, coincides with the election of a new Labor government and the time when the paid parental leave policy was being formulated and widely discussed. This allows us to observe what unions and employers were doing in terms of bargaining for paid parental leave at a time in which the paid parental leave scheme was firmly in the public consciousness, but not enacted.

The paper begins by outlining previous research in the area. This is followed by an explanation of the data and a summary and timeline of the social and political events occurring in the period under considerations. A discussion and evaluation of the major patterns in paid maternity leave emerging from the collective agreements in this period follows. The paper concludes with comments about the interaction of the social and legislative contexts and collective bargaining outcomes. The results show that while there were some gains in paid parental leave in collective agreements between 2005 and 2010, we argue that the ‘opportunity structures’ for improved collective bargaining outcomes prevailed in the public sector rather than the private sector. As a result, we argue that union bargaining and legislation are not mutually exclusive and that legislation is still necessary to provide more extensive access to provisions such as paid parental leave.

Research on collective bargaining and paid parental leave

Dickens (1999) suggests that the tripod approach, of legislation, collective bargaining and company policy, is needed to achieve equality measures for women. Heery (2006) suggests that a favourable legislative and policy context encourages bargaining for equality measures. While there is an extensive body of research on the availability of paid parental leave in different countries, much of this refers to statutory entitlements. Internationally, there is a dearth of research on work-family entitlements as they are found in union bargained agreements. However such knowledge is particularly relevant for neo-liberal states such as the USA and Australia, where governments have had a tendency to be absent from the work and family regime (see Baird 2011) and have emphasised instead the responsibility of either the family or individuals, or employers and employees, to make arrangements to accommodate work and family demands.

Demetriades et al (2006) provide one of the few overviews of the provision of work and family entitlements which includes reference to collectively bargained outcomes. They find that in the European Union collective bargaining was dealing increasingly with work and family issues, most relating to working time, flexible hours, teleworking and child care, but with special leaves such as parental leave, maternity leave and career breaks less frequently on the agenda. They also found there was considerable diversity in how conditions are set, including through legislation, framework, sectoral and company level agreements. The approach is influenced by the industrial relations and legislation in each country. Gregory and Milner (2009) also suggest there are particular ‘opportunity structures’, or negotiation spaces, which facilitate unions including work-family concerns on bargaining agendas, which in their study also related to the working time and legislative regimes of the UK and France.

The absence of a paid parental leave scheme in Australia and the reluctance of governments to introduce such a scheme, led to a small but specific set of research papers on work and family policies, including maternity leave, in collective agreements. Whitehouse (2001) examined the presence of work and family provisions in enterprise agreements using the ACIRRT database, a sample of agreement registered in state and federal jurisdictions and referred to as ADAM. Her study included paid maternity leave as well as other entitlements – paid paternity leave, family carers, leave, job share, child care, work from home, career breaks and elder care referrals. Paid maternity leave was one of the most frequent references – occurring in 4.5 per cent of agreements registered in 2000. Occurrences were higher in 1997 (8 per cent) and 1998 (7 per cent) and lower again in 1999 (4.5 per cent). Whitehouse also found that the incidence was significantly higher in the public sector and in agreements covering more than 500 employees. She concluded however that as the uptake of family friendly provisions in bargaining was minimal and slow, public policies were needed to complement the paucity of family friendly provision in enterprise agreements. Noting the uneven pattern over the years examined, Whitehouse suggests: ‘The increased incidence of work/family provisions in agreements to 1998 ... is unsurprising given the growing emphasis on these issues over the 1990s... In particular, the ACTU Family Leave test cases in 1994/5 focused attention on what could be achieved through agreements, and negotiators may subsequently have been encouraged to move beyond the basic provision of access to sick leave for family purposes.’ This implied influence of the external context is the connection we explore further in this paper, especially as the debate about the lack of a paid maternity leave scheme in Australia gathered pace in the decade beginning 2000. Arguably, this was an issue the union movement felt it could make some headway on in terms of public policy and was presumably also on the minds of negotiators as they consulted with their members and went to the bargaining table.

