



15 May 2008

Inquiry into Paid Maternity, Paternity and Parental Leave
Productivity Commission
GPO Box 1428
Canberra City ACT 2601
Email: parentalsupport@pc.gov.au

**KINGSFORD
LEGAL CENTRE**

Dear Sir/Madam,

Submission into the Inquiry into Paid Maternity, Paternity and Parental Leave

We welcome the opportunity to make a submission to this Inquiry.

Kingsford Legal Centre is one of over 38 community legal centres in New South Wales. The Centre provides advice and assistance to people who live, work or study in the municipalities of Randwick and Botany on selected legal problems, and a state wide service on matters of Discrimination Law. All advice is free, with services jointly funded by the University of New South Wales's Faculty of Law and the Community Legal Services Program.

Kingsford Legal Centre conducts specialist services in discrimination and employment law. Over the last 5 years we have advised a large number of clients.

	<u>Employment</u>	<u>Discrimination</u>
2003	292	140
2004	277	87
2005	255	112
2006	287	99
2007	278	95
2008 (to May)	109	35

We have advised a number of women on issues related to pregnancy and maternity leave and have noticed certain recurring problems. An overwhelming issue is the right of women to return to work following maternity leave. We will refer to case studies in support of our recommendations.

In this submission we recommend a scheme for paid parental leave, while addressing some of the questions outlined in the Productivity Commission Issues Paper April 2008. The Appendix at the back of this submission contains brief summaries of the pregnancy discrimination cases that Kingsford Legal Centre has been involved in over the last two years.

Kingsford Legal Centre Recommendations

These are the recommendations of Kingsford Legal Centre based on the discussion below.

Recommendation 1 : That a Government funded parental leave scheme be established.

Recommendation 2 : A person will be eligible for payment under the scheme if they are currently in paid employment or have recently engaged in paid employment.

Recommendation 3 : The payment be matched at the individuals normal weekly payment, to a maximum full time hours at federal minimum wage (currently \$431 per week).

Recommendation 4 : The payment be given over 26 weeks, or the payment be given over 52 weeks.

Recommendation 5 : An individual who has been with an employer for 12 months may take up to 52 weeks parental leave. A pregnant woman may take leave up to 6 weeks before the due birth.

Recommendation 6 : Parents have the option of returning to work part time or with flexible working conditions.

Recommendation 7 : Where an individual has been with an employer for 12 months, the employer be encouraged to 'top-up' Government payments to the person's full salary.

Recommendation 8 : The 'baby bonus' be retained for those who do not qualify for Government funded parental leave.

Recommendation 9: A period of paid parental leave should be reserved for a partner, or other carer, on a 'use it or lose it' basis.

Recommendation 1 : That a Government funded parental leave scheme be established.

Australia is currently one of two OECD countries which have no paid parental leave scheme. We have ratified the International Labour Organisation convention 183 and recommendation 191 which cover maternity protection, but with reservations as to paid maternity leave. It is time to follow our international counterparts and provide parents with paid parental leave.

We believe that any sustainable parental leave scheme must be primarily government funded. An employer based scheme places an unnecessary financial burden on smaller businesses and industries which contain mainly female workers. These industries would be penalised for having a high number of female workers. We believe that this may cause some employers to avoid hiring female workers of child-bearing age.

A Government funded scheme will allow the class of eligible individuals to be expanded to casual and self employed workers, without penalising employers.

As discussed below (Recommendation 7), we support an additional employer funded payment. This payment would be dependent on the actual wage of the individual, and could be negotiated with the employer.

Recommendation 2 : A person will be eligible for payment under the scheme if they are currently in paid employment or have recently engaged in paid employment.

This model extends the eligibility of paid leave to people who have recently changed employment, or those who have recently left employment. A person should be entitled to paid parental leave regardless of how long they have worked. As discussed below, an employer may not be required to support the parental leave of a new employee, but the Government should have this obligation.

In 2006, Kingsford Legal Centre gave advice to a woman who had been refused maternity leave because she had worked 50 weeks in that position, not 52 weeks. If an employer wishes to administer its rights strictly, we believe that the Government should support those people who have shown a commitment to the workforce.

