

Australian Education Union



Submission

to the

Productivity Commission's Paid Maternity, Paternity and Parental Leave Interim Report

November 2008

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1. Introduction

- 1.1 The AEU is pleased to respond to the Productivity Commission's interim report on paid maternity, paternity and parental leave. The AEU put a detailed submission the Productivity Commission's initial inquiry period. In that the AEU argued for Australian women to access 26 weeks, full wage replacement, paid maternity leave and that this could be made up of a combination of a Government payment and legislated employer 'top ups' which would then form part of the National Employment Standards. Our reasoning for 26 weeks was heavily reliant on the arguments made by the World Health Organisation around breastfeeding for a minimum of six months and the associated child and maternal health benefits.
- 1.2 In recognising the Productivity Commission has not implemented the AEU's preferred model in full, we are very supportive of many aspects of the Commission's proposals and this response will outline both areas we agree with the Commission on and those elements with which we believe improvements or changes should be made.
- 1.3 On the whole, the AEU supports the recommendations made by the ACTU, in their submission though we wish to emphasise particular areas of the Commission's proposals.

2. Overall

- 2.1 The AEU believes the Commission's agreement that paid parental leave IS an economic imperative, that it IS about women's participation in the labour market. It IS a fundamental step toward greater gender equity is a much awaited statement nationally. The model proposed has been designed in response to these key objectives and does so thoughtfully and indeed cautiously in some places.
- 2.2 Therefore it is imperative that any model of paid parental leave that eventuates from this thorough inquiry process is respected and immediately implemented by the Federal Government, through the May 2009 Budget to commence from 1 July 2009. This will minimise the period of time that many women in Australia will receive no parental support from the government. In a time of global economic uncertainty it is more important than ever to provide support for new mothers and their babies.
- 2.3 The AEU believes that, though unions have traditionally supported a strong welfare safety-net for working families, we believe that paid parental leave (like superannuation and occupational health and safety) needs to retain a strong industrial nexus. For this reason, the Commission should acknowledge that any scheme for paid parental leave is not a welfare payment, but an industrial entitlement. There is no objection to a scheme that provides an industrial entitlement to women in the workforce and a separate welfare payment to those not in the workforce.

3. No loss of current entitlements

- 3.1 The AEU wishes to also emphasise that any Federal paid parental scheme, particularly as the Commission has preferred a wholly Government funded model, must be understood and preserved as *additional* to current entitlements provided by employers.
- 3.2 This point is particularly important to the AEU as the entitlements to 14 weeks paid maternity leave across the country have been hard fought on behalf of our members and are a proud achievement. Employers who have supported the provision of paid leave for parenting purposes and to ensure parents retain their attachment, particularly to the teaching profession which is currently suffering shortages, should recognise the need to maintain these provisions and to be seen as an employer of choice for women.
- 3.3 The AEU supports the attainment of 26 weeks paid maternity leave, at full wage replacement. The 18 week minimum wage payment would only cover 22 weeks at wage replacement for teachers on average when combined with their original 14 week entitlement.
- 3.4 Specifically, at the minimum wage, 18 weeks of any Federal scheme amounts to \$9788.04; this equals an average of 8.3 weeks for teachers (on NSW Band 9). The AEU would therefore consider bargaining for a full additional four weeks leave, or for the employer to top up the Federal scheme's wages to achieve 26 weeks at full pay. However, we would prefer that the Commission recommend a staged increase of the Federal scheme over a five year period to eventually amount to the full 26 weeks regardless of some employees current entitlements.
- 3.5 The AEU therefore supports the ACTU's proposition that a 'no disadvantage' clause be part of implementing a new scheme to protect employees existing entitlements, including the right to take their own entitlement more flexibly, for example being able to take leave at half pay and/or the ability to take leave prior to the expected birth date. The reasoning around our preference for such flexibility is discussed later in this submission.