Baird, Brennan and Cutcher (2001) undertook a study focussed solely on the provision of paid maternity leave in enterprise agreements in Australia. Using data from two sources, the ACIRRT sample of more than 2000 enterprise agreements (also used by Whitehouse) and the Workplace Agreements Database (WAD). The WAD includes all federally registered agreements, rather than a sample of agreements. To avoid duplication between the two sets of data, Baird et al only analysed state registered agreements in ADAM and used WAD for the analysis of federally registered agreements. Thus, while the data are not directly comparable with the Whitehouse study, their findings largely concur. Baird et al found that in federally registered agreements the incidence of paid maternity leave clauses was higher in those registered in 1998 and 1999, 9.8 per cent and 9.3 per cent respectively, than in 2000, when the incidence dropped to 6.2 per cent. As Whitehouse found, public sector agreements were more likely to include a paid maternity leave clause. Baird et al also examined the duration of paid leave available and found that 6 weeks and 12 weeks were the two most commonly provided periods of paid maternity leave.

In a subsequent study, Baird, Frino and Williamson (2009) found some increase in the both the incidence of paid maternity leave clauses and duration of leave. This study used only the ADAM agreements and is this more comparable with the Whitehouse study. The sample was 1865 agreements still in operation (i.e. had not reached their nominal expiry dates) as at 1 January 2008. They found that in 2008, 22 per cent of agreements included paid maternity leave and while a sizeable increase since 2000, the incidence was still dominated by agreements in the public sector (59 per cent of public sector agreements and just 16 per cent of private sector

agreements; and 55 per cent in the non-profit sector). A further shift was in the duration of paid maternity leave available in enterprise agreements with 14 weeks being the most common period.

In summary, there is little international research explicitly examining collective bargaining for paid maternity or parental leave, perhaps because in most countries the state provides the entitlement through welfare policies. By contrast, in Australia, where a statutory scheme did not exist until recently, research has examined outcomes under bargaining, as this has been one means of achieving the entitlement. Additionally, such evidence has been used to provide evidence to inform policy makers and advocates in their campaign for paid parental leave. The Australian research to date indicates that the inclusion of paid maternity or parental leave in enterprise (collective) agreements, while increasing, is still not widespread. Furthermore, there is a distinct difference between the provision and duration of paid maternity leave in the public sector and private sector.

The Industrial and Political Contexts

Since 1991 Australia has formally had an enterprise bargaining system which is perhaps best described as a system of single employer collective bargaining. Although there has been a move to more individualised determination of pay and conditions of work, underscored by legislative change from 1996 to 2005, collectively bargained agreements remain the most common method for setting the pay and conditions of employment in Australia. The proportion of employees covered by collective agreements in Australia in the period 2005-2010 rose from 40 per cent to 43 per cent (ABS 2010)¹, partly due to changes in the regulatory framework (Cooper and Ellem 2011).

As the research summarised earlier has indicated, by the mid-2000s the spread of paid maternity leave in collective agreements was minimal – fuelling arguments for the introduction of a statutory scheme. The Australian scheme came into being after a decade of political and social debate and also in a context of significant regulatory change in industrial relations. The previous federal (conservative) government had opposed the introduction of a paid maternity leave scheme arguing instead that it was best left to individual employer-employee bargaining. In 2005 that government introduced very controversial amendments to the industrial relations legislation (called WorkChoices), restricting union bargaining power and content in agreements.

In 2005 the peak union body, the ACTU, had also run a test case in the national labour tribunal on behalf of unions seeking important changes to family provisions in awards. The Australian Industrial Relations Commission awarded a range of improvements, including the ‘right to request’ extended unpaid parental leave entitlements, from 12 to 24 months (Williamson and Baird 2007), but paid parental leave was neither sought nor awarded. Until the enactment of the Paid Parental Leave Act 2010 (C’wealth), Australia did not have a paid maternity leave scheme. This public policy deficit became the focus of a concerted campaign by unions, the Human

¹ Award only 20%-15%; individual 34%-37% (owner operator the rest) (ABS 2010 cat 6306).

Rights Commission and women’s groups. Those employees who did have access to paid maternity leave, had this through either company policies, union negotiated collective agreements or public sector employment legislation.

