

1st October 2008

Release of Productivity Commission's Draft Report into National Paid Maternity, Paternity and Parental Leave

Background:

In February 2008 it was announced that the Australian Government had asked the Productivity Commission to undertake a public inquiry into paid maternity, paternity and paternal leave. The inquiry was to concentrate on support for parents of newborn children up to the age of two years, with the following focus:

- *to consider the economic, productivity and social costs and benefits of providing paid maternity, paternity and parental leave;*
- *assess the current extent of employer-provided paid maternity, paternity and parental leave in Australia;*
- *identify the models that could be used to provide such parental support and assess these against a number of criteria. These include their cost effectiveness; impacts on business; labour market consequences; work/family preferences of parents; child and parental welfare; and interactions with the Social Security and Family Assistance Systems;*
- *assess the impacts and applicability of the various models across the full range of employment forms (such as the self-employed, farmers, and shift workers); and*
- *assess the efficiency and effectiveness of Government policies that would facilitate the provision and take-up of these models.*

Over 250 formal submissions were received by the Commission in response to the Issues Paper released April 8. A large number of written personal responses and views were also received by the Commission. The Commission also held numerous public hearings around the country, of which NTEU representatives attended in Melbourne, Sydney and Brisbane.

1 Summary of Draft Report –General

The Report recommends a taxpayer-funded parental leave scheme of 18 weeks at the adult minimum wage (currently \$543.78 per week) for eligible employees. It is estimated by the report that this would benefit around 140,000 birth mothers/primary carers and their newborn children each year and yield community-wide gains in the long term. The leave would be generally paid regardless of pre-birth income, and is subject to taxation (there is also no access to Family Tax Benefit B).

The proposed Parental Leave Scheme would replace the “Baby Bonus” scheme for eligible recipients. For those who are ineligible for the paid parental leave (primarily mothers/carers not in the workforce), a new maternity allowance of \$5000 (non-taxed and non-means tested), together with other financial support, will be available through the social welfare system.

The proposed scheme also provides for two weeks paid leave to over 225,000 eligible fathers/partners, even if the mother/primary carer is not eligible for paid maternity leave under this scheme. The ‘paternity’ leave can overlap with the paid parental leave.

By using the term ‘parental leave’ the scheme also broadens the definition of a family, including as potential beneficiaries same sex couples, single parents and adopting parents.

Importantly, the scheme covers full time, part time and casual employees, as well as the self-employed and contractors. Around a third of all women workers in Australia are casual.

The Commission's proposed scheme is designed to be integrated with existing workplace practices, with the Commission specifically noting that this is an industrial measure, administered through PAYG taxation, rather than a welfare measure. Initial payment of the leave benefit would be by the employer with early reimbursement by government. Thus, it requires genuine attachment to work as an eligibility requirement. To be eligible the recipient must have worked an average of 10hr per week, with one or more employers, with continuous employment for the 12 months prior to the date of expected birth. It should be noted however, that according to the Productivity Commission's own modelling around 20% of working women will remain excluded from paid parental leave.

One of the major advances of the scheme is the recognition of the importance of continued superannuation contributions for working mothers/primary carers whilst taking parental leave. As such, the proposal includes a capped superannuation contribution of 9% from employers for those employees who have been with the one employer for at least 12 months. The superannuation contributions and compliance costs are the only real expenses for employers under this scheme (costed by the Productivity Commission at around \$75m), and as such the cost to employers is minimal.

Another important aspect of the proposed scheme is the recognition of the importance of breastfeeding, recommending that there be increased support for breast feeding within the first 6 months, particularly in the post-initiation phase.

The report is a draft only and has some way to run before the recommendations contained within it become reality. Further submissions on this proposed model can be made by 14 November, following which there will be 3 weeks of public hearings. A final report will go to the Government at the end of February 2009, following which the Government will make their decision.

2. NTEU Specific

Currently, NTEU collective agreements provide for a range of paid maternity leave arrangements. Of the 38 universities, six (Monash, ACU, CDU, Swinburne, CDU and Sydney Uni) provide for paid maternity leave of greater than 26 weeks, with all other universities providing for 26 weeks in a variety of formats.

