

Draft Inquiry Report

Paid Parental Leave: Support for Parents with Newborn Children

VACC Response to the Productivity Commission

November 2008



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Introduction

1. The Victorian Automobile Chamber of Commerce (VACC) welcomes the opportunity to comment on the Productivity Commission's Draft Inquiry Report *Paid Parental Leave: Support for Parents with Newborn Children* (the Report). The VACC is also a member of the Australian Chamber of Commerce and Industry (ACCI) and supports the submission and contentions raised by ACCI.

About VACC

2. VACC was established in 1918. It is an employer organisation registered under the *Workplace Relations Act 1996* (Cth). VACC represents the interests of over 5200 businesses in regional and metropolitan Victoria and Tasmania. Members employ over 50,000 Victorians in the repair, services and retail sectors of the automotive industry. Its membership includes (but is not limited to) new and used car dealers, service station operators, automobile repairers, farm machinery dealers, automotive electricians, crash repairers, engine re-conditioners, tyre dealers, LPG installers and tow truck operators.
3. The majority of VACC members are small businesses. Data from a national survey of members of the Motor Trades Organisations in December 2004 shows that 54.2% of retail motor industry businesses have fewer than five employees. Of the remainder, 26.4% have between five and nine employees and 19.6% employ ten or more staff.
4. In the retail motor industry, the level of participation according to gender is 1 female to every 5 males. Many of the women in the industry are those running small businesses with their husbands, with the women carrying out the payroll and/or administrative duties. Other women in the industry are usually found in retail sales or managerial roles.
5. The retail motor industry suffers from severe skill shortages, tight profit margins and the impact of rapid technological change. In these circumstances and in the current economic climate, further financial and administrative burdens could mean closure for small businesses in the industry.

Draft Recommendations for Paid Parental Leave

6. According to the Terms of Reference of this inquiry into paid parental leave, the government is seeking ways "to ensure strong and sustainable economic growth, adjust to the imperatives of an ageing population, promote the early development of children and support families in balancing work and family responsibilities".
7. The proposal for a paid parental leave scheme is therefore for the most part aimed at addressing a number of issues affecting society as a whole rather than in an employment context. Accordingly, VACC would support a paid parental leave scheme that is funded by the federal government provided

there were no additional costs for employers.

8. The Productivity Commission has made 12 draft recommendations in the Report which are set out in the following paragraphs with comments as to our views on each.

Draft Recommendation 2.1

9. Draft Recommendation 2.1 provides that:

The Australian Government should introduce a statutory paid parental leave scheme that provides:

- *paid leave capped at the adult minimum wage for each week of leave for those covered by adult minimum wages:*
 - *but with lower rates — to be set administratively — for juniors and others with hourly wages below the adult minimum*
- *payments to be taxed and included in income for assessment of any welfare benefits*
- *leave benefits for parents having twins or higher multiple births to be equal to those for parents bearing one child, supplemented by a payment equivalent to the new maternity allowance for each additional child (draft recommendation 2.6*
- *superannuation entitlements calculated on the going wage of the employee or at the relevant capped amount, whichever is the smaller, but*
 - *this would only be available for employees who (a) have met the Commission's eligibility criteria for paid parental leave under draft recommendation 2.4; (b) were entitled to employer superannuation contributions in their jobs before taking paid parental leave; and (c) were entitled to unpaid parental leave under the National Employment Standards*
 - *super contributions would be limited to the statutory 9 per cent rate*
 - *subject to its practical feasibility, including consideration of its compliance and administrative costs.*

10. VACC does not agree that superannuation should be paid on payments under the proposed scheme. Whilst we note the argument that the ability for women to save for their retirement is affected by their absences from the workplace to have children there is also strength in the responding argument that there have been changes to laws resulting in rights for women to access their husband's superannuation including upon death or divorce (see page 8.28 of the Report).

11. There is currently no requirement to pay superannuation while an employee is parental leave or any other unpaid leave. Under the proposed scheme, the

employee would not be on paid leave but would be using unpaid leave under the National Employment Standards (NES). It would be out of step with current industrial practice to pay superannuation for unpaid leave.

