

# Australia<sup>1</sup>

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N.B. Australia is a federal state.

**Note on federal and state industrial relations systems and awards:** In Australia, the employment conditions of most employees are set by federal legislation in combination with awards, collectively negotiated enterprise agreements, and employer or company policies. Federal (Commonwealth) legislation and modern awards (which are prescriptive documents covering specific industries and determined by the national industrial tribunal) form the safety net of terms and conditions of work. In addition, unions and individual employees may negotiate conditions above this safety net, and companies may also provide employment conditions above the safety net. Terms and conditions for public service employees in each of the states of Australia (except from Victoria) are set by the relevant state legislatures, as well as relevant state awards and agreements. The Fair Work Act 2009 (Commonwealth) provides ten National Employment Standards that prescribe the minimum set of entitlements for employees. One of these standards relates to unpaid Parental leave. This has been an entitlement under federal industrial relations legislation since 1994. Another standard is the right to request flexible working arrangements (see below).

**Note on terminology:**

In Australian legislation 'Parental leave' is used as an overarching, gender-neutral term for leave entitlements in association with the birth or adoption of a child, rather than a separate entitlement in addition to Maternity and Paternity leave.

For comparisons with other countries in this review on leave provision and early childhood education and care services, please see the [cross-country tables](#) at the front of the review (also available individually on

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the Leave Network website). To contact authors of country notes, see the [members](#) page on the Leave Network website.

## **1. Current leave and other employment-related policies to support parents**

### **a. Maternity leave**

- In Australia, there is no statutory entitlement to specially designated 'Maternity' leave. Maternity (and Paternity) leave both fall under the definition of Parental leave (see 1c for details of the unpaid Parental leave entitlement under the Fair Work Act 2009). Entitlements to payment under the Paid Parental Leave Act 2010 are also covered in 1c.
- Specific entitlements to Maternity leave payments may, however, be provided by employers. Employer-paid Maternity leave, usually at wage replacement level, is available to many female employees through industrial instruments, company policies, or legislation covering public sector employees in Australia's federal, state, or territory jurisdictions.
- Surveys vary on whether questions are asked specifically about Maternity, Paternity, or Parental leave at the workplace, and employer terminology is not consistent. While earlier country notes have included estimates from various surveys on the prevalence of employer-paid Maternity leave, we only report estimates for employer-paid Parental leave here (see 1c).

### **b. Paternity leave**

- As with Maternity leave, there is no specifically designated 'Paternity' leave in Australia, with provisions for unpaid leave incorporated into the Parental leave entitlement (see 1c for details).
- An entitlement to 'Dad and Partner Pay' was introduced in 2013. For births or adoptions after 1 January 2013, a father (or the mother's partner) may be entitled to up to two weeks' Dad and Partner Pay at a rate based on the national minimum wage: currently AUD\$18.93 [€11.53]<sup>2</sup> per hour or AUD\$719.20 [€437.95] per 38-hour week (before tax). This payment must be taken while on unpaid leave (such as the unpaid Parental leave available under the Fair Work Act) or while not working and is not transferrable to the mother. Dad and Partner Pay is therefore effectively ring-fenced for fathers or same-sex partners.

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<sup>2</sup> Conversion of currency undertaken for 24 June 2019, using: <https://www1.oanda.com/currency/converter/>

- Employer-paid Paternity leave may also be available to some fathers and partners through company policies, industrial instruments, or legislation covering public sector employees in Australia's various jurisdictions. As noted above, we only report estimates for employer-paid Parental leave in this year's country note (see 1c).

