



CPSU submission to the Productivity Commission's

Draft Inquiry Report Paid Parental Leave: Support for Parents with Newborn Children

November 2008

The CPSU welcomes the Productivity Commission's draft report and recommendations. The CPSU supports the 18 weeks recommended by the Productivity Commission as a good first step and will continue to achieve our aim of 26 weeks paid leave at full income replacement and usual superannuation through collective bargaining.

Prior to turning to the specific recommendations in the Productivity Commission's Draft Report, several threshold issues need to be addressed:

- The 18 week entitlement recommended by the Productivity Commission should be at full income replacement with superannuation contribution at the usual level.
- Any final recommendation from the Commission must mention that the government entitlement is in addition to any current entitlements, which should be protected under a no disadvantage clause in any statutory scheme.
- Unions have traditionally supported a strong welfare safety-net for working families. At the same time 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 must acknowledge that any scheme for paid parental leave is not a welfare payment but an industrial entitlement. Of course, 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.
- Finally, to ensure that no woman is worse off as a result of the introduction of a national paid parental leave scheme, the scheme must be fully funded in the May 2009 Budget and implemented from 1 July 2009. This will minimise the period of time that many women in Australia will receive no parental support from the government. The 18 week paid leave scheme as proposed by the Productivity Commission would enable new mothers to afford time away from work to develop important relationships with their baby. For women already with paid leave entitlements, negotiated through collective bargaining, the government entitlement would allow them to extend their paid time away from work and move closer to the minimum 6 months recommended by the World Health Organisation. The cost of the proposed 18 week government payment is not significantly more than the government currently spends on family assistance payments. Given that the cost to a household of a new baby is substantial and is on top of normal living, any government funded paid parental leave scheme would be a cheap and effective stimulatory package for the economy, particularly in terms of boosting local spending.

Recommendation 2.1

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

- 1. paid leave capped at the adult minimum wage for each week of leave for those covered by adult minimum wages
 - i. but with lower rates — to be set administratively — for juniors and others with hourly wages below the adult minimum**
- 2. payments to be taxed and included in income for assessment of any welfare benefits*
- 3. 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)*
- 4. superannuation entitlements calculated on the going wage of the employee or at the relevant capped amount, whichever is the smaller, but
 - i. 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*
 - ii. super contributions would be limited to the statutory 9 per cent rate*
 - iii. subject to its practical feasibility, including consideration of its compliance and administrative costs.**

Statutory Scheme

The paid parental leave scheme should be regulated through the proposed Industrial Relations Bill (through the National Employment Standards) for parents with workplace attachment and the Superannuation Guarantee Act for superannuation contributions.

Without knowing the details of the proposed Industrial Relations Bill or NES, difficult to make recommendations in respect of the most appropriate form of regulation of the scheme.

However there are a number of features which are essential in any scheme:

- a) Ensuring that no worker is disadvantaged by the introduction of the Scheme and their current entitlements are protected.
- b) An ability to quickly and cheaply resolve disputes over the application of the government entitlement through Fair Work Australia and
- c) A mechanism for regular review of the entitlement.

1. Capped at adult minimum wage

We do not support the recommendation for the paid leave to be capped at adult minimum wage. It will not encourage nor enable many women who earn above minimum wage to take leave.

For many families, paid leave at minimum wage is not adequate to meet all necessary financial commitments, such as mortgage payments and other cost of living pressures. If the aim of the scheme is to allow mothers and fathers the opportunity to stay at home and care for a new child then providing paid leave at full replacement is the best way to achieve this aim.

The best outcome for the child and for the family is that the paid leave is provided at full wage replacement or the federal minimal wage, whichever is higher (for casual workers, replacement wages may not be as high as the minimum wage and to provide them with a lesser payment risks them earning less than the maternity allowance – something which would discourage attachment to the labour market).

CPSU Recommendation

That the statutory scheme provide for paid leave at full income replacement plus usual superannuation contribution or the federal minimum wage plus superannuation, whichever is higher.

