

Submission to the Productivity Commission in relation to the inquiry into paid maternity, paternity and parental leave

Introduction

1. The Employment Law Centre of WA (Inc) (**ELCWA**) makes this submission to the Productivity Commission in its Inquiry (**Inquiry**) into Paid Maternity, Paternity and Parental Leave.

2. ELCWA is a community-based legal centre specialising in employment law. It focuses on the:

- provision of legal services to individuals who may face barriers in obtaining access to justice in employment;
- collection of data and the use of that data in evaluating the effectiveness of current laws; and,
- promotion of the principles and practices of equal opportunity.

ELCWA provides free legal advice to approximately 4000 clients each year in relation to workplace issues.

3. ELCWA data demonstrates a high correlation between maternity and workplace disadvantage. This is supported by statistics provided by the Australian Bureau of Statistics (**ABS**)¹. Specifically, although some women in higher paying corporate positions may receive paid maternity leave, women who work in lower paying jobs (often for small businesses) are far less likely receive paid maternity leave. ELCWA data confirm that its clients who work in hospitality and retail are the least likely to receive paid maternity leave. Those same clients can least afford to take an unpaid period of maternity leave.

4. ELCWA supports the establishment of a scheme of paid maternity leave as the first phase in a scheme which should ultimately provide for paid parental leave.

¹ 6105.0 – Australian Labour Market Statistics July 2008. In August 2007 1.5 million female employees were not entitled to paid maternity leave, with part-time employees accounting for 70% of this figure

5. ELCWA shares the view² that it is unacceptable that Australia remains one of only two OECD countries not to have a universal, federally funded, maternity leave scheme.

International Standards

5. Article 23 (1) of the Universal Declaration of Human Rights recognises that everyone has the right to work, to free choice of employment, to just and favourable conditions and to protection against unemployment.

6. Article 11(1) of the *Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, to which Australia is a party, provides that States shall take appropriate measures to eliminate discrimination against women in employment to ensure equal rights with men.

7. Article 11(2)(b) of CEDAW provides that, in order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States shall take appropriate measures to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.

8. The *International Covenant on Economic, Social and Cultural Rights*, to which Australia is a party, provides that States recognise that special protection should be accorded to mothers during a reasonable period before and after childbirth. During these periods working mothers should be accorded paid leave or leave with adequate social security benefits (Art 10(2)).

9. The *Social Security (Minimum Standards) Convention, 1952 (No.102)*³ provides that each State, for which Part VIII of the Convention is in force, shall secure to the persons protected the provision of maternity benefit in accordance with the Convention. The contingencies covered include pregnancy and confinement and their consequences, and suspension of earnings, as defined by national laws and regulations, resulting from these circumstances.

² For example: WA Council of Social Services Inc, Human Rights and Equal Opportunity Commission, Senator Stott Despoja, Unions WA

³ *International Labour Organisation Convention*

Priorities for a national scheme (Scheme) – an employment law perspective

10. The Scheme should provide in its initial phase:

- economic security for parent(s) at the time of the birth of a child and for the period before and after the birth. This will ensure that parent(s) can continue to cover all general expenditure without seriously compromising their standard of living;
- measures to support the combination of motherhood with employment; and
- recognition of:
 - the physical demands of the latter stages of pregnancy, and
 - following birth, the requirements linked to recovery, breast feeding and attachment.

11. In a subsequent phase the Scheme should provide reciprocal leave provisions which allow:

- women to participate in the workforce and public life; and,
- men to play central, rather than peripheral, roles in family life.

Recommendations

12. The Scheme for paid maternity, paternity and parental leave will build upon:

- existing provisions for unpaid parental leave⁴; and,
- existing provisions for paid maternity leave which currently apply to federal public servants.

13. The Scheme should be federally funded.

14. The Scheme should be implemented in a series of phases. The establishment of the initial phase is of crucial importance and is addressed here. The subsequent phases which should eventually incorporate paid parental leave for up to 26 weeks are left to be dealt with in a later submission.

15. The initial or first phase should focus on establishing a minimalist position centred on paid maternity leave. Subsequent phases should seek to broaden legislative provisions to include paid parental leave.

⁴ *Work Place Relations Act 1996* (Cth) Part 7 Division 6

16. In keeping with the international standards cited above, the Scheme in this phase should provide a minimum of 14 weeks⁵ Government funded paid maternity leave at or around the time of the birth or adoption of a child.

17. The Scheme should be open to all eligible Australian working women, including self-employed and farming women.

18. There should be a qualifying period of 12 months' employment.

19. The leave should be paid at the rate of the federal minimum wage plus 9% superannuation.

20. The leave should be paid on a pro rata basis where the employee is employed part-time.

21. The means testing of eligibility for the Scheme should not be discounted where the projected cost of implementation threatens to stifle its introduction.

22. Means testing is contrary to the ideal of a universal scheme of paid maternity leave open to all working women; however, it remains an important if not overriding consideration that it is better to have a scheme which benefits the most deserving than no scheme at all.

Concluding remarks

23. Paid maternity leave has positive ramifications for women in general, and particularly for women on low incomes. It provides those women with the opportunity to sustain their standard of living and to care for their child without the pressure to make an early return to work. Important social and educational benefits can flow from such opportunities, which have positive implications for society as a whole.

⁵ See also: *International Labour Organisation Maternity Protection Convention* (No 183)