

**Submission by the National Tertiary Education Union
17 November 2008**

**Response to the Productivity Committee Draft Inquiry Report
Paid Parental Leave: Support for parents with Newborn Children**

About the National Tertiary Education Union

The National Tertiary Education Union (NTEU) represents more than 26,000 staff employed in the tertiary education sector in Australia. While academic and general staff in the university sector comprise the vast majority of NTEU's membership, the Union also represents staff of student organisations, English Language Intensive Courses for Overseas Students (ELICOS) and staff working in university companies. In addition, the Union represents an increasing number of staff working in private education providers, TAFE and adult education.

Women comprise 54% of NTEU membership and are well represented in all the Union's representative elected bodies. Women members also participate in the Union's affairs through the Women's Action Committee, which is comprised of women representatives from each State and Territory and an Indigenous representative. It represents the specific interests of women working in Australian tertiary education institutions.

NTEU Response to the Productivity Commission's Draft Inquiry Report on Paid Parental Leave

NTEU welcomes the opportunity to make a submission in response to the Draft Report on Paid Parental Leave, released by the Productivity Commission as a result of its Inquiry into Paid Maternity, Paternity and Parental Leave.

NTEU is in a unique position to contribute to this Inquiry as our membership is largely employed in a sector which already provides paid parental leave. As noted in our submission to the Commission's Inquiry in June, 26 weeks paid parental leave is a minimum standard across the university sector, with eight institutions providing for up to 36 weeks paid leave to staff, after a qualifying period of service. These conditions resulted from collective bargaining and are mandated in university-specific Collective Agreements.

These entitlements have been won as a result of NTEU's long running campaign to significantly improve maternity and parental leave for staff working in the sector, and are based on the principle that access to paid maternity and parental leave should be a fundamental industrial right for all workers in Australia. Paid parental leave is critical for gender equity, social justice, and for improving women's participation in the workforce, noting that in Australia women's participation is

relatively low by international standards¹. Furthermore paid parental leave is central for maternal and child health, as noted by the Commission in the Draft Report. The argument for this premise is also supported by the fact that Australia's international human rights obligations, together with relevant international labour standards, include provisions which support the need for paid leave for parents, including paid maternity leave, supporting parent leave, and paid parental leave.²

However, whilst NTEU has made significant headway in terms of employer funded maternity and parental leave for workers in the higher education sector, we recognise that this is certainly not the case for the majority of Australian women in paid employment. Thus, the Union's submission to this Inquiry is twofold; while we are responding to the Inquiry's Draft Report in terms of the effects of its recommendations on staff in the higher education sector, we are also mindful of the fact that the proposed scheme would provide access to paid parental leave for a significant number of workers, mostly women, who are currently denied this basic industrial right. As such, we believe that it is vital that any proposed plan for universal parental leave must be flexible enough to accommodate both workers who currently have access to employer paid parental leave, as well as those who do not. In particular, it is important (for all workers) that any proposed scheme does not have the effect of undermining any current entitlement to paid parental leave.

NTEU believes that, in general, the principles behind the recommendations made within the Draft Report should be commended. We strongly agree with the premise that paid parental leave is vital if we are to increase the lifetime participation of women in the workforce and improve work-life balance for families. In particular, whilst we acknowledge the importance of providing adequate support for non-employed parents (via social welfare and taxation arrangements) we strongly

¹ At 69.3% in 2005 (a rise of 2.5% from 2001) Australia's female participation rate is not high by international standards. A 2004 OECD study examining participation rates of women aged 25-54 found that Australia ranked 19 out of the 30 member nations (OECD 2004).

² The Australian Government has agreed to be bound by a number of international instruments which are relevant to this inquiry. These international instruments include:

- *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*;
- *Convention (No 156) Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities (ILO Convention 156)*;
- *Convention (No 111) Concerning Discrimination in respect of Employment and Occupation (ILO Convention 111)*;
- *Convention (No 159) Concerning Vocational Rehabilitation and Employment of Disabled Persons (ILO Convention 159)*;
- *International Covenant on Civil and Political Rights (ICCPR)*;
- *International Covenant on Economic, Social and Cultural Rights (ICESCR)*; and
- *Convention on Rights of the Child (CRC)*.

