



# **Submission to the Productivity Commission**

## **Public Inquiry into Paid**

## **Maternity, Paternity & Parental Leave**

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## 1. Introduction

- 1.1. The Catholic Commission for Employment Relations (CCER) is an organisation established by the Bishops of New South Wales (NSW) and the Australian Capital Territory (ACT) to provide Catholic Church employers with employment relations advice, research and advocacy within the context of Catholic Social Teaching. CCER assists Parishes, Chanceries and other Diocesan employers, as well as Religious Congregations with employment relations matters. CCER also provides employment relations advice and assistance to the Catholic education sector, a number of social welfare agencies, as well as a variety of employers within the health and aged care sector. CCER acts as a spokesperson for the Catholic Church in NSW and the ACT in public policy debates concerning employment relations.

## 2. Submission

- 2.2 CCER welcomes the Productivity Commission's recommendation that a Government funded paid parental scheme be introduced in Australia as soon as possible. Catholic Social Teaching upholds the principle that time together is every family's right. To this end, the Vatican has called on the international community to ensure working parents, both men and women, are 'assisted, *if necessary by law*, to bring their own unique and irreplaceable contribution to the upbringing of their children, to the evident benefit of the whole society'.<sup>1</sup>
- 2.3 However, although CCER supports the Productivity Commission's recommendation that a Government funded paid parental leave scheme be implemented in Australia as soon as possible, CCER wishes to make a number of submissions in relation to the proposed paid parental leave model put forward by the Productivity Commission. CCER outlines these submissions below.

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<sup>1</sup> Statement of the Apostolic Nuncio, H.E. Archbishop Celestino Migliore, to the U.N. Economic and Social Council 45th Session of the Commission for Social Development, New York, February 2007.

### 3. Draft Recommendation 2.1 – Minimum Weekly Wage

- 3.1 The Productivity Commission is advocating eighteen weeks paid maternity leave with a further two weeks paid paternity leave to be paid at the minimum weekly wage. The current minimum weekly wage is \$543.78. Therefore, the proposed scheme advocates a total payment of approximately \$10,875.00.
- 3.2 In its earlier submission to the Productivity Commission, CCER advocated that parental leave payments should be paid at the rate of ordinary time earnings or average weekly earnings whichever is the lesser, **not** at the minimum weekly wage. CCER reiterates this position.
- 3.3 CCER considers that payment at the current minimum weekly wage of \$543.78 falls short of what is reasonable for families to live on in order meet basic living expenses during the period of paid parental leave.
- 3.4 CCER notes that average weekly earnings in May 2008 were reported to be \$890.90. Therefore, increasing the payment rate from \$543.78 to \$890.90 would translate to a figure of approximately \$16,036.20 which represents a payment close to 150% of the current minimum weekly wage.
- 3.5 CCER submits paying parental leave payments at the rate of ordinary time earnings or average weekly earnings, is both economically defensible and socially desirable. CCER considers that payment at either of these rates would operate to the benefit of families who are met with increased demands on the family budget following the birth of a child.
- 3.6 Furthermore, CCER submits that fiscal stimulus directed towards the parents of new born children would have the effect of encouraging women, in particular, to take longer periods of paid maternity leave and promote mother and child bonding.

- 3.7 In addition, CCER submits that payment at the rate of ordinary time earnings or average weekly earnings for a period of paid parental leave would assist low income earners and reduce the impact of the loss of income from women on higher incomes.
- 3.8 Finally, CCER submits that cushioning the loss of income and setting paid parental leave payments at average weekly income rates represents a real investment in working families.

#### **4 Draft Recommendation 2.1 – Superannuation Entitlements**

- 4.1 In its Draft Recommendation 2.1, the Productivity Commission recommends that employers should fund superannuation contributions which would be capped at 9% during the paid parental leave period. However, CCER submits that, even though under the Commission’s proposed scheme superannuation contributions would be capped at 9% and would be a deductible business expense, requiring employers to pay this amount would still represent a significant cost to employers. This is particularly so when such contributions are examined in conjunction with other costs incurred by employers associated with paid parental leave including hiring and training replacement staff and leave administration.
- 4.2 Therefore, CCER submits that requiring employers to fund superannuation contributions during the paid parental leave period may have an unintended negative impact on the employment of women, particularly those of child bearing age, as employers may view employing such women as an expensive option and therefore make alternative choices.
- 4.3 CCER recognises the benefits of superannuation and the impact that extensive breaks in superannuation for child rearing purposes can have on women’s ability to accrue superannuation and effectively plan for retirement. Therefore, in order to prevent discrimination against women of child bearing age in the workplace, and to facilitate the continuity of women’s superannuation contributions, CCER submits that the superannuation component of the Productivity Commission’s proposed paid parental leave scheme should be **Government funded**.

## 5 Draft Recommendation 2.5 - Commencement Date

- 5.1 In its Draft Recommendation 2.5 - the Productivity Commission recommends that parents should only be able to initiate paid parental leave after the birth of the baby. CCER submits that this is problematic for two reasons:

### ***1. The Health of Pregnant Women and their Babies***

- 5.2 CCER submits that denying women access to paid leave until after the birth of their baby may leave women, particularly those who may not be able to afford to stop working, in a position where they have no option but to keep working until as close as possible to their due date. CCER submits that this could pose a significant risk to both pregnant women's health and that of their babies.
- 5.3 CCER notes that the Productivity Commission argues that granting women access to paid parental leave in the prenatal period is unnecessary, as women are able to use sick leave where there is a medical need and have the right to be transferred to a safe job or be paid 'no safe job' leave. CCER submits that this argument is fundamentally flawed.
- 5.4 CCER considers that a number of women may not have access to paid sick leave because of either their employment status, or the fact that they may have already used up all such leave. Furthermore, CCER submits that pregnancy should not be viewed as an 'illness' and therefore the utilisation of sick leave for financial reasons in the prenatal period should not be encouraged. Finally, CCER submits that a woman could be performing a safe job but still be sick in the final weeks before the baby is born. In such a case, transfer to a 'safe job' or the payment of 'no safe job' leave would not be available.