### **c. Parental leave**

#### *Length of leave*

- 12 months' unpaid leave (with the possibility of extension to 24 months) is available under the Fair Work Act 2009 as elaborated below.
- 18 weeks of Parental Leave Pay is available under the Paid Parental Leave Act 2010, but this is a payment only and does not extend leave duration.
- A National Employment Standard in the Fair Work Act 2009 provides each working parent who meets the eligibility requirements with an entitlement to 12 months' *unpaid* job protected Parental leave. This is an individual entitlement but (apart from the exception noted below) cannot be taken by both parents simultaneously. If both parents are entitled to this leave, they could each take 12 months sequentially, with a maximum of 24 months available for a working couple per birth. If one parent takes less than their entitlement, the other parent can extend their leave by an equivalent amount (up to 12 months, if their partner takes no leave). Such an extension is only possible if the employer agrees – an employer has the right to refuse if the additional leave does not fit with the operational requirements of the business. Any agreement for an additional period of leave beyond the first 12 months will reduce the other parent or partner's entitlement by an equivalent amount. All leave must be taken within 24 months of the child's birth. For the mother, the leave can start from the birth date or adoption of the child, or from up to six weeks before the expected date of birth of the child, or earlier if the employer agrees. When both members of a couple are entitled to unpaid Parental leave under the National Employment Standard, they can take eight weeks of this leave at the same time; this leave has to be taken within 12 months of the birth or adoption, and can be taken by the partner who is not the primary carer in separate periods, provided that each period is no shorter than two weeks (a stipulation that can be waived if the employer agrees).
- Paid leave entitlements, such as employer-provided Parental leave if available to employees through their employment conditions, and other forms of paid leave, such as annual leave, can also be used. However, for each period of paid leave used, the unpaid Parental leave entitlement is reduced by the same amount, so that

the maximum time available for Parental leave per working couple is still two years. The government-funded 18 weeks' Parental Leave Pay does not reduce or extend the duration of unpaid Parental leave available as it is an entitlement to pay rather than to leave.

### *Payment and funding*

- Parental Leave Pay (provided under the Paid Parental Leave Act 2010) is paid to eligible mothers at a rate based on the national minimum wage (currently AUD\$18.93 [€11.53] per hour or AUD\$719.20 [€437.95] per week) for up to 18 weeks following the birth or adoption of a child. In circumstances where the father or the other primary carer provides the majority of daily care for the baby, the payment can be transferred. It represents 49 per cent of average full-time, adult, ordinary-time female earnings as of November 2018, and 42 per cent of average full-time, adult, ordinary-time male earnings.<sup>3</sup> Parental Leave Pay can be received during unpaid leave or while on paid leave, such as employer-paid Parental leave or annual leave. Payment is funded from government general revenue, with the majority of mothers (or designated primary carers) receiving it via their employer<sup>4</sup> and others receiving it directly from the government. In the 2017-18 financial year, 68.5 per cent of Parental Leave Pay recipients received this government-funded payment via their employer.<sup>5</sup>
- Dad and Partner Pay is paid to eligible fathers/partners at the same rate as Parental Leave Pay (i.e. based on the national minimum wage). Unlike Parental Leave Pay, the two weeks' Dad and Partner Pay cannot be taken concurrently with other paid leave; it must be taken while on unpaid leave (such as the statutory entitlement to unpaid Parental leave) or while not working. Employers can supplement Dad and Partner Pay (for example, to employees' normal wage) and this does not affect eligibility for the payment.
- As noted in 1a and 1b, some employees also have access to employer-provided paid leave. The Australian Workplace Gender Equality Agency (WGEA), which records provision of 'Primary Carer' and 'Secondary Carer' paid Parental leave by private sector

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<sup>3</sup> Australian Bureau of Statistics (2019) *Average Weekly Earnings, Australia, November 2018*, Cat. No. 6302.0. Available at: <http://abs.gov.au>

<sup>4</sup> Employers are required to deliver the payment when it is for Australia-based employees who have worked with them for 12 months before the expected date of birth or adoption, who will be with them for their Parental Leave Pay period and who are expected to receive at least eight weeks of Parental Leave Pay.

