

# **Australian Rail Tram and Bus Industry Union (RTBU)**



## **Submission to Productivity Report and Recommendations into Paid Parental Leave**

*The demands of human solidarity underpin the values of the trade union movement. Solidarity is the recognition each owes to the life and needs of others.*

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## **Preamble**

The Australian Rail Tram and Bus Union (RTBU) welcome the opportunity to comment on the Productivity Commission Draft Inquiry Report into Paid Parental Leave: *Support for Parents with Newborn Children*.

The Australian Rail Tram and Bus industry Union is the collective voice at work of the men and women who operate rail passenger and freight services, and publicly owned passenger buses across Australia.

The incidence of paid parental leave in this industry is almost wholly governed by the ownership of the type of operation in which the employee works. Where an entity is publicly owned, some maternity leave is available to employees pursuant to Agreements and Awards previously negotiated by the Union. This parental leave varies from State to State, and while it is a significant improvement in conditions on a bare statutory right to take a finite amount of unpaid leave, it is not regarded by the Union as being wholly sufficient in itself to properly support a new parent and their dependents while away from work on necessary parenting duties, or to properly supplement lost income where a household is dependent on two incomes in these circumstances.

Where an employee is employed by a privatised or small entity, that employee may expect little in the way of conditions amenable to the new parenting role, again depending on the Award or Agreement. Generally conditions for these employees are inferior to those of public sector employees. The Union simply does not have the Industrial influence necessary to negotiate on behalf of all employees in these situations. We submit this is generally the case for all Australian Unions in 2008 that operate wholly or partly outside of the Public sector.

To that extent the RTBU generally welcomes the draft report and recommendations to introduce a universal statutory parental leave entitlement in Australia as part of the concept of the Australian Social Wage.

### **A Statutory Scheme?**

The Productivity Commission does not specify a preferred head of Commonwealth power under which the statutory scheme should be legislated.

We take the view that the payment has a strong Industrial rather than Welfare nexus, attaching as it does to persons in existing employment working under Awards, Agreements, or the National Employment Standards.

The RTBU notes that the Productivity Commission has not set out a particular view as to a dispute or complaint mechanism in respect of the payment or its terms. We anticipate such a mechanism will be announced inevitably.

The RTBU as a Trade Union is highly cognisant of the potential for difficulty in compelling proper compliance from Employers. We suggest that it would be inappropriate to split the dispute resolution procedures between two bodies (or to provide for no dispute mechanism at all for the scheme), one an Industrial Arbiter to have jurisdiction in respect of the employees wages and conditions in all ordinary respects, the other presumably an Administrative Tribunal convened to deal with matters arising under a discrete, short, and infrequent part of the employees work life.

We note that Fair Work Australia has Jurisdiction to deal with Unlawful Dismissals. Apposite here is the situation where an employee proposes to take the relevant leave for parenting, and whose employment is terminated as a result, amounting to an Unlawful Dismissal under the legislation, (and a Wage Claim in the event the payment is not made). Further, it would seem arbitrary that Fair Work Australia would not have jurisdiction to deal with disputes over the payment of the parenting allowance to the employee, where it has jurisdiction in respect of other disputes regarding the employee's wages and conditions.

Regardless of the head of power ultimately invoked to found the legislation, we submit that general or special jurisdiction should be vested in Fair Work Australia to deal with the inevitable disputes arising, if it is not anticipated that such jurisdiction would automatically flow from the scheme.

### **Quantum of Payment and Length of the scheme**

The RTBU would urge the Commission to review its position on the length of the proposed scheme from 18 weeks to 26 weeks. All relevant data supports the proposition (and the Community's expectation) that a new parent and child should be given proper opportunity to bond in the first year, and the parent be given optimum opportunity to care for the infant at his or her most vulnerable stage of life.

We would seek to have the Productivity Commission consider an extension of the leave for partners to four weeks. The birth of a child is a significant family event, requiring an adjustment in family roles and routines where both partners had hitherto been employed. In these circumstances, and where it was anticipated the birthing partner would return to work at the expiration of any leave period, we anticipate a merging and sharing of roles as parents.

The RTBU accepts the fiscal limitations on any scheme proposed by the Commission in terms of quantum, and agrees the scheme targets those in highest need financially and industrially.

### **Juniors and others earning less than the Adult Minimum Wage**

We disagree strongly with the Commissions proposal that special arrangements be made in respect of those on lower minimum wages, particularly Juniors.

We anticipate a situation (given the current ordinary hourly rates paid to Juniors and Trainees), that Juniors, young single mothers in particular, would be provided with an obvious financial disincentive to take advantage of the proposed scheme in that they are obviously better off to resign from work, and apply for the baby bonus in its new form and relevant parenting payment from Centrelink. Short sighted decisions by young people, and we note in particular the decision to have a child while young, are rarely circumvented by punitive financial consequences.