12. The question has been raised whether the definition of 'ordinary time earnings' should be amended to include any payments made when an employee is on parental leave (see page 8.27 of the Report). As has been noted, however, under the proposed scheme, an employee taking parental leave would be on unpaid leave under the NES. It would not be appropriate for the definition of 'ordinary time earnings' to extend to payments from a taxpayer funded scheme.
13. VACC is also very concerned about the additional costs that would have to be borne by members if superannuation is required to be paid on payments under the scheme. Feedback from members confirms that this aspect of the proposal is of great concern. As noted above, this industry is affected by very tight profit margins and is struggling in the current economic climate. Even with proposals that seek to offset compliance costs, the burden would be for many too great.

Draft Recommendation 2.2

14. Draft recommendation 2.2 provides that:

The Australian Government should fund the cash component of the paid parental leave scheme, partially offsetting these costs by:

- *removing eligibility for family tax benefit B while parents are on paid parental leave*
- *replacing the baby bonus with another, differently focused payment as set out in draft recommendation 2.6.*

Employers should fund superannuation contributions during the paid parental and paternity leave period, but only under the conditions specified in draft recommendation 2.1.

15. VACC refers to the comments above in relation to employer funding of superannuation contributions.

Draft Recommendation 2.3

16. Draft recommendation 2.3 provides that:

The employer should initially make payments to employees under the statutory parental leave scheme, with subsequent reimbursement by the Australian Government. However, an employer would only act as a paymaster for government where:

- *an employee was also eligible for unpaid parental leave under the National Employment Standards and*
- *a workable method for speedy reimbursement of that employer was feasible*

– the Commission’s preferred approach is for employers that make at least monthly ‘pay as you go’ withholding payments to the Australian Taxation Office to receive reimbursement through those payments, with all other employers exempt from the obligation to act as a paymaster.

The Australian Government should pay other eligible parents directly, preferably through a non-welfare agency.

17. VACC believes that an Australian Government agency should be responsible for making the payment **directly** to employees on parental leave. This is not a cost that should be borne by employers given the objective of the scheme as set out in the Terms of Reference. Whilst employers would be reimbursed for the payments and “a workable method for speedy reimbursement” is included in the draft recommendation, there would still be a lag time during which employers will have to bear the cost of paying one employee on parental leave and that person’s ‘fill in’.
18. Small businesses like many of our members do not have the cash flow to be able to cover that sort of expenditure, particularly in these difficult economic times. Members have already reported a downturn in business which has led to redundancies in many businesses. The impact of the proposed delivery method would be far too great for many of our members.
19. Whilst some larger members report that it would be possible to carry the cost for a short time before being reimbursed, it would be more efficient to have all payments administered by a government agency.
20. It is noted in the Report that one of the reasons for proposing that the employer fund the payments is that it can impact on the way that the recipients and the public view the payments (see page 8.24). The argument is that if payments were made through the Family Assistance Office, which currently provides payments for most child-related income support payments, it would give the payments the stigma of being a welfare payment. In New Zealand, parental leave payments are made through the Inland Revenue Service which has supposedly prevented any potential stigma.
21. VACC does not consider these factors should be determinative in choosing the delivery model. The Family Assistance Office is responsible for providing many different types of payments for families including childcare benefits and rebates which are accessed by people with a wide range of incomes. It is also not necessarily the case that the Family Assistance Office is viewed as a welfare agency by members of the public. If there is a real concern about the potential for stigma to be attached to having payments made through the Family Assistance Office then payments could be made through a different government agency such as the Australian Taxation Office.

22. The report also states that payments coming employers may increase workplace attachment and loyalty (see page 8.24). Encouraging greater employee loyalty and improving workplace attachment are very important however they can also be improved by other means. Ways of doing this include having a nominated contact person in the workplace who contacts the person on leave for regular “catch ups” and/or inviting the person on leave to work functions that occur during that time. It is also noted that draft recommendation 2.10 also contains suggestions for keeping in touch with employees while on leave.

Draft Recommendation 2.4

23. Draft recommendation 2.4 provides that:

The statutory paid parental leave scheme should be available for an employed parent (including the self-employed and contractors):

- *who has worked an average of at least ten hours a week on a continuous basis for 12 months or more prior to the expected birth date of the baby, and*
- *who is also the primary carer of their baby.*

24. VACC notes that it will be difficult to determine that contractors and self-employed people have met the eligibility requirements. The requirements under the scheme in New Zealand which require a statutory declaration by the person seeking payments and an accountant regarding the hours of work would appear to be an appropriate starting point. The proposal that there also be a test that the business was a genuine ongoing concern may also be worthwhile.

