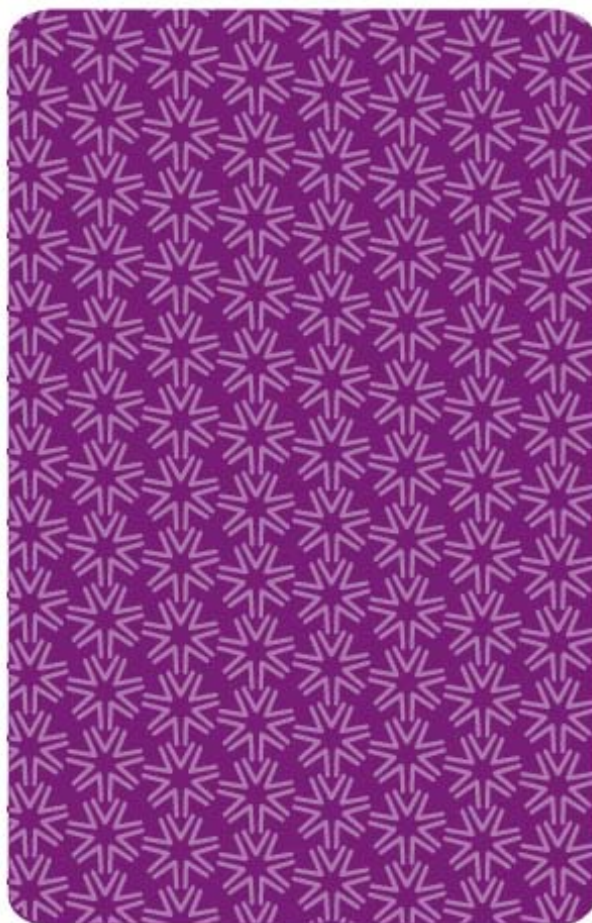


Submission

Inquiry into Paid Maternity, Paternity and Parental Leave

NSW Business Chamber and ABI Submission
to the Productivity Commission

June 2008



Invigorating Business Representation



About NSW Business Chamber

The NSW Business Chamber (NSW BC) has over 30,000 members and is affiliated with 129 NSW regional Chambers of Commerce, with an additional combined membership exceeding 12,000.

Through its alliance strategy and Australian Business Industrial the organisation has a strong partnership with a significant number of the NSW industry and employer associations.

Members of the NSW BC closely mirror the broader NSW business demographic. Approximately 62% are located outside the Greater Sydney Metropolitan region and of the total membership

- 55% have between 1 and 50 employees;
- 32% have between 50 and 100 employees; and
- 13% employ over 100.

This broad-based membership is supported through a network of regional offices located in Western Sydney, Sydney South, Wollongong (Illawarra Business Chamber), Newcastle (Hunter Business Chamber), Gosford, Coffs Harbour, Ballina, Canberra, Griffith and Albury.

About Australian Business Industrial

Australian Business Industrial (ABI) is the registered industrial relations affiliate of NSW Business Chamber, and is responsible for NSW Business Chamber's workplace policy and industrial relations matters.

ABI is a Peak Council for employers in the NSW industrial system and a transitionally registered organisation under the *Workplace Relations Act 1996*, and regularly represents members in both the New South Wales and Australian Industrial Relations Commissions.

ABI in conjunction with NSW Business Chamber represents the interests of not only individual employer members, but also other Industry Associations, Federations and groups of employers who are members or affiliates.

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Introduction

NSW BC and ABI would like to thank the Productivity Commission for the opportunity to make a submission to the Productivity Commission's Inquiry into Paid Maternity, Paternity and Parental Leave (the Inquiry), and comment on the issues raised in the Productivity Commission's Issues Paper (the Issues Paper).

NSW BC Council and ABI Council, which are both comprised of elected representatives of its membership, have discussed the issues raised in the Issues Paper respectively out of session and at its last meeting. This submission is reflective of the opinions and recommendations endorsed by both Councils.

There has been significant public debate on the issue of paid parental leave in Australia in recent years; NSW BC and ABI welcome the opportunity to contribute to the debate concerning the introduction of paid parental leave into Australian workplaces, and put forward the interests of our members.