This recommendation applies broadly to full-time, part-time, casual and self-employed workers. It seeks to encourage a wider acceptance and support of pregnancy and child-care responsibilities in the workplace and society at large.

Recommendation 3 : The payment be matched at the individuals normal weekly payment, but capped at full time hours at federal minimum wage (currently \$431 per week).

We believe that a payment of minimum wage or less will make the scheme accessible to a wider range of applicants. Eligibility should be widened to include individuals who would otherwise receive little support. A lower payment puts the Government in a better financial position to widen eligibility and to provide a longer period of leave.

We disagree with the Government-funded scheme having no cap (a full wage replacement) as it draws resources away from those families who rely on Government support.

We view this amount as a starting point for the scheme. This capped payment would allow a few years of adjustment, to ease concerns about the cost of such a scheme on Australian economics.

We propose that the impact of this cap be reviewed after three years, with the view to increase the amount above minimum wage.

Self employed people who work at a loss are an issue. The Government could allocate them a set amount, such as 10 hours per week at federal minimum wage. Alternatively a self employed person could be eligible for the baby bonus discussed below (Recommendation 8).

Recommendation 4 : The payment be given over 26 weeks, or the payment be given over 52 weeks.

This model is favourable because it allows the parent to take a lower payment for the entire length of parental leave. Consistent payments make household budgeting easier and relieve the stress of relying on one income.

This model of half-payments should be available whichever length of payment is implemented for paid parental leave.

We opt for a 26 week scheme for several reasons.

- It encourages parental bonding with the child.
- It allows a mother to breastfeed for at least 26 weeks, which is recommended by the WHO for the health of the child.
- It extends neatly into 52 week half-payments, which allows a family to receive payments for the entire duration of leave from work.

Recommendation 5 : An individual who has been with an employer for 12 months may take up to 52 weeks parental leave. A pregnant woman may take leave up to 6 weeks before the due birth.

The majority of pregnancy related advice given by Kingsford Legal Centre is about returning to work after parental leave.

We believe that the ability of women (in particular) to return to their position following leave needs to be strengthened.

Case Study: Xin

The company Xin was working for was restructured during her maternity leave. When she returned, her current position was no longer available. She was offered a lower position (lower pay and less responsibility), or she could leave.

Case Study: Mary

As soon as Mary told her employer about her pregnancy she was demoted. She was responsible for seven projects at the time but wanted some extra assistance for administrative tasks. Instead the company reduced her work responsibility to two projects.

The company hired another worker without informing or involving Mary in the recruitment process. Mary was humiliated at her workplace as her authority was undermined. The interview was not vigorous and the new employee was soon found to be unqualified for the position.

As a result, Mary in her last trimester was working until 12 and 2 am to rectify the other employees' mistakes. Her in-utero child lost weight during this period. On return from statutory leave she was immediately sent home. A week later she received an email and letter saying that she had been made redundant due to company restructuring.

In each of these cases, the employer has demoted the employee either during pregnancy or following maternity leave. Sometimes the company is 'restructured' during leave and the employee's position no longer exists. Whether or not it is true, measures need to be implemented to prevent this from occurring. When employers restructure their company they should keep their parental leave staff in mind. They should make more effort to find a suitable position for them.

We propose that any redundancies following an announcement of pregnancy, announcement of intention to take parental leave or on return from parental leave should be scrutinised. The Ombudsman or a Government body could be responsible for making these investigations.

Recommendation 6 : Parents have the option of returning to work part time or with flexible work conditions.

Kingsford Legal Centre was involved in a 2002 case called *Sandra Escobar v Rainbow Printing Pty Ltd*, heard in the Federal Magistrate's Court. It was held that a woman who wanted part-time work after returning from maternity leave, was indirectly discriminated against on the ground of her sex, contrary to s 14(2)(c) of the *Sex Discrimination Act 1984* ("SDA"). It held that being subjected to a requirement to work full-time, was a requirement that was likely to disadvantage women due to their disproportionate responsibility for the care of children. We completely support this decision and would approve of this becoming a statutory right.

In the UK, certain parents and carers have a statutory right to apply for flexible working conditions. The employer is obliged to consider the request within a certain period of time. If they refuse a request they must have a good reason, which are broadly defined and include:

- The burden of additional costs;
- The detrimental effect on the ability to meet customer demand;
- Inability to reorganise work among existing staff;
- Inability to recruit additional staff; and
- Planned structural changes to the business (list not exhaustive).