## **2. Occupational Health and Safety (OH&S) Risks**

- 5.5 In addition to concerns surrounding the health of pregnant mothers and their babies, encouraging women to work until their due date, by not allowing them access to paid parental leave until after their baby is born, also raises significant occupational health and safety concerns from an employer's perspective. Some of these include an increased likelihood of accidents in the workplace due to excessive tiredness or sickness in the weeks and days preceding the birth of the child, as well as the ever present risk that the baby may come early while the employee is at work. In this respect it is important to note that section 16 of the *Occupational Health and Safety Act* (Cth) 1991 (the "OH&S Act") imposes an obligation on all employers to ensure the health, safety and welfare at work of all employees. This provision is mirrored in State OH&S legislation. It is also noteworthy that offences under the Federal and State OH&S Acts incur substantial liability.
- 5.6 While CCER notes that pursuant to section 27(2) of the *Sex Discrimination Act* (Cth) 1984 it is open to employers to request a medical certificate at any time during a woman's pregnancy, CCER considers that this may potentially place employers in the difficult position of having to ask an employee who is unfit for duty, to not present for work, knowing that she may not have access to any form of paid leave and that this will cause financial hardship for her and her family.

### ***Recommendation***

- 5.7 In order to protect the health of pregnant women and their babies, to encourage good OH&S practices within workplaces and to avoid unnecessary financial hardship for pregnant workers and their families, CCER submits that access to a Government funded paid parental leave scheme should be available to women up to 6 weeks prior to their due date. This would enable women to access paid leave prior to the birth of their child, should their health necessitate this or they chose to do so for other reasons. Such a provision would also support the Australian Government's National Employment Standards which stipulate that women are entitled to unpaid parental leave up to six weeks prior to the expected birth date.

## **6 Draft Recommendation 2.3 – Reimbursement by Government**

- 6.1 In its Draft Recommendation 2.3, the Productivity Commission states that employers should make payments to employees under the statutory parental leave scheme, with the employer to be reimbursed subsequently by the Australian Government.
- 6.2 CCER supports the Productivity Commission's proposal that the employer should act as the 'paymaster' for the government, as this would signal to employees that paid parental leave is a normal work-related entitlement and as such cannot be viewed as a welfare payment. CCER also considers that having the employer act as 'paymaster' would serve to encourage employee loyalty and thus potentially improve workforce attachment.
- 6.3 However, CCER submits that if employers are to act as 'paymaster' they should be reimbursed speedily so that undue financial hardship is avoided. With respect to larger or wealthier employers, CCER considers that reimbursement through the PAYG system on a monthly basis would be appropriate, as recommended by the Productivity Commission. However, with respect to small employers or less wealthy employers, such as not-for-profit organisations or organisations reliant on Government funding, CCER strongly advocates that payments be made directly to the employee by the Australian Government. This would ensure that such employers would avoid a further financial cost associated with paid parental leave.

## **7 Draft Recommendation 2.5 – Paid Paternity Leave**

- 7.1 CCER supports the Productivity Commission's proposal of a two week paid paternity leave period for a number of reasons. In particular, CCER considers that it would:
- (a) encourage fathers to take a short period of leave from work following the birth of their baby, especially those whose financial circumstances would otherwise preclude them taking unpaid leave;
  - (b) affirm the important role that fathers play in the life of their family, and the community more generally;

- (c) encourage employers to better accommodate the family responsibilities of their employees and reinforces that it is legitimate and normal for men to access leave from work to care for their children;
- (d) enable fathers to become more actively involved in family life, in particular, by enjoying time with their baby and providing support to their partner in the weeks following the birth of their baby; and
- (e) promote more active involvement by fathers in the early years of their childrens' lives. The evidence suggests this has emotional benefits for fathers, positively affects children's emotional and educational achievements and is beneficial for the mother.

## **8 Existing Private Paid Parental Leave Schemes**

- 8.1 CCER notes that the Productivity Commission's draft recommendations do not take into account existing private paid parental leave schemes. A plethora of private paid parental leave schemes currently operate within the Australian economy. Although it would be open to employers to decide whether to retain existing private paid parental leave schemes if the Australian Government introduces a Government paid parental leave scheme, CCER considers that it would be desirable that employers consider retaining existing private schemes and have their current schemes operate in tandem with any Government-funded scheme. This could include the employer's discretion to use the Government-funded scheme to extend any pre-existing scheme which would be an added benefit to an employee at no further cost to the employer.
- 8.2 Attraction, recruitment and retention are crucial issues facing Australian employers. Becoming and remaining an 'employer of choice' is a constant theme in human resource management literature. Retaining existing private paid parental leave schemes is one mechanism to distinguish one employer from another.



- 8.3 The World Health Organisation (WHO) recommends breastfeeding for a minimum of six months. The combination of a Government-funded scheme of 18 weeks paid maternity leave, operating with current private schemes will – in a number of cases – mean that mothers will be able to meet, and in some cases, exceed the WHO 26 weeks paid parental leave benchmark.

CCER is willing to elaborate on any of these submissions further if necessary, and wishes to reiterate that it supports the implementation of a Government sponsored paid parental leave scheme in Australia as soon as possible.