This submission does not attempt to address all the questions raised in the Issues Paper, but rather addresses issues that are of major concern to the members of NSW BC and ABI; particularly those that impact on workforce participation, employer obligations and the work relationship.

The NSW BC and ABI support the introduction of a Federal Government funded paid parental leave scheme for 14 weeks paid at the rate of the Federal Minimum Wage, with payment made to the mother other than when she is not the primary care-giver.

Women make up a significant portion of Australia's workforce and have skills that are critical to our continued national economic prosperity. We need to recognise this contribution and put in place policies that assist the retention of these skills. New mothers need a period of time out of the workforce as they have a family - which will vary depending on personal circumstances and preferences. We believe a paid parental leave scheme will go some way to ensuring new mothers remain connected to the workforce, hence increasing the likelihood that they will return to paid work at some point in the future.

This is not only about providing financial assistance to the families directly affected by parental leave. The combination of an aging population and internationally low workforce participation rates amongst mothers means Australia as a whole would benefit from the introduction of a paid parental leave scheme that encourages women to remain connected to the workforce during the years they are raising a family. Labour shortages are already widely reported amongst our members – even before the full impact of the retiring baby boomer generation is felt.

However, a national paid parental leave scheme is not the 'silver bullet' solution to improving the workforce participation of parents or assisting Australian employees to manage their work and family responsibilities. As detailed further in our submission, NSW BC and ABI believe that a national paid parental leave scheme is only a part of the solution, in what needs to be a broader consideration of issues surrounding support to families during the first few years of a child's life, including child care and the range of other family payments and tax relief available to families.

Summary of Recommendations

- The primary objectives of any national paid parental leave scheme introduced by the Government should be:
 - improved health/development outcomes for the mother and child immediately post-birth;
 - assisting parents to achieve better work-life balance; and
 - the increased workforce participation and labour force attachment of parents, particularly mothers.
- NSW BC and ABI support the introduction of a Federal Government funded paid parental leave scheme for 14 weeks at the rate of Federal Minimum Wage.
- Parental leave payments should be made to the employee directly by the Government, not through the employer, and should be paid to the mother except in circumstances where she is not the primary care giver.
- A national paid parental leave scheme should not impose financial or administrative obligations on employers, and the significant costs currently borne by employers in implementing unpaid parental leave entitlements must be recognised.
- Any national paid parental leave scheme should not make reference to existing employer schemes, or place obligations or restrictions on employers' capacity to alter those schemes.
- Any national paid parental leave scheme should have at its centre the objective of facilitating greater workforce participation by parents, via a minimum qualifying period and the attachment of part or whole of the payment upon re-entering the labour market within a given period of time.
- Any examination into a national paid parental leave scheme intended to assist families to balance work and family responsibilities and boost the workforce participation and attachment of women must also consider the importance of accessible, affordable, quality child care and the implications of interaction with the suite of tax transfer assistance currently available to families.
- A right to return to work guarantee should not be extended to non-employee workers. Any parental payment to contractors and other self-employed workers should be publicly funded.

Issues and Recommendations

Objectives of Paid Parental Leave

There are numerous possible objectives and rationales of and for the introduction of a paid parental leave scheme. As the Productivity Commission notes, the relative importance of the objectives and rationales will be instrumental in the design of any proposed scheme¹.

NSW BC and ABI consider that the primary objectives of any paid parental leave scheme introduced by the Government should be:

- improved health/development outcomes for the mother and child immediately post-birth;
- assisting parents to achieve better work-like balance; and
- increased workforce participation and labour force attachment of parents, particularly mothers.

Increasing the workforce participation of parents, particularly mothers, is a key concern of NSW BC and ABI. Four years ago, in response to our NSW Business Priorities 2003 Survey, members for the first time identified that accessing and retaining an appropriately skilled workforce was the most significant challenge facing business².

In the more recently undertaken NSW Business Chamber 2007 Federal Business Priorities Survey, 83% of respondents reported that recruiting employees with appropriate skills was a major or moderate concern for their business. The retention of skilled employees was of major or moderate concern to 65% of respondents³.

The 2005 *Workplace Tomorrow* report estimated that the impact of population ageing will result in a shortfall of 195,000 workers by 2010⁴. Australia, with its relatively small population base will need to respond to the projections for shrinking numbers of new entrants by focusing on strategies that retain existing employees, one of which needs to respond to the needs of parents with caring responsibilities.