Recommendations

1. *Inclusion of a specific provision in the legislation which ensures that there will be **no disadvantage** to employees with respect to their existing parental leave entitlements as a result of the implementation of the new scheme.*
2. *Employee's existing rights to take paid parental leave at half pay and to commence paid parental leave prior to the expected birth date must be explicitly protected.*

4. Positives

- 4.1 While 26 weeks paid maternity leave for AEU members is not wholly enabled by the Commission's model, there are a number of aspects of the model we strongly support. We would like to stress our support for the following aspects of the proposal.
- 4.2 The most vulnerable employees often have the least protections and entitlements attached to their employment. Casual employment for example, carries few rights or entitlements yet holds much uncertainty in terms of ongoing income stability and predictability of hours. For many women with parental responsibilities, casual employment, because of its part-time nature, has been promoted as providing 'flexibility' and therefore as a solution to work/family balance. However around 40% of working mothers have no leave entitlements at all which makes caring whilst working harder.
- 4.3 Further, we know that the pressures of unpredictable working hours and income is a significant burden for working parents and instead of facilitating and accommodating their care responsibilities, casual employment often exacerbates these pressures.
- 4.4 It has been disappointing to unions for some time, that casual employees have for so long been left off the agenda with employers and government determining (or by outright rejecting test case proposals) casual employees should not have the same entitlements to measures such as paid carers' leave, the right to request part time work and paid or unpaid parental leave as other workers.
- 4.5 The Productivity Commission is to be commended therefore for recognising the reality of many women's employment patterns and employment modes and for attempting to accommodate them in a national scheme.
- 4.6 We support the Commission's inclusion of many casually employed parents in the proposed scheme (though we'd like to see the eligibility criteria broadened slightly to include more casually employed) and we also very much support the recognition that many employees are forced to combine work with multiple employers in order to earn a liveable income. Entitlement to paid parental leave is a great step forward for these highly vulnerable employees.
- 4.7 In contrast to the outdated perceptions of women's work and indeed family composition that has characterised public debate for some time in Australia, it is also a welcome and significant change that the Commission has proposed to extend paid parental leave to adoptive and same sex parents.
- 4.8 Similarly, we support the measures which recognise the additional financial needs of parents of multiple babies and which sensitively extend paid parental leave to parents who've experienced the tragedy of neo-natal death, still-birth or maternal death.

4.9 For all the above reasons, we congratulate the Commission.

5. Eligibility

- 5.1 It appears that the Commission has attempted to be quite broad in many areas of eligibility for the scheme and this is commended. In our original submission we argued for all employed women to access any paid leave scheme proposed, that is, no eligibility requirements at all. Noting that the Commission has proposed some eligibility tests, the AEU would still prefer some particular groups of employees to be brought into the scheme for limited additional cost and minimal actual change to criteria.
- 5.2 The particular recommendation in question is 2.4 which currently excludes individuals who work less than 10 hours a week or are seasonally attached to the labour market. This could act as a disincentive for women to maintain their connection with the workforce.
- 5.3 In the TAFE sector, where the AEU represents many casually employed teachers, it is common for employees to maintain an ongoing employment relationship which satisfies the 12 month requirement but less than an average of 10 hours per week.
- 5.4 The AEU supports recommendations in other union's submissions to reduce the average number of hours to one full day's (i.e. 7 hours) work per week as the minimum required to qualify for paid parental leave.
- 5.5 A significant but not overwhelming number of employees would also be able to access the scheme if the criteria were reduced from 12 months service to just 6 months. In particular the ACTU and SDA's submissions provide the figures for these employees.
- 5.7 Importantly, where the Commission has respected the reality of women's working patterns and specifically included those casually employed and those working for multiple employers, it would seem reasonable and consistent to amend the National Employment Standard (around unpaid parental leave and return to work) to allow for employees with six months employment with the same employer to be covered by the NES.

Recommendations

3. *The **eligibility criteria** of average number of hours worked in the year prior to birth should be 7 hours per week.*
4. *The workforce tenure criteria for paid maternity leave should be **six months** employment across any number of employers.*

5. *Amend the length of service criteria (including for casuals) of the NES unpaid leave and return to work entitlement to six months employment with the same employer.*