We understand that our recommendation could be unfair to employers if strictly enforced, and therefore propose that exclusions be available, similar to the UK model.

Recommendation 7 : Where an individual has been with an employer for 12 months, the employer be encouraged to 'top-up' Government payments to the person's full salary.

This leaves it open for higher income earners to receive a higher portion of their salary during leave, without unduly penalising employers. This allows employers to attract highly-skilled employees and keep them within the company. Like the Government payment, this could be payable for 26 weeks, or for 52 weeks.

We would like to note the following possible issues with an employer payment:

- If the employer is required to make contributions into a Government parental leave fund, through taxes or otherwise, in addition to directly paying employees on leave, they may be less willing to 'top-up' employee payments.
- This may widen the gap between the salary of male and female counterparts. This issue needs to be addressed by encouraging paternity leave.

Recommendation 8 : The 'baby bonus' be retained for those who do not qualify for Government funded parental leave.

We are concerned that a significant number of individuals would not be eligible for any Government funded parental leave. We believe that these individuals should still receive support following the birth of a child. We propose that families who are not eligible for Government funded paid parental leave, or who choose not to take that paid leave, should be eligible for a Government funded 'baby bonus'.

We approve of the revised 'baby bonus' which makes a \$5000 payment over 14 weeks, as a lump-sum payment can be spent on non-baby related items.

Recommendation 9: A period of paid parental leave should be reserved for a partner, or other carer, on a 'use it or lose it' basis.

To pursue gender equity and promote co-parenting some countries (Norway, Iceland and Sweden) have introduced father quota in parental leave systems. This is a period of leave that is reserved for the exclusive use by fathers. If this benefit is forgone by the father, or other partner or carer, the family relinquishes the right to that period of paid leave. This period can be as long as 3 months in Iceland.

The aim of substantive equality for women in employment is threatened by the unfair burden placed on females in regards to reproduction and unpaid care work. In shared parental leave schemes, it is up to parents to decide amongst each other as to who takes leave and claims income support. In practice this means that mothers rather than fathers use leave entitlements. This perpetuates the inequality women face in the workplace for the following reasons:

- a) Women continue to carry the primary burden of care work, not only after child birth but as the child matures. ABS statistics show that in 2006, mothers (with children under 15) in full-time employment spent on average 18 hours per week on domestic activities - twice as much as fathers employed full time.
- b) They are required to make interruptions to their career, further increasing wage inequality and their ability to support themselves in retirement.
- c) By maintaining the perception that it is a women's duty to care for children employers are more likely to continue to discriminate against women in regards to their pregnancy and family responsibilities.

Attainment of true equality for women in the workplace necessitates a reemphasis on the integral significance of care work as a societal function and the importance of sharing this

responsibility. The increased involvement of a father, or other carer, would alleviate the double burden of work and care which is usually placed on the mother. Furthermore, encouraging men to take up paternity leave with the 'use it or lose it' criteria may alleviate some of the discrimination women face in the workplace as men and women are more equally responsible for care work.

This recommendation is particularly significant for KLC as we have seen countless cases of women being discriminated against by virtue of their sex or pregnancy. In one constructive dismissal case a woman who had a relationship with a co-worker was told that her job was more vulnerable than her male partners because she was a woman. Her employer continuously harassed her by asking if she was pregnant and whether she would take leave and suggesting that she had better not get pregnant. Any changes to the parental leave scheme should support gender-neutrality, emphasising a policy of sharing the burden of care work in order to change popular and employer attitudes towards women, and men, in employment.

We appreciate the opportunity to provide our advice in relation to these issues.

Yours sincerely,

KINGSFORD LEGAL CENTRE

Anna Cody
Director

Jenessa Rabone
Student

Shana Krishnan
Student

APPENDIX

Kingsford Legal Centre's experience in Pregnancy Discrimination

Mary 2008 Randwick

When Mary told her employer about her pregnancy they demoted her instead of giving her less work. When she returned from statutory leave was made redundant.

Mary had been the accounts manager for a large company.