Women, particularly those with parental caring responsibilities, form one of the few groups for whom workforce participation could be significantly increased. Providing incentives to women to remain in the workforce before and after child-bearing is important to business, particularly in the context of a tight labour market.

Overall, women's workforce participation has increased in recent decades (by 11% between 1990 and 2005), however participation rates for women aged 25-45 with dependent children have in

¹Productivity Commission, *Inquiry into Paid Maternity, Paternity and Parental Leave - Productivity Commission Issues Paper*, April 2008, at pg 5

² Australian Business Ltd (now NSW Business Chamber), *NSW Business Priorities 2003 - policies for jobs, growth and competitiveness*, 2003, at pg 10

³ NSW Business Chamber, *2007 Australian Business Priorities - Fixing the Federation*, September 2008, at pg 18

⁴ Department of Education, Employment and Workplace Relations, *Workforce Tomorrow - Adapting to a more diverse Australian labour market*, 2005, at pg 3

fact declined, highlighting the competing pressures of parenting and work⁵. These participation trends around child-rearing are also reflected in Australian Bureau of Statistics (ABS) labour force participation statistics. April 2008 data shows that 20-24 year old females have a participation rate of 79.9%. This falls to 74.5% for 25-34 year olds and 74.6% for 34-44 year olds, before rising again to 77.6% for 44-54 year olds⁶.

There is no 'silver bullet' solution. There are a number of factors which encourage parents, particularly mothers, to engage or re-engage with the labour market, and a paid parental leave scheme will not address all of them.

Other issues that NSW BC and ABI have identified include:

- the availability of affordable, quality child care; and
- the Family Tax Benefits structure, particularly biases within the family payment system and high effective marginal tax rates that discourage workforce participation.

Child care is a particularly important factor that acts as a barrier to the workforce participation of parents of young children. Research indicates that with respect to a parent's decision to return to work after child-bearing, access to available, affordable and high-quality child care is instrumental to their decision to either remain or re-enter the labour market. ABS data for 2006/07 shows that there were 216,000 currently unemployed women who wanted to work or work more hours but were not able to. Of these, 44.4% said that caring for children was the main barrier to them increasing their labour force participation. Of these women, around half said this related to access to child care and child care costs⁷.

Whilst child care is not the subject of this inquiry, NSW BC and ABI would request that the Productivity Commission suggest that the Government consider the issue of child care. To put it bluntly, without ensuring that there is a ready supply of affordable, quality child care - a paid parental leave scheme may not achieve aims of facilitating balancing of work and family responsibilities, nor increase the workforce participation and attachment of parents, particularly women.

Similarly, any prospective paid parental leave scheme must be considered in the context of other tax transfer assistance available to families.

The current parenting payment system, including payments such as Family Tax Benefit Part A and B, does not smoothly interact with the income tax system. Our research shows that some secondary income earners face effective marginal tax rates in excess of 50% because of the impact increased earned income has on Family Tax Benefit entitlements. A paid parental leave scheme needs to be designed to avoid these high effective marginal tax rates and potentially resolve or minimise some of the faults of the current parenting payment system.

⁵ Rolland, L., Swinburne University of Technology, *Ageing 2030 - NSW Government Roundtable*, October 2007

⁶ Australian Bureau of Statistics, *Labour Force*, 6291.0.55.001, April 2008

⁷ Australian Bureau of Statistics, *Barriers and Incentives to Labour Force Participation*, 6239.0, July 2006 - June 2007

Finally, the parenting payment system already has many tiers, supplements and multiple payments that make the system complex to understand and administer. The paid parental leave scheme should avoid adding to this complexity.

Recommendations:

NSW BC and ABI support the introduction of a Federal Government funded paid parental leave scheme for 14 weeks at the rate of Federal Minimum Wage.

NSW BC and ABI consider that the primary objectives of any paid parental leave scheme introduced by the Government should be:

- improved health/development outcomes for the mother and child immediately post-birth;
- assisting parents to achieve better work-like balance; and
- the increased workforce participation and labour force attachment of parents, particularly mothers.