<sup>5</sup> Australian Government Department of Social Services (2018) *2017-2018 Annual Report*, 58. Available at: [https://www.dss.gov.au/sites/default/files/documents/10\\_2018/dss\\_annual\\_report.pdf](https://www.dss.gov.au/sites/default/files/documents/10_2018/dss_annual_report.pdf)

organisations with 100 or more employees, reported that 47.8 per cent of these organisations provided primary carers' leave for an average duration of 10.3 weeks in 2018.<sup>6</sup> The majority (80.7 per cent) offered full pay in addition to the government scheme.<sup>7</sup> The same survey showed that around 42 per cent of these organisations provided secondary carers' leave, for an average duration of 1.6 weeks.<sup>8</sup>

- For earlier estimates of access to employer-provided Parental and primary carer leave not limited to large employers, see 2016 and 2017 country notes, which cite data from a survey of employers conducted in 2012.
- In Australia, retirement benefits are based on superannuation (paid by a mix of employee and employer contributions) and a publicly funded Age Pension. It is compulsory for employers to make contributions to eligible employees' superannuation funds and additional voluntary contributions are encouraged through tax concessions. These contributions continue when employees take most forms of paid leave. However, no superannuation contributions are made by the government while parents are on paid Parental leave; and employers are not required to make superannuation contributions for parents on unpaid leave. These arrangements disadvantage women, the main recipients of Parental leave and pay entitlements.

#### *Flexibility in use*

- Unpaid Parental leave and Parental Leave Pay must be taken in one continuous period: starting from the birth date or later in the case of Parental Leave Pay, although the full Parental Leave Pay period must be completed by 12 months after the birth.
- As noted above, under the National Employment Standard in the Fair Work Act, each parent is entitled to 12 months' unpaid Parental leave, however both parents cannot access this leave at the same time. An exception is that the parent who is not in the primary carer role can take unpaid leave for up to eight weeks, concurrently with the primary carer during the 12 months following the birth or adoption. A measure of flexibility is that this eight-week entitlement may be taken in separate periods at any time during the first 12 months.
- Parental Leave Pay can also be transferred from one parent to the other where the primary carer for the child (i.e. the parent on leave) also changes and the recipient meets the eligibility criteria. This includes, in the case of separated parents, being able to

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<sup>6</sup> Workplace Gender Equality Agency (WGEA), Data Explorer. Available at: [http://data.wgea.gov.au/industries/1#carers\\_content](http://data.wgea.gov.au/industries/1#carers_content)

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

transfer an unused portion of the Parental Leave Pay to the child's other legal parent or the partner of that other parent, should they also meet the eligibility criteria.

- Flexibility is sometimes available with employer-paid Parental leave: while this is usually paid at the employee's normal pay rate, in some cases there are provisions to double the duration by taking the leave at half pay.

*Eligibility (e.g. related to employment or family circumstances)*

- Employees in permanent positions and on fixed-term contracts (full- or part-time) are eligible for the unpaid statutory leave provisions under the Fair Work Act 2009 and to return to that same job, provided they have 12 months' continuous service with the same employer immediately before the date or expected date of birth, or the date of placement in the case of adoption. However, workers on fixed-term contracts are not entitled to return to the same job if their contract ends while they are on leave – that is, the employer is not required to extend the contract period by the amount of leave taken.
- Casual (hourly paid) employees are also eligible for the above entitlements if they have been employed on a regular and systematic basis for at least 12 months and have a reasonable expectation of continuing regular employment.
- Self-employed workers (not classified as employees) and the unemployed are not covered by the provisions of the Fair Work Act 2009 and therefore do not receive unpaid Parental leave under the act. Self-employed workers, however, do have access to government-funded Parental Leave Pay.
- Unpaid leave can be accessed for up to 24 months by an employed couple in a spousal or de-facto relationship<sup>9</sup>: same sex relationships are recognised for unpaid Parental leave entitlements under the Fair Work Act 2009.
- To be eligible for the government-funded 18-week Parental Leave Pay, the primary carer (usually the mother) must be an Australian resident and meet the requirements of a work test. The work test requires engagement in work continuously, with no more than an eight-week gap between any two consecutive working days, for at least ten of the 13 months prior to the expected birth or adoption of the child, with at least 330 hours of paid work undertaken in the ten-month period. This work can be in permanent, fixed-term or casual positions, and includes self-employment.
- Fathers' or partners' eligibility for the government-funded two

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<sup>9</sup> Co-residency is not specified as a requirement in the legislation. However, as leave cannot be taken simultaneously and must be taken in a continuous block (apart from the exception noted earlier) it would be difficult for a non-co-resident couple to share the leave.

weeks' Dad and Partner Pay is based on the same requirements as Parental Leave Pay and is similarly available to those in self-employment.