Australia has also signed but not yet ratified the Convention on the Rights of Persons with Disabilities. In addition to Australia's international human rights obligations set out above, a number of international labour standards are relevant to the need for a paid leave scheme for parents, as follows:

- *Maternity Protection Convention 2000 (No 183) (ILO Convention 183)*; and
- *Maternity Protection Recommendation (ILO Recommendation 191)*.

Australia is a member of the International Labour Organisation (ILO) and is an elected member of the ILO Governing Body. Australian Government representatives voted in favour of adoption of both instruments, but Australia has yet to ratify ILO Convention 183. ILO Recommendation 191 is a non-binding guideline for ILO member states and cannot be ratified.

support the premise that any taxpayer funded paid parental leave scheme should be formulated as an industrial leave entitlement, and as such only accessible to those in paid employment.

The Union concurs with the Commission's statement that the six months following childbirth is vital to support the health of both the mother/primary carer and the child. The Commission's recommendations for the strengthening of policies to assist new parents, such as improved support for breastfeeding, are also welcome. NTEU's own Collective Agreements support this approach, via our minimum of 26 weeks (and in some institutions up to 36 weeks) paid parental leave.

NTEU welcomes the Productivity Commission's attempt to broaden the definition of family, including same sex couples, single parents and adopting parents as potential beneficiaries to the proposed scheme. The Report's recommendation for paid paternity leave (of two weeks) is a positive step in recognising the role of supporting partners, and enhancing work-life balance. The Union's own Collective Agreements have, for some time, specified that parental leave may be accessed by same sex and adopting parents, and allow for paid paternity/supporting partner leave.

The Union also notes that the proposed scheme is intended to cover full time, part-time and casual employees, as well as self-employed and contract workers. Whilst the Union's Collective Agreements cover all staff working in Australian universities, there is a small but significant number of staff (mostly casuals, who in some cases work at multiple institutions) who, by virtue of their casual status or level of continuous service are not eligible for fully paid parental leave entitlements that other staff may access. As such, a national statutory scheme that would allow many of these workers to access such a fundamental industrial entitlement is extremely important.

ISSUES AND RECOMMENDATIONS SPECIFIC TO NTEU

NTEU has some concerns with a number of the recommendations as they are currently stated, and in addressing our concerns we note we are speaking here only in relation to paid parental leave as it currently applies to staff in universities. If the Productivity Commission's proposals were to be implemented unchanged, there are a number of elements that would create some unique challenges for current staff conditions in the university sector, due to the fact that there are existing provisions for paid parental leave. NTEU is very keen to ensure that university staff are not disadvantaged as a result of already having an entitlement to paid parental leave. As such, we wish to draw the Commission's attention to the following areas of its Draft Report that give us cause for concern, and make some suggestions as to how these particular concerns could be accommodated.

Summary of Concerns

Draft recommendation 2.1

- *Paid leave capped at the adult minimum wage for each week of leave for those covered by adult minimum wages;*
- *Superannuation contributions would be limited to the statutory 9% rate should the term “capped” (or similar descriptor) be used as wording in this clause.*

Paid leave capped at the adult minimum wage

NTEU's experience with the operation of paid parental leave in the University sector over the long period of operation of this leave has shown that full income replacement during the period of leave has produced the desired outcomes of extremely high return to work rates, and thus improved labour force attachment for women. This has also been acknowledged by universities. In 2003, it was reported in the Group of Eight Universities publication, *GO8 Benchmarking Exercise – Maternity leave data & Family-friendly policies* that:

The overall trend appears to indicate that a high percentage (majority of respondents report rates of over 80%) of women do return to work after taking maternity leave. It is also significant to note that this figure has increased in the last reporting period i.e. 2001 – 2002 and may reflect an enhanced work/family balance culture. A similarly consistent pattern emerged with respect to the number of women choosing not to return to work after maternity leave. This figure was generally in the range of 9% – 15% and appeared to be trending downwards for those universities that provided longitudinal data.