6. Instrument

- 6.1 Whilst acknowledging the National Employment Standards above, the AEU believes there is some question as to the instrument best used to implement the paid parental leave scheme.
- 6.2 There are several options for the form that the statutory scheme should take and which instrument is best to administer the entitlement.
- 6.3 The main options for the scheme are:
 - i) Stand alone legislation using an international convention
 - ii) In legislation and the NES (as employer top up)
 - iii) In NES alone as 18 week entitlement
 - iv) Other
- 6.4 As stated, the AEU is firmly of the belief that paid parental leave is an industrial measure and right, rather than a welfare payment. In this vein, there are a number of unknowns in the industrial area as the new national system is still being crafted by the Federal Government. Nevertheless, the AEU believes paid parental leave should be 'ultimately incorporated' into the NES but there is a need to be sure that industrial legislation will deliver the ability to argue for improvements to the NES and to allow for dispute processes, preferably through Fair Work Australia.
- 6.5 It is important to assess and evaluate all aspects of the scheme to ensure that parents are receiving the support they need and that the scheme is being appropriately administered by employers and the government.
- 6.6 There must be a review of the level of entitlements provided by the scheme included in the evaluation of the scheme's impact five years into its life, with a longer term objective of ensuring that working women have six months leave at full pay plus superannuation. The Productivity Commission in its report acknowledged the benefits of six months leave and this should be the ultimate focus of any paid parental leave scheme and subsequent reviews.
- 6.7 This increase to six months at full income replacement is to be done through industrial framework with entitlements flowing to all working women. This also should be included in any future reviews of the scheme.

Recommendations

6. *In addition to the evaluation mechanisms outlined by the Commission, the evaluation of the scheme two years into its life should not be limited to administrative aspects.*
7. *A staged increase of the proposed entitlement to 26 weeks at full income replacement levels over a 5 year period.*

7. Leave Flexibility

- 7.1 While we welcome the draft recommendation of 18 weeks any paid parental scheme should allow for 26 weeks to reflect the optimum of time a woman/parent needs off work to care for a new child. This is in the best interest of both the mother and the child. We recognise that 18 weeks paid leave however is a good start.
- 7.2 Understanding the Commission's rationale in Section 2.6 regarding the flexibility of leave timing versus simplicity of design for administration purposes, there are two aspects of flexibility the AEU would like to see adapted. We would like employees (particularly where they can already do so) to be able to take their leave prior to the birth of the child and to be able to take the leave at half pay.
- 7.3 Further, we understand that the Commission's objective was to preserve current entitlements and to streamline the administration of those employees combining the Federal scheme with current entitlements. However the requirement to begin the Federal scheme within six months seems too narrow a window for many employees who currently have quite flexible entitlements. These employees may lose entitlements or forgo preferred flexibility to meet the confined period of time.
- 7.4 The AEU believes entitlements should not have to be exhausted, nor should the Federal scheme be taken second. There may be a combination of leave options preferred by parents, to match their particular circumstances and it is the AEU's view that the order and length of time for taking leave should not be so prescriptive.

Recommendations

8. *The requirement to commence the government entitlement **within six months of the birth** should be amended to 12 months and the requirement to exhaust existing workplace entitlements, should be removed.*
9. *Parents should be able to access paid parental leave up to six weeks prior to the expected birth date of the child.*
10. *Provide the capacity for parents to opt to take their parental leave entitlement at half pay.*

8. Accrual of Other Entitlements

- 8.1 Central to the AEU's concerns with the proposed scheme is that the few employee groups with better than average entitlements should not be penalised or be disadvantaged by the introduction of a Federal scheme.
- 8.2 Further, though paid parental leave is not yet the norm in Australia, such workplace entitlements should never be seen as a 'special provision', 'favourable treatment' or a bonus for some employees but not others. This type of attitude has been evident in some elements of public debate and it leads to restrictions not otherwise placed on other types of industrial provisions. The anomalies for the accrual of leave whilst on paid parental leave, and the differential rates of superannuation paid are examples of this.
- 8.3 The AEU agrees that as with any other leave entitlement, employees should accrue annual, sick, long service leave entitlements, superannuation and incremental salary progression during the period of paid parental leave. This promotes greater gender pay equity by ensuring women are not further disadvantaged by taking periods of birth related leave.
- 8.4 The accrual of other entitlements during paid parental leave is not an onerous cost to employers given the short (18 weeks) period of time.
- 8.5 As argued by the ACTU 'the relevant legislative amendments are not onerous. Creation of a national long service leave scheme is currently the subject of COAG and would simply need to deem periods of paid parental leave as counting for service with respect to accrual of long service leave entitlements.' We therefore support the suggested recommendations around service and accrual of entitlements and retaining any existing flexibilities

Recommendations

- 11. *Both paid and unpaid parental leave should **count as service** for the purpose of meeting the work test for the paid parental leave entitlement.*
- 12. *Amend the relevant NES so that paid parental leave is counted as service for purpose of accrual of annual leave, sick leave, and incremental salary progression.*

9. Payment

- 9.1 It is still the view of the AEU that any paid parental leave should be paid at a replacement wage rate and suggest the Commission reconsider the viability of requiring employers to top up the Federal payment. This should be part of the NES.
- 9.2 Further, given all that is known about the gender wage gap and the impact time away from work for care has on women's retirement incomes, it seems critical that superannuation payments whilst on parental leave be paid at the usual rate of pay not a minimum.