- For children born or adopted after 1 March 2014, claimants can count any Paid Parental Leave or Dad and Partner Pay periods taken in the 13 months prior to the birth or adoption towards the work test.
- Government-funded Parental Leave Pay is restricted to those individuals earning less than AUD\$150,000 [€91,340.90] per year or around 1.98x the average full-time, adult, ordinary-time female earnings in November 2018.<sup>10</sup>
- The government-funded Parental Leave Pay can be taken in addition to other forms of paid leave to which the employee may be eligible (annual leave, long service leave, or employer-funded Parental leave) but must be taken before the employee returns to work and before the child's first birthday.
- Any unused portion of the Parental Leave Pay can be transferred to another primary caregiver (usually the father, but potentially a partner who is not a biological parent, including a same-sex partner) if they also meet the eligibility criteria; or in exceptional circumstances (such as a sole parent mother being unable to care for a child) the payment could be transferred to another primary carer, such as a grandparent. The unused portion can also be transferred to the child's other parent or their partner, if they meet eligibility requirements, in the case of separated families.
- Where employees are covered by an existing industrial instrument that includes employer-paid Parental leave, that entitlement cannot be withdrawn during the life of the agreement; the government-funded Parental leave scheme is in addition to any existing employment conditions.
- Parents who are not in work are not eligible for Parental Leave Pay or Dad and Partner Pay, but may be eligible for the Newborn Upfront Payment (currently AUD\$550 [€334.92] and Newborn supplement (dependent on family income and number of children, with a current maximum payment of AUD\$1,649.83 [€1,004.65] for a first child).

*Variation in leave due to child or family reasons (e.g. multiple or premature births; poor health or disability of child or mother; lone parent); or delegation of leave to person other than the parents*

- Special unpaid Maternity leave may be taken in cases of pregnancy-related illness or if the pregnancy ends within 28 weeks of the expected date of delivery otherwise than by the birth of a live child. Mothers who use special Maternity leave (for example,

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<sup>10</sup> Australian Bureau of Statistics (2019) *Average Weekly Earnings, Australia, November 2018*, Cat. No. 6302.0. Available at: <http://abs.gov.au>.

due to a pregnancy-related illness) are still entitled to the full 12 months' unpaid Parental leave under the Fair Work Act.

*Additional note (e.g. if leave payments are often supplemented by collective agreements; employer exclusions or rights to postpone)*

- Employer-paid Parental leave, sometimes specified as paid Maternity, Paternity or Primary and Secondary Carer leave, is available in some industrial instruments and company policies. As explained earlier, these provisions are usually at full replacement salary and on this measure exceed statutory entitlements.

#### **d. Statutory childcare leave or career breaks**

- No statutory entitlement.

#### **e. Other statutory employment-related measures**

*Adoption leave and pay*

- The same statutory rights to unpaid Parental leave and Parental Leave Pay apply when a child under 16 years old is adopted, however Parental Leave Pay may not be available in cases where a child has been living with the adoptive parents prior to the adoption (for example, with the formal adoption of a step-child).

*Time off for the care of dependants*

- Under the National Employment Standards of the Fair Work Act 2009 all employees (except casuals) have access to ten days of paid personal/carer's leave per year of service. Paid personal/carer's leave includes 'sick' leave and may be taken because of a personal illness, or to provide care or support to a member of the employee's immediate family or household who is ill or injured, or in the case of an unexpected family emergency.
- In addition, all employees (including casuals) can access up to two working days' unpaid carer's leave for each 'permissible occasion,' provided paid personal leave has not been exhausted. Unpaid carer's leave may be taken to provide care for an immediate family or household member due to illness, injury, or an emergency.

*Flexible work arrangements*

- One of the ten National Employment Standards contained in the Fair Work Act 2009 provides eligible parents with a statutory right to request flexible working arrangements. The range of employees entitled to request such arrangements currently includes



employees with caring responsibilities, that is parents or guardians of children who are school age or younger, as well as employees with a guardian or child with a disability, employees aged 55 years or over, and employees experiencing family violence or caring for a family or household member who is experiencing family violence. An employer must respond to a request within 21 days and may refuse the request only on 'reasonable business grounds.' While examples of 'reasonable business grounds' are provided in the legislation, these do not limit what might be included. The request is ultimately not enforceable by any third-party body.