Source: <http://www.equity.uwa.edu.au/welcome/resources/archive?f=53792>

The report goes on to note that:

It is important to recognise that, notwithstanding the fact that the attrition rate post-maternity leave is low and trending downwards, the figure presents a significant cost to the organisation in terms of loss of corporate knowledge and people ‘investment’.

Source: <http://www.equity.uwa.edu.au/welcome/resources/archive?f=53792>

The best outcome for the child and for the family is that income during the period of parental leave is provided at full wage replacement. It remains that for many families, paid leave at the minimum wage is not adequate to meet all necessary financial commitments, such as mortgage payments and daily expenses. The Union notes that this situation is likely to worsen in a slowed economy, with the result that many women may either delay having children; or conversely may opt out of the workforce altogether and instead rely upon the social welfare system and tax relief for support. Therefore, if the aim of the scheme is to allow mothers and fathers the opportunity to stay at home and care for a new child, whilst also ensuring that the connection to the paid workforce remains, then paid parental leave, like other leave entitlements, should be provided at full replacement wages.

However, should the recipient of the scheme be earning under the Federal minimum wage, the Union agrees that, in the interests of equity, the Federal minimum wage should apply.

Recommendation: That for the period of parental leave, income is at the full replacement wage of the employee concerned, unless the employee's ordinary income falls below the Federal minimum wage, in which case payment equal to the Federal minimum wage will apply.

Superannuation

The Commission's proposal at draft recommendation 2.1 that 'super contributions would be limited to the statutory 9 per cent rate' causes a range of concerns for university staff. An employer contribution of 17% is standard across the university sector for staff who are employed on an ongoing or fixed term basis, with some variations on qualifying periods at individual universities (eg. length of appointment and fraction of appointment). The vast majority of staff in the university sector are members of the industry superannuation fund *UniSuper*. The 17% superannuation entitlement is paid to staff when they are on paid parental leave, in the same way as it is paid on annual leave, sick leave and long service leave.

The large numbers of casual staff employed across the university sector typically receive 9% employer-contributed superannuation (although a number who work only very few hours will only receive the award minimum of 3%).

For those staff who receive 17% superannuation, the proposed reduction of superannuation benefit for an 18 week period would not only be an administrative headache for universities, it would also represent a diminution of conditions for university staff and undermine the Commission's stated intention to support women's workforce attachment.

Recommendation: That the employer be required to maintain the existing superannuation contribution rate for that employee for any period of paid parental leave. The only exception to be that, in circumstances where the current superannuation contribution for that employee falls below 9% (as in the case of some casual staff), the employer will contribute 9% superannuation for the term of the parental leave payments.

Draft recommendation 2.7

- *That the period of leave must commence at birth, or after a period of other continuous leave that commences at the birth of the child;*
- *Must be commenced within 6 months of birth;*
- *Leave must be taken in one block.*

The Commission's proposals at draft recommendation 2.7 that the proposed 18 week period of tax payer funded parental leave be taken 'after a period of other continuous leave that commences at the birth of the child', that the leave 'be commenced within six months of birth' and 'be taken in one block' and that the leave only be taken on a full-time basis present a range of difficulties for staff in universities.

Under this proposal, a university staff member who took their existing 26 week paid entitlement on a half-pay basis would be denied access to any government funded benefit, as would a staff member with a 36 week paid entitlement. Whilst NTEU acknowledges that the Commission's attention is primarily turned to parents who have no access to any paid parental leave, we would argue that where there is already an employer funded entitlement, there should be the capacity for the staff member to use any government funded benefit to extend their leave beyond that currently provided by the Collective Agreement. Collective bargaining has provided universities as well as their staff sufficient flexibility to allow paid parental leave to be taken in a range of ways that suit both parties. Any government funded entitlement should also be able to accommodate this kind of flexibility. In particular, there should be capacity for both the government funded component and any locally negotiated component of paid parental leave to be taken at less than full-time, and at the same time.

Take a hypothetical example of a staff member at an Australian university on a weekly wage of \$900 after tax who is currently entitled to 26 weeks paid parental leave funded by the employer at her full salary, and is also entitled to 18 weeks paid parental leave at the minimum wage (currently \$543.78), to see how this might work in practise.

