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Parental Leave Inquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Sir / Madam

Comments on Draft Inquiry Report: Paid Parental Leave

The National Children's and Youth Law Centre thanks the Productivity Commission ("**Commission**") for the opportunity to respond to its Paid Parental Leave Draft Inquiry Report ("**Draft Proposal**").

We commend the proposed introduction of a paid parental leave scheme for Australia.

However we wish to express our concern about one particular aspect of the Draft Proposal - the separate and discriminatory treatment of young people currently paid less than the adult minimum wage.

Our comments are attached.

Yours sincerely

James McDougall
Director

1.0 Our Original Submission

The National Children's and Youth Law Centre ("**the Centre**") made a submission to the Parental Leave Inquiry earlier this year. Our submission and supporting oral evidence to the Commission's hearings, informed by a child rights perspective, supported the introduction of 12 months paid parental leave universally available to all parents.

2.0 General Comments on the Proposed Scheme of Paid Parental Leave

We commend the proposed introduction of paid parental leave in Australia. Paid parental leave provides a positive opportunity for Australia to identify and seek to achieve the objectives outlined in the Draft Proposal.

We support, in particular, the broad eligibility criteria to encompass a wide range of employees (including those in casual employment and the self-employed) and the broad definition of 'family'.

We support the proposed period of 18 weeks paid leave on the basis that it represents a transitional step towards a longer and more comprehensive scheme in the future.

We now focus our comments on the proposed provision that provides for a lower rate of parental leave, subject to administrative determination, to be paid to those employees receiving less than the adult minimum wage: Draft Recommendation 2.1.

3.0 Discriminatory Treatment of Children and Young People

A lower rate of payment for young people is arbitrary and is inconsistent with the objectives and approach otherwise adopted by the Commission in the Draft Proposal.

We contend that the differential treatment is an inappropriate and unjustified discrimination.

The explanation, in the Draft Proposal, is that it will ensure that parental leave payments do not provide a bigger incentive to have a baby or encourage "short-sighted decision-making by younger people".¹

This rationale is not applied to any other category of employees in the Draft Proposal and we would suggest that it is not evidence-based.

Consider the case of employees working part-time or reduced hours. Because all eligible employees, other than those receiving less than the adult minimum wage, are entitled to the same parental leave payment rate, some low income employees working less than full time will experience an increase in earnings whilst they are on leave.

¹ Productivity Commission, Paid Parental Leave: Support for Parents with Newborn Children Draft Inquiry Report (Commonwealth of Australia, 2008) at 2.7-2.8.

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The Draft Proposal, in acknowledging this consequence, notes that to make parental leave payable on a pro-rata basis would reduce the likelihood of attaining the desired outcomes for those who most need the assistance.²

Why should this argument not apply to those young people earning less than the adult minimum wage? A more careful examination of the available evidence may suggest that this is indeed the group in most need of assistance.

4.0 The Rights of Children and Young People

The Centre submits that children and young people are entitled to rights as employees, and that these rights should be at least as clear and enforceable as those of adult employees.

It is our view that the current system of junior wage provisions generally is discriminatory towards children and young people³.

A paid parental leave model that allows for lower rates to be payable to younger employees compounds this discriminatory treatment. The full benefits of the scheme will not be available to this group and may also adversely impact on a young family's capacity to support their child.

Children and young people have the right not to be discriminated against on the basis of their age.

The Centre draws the Commission's attention to Article 32 of the United Nations *Convention on the Rights of the Child* ("CROC"), which protects young workers from economic exploitation and requires that States take legislative and administrative measures to ensure that this protection is implemented.

Article 2 of CROC requires that States take appropriate measures to protect children and young people from all types of discrimination.

Article 4 of CROC requires that States take measures to the maximum extent of available resources to ensure that the economic, cultural and social rights of children and young people that the Convention recognises are implemented.

The Centre also draws the Commission's attention to the following international standards and laws regarding the protection of young workers:

- The International Labour Organisation Minimum Age Recommendation, 1973 (No. 146) stipulates that special attention should be given to the provision of fair

² Draft Proposal, note 1 at 5.17-5.18

³ National Children's and Youth Law Centre, "Junior Wages – Exploitation in Disguise?", Submission to the Australian Industrial Relations Commission, 6 June 2008

remuneration to young people, bearing in mind the principle of equal pay for equal work.⁴

- Article 10 of the International Convention of Economic Social and Cultural Rights requires that States protect children and young people from economic and social exploitation.
- The 1945 International Law Commission Resolution further provides that the measures taken with regard to young workers pay should aim at guaranteeing them payment consistent with the work they perform, while respecting to the extent possible, the principle of equal remuneration for comparable work.

The Centre submits that Australia's current system of junior wage provisions generally is discriminatory towards children and young people and in conflict with the relevant principles from these international human rights instruments. A paid parental leave model that allows for lower rates to be payable to young people will only compound this discriminatory treatment.

5.0 The Evidence Considered?

The Draft Proposal does not refer to any evidence to support the assertion that providing younger people with the same level of payments will increase fertility and prompt 'short-sighted' decision-making.

We invite consideration of whether a claim of impaired decision-making might ever be used as a basis in public policy development for reducing the level or entitlement to the pension benefits received by senior citizens.

The Centre submits that this discriminatory treatment is contrary to the objectives and approach otherwise reflected in the Draft Proposal.

The objectives are identified as: enhancing child and maternal health; facilitating work participation and gender equity.⁵ The less advantageous treatment of younger people is not consistent with these objectives and risks compromising the intended effect of encouraging a reasonable break from work to promote optimum maternal and child health outcomes.

The Draft Proposal identifies younger employees (15-19 years of age)⁶ and those on lower incomes⁷ as more likely to return to work early due primarily to financial constraints. Financially constrained families are specifically identified as a target population⁸ of the proposed model of leave and the importance of equitable treatment is highlighted. The discriminatory treatment of younger employees is contrary to these objectives and principles. Younger people earning less than the minimum wage fit

⁴ Part IV, paragraph 13(1)(a).

⁵ Draft Proposal, note 1 at 1.1.

⁶ Draft Proposal, note 1 see Figure 3.3.

⁷ Draft Proposal, note 1 see Figure 3.4.

⁸ Draft Proposal, note 1 at xxi.



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squarely within the target population of financially constrained families. Younger people are also less likely to have savings or financial resources otherwise set aside to enable any additional unpaid leave to be taken.

6.0 The Calculation of the Rate

There is no detail as to how the lower rate of parental leave will be calculated, other than that it will be by administrative determination. A suggested figure, in the Draft Proposal, is 60% of the adult minimum wage.⁹

This is a substantial reduction from the amount payable to all other eligible employees. The effect of separating out those paid less than the adult minimum wage is to further marginalize and discriminate against younger people who are already disadvantaged by the current junior wage system. Younger people having children have parenting costs comparable to other employees but face the dual disadvantages of lower wages and less working time in which to have accumulated savings. A lower rate of parental leave further compounds this already disadvantaged position.

7.0 The Centre's Recommendation

All eligible employees should be entitled to the same rate of payment for parental leave.

The Centre submits that this would result in a more equitable model that would be better able to achieve its desired outcomes. Furthermore this would simplify the administrative arrangements by eliminating the need to identify those employees receiving less than the adult minimum wage and the consequent determination of a differential level of payment.

⁹ Draft Proposal, note 1 at 2.8.