Importantly for NTEU members, the draft scheme proposes that the tax payer funded entitlement of 18 weeks is to *commence* upon the exhaustion of any employer funded parental leave entitlement, and that this must occur *within 6 months of the birth of the baby*. This means that, should the scheme be accepted in its current form, university staff eligible for paid parental leave under their collective agreements must take and complete their employer funded parental leave *within six months* in order to then be able to take the tax payer funded leave.

Should this not occur, however, and a mother/primary carer only takes the existing employer funded entitlement, under the proposed scheme the mother/primary carer would instead qualify for the maternity leave payment of \$5000.

Employees eligible for the scheme will generally lose Family Tax Benefits A and B as the tax payer funded paid parental leave is counted towards taxable income.

The proposal also specifically caps superannuation contributions for the period of the tax payer funded scheme to a maximum of 9%, (even if the employee normally receives a higher rate) on the minimum wage rate. Currently, the employer superannuation contribution for most university staff is 17%. A change in the rate of superannuation would negatively impact on the mother/primary carer's superannuation accumulation during this time. Furthermore, it may not be possible to amend the employers' superannuation contribution level for those staff who are part of a defined benefit scheme. Should this aspect of the proposed scheme remain unchanged in the final legislation it may be possible to increase the level of superannuation (to current levels) via bargaining.

In general, however, the scheme would be of benefit to university staff, potentially extending their time of paid parental leave by 18 weeks (albeit at a reduced rate) and allowing for another 2 weeks of paid paternity/supporting partner leave. In addition, the broad definition of “continuous employment” may mean that staff currently ineligible for employer paid parental leave under their current Collective Agreement (such as casual and in some cases fixed term staff) can access some form of paid parental leave.

3. Future Bargaining

It may be possible to bargain further around the minimal rate, with the aim of securing employer top-up. The Commission notes in its draft Inquiry Report that: “...the Commission would expect that many Australian businesses would restructure their existing leave schemes to top-up government funded leave to full replacement wages and then use the balance (if any) to extend the period of leave at full pay” (pg 7.13)

In relation to the capped 9% superannuation component, further advice is being sought in relation to the capacity for unions to bargain up to existing entitlements.

It should be noted that there may be an attempt by some employers to rely on the tax payer scheme as a form of business subsidy, seeking to reduce current employer paid parental leave provisions and/or resisting attempts to improve current entitlements. The ACTU and NTEU believe that some form of employer contribution to parental leave is necessary (as it is with all other types of paid leave), and that the goal should be to improve both the quality and quantity of time that parents have to adjust and bond with their child.

If and when such a scheme does become a reality, our claims around paid parental leave will need to be re-examined. Our goal should be to establish a 36 week paid parental leave entitlement as standard across the sector, with full superannuation payable during that period.

4. Total Costs

The Commission estimates that its proposal will cost approximately \$530 million annually in net terms (of which taxpayers would contribute around \$450 million and business \$75 million)¹.

These costings take into account the significant offsets from reduced social welfare payments (including removal of the baby bonus for employed parents using the scheme) and the tax revenue from paid leave. The costs would be much higher without these offsets.

¹ Additional Note on Costings

The ACTU have provided the following preliminary figures on estimated costs to Government and Employers:

- Maximum government payment for paid parental leave (18 weeks at Federal Minimum Wage) is \$ 9,788.
- Maximum government payment for paid parental leave and paternity/supporting carer leave (20 weeks at Federal Minimum Wage) is \$ 10,876.
- Total net cost to government (including savings on baby bonus and Family Tax Benefit B) is \$450m.
- Each additional week of leave would cost \$70m.
- Maximum employer payment on 9% super on maternity leave at Federal Minimum Wage is \$881.
- Maximum employer payment on 9% super on paternity leave at Federal Minimum Wage is \$98.
- Total net cost to employers is \$75m in additional super payments.