Any examination into a national paid parental leave scheme intended to assist families to balance work and family responsibilities and boost the workforce participation and attachment of women must also consider the importance of accessible, affordable, quality child care and the implications of interaction with the suite of tax transfer assistance currently available to families.

Existing Employer Obligations related to Parental Leave

Paid parental leave comprises two key aspects. The first is the right to take time away from work and the ability to return to work at the end of that absence. The second is payment for and/or during that period of leave.

Under the *Workplace Relations Act 1996* (Cth) (WR Act), full-time and part-time employees with at least 12 months continuous service, and casual employees who have been engaged regularly and systematically by an employer for at least 12 months, who are the primary carers of a newly born or adopted child have access to 12 months unpaid parental leave. At the end of the 12 months leave, the employee has the right to return to employment in their former position (or if that position is no longer available, the position nearest in status and remuneration)⁸. This applies to employers and employees whether or not they are in the federal workplace relations system.

The Government's Exposure Draft of the National Employment Standards (NES) details a number of new obligations on employers relating to parental leave and associated flexibilities. NSW BC and ABI note that the content of the NES has not yet been settled, however that at the very least, the Exposure Draft provides an indication of the Government's intent.

Parental Leave and Related Entitlements

Similar to provisions already contained in the WR Act, proposed s.13 of the draft NES stipulates that an employee (who fulfils the relevant service requirements) is entitled to up to 12 months' unpaid parental leave associated with the birth or adoption of a child for whom the employee has the responsibility to care for⁹. Proposed s.23 stipulates that on finishing parental leave, an employee is entitled to return to his/her pre-leave position, or if that position is no longer available - an available comparable position¹⁰.

Proposed s.16 allows that an employee who takes 12 months unpaid parental leave may request (in writing), additional unpaid leave of up to 12 months, provided an "employee couple" does not take more than 24 months of unpaid parental leave combined. The employer must agree to the requested extension, unless the employer has reasonable business grounds for refusing¹¹. Although award covered employees have had similar entitlements since the *Family Provisions Test Case* and consequential State flow-on cases, this would be a new entitlement for non-award covered employees.

Proposed s.22 requires that an employer must provide an employee on parental leave with information about, and an opportunity to discuss any decisions that the employer may make that will have a significant effect on the status or pay of an employee's position¹². This is also a new employee entitlement and a new obligation on employers.

⁸ *Workplace Relations Act 1996* (Cth) at Div 6 of Part 7

⁹ Department of Education, Employment and Workplace Relations, *Discussion Paper - National Employment Standards Exposure Draft*, February 2008, at pg vi

¹⁰ *Ibid*

¹¹ *Id* at pg vii

¹² *Id* at pg x

Requests for Flexible Working Arrangements

Proposed s.10(1) of the Draft NES provides that an employee who is a parent, or has a responsibility for the care, of a child under school age may request the employer for a change in working arrangements for the purpose of assisting the employee to care for the child¹³. Proposed s.10(4) states that the employer may refuse the request only on reasonable business grounds¹⁴. Although award covered employees have had similar entitlements since the *Family Provisions Test Case*, this is a new entitlement for non-award covered employees.

All of these new and existing entitlements, whilst unpaid, do not come without significant cost to the employer.

When employees take parental leave, employers bear the expense of advertising and recruiting for replacement staff. Employers bear the substantial 'on-costs' associated with engaging new staff, including induction and training, and the inevitable period during which the new employee has reduced productivity. Then, before the employer is able to extract any significant return on investment, the employee on parental leave is due to return. Alternatively, some employer's choose to 'make do' without the employee for the period of leave in which case, other employees are expected to work harder to pick up the slack and/or the employer loses some business capacity.

Small businesses and businesses in regional areas are particularly disadvantaged. In most cases they are not in the position to easily cover staff absence, particularly when skilled or professional staff is involved.

With respect to flexible working arrangements, in some cases the employer may be able to accommodate requests for shift pattern changes (for example) without cost and too much inconvenience. However, in some cases, where an employee requests a move from full-time to part-time work (for example), the costs for an employer can be significant. In this situation, the employer may have to recruit another employee in order to gap-fill, with the recruitment and on-costs this would entail.

Recommendation:

That the Productivity Commission, in considering possible models of paid parental leave, recognise the significant costs currently borne by employers in implementing unpaid parental leave entitlements. Consequently, NSW BC and ABI favour a Federal Government funded scheme.