If that staff member chose to take the full statutory year's maternity leave, she would currently be able to access her employer-funded leave at half-pay (thereby making her employer-funded weekly payment \$450 over a 52-week rather than a 26-week period). **At the same time**, that employee should be able to access her government-funded payment at 1/3 time (thereby making her government-funded weekly payment \$188.23 over a 52-week rather than an 18-week period). This would bring her overall payment to about \$638 weekly, being approximately 70% of her current salary for the **full year**. This would be far preferable to the scenario suggested by recommendation 2.7 which would provide for full wages for six months, followed by a significant drop in wages to the minimum wage for 18 weeks, followed by no pay.

Further, employers should not be permitted to simply absorb government payments into their current provisions; instead these payments should be able to be used to improve the existing entitlement by agreement between the staff member and the employer, within the context of a range of options provided by the Collective Agreement. That is, the government funded

entitlement must provide for sufficient flexibility so as to not disadvantage those who already have an entitlement to paid parental leave. At a minimum, any national paid parental leave scheme should ensure that implementation of the scheme will be at no disadvantage to any employee. This could be achieved by a simple “no disadvantage” clause in the final scheme, with associated access to dispute resolution in the event of an employer seeking to absorb or otherwise not pass on the benefit of the scheme to employees.

Recommendation: That any government funded entitlement to paid parental leave must not be absorbed by the employer into existing provisions

Recommendation: That employees should be able to access any government-funded paid parental leave scheme at less than full pay, and simultaneously with other existing paid parental leave, save that the government-funded component may not have the effect of increasing an employee’s wages above their normal salary over the course of a year.

Recommendation: That any government funded entitlement to paid parental leave operate with no disadvantage to employees who already have access to employer funded paid parental leave.

Recommendation: That where employees have their wages and conditions determined by an award or Collective Agreement, that instrument be used to set the range of options available to employees for the use of any government funded parental leave entitlement, and those options be reached by negotiation between the industrial parties.

Recommendation: That access to and implementation of any government-funded paid parental leave scheme be disputable through a dispute settling procedure embedded in the statutory framework.

Draft recommendation 2.10

- *A “keeping in touch” provision allowing the employee to work up to 10 days while on paid parental leave.*

The Union notes that the Commission has recommended a “keeping in touch” provision to enable the primary caregiver to maintain connection with their work, colleagues and employer. NTEU supports provisions which provide flexibility for the employee and employer to negotiate arrangements which facilitate smooth return to work via agreed activities that can keep the employee in touch with the workplace. While supporting these arrangements, NTEU suggests that such ‘keeping in touch’ provisions should be voluntary, and that any days worked should extend the period of leave.

Recommendation: Any ‘keeping in touch’ provisions providing for work while on paid parental leave should provide that such work is voluntary, any days worked should extend the period of leave.

Request for further feedback on (s8.31);

- *Whether other leave entitlements, such as sick, recreation and long service leave, should accrue during the period of paid parental leave*

In order for a government funded paid parental leave scheme to fulfil its stated intentions of improving the lifetime workforce attachment of women and of improving gender equity and work/family balance, it is necessary that other leave entitlements accrue during parental leave. Not only does this reinforce the notion that paid parental leave is an industrial leave entitlement in the same sense as other leave entitlements (eg long service, sick leave) but it assists in providing that essential link of labour force attachment in returning to work. These leave entitlements come from a variety of instruments, including legislation, awards and agreements, and can vary from State to State (in the case of long service leave for example). The notion that entitlements accrue at the rate applicable to the employee who is on paid parental leave is not a complex one, and should not therefore be difficult nor costly to administer.

Recommendation: That other leave entitlements continue to accrue during the period of paid parental leave.

Conclusion

NTEU believes that the Draft Report of the Productivity Commission represents an important first step in the goal of achieving a universal paid parental leave scheme for Australia, and we commend the Commission for their work. The NTEU, and indeed the wider union movement wish to aim higher for the future. As the pace setter in this regard, through bargaining NTEU intends to push for a 36 week minimum period of paid parental leave, thereby setting a new standard for wider community aspiration, and a standard that would meet all the aims outlined by the Commission’s Report, in particular the aim of improving child and maternal health and welfare.