In November 2007 the Australian Labor Party (ALP) was elected to government, ousting the conservative federal government. A central element of the ALP’s policy platform was a Paid Parental Leave scheme, which was one of the policies regarded as a vote decider. Soon after their election, the new Labor Government referred the question of parental leave to the Australian Productivity Commission to investigate the economic, productivity and social costs and benefits of paid maternity, paternity and parental leave’ and to assess models for impact on employment of women, earnings and workforce participation of parents. The Productivity Commission produced an Issues Paper in April, held public hearings in May, a draft report in September, further public hearings in November and a final report with recommendations to Government in February 2009 (Productivity Commission, 2009). The government announced its commitment to the scheme in the May 2009 Budget. In July 2010, following further consultation with employer associations and representatives, unions and women’s groups, the Paid Parental Leave Act was proclaimed, with the scheme to commence operating on 1 January 2011. (Parents were able to register from October 2010.)

It is important to note that the global economic downturn occurred in this period 2008-09, with associated pessimism that the government would not be able to fund a paid parental leave scheme. This however did not eventuate, although the government did later delay the introduction of two weeks separate paid paternity leave. Thus, while there is no legislative entitlement to paid paternity leave in Australia at present, it is to be introduced in July 2013, and will be called ‘Dad and Partner Pay’.

The other major regulatory change in the same period, that is, the first term of the new Labor Government, was the introduction of new industrial relations legislation. The ‘Fair Work Act’ (C’wealth) replaced the Workplace Relations (WorkChoices) Act and became operative in April 2009. The new National Employment Standards (NES) commenced in January 2010. One of the NES is the right to 12 months unpaid parental leave for each parent, extending the 12 months per couple previously available under legislation. (Twelve months unpaid maternity leave had been available to award covered females since 1979 and as unpaid parental leave to award covered males if they were the primary carer, since 1990.) (Baird, 2005). Table 1 below summarises these developments.

Context - Timeline of significant events

2005	Family Provisions Test Case
2005	WorkChoices Amendments to Workplace Relations Act
2007	Human Rights and Equal Opportunity Commission recommends 14 weeks PML (reaffirms 2002 recommendation)
2007 (Sept/Oct)	Election campaign – Paid Maternity leave promise by ALP; Policy proposal widely debated
2007 (Nov)	Australian Labor Party elected
2008	Productivity Commission inquiry established to recommend suitable

	supports for ‘parents with newborn children’
2009 (Feb)	Productivity Commission report recommends 18 weeks PML, government funded, at federal minimum wage
2009 (April)	Fair Work Act proclaimed – operative from June
2009 (May)	Budget – Government commits to PML scheme
2010 (Jan)	National Employment Standards of FWA operative, include 52 weeks unpaid parental leave for each employed parent
2010 (July)	Paid Parental Leave Act proclaimed – to start in January 2011

Data

The data used in the paper are from the WAD. The WAD is a unique data set containing information on all agreements registered since the introduction of the Enterprise Bargaining Principle in 1991 and is maintained by the Workplace Relations Policy Group of the Federal Department of Education, Employment and Workplace Relations (DEEWR).

The WAD includes information relating to industry, sector, union or non-union bargained agreements, and greenfield or non-greenfield agreements. Of specific interest to us in this paper are the data on paid maternity/parental leave. The WAD codes this if the ‘agreement includes paid maternity leave or paid leave for the ‘primary care giver’ of a child/children’. The WAD also includes estimates that relate to workforce coverage based on information provided by employers when lodging agreements, including number of employees, number of male and female employees, number of full-time and part-time employees, under each agreement.

The paper refers only to data on paid maternity leave (coded in the WAD as primary carers leave). In this paper we present WAD data in two ways. The first is *trend* data for the period from 2005 to 2010, which includes details for all *new* agreements registered in the time period. The data for trends refers to the information contained in the agreement only. The number of new agreements struck in the five year period 2005 to 2010 was 48,345. The second is *total* data, which includes details for all *current* agreements at two points in time, 31 December 2009, and 31 December 2010. This refers to 22,235 current agreements at 31 December 2009, and 25,272 agreements at 31 December 2010. The data for current totals includes the information contained in the agreement, as well as employee coverage.

Results

The paper does not attempt to prove causal relations between collective bargaining clauses and the policy context, but seeks to illustrate the importance of the social and legislative contexts and explain patterns in agreement making and presence of paid maternity leave clauses as we observe them for the period 2005-2010.

Graph 1 shows the number of new collective agreements by industry made in each quarter from March 2005 to December 2010.