5. NTEU Issues and Concerns

While the proposed scheme represents an excellent step towards equitable and universal paid parental leave in Australia, there is some way to go before it becomes reality and significant lobbying will be needed to ensure the government does not seek to reduce the entitlement or delay the implementation. The draft scheme is not without flaws however and a number of concerns/issues should be highlighted:

- Paid Entitlement should be at full income replacement
 - Both NTEU and ACTU recommend that employers should contribute to the scheme by topping up the tax payer funded entitlement to full income (noting that relying on bargaining for full income top up from employers continues to disadvantage those who are unable to bargain).
- Additional entitlements should be able to be negotiated through bargaining, and taken flexibly
 - Families should be able to access additional entitlements fully and when they choose (for example, the ACTU recommends that families be allowed to spread entitlements over the max 2 year unpaid period).
- The 6 month limit for commencement is restricting
 - May exclude staff at a number of universities from accessing the scheme.
 - There should be no restrictions on when leave can be taken, (eg prior to birth).
- There should be provision to take leave at half pay.
- Superannuation to be improved to current entitlement – this is a major issue for NTEU
 - Employer contributions should be on full super entitlement
 - There may be significant problems in changing the rate of the employer contributions to superannuation for staff on defined benefits superannuation plans.
- Other leave entitlements – such as sick, recreation and long service leave – should accrue during the period of paid parental leave
- Access to *Fair Work Australia* regarding disputes

Draft recommendations

DRAFT RECOMMENDATION 2.1

The Australian Government should introduce a statutory paid parental leave scheme that provides:

- *paid leave capped at the adult minimum wage for each week of leave for those covered by adult minimum wages*
 - *but with lower rates — to be set administratively — for juniors and others with hourly wages below the adult minimum*
- *payments to be taxed and included in income for assessment of any welfare benefits*
- *leave benefits for parents having twins or higher multiple births to be equal to those for parents bearing one child, supplemented by a payment equivalent to the new maternity allowance for each additional child (draft recommendation 2.6)*
- *superannuation entitlements calculated on the going wage of the employee or at the relevant capped amount, whichever is the smaller, but*
 - *this would only be available for employees who (a) have met the Commission’s eligibility criteria for paid parental leave under draft recommendation 2.4; (b) were entitled to employer superannuation contributions in their jobs before taking paid parental leave; and (c) were entitled to unpaid parental leave under the National Employment Standards*
 - *super contributions would be limited to the statutory 9 per cent rate*
 - *subject to its practical feasibility, including consideration of its compliance and administrative costs.*

DRAFT RECOMMENDATION 2.2

The Australian Government should fund the cash component of the paid parental leave scheme, partially offsetting these costs by:

- *removing eligibility for family tax benefit B while parents are on paid parental leave*
- *replacing the baby bonus with another, differently focused payment as set out in draft recommendation 2.6.*

Employers should fund superannuation contributions during the paid parental and paternity leave period, but only under the conditions specified in draft recommendation 2.1.

DRAFT RECOMMENDATION 2.3

The employer should initially make payments to employees under the statutory parental leave scheme, with subsequent reimbursement by the Australian Government. However, an employer would only act as a paymaster for government where:

- *an employee was also eligible for unpaid parental leave under the National Employment Standards and*
- *a workable method for speedy reimbursement of that employer was feasible*
 - *the Commission’s preferred approach is for employers that make at least monthly ‘pay as you go’ withholding payments to the Australian Taxation Office to receive reimbursement through those payments, with all other employers exempt from the obligation to act as a paymaster.*

The Australian Government should pay other eligible parents directly, preferably through a non-welfare agency.

DRAFT RECOMMENDATION 2.4

The statutory paid parental leave scheme should be available for an employed parent (including the self-employed and contractors):

- *who has worked an average of at least ten hours a week on a continuous basis for 12 months or more prior to the expected birth date of the baby, and*
- *who is also the primary carer of their baby.*

DRAFT RECOMMENDATION 2.5

The paid parental leave scheme should give:

- *eligible mothers the initial parental leave entitlement, but allow them to transfer the entitlement to eligible partners who take on the role of the primary carer*
- *fathers (and other eligible partners) a two week period of exclusive paternity leave on a ‘use it or lose it’ basis, even if the mother was not eligible for statutory paid parental leave*
- *fathers access to paid parental leave if the mother is not eligible, but only where (a) the fathers meet the employment and primary carer eligibility requirements and (b) there are special circumstances, which would be determined administratively.*

The existing baby bonus should be replaced with an equivalently-valued, non-income tested maternity allowance, payable only to those parents not using statutory paid parental leave (with the exception of multiple births as set out in draft recommendation 2.1).