Lower rates for juniors/trainees

The minimum entitlement should be paid at the same rate for all workers regardless of age. The Productivity Commission recommendation of junior rates is flawed for several reasons:

- Lower rates for juniors discriminate against women who qualify for the scheme and have children at a young age.
- This recommendation also fails to take into consideration that women often have a disrupted attachment to the workforce and are often employed in entry level or trainee positions that are below federal minimum wage later in life.
- Finally, under the proposed scheme, a woman who works 10 hours a week at minimum wage is entitled to 18 weeks at full-time minimum wage, but a woman who works full-time on a trainee rate does not qualify for 18 week entitlement at adult minimum wage. This is illogical; one individual should not qualify to get more than their usual take home pay while another does not.

CPSU Recommendation

The proposed 18 weeks scheme should recommend the same base rate of federal adult minimum wage for all workers and not discriminate based on age or level of pay.

2. Taxed and included in income assessment

The CPSU supports, in principle, the recommendation that the 18 week scheme be treated as income for taxation purposes. However due to the complex nature of the tax system, particularly Family Tax Benefit Part B, there must be modelling undertaken to ensure that the proposed tax changes do not have an unintended or disproportionate impact on certain groups of women.

Further to this, a no disadvantage clause needs to be included in any scheme to guarantee that under the scheme no woman is worse off.

CPSU Recommendation

Further modelling to be done on the proposed taxation measure this to ensure that it is fair and a no disadvantage clause needs to be applied

3. Multiple Birth provision

The CPSU supports this recommendation.

4. Superannuation

Employers must be required to pay the employees their usual superannuation entitlement. That is, on their average ordinary earnings and at the existing rate prior to taking paid parental leave.

i. Qualifying period for superannuation

The draft scheme proposes that to be eligible for employer funded superannuation contributions an individual must qualify for the statutory scheme, must be already be eligible for employer contributions and:

(c) were entitled to unpaid parental leave under the National Employment Standards,

This requirement creates a situation whereby a woman could qualify for the 18 weeks paid leave but not for superannuation contributions because the NES requirement for unpaid leave specifies that an individual needs to have worked for the same employer for 12 months.

However to qualify for the proposed 18 week scheme an individual only needs to have been in the workforce for 12 months with no requirement to maintain the same employer. The result is there may be circumstances where a parent has worked for more than employer and therefore is denied super contributions but is entitled to paid parental leave.

There is a need to recognise for the purposes of superannuation contributions that 12 months service can be accrued with more than one employer. If a

woman is eligible for superannuation contributions from an employer than she should be eligible for superannuation contributions under the proposed scheme.

This circumstance is not currently contemplated by the Productivity Commission – i.e. where a woman works more than one part time job and works 10 or more hours a week in each of these jobs. The question that arises is which employer is required to make the superannuation contributions. This will require further research.

Ensuring that women have the ability to build up their superannuation even when on parental leave is important as it ensures that women maintain their connection with the workforce and equity with their male colleagues.

CPSU Recommendation

The eligibility requirements for employer funded superannuation contributions should not differ from the eligibility requirements for the 18 week scheme.

ii. Limited 9% Contributions

We do not support capping employer funded superannuation contributions at 9% of the minimum wage, we propose that women should receive their usual level of contribution on their usual wage.

On average, women receive a retirement payout of \$75,000 whereas as men receive on average \$155,000¹. It is clear that women already face significant inequity in their superannuation payouts, limiting the level of contribution woman can receive while on paid parental leave only serves to deepen this inequality.

The Productivity Commission Draft Report states that the objectives of a statutory paid parental leave scheme include:

- *Facilitating workforce participation*
- *Promoting gender equity and work/family balance*²

Capping superannuation contributions at 9 per cent does not promote gender equity nor does it act as an incentive for women to continue their workforce participation.

Further, increasing contributions from the current recommendation of the Commission to the usual rate for the individual does not represent a substantial amount of money for individual employers. However dropping the rate from, for example the standard 15.4% employer contribution in the Australian Public Service, does represent a substantial administrative burden to employers, since changing the superannuation contribution level for 18 weeks is time consuming and costly.

¹ Herald Sun July 22, 2008 Meredith Booth

² PC Report pg 1.1

CPSU Recommendation

Superannuation contributions paid by employers during 18 week leave must be the employee's normal superannuation entitlement. That is on their average ordinary earnings and at the existing rate they have.

iii. Compliance and Administrative Costs

The cost involved of mandating capped employer super contributions could actually result in employers who pay more incurring additional administrative costs when they have to do the paperwork to drop the contribution to the 9% and from a proportion of their existing wage rate to the minimum wage as proposed under the government scheme.

