

Submission Inquiry into Paid Maternity, Paternity and Parental Leave Productivity Commission

Introduction

I welcome the opportunity to respond to the Productivity Commission Issues Paper, April 2008 *Inquiry into Paid Maternity, Paternity and Parental Leave*. I commend the Australian Government for commissioning this inquiry and for providing a useful discussion paper to promote public debate on these important issues.

I have undertaken research and published academic articles analysing gender inequality in the labour market and the limitations of anti-discrimination (and other labour) laws in addressing gender inequality that stems from family caring responsibilities and stereotyping about such responsibilities. Relevant publications by me on these topics include:

- Belinda Smith, 'It's About Time – For a New Approach to Equality' (2008) *Federal Law Review* (forthcoming);
- Belinda Smith 'From *Wardley* to *Purvis*: How far has Australian anti-discrimination law come in 30 years?' (2008) 21 *Australian Journal of Labour Law* 3;
- Belinda Smith, "Not the Baby and the Bathwater – Regulatory Reform for Equality Laws to Address Work-Family Conflict", (2006) 28(4) *Sydney Law Review* 689-732;
- Belinda Smith, "A Regulatory Analysis of the *Sex Discrimination Act* 1984 (Cth): Can it effect equality or only redress harm?" in C Arup, et al (eds), *Labour Law and Labour Market Regulation - Essays on the Construction, Constitution and Regulation of Labour Markets and Work Relationships*, Federation Press: Sydney (2006), 105-124; and
- Belinda Smith & Joellen Riley, "Family-friendly Work Practices and the Law" (2004) 26 *Sydney Law Review* 395-426.

Ultimately I have concluded that equality laws, such as the *Sex Discrimination Act* 1984 (Cth) and the *Equal Opportunity for Women in the Workplace Act* 1999 (Cth), can play a role in promoting substantive gender equality, but there are significant limitations on their capacity to achieve this.

The establishment of a national scheme providing for paid maternity, paternity and parental leave is an essential step in the struggle for substantive gender equality which enables women and men to develop their capacities and fulfill their desires to undertake both caring and paid employment roles. I make the following short submission in respect of a few key questions posed by the Commission.

Objectives: What ought to be the objectives of a paid parental leave scheme?

- A paid parental leave scheme should allow and enable parents – both men and women – to provide the personal care they wish to provide to their newborn child without undue economic hardship or insecurity, or having to choose between family responsibilities and a career path. By providing for paid parental leave, parents will have financial support to take more leave and at more appropriate times than is currently possible for many parents who rely upon savings or very limited accumulated leave. If we want our dependents – in this case babies – to be well cared for, then we need to do what we can to ensure that people are not required to choose between caring obligations and financial security.
- A related objective of paid parental leave should be to transform the notion of the ‘ideal worker’ from one who is unencumbered and has a wife at home to take care of household and other reproductive activities, to one who is a worker-carer, whole and fulfilled in being able to balance both paid employment and caring responsibilities. We need to ‘normalised’ the taking of parental leave, re-characterising it as something we value as a society and community.

Eligibility: Who should be eligible?

- There should be an eligibility test that is based upon prior workforce participation in order to encourage workforce participation prior to and after parental leave. However, this needs to be designed to ensure that women, whose employment tenure is often broken or casual, are not disproportionately excluded. To this end, the eligibility period should be shorter than the current requirement of 12 months for unpaid parental leave which excludes a significant proportion of women. While this employment should not be restricted to a single employer – again a requirement that many female employees would be unable to meet – to balance the needs of employers it would be reasonable to impose a minimum service period (especially in respect of small businesses) in order to be eligible for the right to return to work for that employer after leave. Importantly, any eligibility test should not exclude casual workers who are disproportionately women.
- Other primary carers should be eligible, so long as ‘double dipping’ is avoided and procedures are established to ensure that employers are given sufficient notice of intended leave by such carers.
- I believe that it is important to provide financial support to those parents who are not in paid work on a means-tested basis. The current ‘baby bonus’ – only recently amended to include a means-test – has a number of strengths:
 - It was granted on the basis of birth and thus did not exclude those with broken or casualised workforce participation; and
 - And was provided at a flat rate rather than at income replacement, which meant that it was not limited to the often low wages of mothers.

A paid parental leave scheme should encourage workforce participation, but also operate to ensure that those who are marginalized or excluded from the workforce or well-paid jobs are also supported in providing care for newborns.

Duration and Generosity of Benefits -

- Paid parental leave, like other forms of paid leave, should ideally be paid at income replacement rate. However, I recommend qualifications to this:
 - In the interests of spending public monies well, the rate should be capped so as not to be exhausted replacing the incomes of very high income earners who are likely to have the greatest capacity to self-finance their leave. Given the gender pay gap and generally low wages of women, as the Human Rights and Equal Opportunity Commission noted in its paid maternity leave inquiry, even capping the rate at the minimum federal wage would still provide full income replacement for most eligible women.
 - As noted in the previous section, there should also be a *minimum* payment (akin to a ‘baby bonus’, means-tested and paid periodically) to provide a safety net for low waged parents, rather than allowing only for the replacement of already low wages.
 - Efforts should be made to consider ways in which employers could be encouraged to top-up or extend any government funded paid parental leave.
- A paid parental leave scheme should commence with at least 26 weeks, but with a plan to review and extend in the near future after further review and consultation. But we should not wait any longer. Australia has lagged far behind most comparable countries and for too long. We cannot hope to ‘catch up’ by now only introducing the bare ILO minimum of 14 weeks.
- While birth mothers should be entitled to a period of 14 weeks, not transferrable other than in exceptional circumstances, to ensure they can recover from birth and establish breast-feeding, there should also be:
 - A shorter period in which parents can concurrently take leave to care for the child together;
 - An extended period in which either parent can take leave; and
 - A period which is provided on a take-it or lose it basis, to encourage both parents to share caring responsibilities, as per Scandinavian models.

Financing options

- Initially the paid parental leave scheme should be government funded. While the government could seek to support this through a general parental leave levy, all efforts should be made in designing such a scheme to:
 - Minimise costs to employers that might discourage the employment of those workers who are likely to take parental leave; and
 - Minimise or moderate the costs to small business, which disproportionately employ women.
- A social insurance model – whereby employers and employees contribute – maybe desirable in the long run in order to extend the scheme to a longer period, higher

rates, other carers or other non-work obligations. However, the establishment of a basic paid parental leave scheme - 26 weeks, at an income replacement rate capped at the federal minimum wage - should not be delayed so as to design and establish such a new model.

I would be happy to clarify or respond to any queries in respect of this submission.

Dr Belinda Smith
2 June 2008