Graph 1 here

As the graph indicates, the period 2005-2010 is dominated by a spike in agreement making around the passage of new legislation, and much of it in the construction industry. Cooper and Ellem (2011) suggest this paradoxical outcome is a result of increased agreement making by employers seeking to pre-empt the new legislation before it came into effect. The construction industry appears to be particularly sensitive to proposed changes in legislation, with heightened agreement making activity around the announcement in April 2005 of the proposed WorkChoices legislation, its passage through parliament in December 2005, and its implementation in March 2006. A similar spike in activity occurs around the passage of the Fair Work Act in April 2009 before a period of transition came into effect in July 2009 and when the full Act came into force January 2010.

The amount of agreement making in the construction industry is generally higher than in other sectors in these figures. Throughout the period 2005-2010, the construction industry is responsible for 35.8% of all new agreements, the industry makes up between 21.8% of all agreements in the quarter to March 2005 and 57.6% in the quarter to December 2005, including 52.4% in the quarter to March 2009. This is partly due to the relatively small amount of people covered in each new agreement, which is on average less than 20 persons per agreement in the period depicted. To give some comparison, the average number of people covered in each new agreement in all industries in the period is 112.9, with the range of employees covered by each agreement being between 37–900.

Interestingly the spike in agreement activity around the passage of the Fair Work Act is repeated in a number of industries. When compared to the amount of agreement making in each industry from March 2005 to December 2008, we observe an increase in agreement making of 285 per cent in the quarter before WorkChoices was abolished and the Fair Work Act took effect. Measured in this way, the 309 per cent increase in agreement making in construction in the quarter is only slightly above average. The relative increase in some other industries was much higher, from low-to-high: wholesale trade 404 per cent, mining 473 per cent, retail trade 474 per cent, professional, scientific and technical services 618 per cent, financial and insurance services 725 per cent, administration and support services 777 per cent, and agriculture, forestry and fishing 847 per cent.

Number of agreements which include a paid maternity leave clause

Collective agreements can cover a range of matters and Table 2 shows those matters related to paid maternity leave. They relate to whether or not casual employees are eligible for paid maternity leave, whether the clause specifies an extension to the 12 months unpaid parental leave allowed in the legislation, and whether the paid leave can be taken in a flexible manner. Returning to work after maternity leave is known to be a critical period in a female's work-life cycle. In Australia the 'one-plus' breadwinner model has become paramount and many women return to work part-time after the baby (Baird and Charlesworth, 2007), sometimes in a lower job or in the same job at part-time hours. Around 12 per cent of agreements allow return to work part-time after maternity leave. The FWA introduced the right to request flexible work arrangements for employees with pre-school age children or a child less than 18 with a disability. While these entitlements undoubtedly assist employees balancing work and family, the focus for the remainder of the discussion in this paper is on paid maternity leave.

Table 2. Maternity leave related clauses in current agreements, December 2009 and 2010

	31/12/2009	31/12/2010
Casuals Eligible	69.4%	69.7%
Extended unpaid	7.4%	10.5%
Flexible paid	3.7%	4.1%
Simultaneous parental leave	8.4%	7.7%
Return part-time	12.7%	12.3%
Access other leave for parental leave	12.9%	14.8%
Has paid maternity/primary carer leave clause	13.5%	14.3%
Has clause secondary carer	8.8%	9.7%
Has clause adoption leave	8.1%	8.8%

As Table 2 shows, of the total number of agreements current at December 2010 (25,272) just 14.3 per cent (approximately 3,636 agreements) included a paid maternity leave clause. This total increased slightly from Dec 2009 (13.5 per cent). Of all new agreements lodged in 2009 and 2010 however, about 20 per cent included a paid parental leave clause (see graph 2 below). Previous studies used different data sets, or combinations thereof. This is the most comprehensive and most comparable with the Baird et al 2002 figure on federally registered agreements (which also used WAD) where it was estimated that paid maternity leave clauses had dropped to 6 per cent in 2000, but were closer to 10 per cent in 1988 and 1989.

Female Employees covered by agreements that include a paid maternity leave clause

Table 3 shows the estimated number of employees covered by a collective agreement with paid maternity leave and the duration (in weeks) of that paid leave. The estimate is based on employer notifications and DEWR assessments. Table 4 shows the same data in percentage figures, and shows that an estimated 50 per cent of employees covered by collective agreements have access to paid maternity leave.