This cannot be the intention of the scheme. Further, we note the obvious disincentive to remain in the workforce during the critical training years in a

young person's career trajectory. This cannot assist the overall pattern of workforce participation among younger women in Australia.

Further, we point out that costs in caring for a newborn child are identical, regardless of the age of the parent. Any disparity in the benefit rate mitigates negatively on the care of a new born child whose parent by coincidence is young enough to be paid at a Junior or Trainee rate, and discriminates against a section of the parenting population solely on the basis of age. This is not good public policy.

Further, we note that apprenticeship and trainee wages are lower for adults in training in particular sectors, being set by the stage or year of the traineeship, rather than by age. By way of non exhaustive example we refer to Hairdressing, Kitchen trades, Building and Mechanical trades etc. It cannot be the intention of the Productivity Commission to recommend a policy which discourages training and retraining by adults, or which disadvantages those adult trainees in the event of a new parenting role.

### **Superannuation**

The RTBU believes that Superannuation should be paid under the scheme at negotiated Award or Agreement rates where applicable, rather than at the bare rate set by the Superannuation Guarantee. Except in discrete parts Public Sector, or where negotiated separately (generally by high earning employees with skills in high demand), superannuation is rarely set at higher, or more than marginally higher than the Superannuation Guarantee. The RTBU is party to only one significant agreement with above Superannuation Guarantee provisions (specifically 1% above guarantee). This is Agreement is exceptional, and summarises the superannuation position in respect of Australian Transport Employees generally.

Notwithstanding the above, the RTBU does not preclude that negotiations for above guarantee superannuation at the request of our members will not occur in the future in our industry.

We believe that to pay the above guarantee superannuation of employees who are entitled to it under an Award or Agreement (to which the Employer is

otherwise bound), is an insignificant impost on business, given the overall costs and benefits to the Employer of the Paid Parental leave scheme.

There are sound public policy arguments as to why any proposed Parental Leave scheme should seek where possible to maintain existing above Superannuation Guarantee levels, given the bare fact that the current 9% is universally recognised as being insufficient savings to maintain a retirement aged person.

Further we argue strongly that there be no qualifying period for Superannuation to be paid on behalf of an Employee taking the Parental Leave under the scheme nor should an employee be attached to an Employer for the twelve month required for unpaid leave in the National Employment Standards. There are sound public policy reasons for the continued payment of superannuation

### **Existing Parental Leave arrangements in Awards and Agreements**

The proposed parental leave scheme is an adjunct, but not a replacement for parental leave on full wages which the RTBU believes is a preferred option.

To this extent the RTBU would ask the Productivity Commission to consider making a final recommendation that where there is a mix of the two payments available, the employee should be afforded the highest degree of latitude in how those payments and the relevant leave is taken. No significant prejudice to Employers should flow from this position, as parental leave pursuant to an Award or Agreement is the status quo position where it is available at present.

This flexibility will offset the real difficulty this Union anticipates in bargaining further with Employers for better parental leave conditions in our Awards and Agreements. We anticipate Employers will resist agreeing to making improvements to current paid parental leave on the basis that there is a tax payer funded scheme. The obvious disparity in payments is not likely in our experience to affect their position. There is a real danger that while helping many low income workers with no parental leave at all, that those who wish to bargain for improved full wage parental leave will be prejudiced into the future.

To that extent we suggest that no restriction be placed on the employee's use of any current Parenting leave in conjunction with the proposed scheme so long as

the leave is taken within the 12 month parameters of the National Employment Standards where it applies.

### **Eligibility for Non-Birthing Partners**

The RTBU represents workers who are mostly male, though the ratio between male and female members varies from State to State. Our membership in Tasmania for example is approximately 50% female.

We advocate strongly for a meaningful place for fathers in the scheme and support the Productivity Commissions proposal that a method of transfer with consent between the parents be recommended.

Two scenarios arise 1) Where through some incapacity the birthing mother is unable to care for the child, or 2) Where the earning capacity of the birthing mother is greater than that of her partner, and where the parents agree that their family finances would be prejudiced if the birth mother were the parent who was off work for a substantial period.

### **Casuals and Part Time Employees**

The RTBU would urge the Productivity Commission to review its position in respect of Casual and Part Time Employees. The model must include those who work more than one part time job. Additionally, it is not unusual for the roster of a casual employee to be spread over a fortnight or a month, with a concentration of hours worked occurring in a specific part of the period. Rather than consider the casual employees weekly earning, we suggest an averaging of casual hours worked over the preceding 26 weeks, regardless of whether the employee has worked on a weekly basis.