CPSU Recommendation

At the very least, the 9 percent should be a floor not a cap, allowing employers to pay the regular contribution. Therefore allowing women access to super at their existing percentage (eg for most in APS = 15.4%) and at their existing salary level.

Recommendation 2.2

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.

We support the recommendation that the Australian Government should fund the cash component of the paid leave scheme. However again, we stress the importance of ensuring that the changes in taxation benefit are fair and equitable and do not cause women to be worse off.

We support the other recommendations with some changes:

- That employers bear the cost of the superannuation contributions at usual rate on ordinary wages.
- If the scheme is at minimum wage, that employers bear the cost of any top-up of the paid leave scheme.

- That the baby bonus should be replaced with a maternity allowance, and the replacement allowance be a comparable amount to the industrial entitlement.

CPSU Recommendation

- That a no disadvantage clause be included in any scheme to ensure that changes in taxation benefits to not disadvantage families.
- Employers should fund any top-up to replacement wages.
- Baby bonus should be replaced by comparable to the 18 week scheme social welfare payment.

Recommendation 2.3

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.

The employers and their associations are better placed to comment on these recommendations. We support payments being made through the PAYE system and we also support speedy reimbursements for employers to ensure that employees do not face unnecessary barriers when trying to access paid parental leave entitlements.

Recommendation 2.4

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.*

To qualify for government entitlement a parent must be the primary carer of the baby '*who has worked an average of at least 10 hours a week on a continuous basis for 12 months or more prior to the expected birth date of the baby*'. We do not support this recommendation as it excludes individuals who work less than 10 hours a week or are seasonally attached to the labour force. This could act as a disincentive for parents and women in specifically to maintain their connection with the workforce.

To combat this disincentive we believe several changes should be made to the draft recommendation:

- The 10 hours should be 7 hours, this aligns with one working day, which we believe is a more logical and fair measure of workforce participation.
- The requirement for working continuous for 12 months prior to the expected birth date is problematic especially when parents are trying to qualify for a subsequent births and amounts of paid parental leave.
- For casuals/part time workers there must be recognition that they do not void their entitlement to the government 18 weeks if they are unattached to the labour market for periods of up to 4 weeks between jobs, this is to align with annual leave that full-time employees receive.

We support the clause that allows the 10 (our proposed 7) hours requirement to be worked across more than one employer. This is important to parents who are engaged in seasonal and casual employment and often have a high instance of movement between employers.

CPSU Recommendation

- The 10 hour average requirement be dropped to 7 hours per week.
- That the qualifying period for continuous work be reduced from 12 months to 6 months.
- That casual/part-time workers can still qualify if they have been unattached to the workforce for up to 4 weeks.

Recommendation 2.5

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*

We welcome the recommendation for paid paternity leave, however the two week paternity leave for eligible partners should be increased to 4 weeks (at replacement wages plus full superannuation). And the period in which this leave can be taken should be extended from 6 months to 12 months from the birth or adoption of a child.

The Productivity Commission report recommends that only one transfer of the government allowance can be made between parents. There needs to be more flexibility in this – for example in a circumstance where a mother transfers the leave to her partner to return to work and then the partner falls ill and is no longer able to care for the child. In that case the mother should be allowed to resume access to the 18 week scheme.

CPSU Recommendation

- Paternity leave be increased from two weeks to four weeks.
- The period which paternity leave can be taken be extended from 6 months to 12 months.
- The transfer entitlement should not be restricted to one transfer only.

Recommendation 2.6

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.

Paid parental leave is should be an industrial entitlement available to parents who are attached to the workforce like other forms of paid leave. This ensures that it attracts the same legal protections as other entitlements such as annual leave.

Those men and women who are not attached should also be supported in a similar fashion and be eligible for government assistance, however the assistance should be through the welfare systems and distinct from the industrial entitlement of paid parental leave.

The ability to opt out of the paid parental scheme and receive the maternity allowance needs further review, and safeguards should be in place to ensure that women who do so are not in any way disadvantaged.

CPSU Recommendation

- The 18 week scheme must be recognised as an industrial entitlement.
- The ability to opt out of the paid parental scheme and receive the maternity allowance needs further review, and safeguards should be in place to ensure that women who do so are not in any way disadvantaged.

Recommendation 2.7

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.