- Modern awards and enterprise agreements are required to include provisions for employers to consult with employees over any proposed changes to rosters and ordinary working hours, and to consult genuinely with employees about the impact of changes on their family and caring responsibilities.

#### *Specific provision for (breast)feeding*

- Neither federal nor state/territory laws provide an explicit right to paid breaks for breastfeeding or to express milk at work. However, rights not to be discriminated against on the basis of sex exist in all Australian jurisdictions, so explicitly or implicitly cover breastfeeding.<sup>11</sup>
- A survey of private organisations with 100 or more employees indicated that 66 per cent reported providing breastfeeding facilities in 2018 but did not provide details on the nature of the facilities.<sup>12</sup>
- The Commonwealth Sex Discrimination Act 1984 (s7AA) expressly prohibits employers either from treating women less favourably because of their breastfeeding or expressing of milk, or the imposition of an unreasonable condition or practice by an employer (affecting all employees but likely to disadvantage such women).

#### *Transfer to safe job*

- All pregnant employees, regardless of period of service, have the entitlement to be transferred to a safe job. If no safe job is available, an entitlement to 'paid no safe job leave' is available

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<sup>11</sup> Australian Human Rights Commission (2014) 'Supporting Working: Pregnancy and Return to Work,' *National Review - Report*: 116. Available at: [https://www.humanrights.gov.au/sites/default/files/document/publication/SWP\\_Report\\_2014.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/SWP_Report_2014.pdf)

<sup>12</sup> Workplace Gender Equality Agency (WGEA), Data Explorer: [http://data.wgea.gov.au/industries/1#carers\\_content](http://data.wgea.gov.au/industries/1#carers_content)

for those eligible for unpaid Parental leave, while those not eligible for unpaid Parental leave are entitled to 'unpaid no safe job leave'.

## **2. Relationship between leave policy and early childhood education and care policy**

The maximum period of post-natal leave available for mothers and fathers/partners combined in Australia is 24 months, including up to 20 weeks paid by the government at a flat rate based on the national minimum wage (this is made up of the 18 weeks' Paid Parental Leave entitlement and the two weeks' Dad and Partner Pay entitlement).

There is no entitlement to ECEC. Improving access to 15 hours of quality nursery education for children in the year before compulsory schooling (i.e. from around age five) has been a government priority over recent years, through the National Partnerships Agreements.<sup>13</sup> Levels of attendance at formal services for children under three are around the average for the countries included in this review and for OECD countries; however, they are well below average for children over three years. For attendance levels, see 'relationship between leave and ECEC entitlements' on the [cross-country comparisons](#) page.

## **3. Changes in policy since April 2018 (including proposals currently under discussion)**

No changes in the Paid Parental Leave scheme have taken place since April 2018.

In July 2018, a new Childcare Subsidy (CCS) came into effect, with a key objective being to simplify the previous subsidy system that comprised of two different payments. This is a separate payment to Parental Leave Pay. Eligibility to CCS depends on family income, the activity level of both parents, and the type of service used. Family income determines how much of the childcare fee is subsidised, with the subsidy rate highest (85 per cent) for lower income families (up to AUD\$66,958 [€40,773.30]), increasing in steps up to a subsidy rate of zero for the highest income families (family income of AUD\$351,248 [€213,889] or more). Using this rate, CCS is calculated as a percentage of childcare fees, up to a maximum rate cap established for each service type. With some exceptions, both parents (or a single parent) are required to meet an activity threshold of at least eight hours per fortnight in order to be eligible for CCS. Further, the number of hours of activity beyond this threshold determines the level of subsidy; in two parent families it is the lower of the two parents' activity hours that

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<sup>13</sup> For information about these agreements, see <https://www.education.gov.au/national-partnership-agreements>

matters. For example, a total of eight to 16 hours of approved activity per fortnight is associated with a maximum of 36 hours of subsidised care per child per fortnight. If the approved activity total is more than 48 hours per fortnight, up to 100 hours of subsidised care can be accessed. Being in paid work is an approved activity. Being on paid or unpaid Parental leave also counts as an approved activity.

