SOUTH AUSTRALIAN WINE INDUSTRY
ASSOCIATION INCORPORATED

SUBMISSION TO:

The PRODUCTIVITY COMMISSION

PAID PARENTAL LEAVE - DRAFT INQUIRY REPORT

November 2008

Basis of the South Australian Wine Industry Association Incorporated Submission

The Productivity Commission (the Commission) has invited submissions from interested parties on its Draft Inquiry Report into Paid Parental Leave published on 29 September 2008 (the Draft Report). The South Australian Wine Industry Association (SAWIA) is an interested party and welcomes the opportunity to make a submission to the Commission in relation to the Draft Report.

SAWIA supports the introduction of a paid parental leave scheme for Australia in principle and provided it is not at the employer's cost. The challenge of balancing the demands of work and family is an important social and economic issue facing Australia. Paid parental leave goes some way to addressing this issue by providing working families with financial assistance when they decide to start or extend their family.

SAWIA supports the Commission's proposal that the funding of any cash payments be made by the Government alone. However, SAWIA submits that the full cost and administration of the scheme should also be borne by the Government. Consequently, SAWIA does not support the Commission's proposals related to employers being required (for eligible employees) to fund superannuation payments nor the proposal that employers act as paymaster for the Government.

In response to the Commission's request for feedback SAWIA has addressed the following issues that SAWIA considers are relevant to its members in the wine industry:

1. FUNDING OF THE SCHEME

SAWIA supports the Commission's proposal that the funding of any cash payments be made by the Government alone.

SAWIA notes that the Commission proposes that employers would fund superannuation contributions to employees who meet the eligibility criteria. SAWIA understands that superannuation funding is capped at $881 (that is $544 per week x 18 weeks x 9%), and that this superannuation payment may be tax deductible to the employer?

Superannuation payments by employers in this instance are a direct increase to the cost of employment with no resultant productivity. While the incidence of parental leave may be low for some smaller organisations, it does not belie the fact that business costs will increase and this could act as a deterrent to employing a woman of child bearing age where that choice exists, or where 2 candidates, one male and one female, are equally considered for the vacant position.

Firstly, many employers in the South Australian wine industry are regionally based, and already struggling financially with the effects of a severe and long term drought, increasing employment costs associated with increases in living costs, skills shortages and the downturn of the economy. Any increase to costs, particularly for small to medium businesses, could precipitate business viability and may lead to collapse. We are sure that employers in the wine industry would not be the only one facing this prospect. Secondly, regional employers are also faced with paying higher rates of pay to attract temporary staff to cover short to medium periods of parental leave, that is, if employers can source labour to fill the vacancies.

SAWIA submits that the paid parental leave scheme should be fully Government funded and administered.

2. ADMINISTRATION OF THE SCHEME

SAWIA understands that paid parental leave would be payable to employees who have been continuously employed (whether with one or more employers) for an average of ten hours or more per week over the 12 months prior to the expected birth of the child. The responsibility for administering the payroll function for eligible parents is determined primarily by whether the employee qualifies for unpaid parental leave, under the proposed National Employment Standards (NES), or not.

Employer to be Paymaster
SAWIA notes that the Commission proposes that the employer should act as paymaster for the Government where the employee:-

- Is eligible for unpaid parental leave under the NES, which proposes 12 months *service with the one employer*; and
- Has worked an average of 10 hours per week or more for that employer over the 12 months.

It is proposed that employees in this category will also be entitled to ***employer funded*** superannuation contributions of 9%[1], if they were already entitled to employer superannuation before taking paid parental leave.

The Government to Pay "Other" Eligible Parents
SAWIA notes that the Commission proposes that, in all other cases (where the criteria for the employer to be paymaster) is not met that the Government would be responsible to pay eligible parents directly.

SAWIA submits that there should only be one paymaster, and that should be the Government. Distinguishing which "eligible parents" (who are considered employees) are paid by the employer and those who will be paid by the Government will create confusion for employers and employees, particularly small to medium employers, who may only experience paid parental leave infrequently.

[1] The employer superannuation contribution is capped at the lower of 9% of the adult minimum wage or the employee's actual salary.

For example, the wine industry employs high numbers of casual employees on a seasonal basis, many for 2 -3 months of time during peak periods of the year. In some cases casuals may qualify for unpaid parental leave, (if they have been engaged on a regular and systematic basis for a sequence of periods during a period of at least 12 months), and others may not. Confusion related to determining eligibility to unpaid parental leave could lead to some employers incorrectly "acting as a paymaster" (and therefore also paying a superannuation contribution) when they in fact should not be, while other employers could erroneously refuse an employee's application for paid parental leave on the basis that they have not qualified for unpaid parental leave.

In the first instance, how does the employer seek reimbursement of the "over payment"? and in the second circumstance, is the employer liable for a fine or penalties for not having met their "obligation"? What processes are proposed to ensure that an employee is not paid by both the employer and by the Government? How will payment of parental leave be determined or calculated given that the hours of work for casuals fluctuate from week to week, and month to month? Is a casual loading payable, and if so, who is responsible to effect payment?