25. The most appropriate definition to use for determining whether a person is a contractor would be the common law ‘multi-factor test’ which looks at a range of issues. There is a useful table which summarises the common law test on the Australian Building and Construction Commission web site at <http://www.abcc.gov.au/abcc/FactSheets/AmlanIndependentContractor.htm>. A table of this kind might be helpful as a guide for determining whether a person is an applicant.

26. VACC also notes that payments to self employed persons and contractors would have to be administered by a government agency in any event. An agency such as the Australian Taxation Office would also already have material that would assist it to determine whether or not a person is a contractor.

27. VACC submits that it would be more efficient to have *all* payments (that is, for employees, self employed and contractors) directly administered through the one agency such as the Australian Taxation Office or the Family Assistance Office.

Draft Recommendation 2.5

28. Draft recommendation 2.5 provides:

The paid parental leave scheme should give:

- *eligible mothers the initial parental leave entitlement, but allow them to transfer the entitlement to eligible partners who take on the role of the primary carer*
- *fathers (and other eligible partners) a two week period of exclusive paternity leave on a 'use it or lose it' basis, even if the mother was not eligible for statutory paid parental leave*
- *fathers access to paid parental leave if the mother is not eligible, but only where (a) the fathers meet the employment and primary carer eligibility requirements and (b) there are special circumstances, which would be determined administratively.*

29. VACC does not have any comments to make about draft recommendation 2.5.

Draft Recommendation 2.6

30. Draft recommendation 2.6 provides:

The existing baby bonus should be replaced with an equivalently-valued, non-income tested maternity allowance, payable only to those parents not using statutory paid parental leave (with the exception of multiple births as set out in draft recommendation 2.1).

However, where a parent takes a shortened period of paid parental leave whose value is less than the maternity allowance, the parent would be entitled to a payment equal to the difference.

31. VACC does not have any comments to make about draft recommendation 2.6

Draft Recommendation 2.7

32. Draft recommendation 2.7 provides:

The statutory paid parental leave scheme should provide a total of 18 weeks of paid leave for parents of a newborn child who meet the employment test, including:

- *a requirement that (a) the period of leave must commence at birth, or after a period of other continuous leave that commences at the birth of the child; (b) must be commenced within six months of birth; (c) leave must be taken in one block; (d) only one transfer of paid parental leave between parents would be permitted and (e) there be no concurrent use of paid parental leave by parents*

- *mothers of a stillborn baby, where the baby meets the requirement for birth registration*
- *parents of non-familial adoptions, regardless of the child's age, from the time of placement*
- *custodians of surrogate children, but subject to its compatibility with an impending uniform framework for surrogacy across Australian jurisdictions, (with provision for 12 weeks of paid parental leave to the surrogate mother).*

Parents could take any paid parental leave remaining if their baby died.

Any outstanding leave could be transferred to the partner if the primary carer died.

Paternity leave could be taken concurrently with the mother's paid parental leave but would have to be taken within six months of the birth of the child.

33. VACC does not have any comments to make about draft recommendation 2.7.

Draft Recommendation 2.8

34. Draft recommendation 2.8 provides:

When the National Employment Standards are next subject to revision, the Australian Government should amend:

- *section 21 to require an employee on parental leave to provide six weeks' notice for an extension to leave, unless an employer agrees to a shorter period*
- *section 15 to provide job return guarantees to adoptive parents equivalent to natural parents.*

35. VACC has no objection to the proposals in draft recommendation 2.8.

Draft Recommendation 2.9

36. Draft recommendation 2.9 provides:

In addition to publicly provided information on the workings of a statutory paid leave scheme, the Australian Government should provide:

- *evidence-based advice to employers on how to reduce the disruption burdens associated with increased average durations away from work by carers, with this information especially directed at small business*
- *a web-based calculator that shows which employees would be eligible and sets out any obligations by employers.*

37. VACC supports the proposal in draft recommendation 2.9 for the government to provide evidence- based advice to employers about how to reduce the

disruption to businesses. VACC members, particularly small businesses, find it very difficult to manage the absences of employees when on parental leave. Any additional advice or information about how to manage this process would be very useful.