Table 3

PPL clause	Females Covered		
	Public '000	Private '000	Total '000
<1 week	0	185	185
1 week	0	616	616
2 weeks	0	4096	4096
3 weeks	0	1571	1571
4 weeks	1437	14298	15735
5 weeks	0	650	650
6 weeks	1859	37345	39204
7 weeks	0	361	361

8 weeks	730	16516	17246
9 weeks	1	16454	16455
10 weeks	1509	25273	26782
11 weeks	0	579	579
12 weeks	24853	58670	83523
13 weeks	14441	22437	36878
14 weeks	65424	151084	216508
15 weeks	534	334	868
16 weeks	5061	489	5550
17 weeks	17	0	16
18 weeks	13548	996	14544
20 weeks	7348	134	7482
22 weeks	4776	0	4776
24 weeks	0	27	27
26 weeks	17210	1276	18486
Total with access	158748	353391	512138
Total under collective agreement in sector	206559	827402	1033961

Table 4. Percent female employees with access to paid maternity leave

	Public	Private	All
Access PPL (Any)	76.9%	42.7%	49.5%
6 weeks or more	76.2%	40.1%	47.3%
10 weeks or more	74.9%	31.6%	40.2%
12 weeks or more	74.2%	28.5%	37.6%
14 weeks or more	55.2%	18.7%	25.9%
16 weeks or more	23.2%	0.4%	4.9%
18 weeks or more	20.8%	0.3%	4.4%

Paid Parental Leave Clauses and Industry

One of the distinctive patterns identified in earlier research is the strong industry and sectoral pattern associated with paid parental leave. Graph 2 shows this broken down by public and private sector. Overall, about 20 per cent of *new* agreements in November 2009 and 2010 included a paid maternity leave clause. The public sector dominated however with 90 per cent of all new agreements including a paid parental leave clause, and only 15 per cent of new agreements in the private sector including such a clause.

Graph 2 here

This data shows that there are many more paid maternity leave clauses in public sector agreements than in private sector agreements and that the bargaining outcomes are polarised markedly. This suggests that diffusion to the private sector of such bargaining outcomes is not strong, and accords with previous findings. Indeed, the lack of increase between 2005 and 2010 in the proportion of private sector agreements with paid maternity leave is perhaps most surprising given the intensity of debate that was occurring in this period. It is possible that in the private sector employers may provide paid maternity or parental leave but prefer not to codify in union negotiated agreements, preferring instead to control in company policy.

Having noted this deficit of clauses in the private sector overall, it is also important to note that there is considerable variation within the private sector. Some agreements in private sector industries more are likely to have paid maternity leave clauses than others. Table 5 shows that Education (74 per cent) Health and Community Services (51 per cent), Information, media and telecommunications (50 per cent) and Financial and Insurance services (31 per cent). Different forces appear to be at work in the private sector and are worthy of further investigation. For instance, it could be that alternate employment and labour market pressures exist compared with the public sector; and that public sector competitors influence higher coverage in education and health and community services. In the financial and insurance services it may be isomorphic pressures as employers compete with each other for skilled labour and employer of choice status. Again, as previous research found, female dominated industries with low skill and low bargaining power do not do well in relation to paid maternity leave clauses; for example, in the retail trade and in accommodation and food services just 2.7 per cent and 4.5 per cent respectively of agreements have paid maternity leave clauses.

Table 5 Paid maternity leave in new agreements 2010, private sector only

Private Sector / Industry	Clause	Total	Ratio
Agriculture, Forestry and Fishing	12	805	1.5%
Mining	75	1030	7.3%
Manufacturing	1104	8099	13.6%
Electricity, Gas, Water and Waste Services	129	689	18.7%
Construction	435	17336	2.5%
Wholesale Trade	46	643	7.2%
Retail Trade	68	2555	2.7%
Accommodation and Food Services	113	2521	4.5%
Transport, Postal and Warehousing	441	3035	14.5%
Information Media and Telecommunications	224	451	49.7%
Financial and Insurance Services	159	520	30.6%
Rental, Hiring and Real Estate Services	50	556	9.0%
Administrative and Support Services	101	576	17.5%
Professional, Scientific and Technical Services	72	1243	5.8%

Public Administration and Safety	26	552	4.7%
Education	854	1158	73.7%
Health and Community Services	1712	3335	51.3%
Arts and Recreation Services	94	547	17.2%
Other Services	169	778	21.7%
ALL INDUSTRIES	5884	46429	12.7%

Duration of paid maternity leave in agreements

Another indicator of success in paid maternity leave bargaining is the duration of leave available to employees. Graph 3 shows a steady but slight increase to 14 weeks by December 2010. This reflects the debate about optimal duration of paid maternity leave, with 14 weeks being the ILO standard and the benchmark in bargaining.