¹³ Id at pg iv

¹⁴ Ibid

Paid Parental Leave

As noted above, paid parental leave comprises two key aspects. The first is the right to take time away from work and return to work at the end of that absence. The second is payment for and/or during time while not at work.

The question of payment for parental leave is a separate issue and should be examined separately to that of leave.

The provision of a statutory parental leave payment should not impose further financial burdens on business. Business already has obligations to provide leave for parents associated with the birth or adoption of a child, it is unreasonable to expect businesses to pay for some or all of this leave in addition to paying the costs of replacing an employee who is absent from work for a period of up to 104 weeks.

Many employers already make numerous concessions to enable parents to balance their work responsibilities with those of being a parent. Many employers, particularly in small business, are not in a position to directly fund paid maternity leave as an additional paid leave provision in the workplace.

To require employers to pay parental leave would undermine the broader objectives that a paid parental leave scheme might have by:

- making many businesses uncompetitive, particularly small business, therefore jeopardizing many parent's (particularly women's) jobs; and
- making it more difficult for many women to find and maintain employment, as an increase in discrimination against women of child-bearing age would be unavoidable.

NSW BC and ABI consider that any national scheme of paid parental leave or general parental assistance should be sustainably funded from public revenue and not impose payment obligations on employers, nor attract accruing paid leave entitlements.

In terms of the quantum of such a payment, NSW BC and ABI consider that any scheme should not provide a benefit greater than the Federal Minimum Wage and be paid for no more than 14 weeks. Payment should be paid in all cases to the mother, other than when she is not the primary care giver. The entitlement should commence accruing from the beginning of ordinary maternity/adoption leave and cease to accrue at the time the mother/primary care giver returns to the labour market or when the 14 weeks is complete. Part-time and casual employees should have the payment pro-rated to their average hours of work over the preceding 12 months.

A paid parental leave scheme along these lines would be consistent with the standards outlined by the International Labour Organisation's Maternity Protection Convention (Convention 183 of 2000), the aim of which is to promote equality of all women in the workforce and the health and safety of the mother and child¹⁵.

¹⁵ International Labour Organisation, *C 183 Maternity Protection Convention of 2000*, <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C183> Accessed 20 May 2008

It is also vital that any national, publicly funded scheme should not impose administrative obligations and burdens on employers. Payments should be made to the employee directly by the Government, not through the employer.

Recommendations:

- Any national paid parental leave scheme should be Federal Government funded and not impose financial or administrative obligations on employers;
- National parental leave payments should be made to the employee directly by the government, not through the employer, and should be paid to the mother except in circumstances where she is not the primary care giver; and
- National parental leave payments should be at the level of the Federal minimum wage, and be paid for 14 weeks.

Encouraging Workforce Participation and Ongoing Attachment to the Labour Market

As outlined above, NSW BC and ABI consider that one of the primary objectives of any paid parental leave scheme introduced by the Government should be the facilitation of greater workforce participation by parents, particularly mothers.

There are a number of options that the Productivity Commission might consider in the modelling of possible paid parental leave schemes that could promote the ongoing attachment and participation of parents in the labour market.

Firstly, any paid parental leave scheme should have a 'qualifying period' of continuous participation in the workforce prior to the birth/adoption of the child; e.g. at least 12 months. As the objective is to encourage broader labour market engagement rather than loyalty to a single employer, this minimum period of workforce participation would not necessarily have to be 'served' with a single employer.

Secondly, part or whole of the payment could be made contingent upon the parent in receipt of the paid parental leave re-entering the workforce within a specified amount of time; e.g. three years. As with the pre-qualifying period, this may not necessarily be returning to work with the same employer.

These two eligibility criteria mean that paid parental leave is distinctly different from the current baby bonus payment, which is paid (subject to a means test) irrespective of the employment status of the primary carer. A paid parental leave scheme must be closely linked to workforce participation pre and post child birth if it is to increase workforce participation, a criteria which our members see as critical to the success of the scheme.