Kingsford Legal Centre is trying to get severance pay for her. A complaint has been made to ADRB and Mary is looking for conciliation.

Lakshmi 2007 Hurstville

Halfway through Lakshmi's maternity leave the boss pushed her start date back. He would not let her work from home; even though Lakshmi's temporary replacement was given that flexibility. Lakshmi accepted the later start date with no flexibility.

Right before she was supposed to start she was fired. The employer commented that he did not want 'any more changes'.

Rose 2007 (Central NSW)

Rose worked in a hotel. When she became pregnant they refused to shift her to a non-smoking area.

Because of health implications, Rose was forced to quit.

Kingsford Legal Centre advised her on the process of conciliation

Susan 2007 (Central NSW)

Susan was a manager at a small business. She was made redundant when she became pregnant. The employer had warned staff that 'pregnant women can say goodbye to their jobs'.

Kingsford Legal Centre helped Susan make a complaint to the anti-discrimination Board and settled her matter through conciliation.

Betty 2007 Engadine

Employees were required to sign up to payment schemes, weekly or monthly. These schemes offered different benefits, which employees were not informed of before signing up. Paid maternity leave was only offered to monthly employees.

Betty was a weekly employee and was not entitled to paid maternity leave. Kingsford Legal Centre advised Betty to ask her employer for discretion, but not put up a fight because they were happy for her to take the 52 weeks unpaid leave.

Li 2007 Dulwich Hill

Li attended a tertiary education facility. Part of her course requirement was practical clinic work at an osteopath. Li became pregnant and was unable to complete the final part of the course. The facility did not give Li special consideration. Kingsford Legal Centre advised her on difficulties with proving pregnancy discrimination in these circumstances.

Hannah 2006 Randwick

Hannah worked in a company of 11 people. When Hannah returned from maternity leave she had the same title, but was given different work. When she next became pregnant Kingsford Legal Centre advised her on how to prevent this happening again.

Nahed 2006 Eastlakes

An employer offered Nahed casual work with the option to work full time in the future. When she told the employer that she was pregnant they told her that another accounts employee was pregnant. Nahed was told to leave and call them after she has baby. Kingsford Legal Centre advised her about the law on discrimination and unfair dismissal.

Katrina 2006 Turramurra

During Katrina's maternity leave there was a change in management. Her 3 day position no longer existed. She was offered a 4 day position, a lower position or a redundancy package. Kingsford Legal Centre advised Katrina to negotiate a 4th day at home. Otherwise she should accept redundancy and think about unlawful termination, discrimination or breach of contract.

Gerry 2006 Riverwood

Gerry was a high school teacher. She fell pregnant and miscarried. She was then allocated younger classes in a different discipline because of her intentions to get pregnant. The school did not want her teaching senior classes. Gerry was not familiar with the new discipline and did poorly in her performance review. The school was attempting to fire her. Kingsford Legal Centre advised Gerry about discrimination law and the difficulties in proving her case.

Sonja 2006 (Southern NSW)

Sonja worked part time in accounts. She became pregnant during the probation period. She was demoted with pay cut into an area she was not familiar with, and was given unrealistic targets. When she complained about the working conditions she was sent home and then fired. Kingsford Legal Centre assisted Sonja with a complaint to the Anti-Discrimination Board and mediation at the Anti-Discrimination Tribunal. The matter settled in favour of Sonja.

Georgia 2006 (Northern NSW)

Georgia was an office junior for 18 months. She was training to become a legal secretary when she fell pregnant. The employer made it difficult for Georgia to be pregnant and continue to work and she was forced to leave. Kingsford Legal Centre advised Georgia about discrimination law and the complaints process.

Xin 2006 Castle Hill

Xin's company was restructured while she was on maternity leave. When she returned she was offered a lower accounts position. The employer threatened to fire her if she did not accept the lower position. Kingsford Legal Centre assisted Xin with a complaint and the company quickly settled.

Emily 2006 Meadowlea

Emily was refused maternity leave because she had worked 50, not 52 weeks with the company. The employer increased Emily's travelling responsibilities, more than what was expected of other employees. This made it difficult for her to continue working while she was pregnant. Kingsford Legal Centre advised Emily about discrimination law and the complaints process.