Graph 3 here

Both private and public sectors have seen slight increases in the number of weeks of [aid parental leave in agreements, with the private sector reaching 12 weeks (from average base around 8 weeks), and the public sector 14 weeks or more (from average around 12). The graph shows also that the public sector has provided a longer duration of leave over all time points, with significant increases in the past year to near 16-18 weeks. These outcomes are probably enhanced by the higher education sector where duration is long, with agreements reaching 26-32–52 weeks of paid leave.

Discussion

The degree of social and political debate and discussion about Australia’s lack of paid maternity or parental leave legislation during the 2000s can hardly be overstated. The Productivity Commission inquiry and report catalysed response from many quarters, including union, business, faith based and women’s groups. There was extensive coverage in the media about the topic and on the whole there was widespread support for a scheme, although the particular details of the scheme were contested. For example, the peak union body in the state of NSW argued for 26 weeks paid maternity leave, while the national peak union body, the ACTU, settled on 14 weeks. A coalition of interests also formed between unions, their peak bodies and a range of women’s interest groups, all in support of the introduction of a government scheme. The point here is that the union movement and employers were aware of the pressure building up among their own constituents and the community at large for paid maternity leave. Did this motivation translate to the bargaining table and settlements? From the data presented in the paper it would appear that it did, but in a more nuanced and complex way than our earlier studies may have suggested.

It is clear that there was a growth in the incidence of paid parental leave clauses in agreements between 2005 and 2010 and that this continues the trend reported earlier. The evidence in new agreements lodged in 2009 and 2010 suggests a higher incidence of paid parental leave clauses

in agreements. However, it is also very clear that this growth occurs almost solely in public sector agreements. It is also clear that the duration of leave outcomes tend to be higher in the public sector than the private sector. In relation to duration it would seem that the community debate around 14 weeks and ILO benchmark at this level has influenced the outcome in bargaining, and so here we do see a context effect. Further research is needed to determine if the clauses in public sector agreement are replicating or extending the legislated conditions for public servants.

The private sector offers a completely different story and the data presented in this paper suggest the private and public sectors are on different bargaining tracks and that public sector and private bargaining outcomes, and therefore processes, are different species. Furthermore, within the private sector there are clear differences in outcomes. In some private sector industries where there are both public and private sector agreements, for example, in education, entitlements are comparatively good, in others, such as retail and hospitality, where there are no isomorphic pressures from the public sector, the outcomes are exceptionally weak.

It is therefore not enough simply to report that, although operating in the same legislative and social contexts, there has been minimal diffusion of bargaining for paid parental leave from the public sector to the private sector. The variations in patterns between the public and private sectors, and also within the private sector, are significant and need to be understood far more clearly. There are some industries where there is obviously bargaining for paid parental leave but others where the absence of paid parental leave clauses indicates either no bargaining or early trade-offs occurring on the bargaining table.

Again, further research is needed to clarify exactly what is occurring in these sectors and why this is occurring. There is a range of possible reasons alluded to in earlier research and in this paper. These include the possibility that employers are introducing paid parental leave into company policy but not allowing it to be bargained, that there is no business case for the introduction of these policies, or that there is no bargaining or labour market power of certain groups of employees and hence unions do not have the capacity to bargain for paid paternity leave. There may be a range of other factors that relate to the characteristics of unions, unionization levels, the gender of negotiators and processes within unions that impede or promote the progress of certain items onto the bargaining agenda. That is, the opportunity structures that facilitate successful bargaining for paid parental leave are complex, and differ markedly between the private and public sectors.