- 9.3 Employers must be required to pay employees their normal superannuation entitlement, that is, on their average ordinary earnings and at the existing rate.
- 9.4 Women tend to have much less superannuation than men because of time outside the workforce mostly for caring responsibilities. Having full superannuation contributions under the paid parental leave scheme would begin to address this inequity. Paying women their full rate of pay whilst away from work for family care would also enable a more realistic assessment of domestic care arrangements between partners and not place women automatically in the category of 'lesser earning capacity' by virtue of only earning a minimum wage payment whilst on parental leave. Ensuring that women have the ability to build up their income is key to ensuring that women maintain their connection with the workforce and equity with their male colleagues.
- 9.5 Increasing the 18 week draft recommendation to full income replacement and existing superannuation contribution levels reduces the administrative burden on employers as major changes will not need to be made to their payroll systems. More importantly, these two measures would have a significant impact on gender pay equity.

Recommendations

- 13. **Superannuation** contributions equal to the current Superannuation Guarantee amount should be provided to all employees entitled to the paid parental leave scheme.
- 14. The Superannuation Guarantee (Administration) Act 1992 (SGAA) must be amended to remove the current minimum earnings threshold.
- 15. Superannuation contributions on paid parental leave should be paid at the rate the employee was entitled to prior to commencing paid parental leave.
- 16. The Superannuation Guarantee which is currently 9% is a minimum superannuation contribution payable for periods of paid parental leave.
- 17. All paid parental leave should be included in the definition of ordinary time earnings and salary and wages for the purposes of the Superannuation Guarantee Act.

10. Concluding statements

- 10.1 To conclude, this response focuses on the key areas which affect AEU members the most, however we wish to state our broad support for other unions' submissions which go into greater length regarding the Commission's proposals around *Keeping in Touch* provisions, transferability of leave, and breastfeeding support and facilities.
- 10.2 Noting areas of improvement in the scheme we'd prefer to see, the Commission has devised a contemporary, workable and progressive paid parental leave scheme desperately needed in Australia.
- 10.3 Australian's have waited too long for this important measure and rather than being a pressure on the economy, it will be a boost. It is not unreasonable to demand that upon conclusion of the Commission's inquiry, that the Government implement the proposed scheme, in full, immediately in the 2009 Federal Budget. The AEU cannot stress the urgency of this enough.

RECOMMENDATIONS

1. *Inclusion of a specific provision in the legislation which ensures that there will be **no disadvantage** to employees with respect to their existing parental leave entitlements as a result of the implementation of the new scheme.*
2. *Employee's existing rights to take paid parental leave at half pay and to commence paid parental leave prior to the expected birth date must be explicitly protected.*
3. *The **eligibility criteria** of average number of hours worked in the year prior to birth should be 7 hours per week.*
4. *The workforce tenure criteria for paid maternity leave should be **six months** employment across any number of employers.*
5. *Amend the length of service criteria (including for casuals) of the NES unpaid leave and return to work entitlement to six months employment with the same employer.*
6. *In addition to the evaluation mechanisms outlined by the Commission, the evaluation of the scheme two years into its life should not be limited to administrative aspects.*
7. *A staged increase of the proposed entitlement to 26 weeks at full income replacement levels over a 5 year period.*
8. *The requirement to commence the government entitlement **within six months of the birth** should be amended to 12 months and the requirements to exhaust existing workplace entitlements, should be removed.*
9. *Parents should be able to access paid parental leave up to six weeks prior to the expected birth date of the child.*
10. *Provide the capacity for parents to opt to take their parental leave entitlement at half pay.*
11. *Both paid and unpaid parental leave should **count as service** for the purpose of meeting the work test for the paid parental leave entitlement.*

12. *Amend the relevant NES so that paid parental leave is counted as service for purpose of accrual of annual leave, sick leave, and incremental salary progression.*
13. ***Superannuation** contributions equal to the current Superannuation Guarantee amount should be provided to all employees entitled to the paid parental leave scheme.*
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