However, where a parent takes a shortened period of paid parental leave whose value is less than the maternity allowance, the parent would be entitled to a payment equal to the difference.

The statutory paid parental leave scheme should provide a total of 18 weeks of paid leave for parents of a newborn child who meet the employment test, including:

- a requirement that (a) the period of leave must commence at birth, or after a period of other continuous leave that commences at the birth of the child; (b) must be commenced within six months of birth; (c) leave must be taken in one block; (d) only one transfer of paid parental leave between parents would be permitted and (e) there be no concurrent use of paid parental leave by parents*
- mothers of a stillborn baby, where the baby meets the requirement for birth registration*
- parents of non-familial adoptions, regardless of the child's age, from the time of placement*
- custodians of surrogate children, but subject to its compatibility with an impending uniform framework for surrogacy across Australian jurisdictions, (with provision for 12 weeks of paid parental leave to the surrogate mother).*

Parents could take any paid parental leave remaining if their baby died.

Any outstanding leave could be transferred to the partner if the primary carer died.

Paternity leave could be taken concurrently with the mother's paid parental leave but would have to be taken within six months of the birth of the child.

When the National Employment Standards are next subject to revision, the Australian Government should amend:

- section 21 to require an employee on parental leave to provide six weeks notice for an extension to leave, unless an employer agrees to a shorter period*

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- *section 15 to provide job return guarantees to adoptive parents equivalent to natural parents.*

DRAFT RECOMMENDATION 2.9

In addition to publicly provided information on the workings of a statutory paid leave scheme, the Australian Government should provide:

- *evidence-based advice to employers on how to reduce the disruption burdens associated with increased average durations away from work by carers, with this information especially directed at small business*
- *a web-based calculator that shows which employees would be eligible and sets out any obligations by employers.*

DRAFT RECOMMENDATION 2.10

A paid parental leave scheme should include:

- *a ‘keeping in touch’ provision that — subject to employer and employee consent — allows the employee to work up to 10 days while on paid parental leave, where that work strengthens the connection to their workplace*
- *scope for eligible self-employed parents to maintain some oversight of their businesses while on leave.*

DRAFT RECOMMENDATION 2.11

The Australian Government should provide more resources to allow effective support for breastfeeding during the first six months of an infant’s life, with a focus on the post-initiation stage.

DRAFT RECOMMENDATION 2.12

The Australian Government should undertake:

- *ongoing assessments of the interaction of the paid parental leave scheme with the tax and welfare system*
- *an evaluation of the administrative aspects of the scheme two years into its life*
- *a comprehensive evaluation of the impacts of the scheme five years into its life.*

Requests for feedback

The Commission welcomes feedback on all aspects of its proposed model of paid parental leave — for example, its advantages and disadvantages, unintended consequences and implementation issues. In particular, the draft report has highlighted that the Commission seeks participants’ views on:

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- an effective arrangement to deal with the definition of the self-employed/contractors and that would ensure appropriate compliance (section 2.5)
 - the practicality and merit of allowing paid parental leave to be taken part-time (section 2.5)
 - whether (and if so, how) the scheme could provide fathers with more equal access to paid parental leave, without risks of unintended consequences (section 2.5)
 - the likely disruption burdens for employers associated with employees taking longer periods of leave (section 2.6)
 - the patchwork of government programs that support parents with children under two years of age, and in particular:
 - gaps in services
 - learning from the existing policy measures
 - policy measures that would increase the effectiveness of existing programs, including coverage, the triggers for parents’ access to services, resourcing, and service delivery. (section 2.8)
 - whether other leave entitlements, such as sick, recreation and long service leave, should accrue during the period of paid parental leave, having regard to its costs and appropriateness (section 8.8)
 - the costs involved in mandating the provision of (capped) employer superannuation contributions while an employee is on paid parental leave (section 8.8).