Conclusion

The paper finds that patterns observed in previous research in Australian collective agreements and paid maternity leave are largely continuing, but that there is even more variation between and within sectors than previously understood. There has been an increase in the number of agreements with paid maternity leave clauses in period 2005-2010, with just over 14 per cent of all current agreements including a paid maternity leave clause by 2010. Twenty per cent of all agreements lodged in 2010 however included a paid parental leave clause, suggesting an upward shift in bargaining. We find also that there has been a very slight increase in the average duration of paid maternity leave in agreements. Fourteen to 18 weeks is dominant in the public sector, but

in the private sector the average is 12 weeks. We attribute this increase in the incidence of clauses and the duration of leave to the opportunity space created by the social and political debate that was occurring in the period up to the federal government's announcement in 2009 of the introduction of a paid maternity leave scheme. However, there are marked differences between the public and private sectors, with minimal change in private sector bargaining outcomes. There appears to be little diffusion of bargaining to the private sector, except in a few select industries, and in some of those industries dominated by female employees, paid maternity leave clauses are almost non-existent. The opportunity structures for bargaining for paid maternity leave, for reasons not yet fully understood, do not appear to exist in the private sector.

Thus, to return to the original questions, the social and legislative contexts do apparently influence bargaining outcomes, but far more so in the public sector and not so evidently in the private sector. Further, the absence of legislated schemes does not necessarily greatly encourage their promotion or achievement through bargaining. As a result, at least in the area of paid parental leave, union bargaining and government legislation are not mutually exclusive. The policy consequences of these results suggest that a legislated scheme is necessary to cover those employees who do not gain from bargaining and to provide more extensive access to work and family provisions such as paid parental leave.