Other approved activities include working unpaid in a family business, being self-employed, looking for work, volunteering, or studying.<sup>14</sup> There are exemptions to the activity test as part of the Child Care Safety Net. Through this, low income families (less than AUD\$66,958 [€40,773.30] per year) can access 24 hours of subsidised care per child per fortnight, without having to meet the activity test. There are some other exemptions to the activity test through the Child Care Safety Net that give vulnerable families access to up to 100 hours of subsidised care per fortnight.<sup>15</sup>

## **4. Take-up of leave**

Take-up rates for Australia's government-funded Paid Parental Leave and Dad and Partner Pay schemes are presented below for the most recent year, based on data from the Australian Government Department of Social Services. Take-up rates for the unpaid Parental leave entitlement under the National Employment Standard in the Fair Work Act are based on estimates from a recent Australian Bureau of Statistics survey. Given limited data on take-up rates for employer-paid Parental leave, this is not included for this year/2019 (see earlier country notes for estimates based on surveys conducted between 2010 and 2015).

### **a. Maternity leave**

As explained earlier (1a), the term 'Maternity leave' is not used in Australia for the legislated entitlements to unpaid Parental leave or Parental leave payments. It is still used in some instances in employer-paid schemes but (as noted above) we are not reporting the take-up of employer-paid arrangements due to data limitations.

### **b. Paternity leave**

As with employer-paid Maternity leave, we are not reporting the take-up of employer-paid Paternity leave schemes due to data limitations.

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<sup>14</sup> Australian Government, Department of Education and Training: <https://www.education.gov.au/child-care-subsidy-activity-test>. For more information about the childcare package, see <https://www.education.gov.au/new-child-care-package-families-2-july-2018>

<sup>15</sup> Australian Government, Department of Education and Training: <https://www.education.gov.au/child-care-subsidy-combined-family-income>

Regarding the government-funded Dad and Partner Pay scheme, the Australian Government has reported that in the 2017-18 financial year 81,882 fathers or partners received payment under this scheme, with the vast majority (95.9 per cent) taking the full two weeks' payment.<sup>16</sup>

### **c. Parental leave**

The entitlement to 12 months' unpaid Parental leave in the National Employment Standard under the Fair Work Act is available to and utilised by most mothers working as employees. A 2017 survey conducted by the Australian Bureau of Statistics showed that among women with a child under two years of age, who were working as an employee while pregnant, 65 per cent took unpaid leave, with a median duration of 18 weeks.<sup>17</sup>

Available data on Parental Leave Pay indicates that it is accessible to a high proportion of working parents, although it is particularly targeted at mothers, who are the main users of the scheme. Government figures indicate that in the 1 July 2017 to 30 June 2018 financial year, 48.5 per cent of all mothers with newborns received some Parental Leave Pay (a decrease from 52.7 per cent the previous year), and 96.6 per cent of families who accessed Parental Leave Pay took the full 18 weeks.<sup>18</sup>

### **d. Other employment-related measures**

The Australian Bureau of Statistics 2017 Pregnancy and Employment Transitions survey also provides some information on the use of flexible working arrangements by women with a child under two years of age, who had returned to the same employer after the birth of a child and were working at the time of the survey. Among this group, 83 per cent had used flexible arrangements to assist with the care of a child. The most frequently accessed arrangement was part-time work (58 per cent), while 29 per cent reported having worked from home.<sup>19</sup>

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<sup>16</sup> Australian Government Department of Social Services (2018), 58.

<sup>17</sup> Australian Bureau of Statistics (2018) *Pregnancy and Employment Transitions, Australia*, Cat. No. 49130. Available at: <http://abs.gov.au>

<sup>18</sup> Australian Government Department of Social Services (2018), 58.

<sup>19</sup> Australian Bureau of Statistics (2018) *Pregnancy and Employment Transitions, Australia*, Cat. No. 49130. Available at: <http://abs.gov.au>