From the Commission's proposal it is clear that the Government will have to set up a payment system for a significant number of eligible employees who will not be paid via their employer as draft recommendation 2.3 states that "the Australian Government should pay other eligible parents directly, preferably through a non-welfare agency. In addition, all employers will potentially have to set up or modify their payroll systems to perform the same function that the Government will already be setting up to perform creating a further layer of "red tape" for businesses. In consideration of this approach the system cannot be described as keeping it simple!

Employers will incur additional costs if they are required to be the paymaster for the Government. All businesses have a payroll system of one type or another that will require systems changes at a cost to the employer in order to comply with obligations created by the scheme. The systems changes will not be insignificant because they will need to cover:

- changes to an employees pay rate while on paid parental leave;
- coding to distinguish between who will be paid by the employer and who may be paid by the Government;
- coding / management of leave accruals, i.e. do accruals apply to the period of paid parental leave?
- changes to the systems taxation rules, i.e. reimbursement rules via the PAYG tax payments;
- additional training for payroll and HR employees;
- coding to manage over / under payments;
- a means of ensuring that payments end after 18 weeks;
- calculating entitlements for eligible parents who are casual or irregular part-time employees.

The costs associated with administrative and systems changes will vary from employer to employer and will be greater or smaller depending on the complexity of the employer's payroll / finance system. At a minimum, for example, it will require the payroll program to be altered by the program administrator. Such costs should not be underestimated.

Employers will also incur cash flow consequences of having to pay (eligible) employees in advance of seeking reimbursement from the Government. The Commission's proposed reimbursement mechanism is a credit to "pay as you go" (PAYG) withholding payments to the Australian Taxation Office for those employees making at least monthly payments. In SAWIA's experience, most wine industry employers run weekly or fortnightly payrolls and make PAYG payments on a monthly basis.

For example, the cash flow impact for a medium sized company with only 2 employees on paid parental leave could be up to incur $4,352 per month ($544 per week x 4 weeks x 2 employees), before they can recoup the expense from a future monthly PAYG payment.

Another practical example is that of a large wine industry employer (of around 1100 employees) having 18 permanent employees on maternity leave as at October 2008. The cash flow effect for the employer would be $39,168 per 4 weeks. Lack of access to such funds and an ability to meet these funding requirements will impact on business.

SAWIA submits that in order for the scheme to be simple to understand and implement the Government should be the sole administrator and "paymaster" of any paid parental leave scheme.

3. UNINTENDED CONSEQUENCES

The Commission has asked for feedback on "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".

SAWIA understands that the Commission has not at this time proposed that leave entitlements will accrue during periods of paid parental leave. SAWIA submits that when "the Bill" is drafted <u>it must be clear</u> that leave entitlements will not accrue during periods of paid parental leave. Particularly if the employer is required (in some cases), to act as the Government's paymaster, an unintended consequence may be that by virtue of the employer making paid parental leave payments to its employees, such periods of paid parental leave will be counted "as service" with the employer and will attract leave accruals. This potential unintended consequence could be avoided by either; the Government being the only paymaster; or, if the employer must (in some cases) act as the Governments paymaster, the Bill expressly excluding an ability to accrue any form of leave for periods of paid parental leave.

If leave was to accrue during periods of paid parental leave the hidden costs to employers would be significant and could include:-

- Annual Leave – 52.6 hours p.a. (18 weeks PPL / 52 x 152 hrs per year)
- Sick Leave – 26.3 hours p.a. (18 weeks PPL / 52 x 76 hrs per year)
- Long Service Leave[2] – 17.1 hours p.a. (18 weeks PPL / 52 x 49.4 hrs LSL per year)

Employees would be entitled to additional 96 hours[3] of paid leave, at their rate of pay at the time of taking the leave (which may be significantly higher than the paid parental leave rate of $544 per week). This cost is borne by the employer and is not subject to any productivity improvement. The minimum additional cost to an employer, based on an employee receiving the adult minimum rate of pay of $14.31 per hour would be $1,374[4] per employee. Costs will be higher for employees receiving higher rates of pay in line with higher classifications, grades or non award covered employees.

Other significant incidental costs would include the Workcover levy and for eligible employers payroll tax. Additionally, severance payments may also be impacted in the event of an employee who has taken paid parental leave being made redundant at some future time. Pay increases occurring during the period from accruing to accessing leave.

4. SUMMARY

As previously stated SAWIA supports the introduction of a paid parental leave scheme for Australia, however the key features of any model introducing paid parental leave must be simplicity, an easily understood and easily administered scheme. The scheme should be fully funded and managed by the Government and remain outside of the employer / employee relationship.

SAWIA supports the Commission's proposal that the funding of any <u>cash payments</u> be made by Government alone. However, SAWIA submits that the full cost and administration of the scheme should also be borne by Government. Consequently, SAWIA does not support the Commission's proposals related to employers being required (for eligible employees) to fund superannuation payments nor the proposal that employers act as paymaster for the Government.

SAWIA opposes any prescription requiring employers to fund either wholly or partially paid parental leave. However, as always is the case, employers are free to make additional payments or provide "top-up" payments above any minimum standards.

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[2] Calculation based on the South Australian Long Service Leave Act accrual rate. Pro rata entitlement applies after employee has completed 7 years of service.
[3] Assumes employee is eligible for pro rata Long Service Leave.
[4] 96 hours of "other accrued leave" entitlements x $14.31 per hour = $1,374