38. VACC also supports the use of tools such as web-based calculators for use by employers and employees.

Draft Recommendation 2.10

39. Draft recommendation 2.10 provides that:

A paid parental leave scheme should include:

- *a 'keeping in touch' provision that — subject to employer and employee consent — allows the employee to work up to 10 days while on paid parental leave, where that work strengthens the connection to their workplace*
- *scope for eligible self-employed parents to maintain some oversight of their businesses while on leave.*

40. VACC is in favour of introducing measures that increase workplace attachment thereby encouraging employees to return to work after taking parental leave. The cost to employers of having to replace an employee is substantial so a 'keeping in touch' provision would be a welcome addition to the scheme. However, VACC has a few concerns about how this proposal would work in practice.

41. One concern is how payment for days of work would be deducted from payments under the scheme. It also raises the possibility that employers, would be expected to pay not only the employee who was on leave but their 'fill in' as well. This is of concern to smaller businesses who do not have the cash flow to manage this type of situation.

42. Some members with larger businesses, who are often able to cover periods of absence without actually employing a 'fill in', have reported that this 'keeping in touch' proposal would be possible and would be useful for maintaining contact during the period of leave.

43. VACC considers that there are many other ways to increase attachment to the workplace, some of which were outlined earlier in paragraph 20 of this submission. Many employees may actually find these sorts of 'social' contacts preferable to the expectation that they would come to work for up to 10 days during their parental leave.

Draft Recommendation 2.11

44. Draft recommendation 2.11 provides:

The Australian Government should provide more resources to allow effective

support for breastfeeding during the first six months of an infant's life, with a focus on the post-initiation stage.

45. VACC has no objection to draft recommendation 2.11.

Draft Recommendation 2.12

46. Draft recommendation 2.12 provides:

The Australian Government should undertake:

- *ongoing assessments of the interaction of the paid parental leave scheme with the tax and welfare system*
- *an evaluation of the administrative aspects of the scheme two years into its life*
- *a comprehensive evaluation of the impacts of the scheme five years into its life.*

47. VACC supports draft recommendation 2.12.

Other feedback

48. The Productivity Commission is seeking feedback on a number of other issues including:

- the practicality and merit of allowing paid parental leave to be taken part-time; and
- whether other leave entitlements, such as sick, recreation and long service leave, should accrue during the period of paid parental leave, having regard to its costs and appropriateness.

Part-time parental leave

49. There is discussion in the Report about whether employees should be permitted to take parental leave part-time (see page 2.17 of the Report). An example of this would be a mother who is on leave 4 days a week and is in the workplace for 1 day per week with the father on leave for 1 day per week and at work for 4 days.

50. VACC does not support this proposal. Although for some larger employers, it may be an option, for smaller businesses it will often be near impossible.

51. It would be very difficult to match a parental leave 'fill in' position (which is already a short term contract and thus of limited appeal to prospective employees) to the days that the person taking the parental leave wishes to work. This might make filling a parental leave role even more difficult than it is

already.

52. The number of days that the person taking the leave is in the workplace may only be small (as per the mother in the example above) which can adversely affect work continuity and the management of customer expectations.
53. Further, if the employer did not consent to the arrangement (assuming there is a requirement for consent), there is the risk that in Victoria a claim could be brought under the *Equal Opportunity Act 1995* (Vic) for failing to accommodate the employee's responsibilities as a parent or carer.

Other leave entitlements

54. VACC would object to a change in the way that leave entitlements currently accrue. A provision that employees on leave under the proposed scheme would accrue sick leave, annual leave and long service leave would be an additional cost to be borne by employers. Member feedback indicates that there is a strong objection to this aspect of the proposal.
55. For VACC members, annual leave and long service leave entitlements do not currently accrue under the *Federal Vehicle Industry Repair Services and Retail Award 2002* or the *Federal Vehicle Industry Repair Services and Retail (Long Service Leave) Award 1977* during periods of unpaid parental leave. Entitlements accrue based upon periods of service with an employer.
56. According to the Australian Fair Pay and Conditions Standard, sick leave accrues on each completed 4 week period of continuous service with an employer.
57. Each additional cost that is imposed on employers brings employers closer to the point where they will not be able to afford to stay in business.

Final Comments

58. VACC considers that introducing a paid parental leave scheme should be approached with caution particularly in the current economic climate. The objectives of the scheme as set out in the Terms of Reference are worthwhile, however, it may be that the proposals for funding are no longer viable once the full impact of the economic crisis is known.