It should be noted that there are particular consequences associated with the introduction of a scheme whereby there is a 'qualifying period' of workforce participation that does not necessarily have to be 'served' with a single employer. That is, parents entitled to receive a payment under the national scheme may not necessarily be entitled to take parental leave under the WR Act (because of the 12 month qualifying period to be served with an employer). However, NSW BC and ABI do not consider this a significant issue for consideration in the context of the introduction of a publicly funded national paid parental leave scheme. Under current arrangements, an employee who is having/adopting a child who has not worked for the employer for at least 12 months by the time of birth/adoption, does not have access to parental leave under the WR Act and will generally make informal arrangements with their employer for leave or the employment relationship will end. The introduction of a paid parental leave scheme contingent on a minimum period of workforce participation rather than service with a particular employer will only serve to assist those employees not entitled to take leave with a right of return.

As well, this approach means there is no disadvantage to an employee who does not wish to return to the same job or work as she, or he, was doing at the time of taking leave, or who is unable to, because her, or his, post-child working patterns cannot be accommodated by the previous employer.

Recommendation:

Any national paid parental leave scheme should have at its centre the objective of facilitating greater workforce participation by parents, via a minimum qualifying period and the attachment of part or whole of the payment upon re-entering the labour market within a given period of time.

Contractors and other non-employee 'workers'

The Issues Paper raises the issue of who should be eligible for paid parental leave under a national scheme, specifically whether 'workers' who are not employees, such as contractors and other self-employed people should be eligible¹⁶.

The Issues Paper also raises the issue of the return to work guarantee as an essential element of any national paid parental leave scheme. As the Issues Paper also notes, a right to return to work currently exists under the WR Act, for employees only¹⁷.

It would be completely inappropriate to impose any obligations on businesses in the form of business-funded parental leave and/or a return to work guarantee with respect to contractors and other self-employed workers. The relationship between a contractor and a business is a contractual arrangement, not an employment relationship. A contractor is not entitled to paid leave (i.e. personal/carers, annual etc.) from the business engaging his/her services. Under no circumstances should business have to fund parental leave payments for contractors or guarantee further contractual relations beyond the existing life of a contract to people with whom they have a commercial contractual relationship only.

However, if the Productivity Commission and subsequently the Government wish to provide those types of workers with a form of parental payment, provided it can be sustainably funded through public revenue, NSW BC and ABI would have no objection with such an arrangement.

Recommendation:

A right to return to work guarantee should not be extended to non-employee workers. Any parental payment to contractors and other self-employed workers should be publicly funded.

¹⁶ Productivity Commission, *Inquiry into Paid Maternity, Paternity and Parental Leave - Productivity Commission Issues Paper*, April 2008, at pg 7

¹⁷ Id at pg 8

Effect of national paid parental leave scheme on existing employer-funded schemes

40 per cent of working men and women currently has access to some form of paid parental leave. 67 per cent of this group work in the public sector, 33 per cent in the private sector¹⁸. These statistics suggest that a significant amount of businesses have already established a business case for paid parental leave.

Employer schemes that are directed towards meeting the needs of a particular business are effective and sustainable for the business or they are modified. These schemes are introduced and able to assist business in attracting and retaining quality staff in a tight labour market and in an environment of serious skill shortages. Employer parental assistance schemes are directed towards encouraging employees to remain in or return to the employer's business, they are not directed towards the general goal of encouraging participation in the labour force.

Paid parental leave above and beyond any publicly funded national scheme introduced by the Government should be a matter for negotiation and agreement at the workplace level where the amount and nature of the benefit reflects the ability of the employer to pay and the needs of the specific workforce.

Therefore, any national paid parental leave scheme should not mandate that businesses provide benefits over and above those provided by a publicly funded scheme. Nor should any national scheme of paid parental leave restrict employers' capacity to alter their existing schemes or to introduce a new scheme. Indeed, it could be expected that many existing employer parental assistance schemes would vary as a result of a national scheme, and that is appropriate. A national paid parental leave scheme of the kind suggested could encourage workplaces to transfer some resources currently directed to paid leave towards child care assistance.

Recommendation:

Any national paid parental leave scheme should not make reference to existing employer schemes, or place obligations or restrictions on employers' capacity to alter those schemes.

¹⁸ Australian Bureau of Statistics, *Employee Earnings, Benefits and Trade Union Membership*, 6310.0, August 2007

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Insert call to action here if required

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