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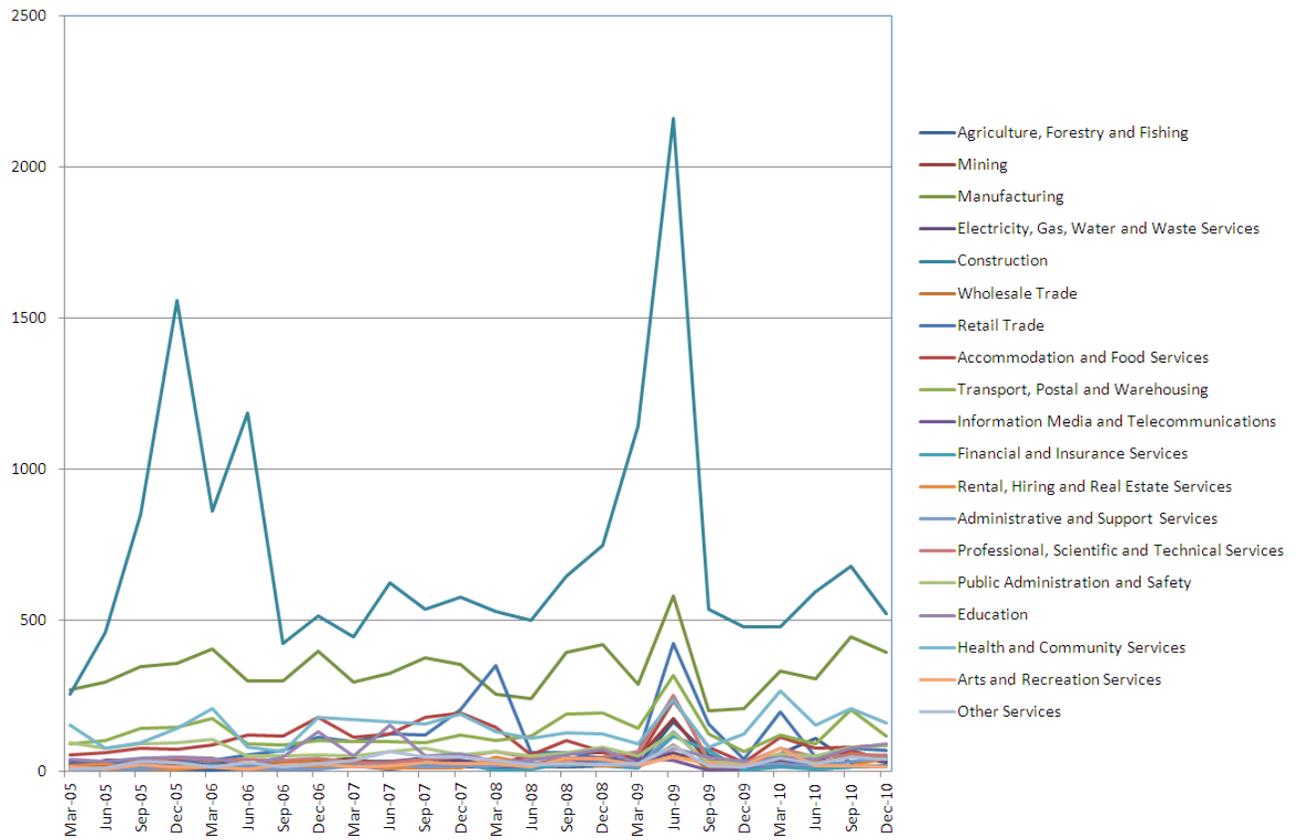
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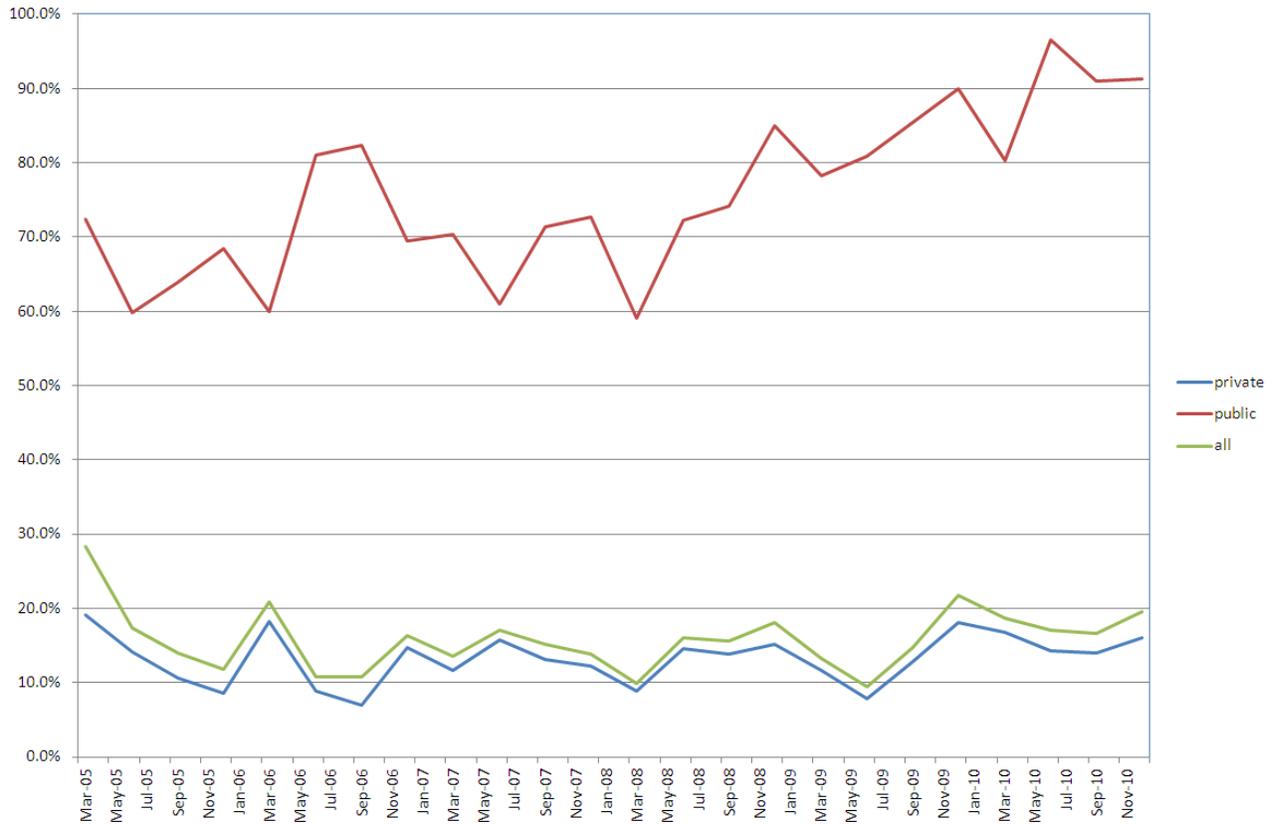
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Graph 1. Overall level of bargaining: new collective agreements 2005-2010



Graph 2. New agreements struck and included a pml clause, yes / no, by sector



Graph 3 Duration (Weeks) of Paid Parental Leave