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. The Productivity Commission Draft Report recognises that this is in the best interest of both the mother and the child.

The restrictions of the proposed 18 week entitlement pose a number of different problems that will need to be resolved in the final recommendations, which are:

- a) The paid parental leave can only be taken after the birth of the child;
 - If women want to take the time off prior to birth, they should have the flexibility to do so.
- b) The paid parental leave must be commenced within 6 months of the birth of the child;
 - This requirement should be amended so that the leave can be commenced within 6 months after the birth or after the expiry of existing entitlements, whichever is the latter. This allows women to take their existing entitlements without the risk of losing eligibility for the government scheme.
 - This change also means that parents will be able to take all of their existing collective agreement entitlements at half pay, and still be eligible for the government scheme.

Again, this is an area that requires the final report to contain a no-disadvantage clause.

CPSU Recommendation

- That paid parental leave should be able to be commenced prior to the birth.
- That paid parental leave should be taken within 6 months of the birth or after existing entitlements have expired, whichever is the latter.

Recommendation 2.8

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.*

This recommendation is fully supported. Adoptive parents should not be considered different under the scheme or the NES and an appropriate notice period is important for both the employee and the employer.

Recommendation 2.9

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.*

It is important that employers are aware of their obligations under the proposed scheme and the government should provide education and resources to employers to ensure that employers and employees are aware of their entitlements and that access to the scheme remains as simple and straightforward as possible.

Recommendation 2.10

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.*

It is important that women maintain their connection to their work, colleagues and employer to ensure a smooth transition back to their job following the end of their paid parental leave.

The 'keeping in touch' provision is a great initiative to keep new parents connected to the workplace but the draft recommendation does not consider the following key details:

1. Any days worked must extend the time away from work.

It is important that women/men can access the full scheme leave entitlements and if keeping connected to the workforce takes away from this, it acts as a great disincentive for women/men to maintain contact with their employer.

2. Any days worked must be paid at full wages plus superannuation and other entitlements should accrue as with any other working day.

If women are returning to work for up to 10 days during their period of leave, they should be remunerated accordingly either by receiving pay or paid time in lieu at the relevant rates. As the proposed scheme is at minimum wage and many women earn above this they should not be expected to work for less money and no accrual of benefits.

The extra costs of returning to work for up to 10 days during the paid parental leave scheme, such as childcare and transport, should be considered in this recommendation and access to support and benefits be enabled.

3. Keeping in touch must be voluntary.

For some women it may not be necessary or viable for them to work any days while on leave and decision to keep connected to work by coming in for several days must be up to the discretion of the individual parent. And they should face no disadvantage or repercussion for not returning to work.

In addition to the above points, guaranteed return to work provisions also need to be clarified. In the NES the eligibility for assured return to work following leave is different from the eligibility for the paid parental leave scheme. This difference has the potential to allow for new parents to take the paid parental leave entitlement but not have their job protected and therefore not have the right to return to employment.

CPSU Recommendation

- Any days worked must be compensated at full salary and must be in addition to the paid parental leave entitlement.
- The scheme must be voluntary.
- If eligible for the scheme, an individual must also be eligible for guaranteed return to work.

Recommendation 2.11

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.

Breastfeeding has significant health benefits to the infant and should be supported by the government and by employers. The proposed scheme of 18 weeks leave allows that women will return to work during the first six months of their child's life, therefore, adequate support needs to be provided.

The government needs to provide better support for breastfeeding not only to the mothers through access to support and resources, but to employers as well to ensure that women can continue to breastfeed following their return to work.

There must be a requirement that employers provide adequate facilities and time for women who return to work while still breastfeeding to continue to do so and feel comfortable in their workplace.

Recommendation 2.12

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.*

This recommendation is supported. 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.

The CPSU supports the proposal for ongoing assessments of the interaction of paid parental leave with the tax and welfare system and a series of evaluations of the scheme. However, the current proposal limits the first evaluation of the scheme (in two years) to administrative aspects. This is unduly restrictive and should be expanded to include a review of the overall operation of the scheme.

In addition to the review of the industrial entitlement of paid parental leave, a separate review must be conducted for those receiving the maternity payment. It is important that the difference between the two payments be acknowledged and the different administrative and other impacts be thoroughly evaluated and reviewed.

Other issues to be considered

A further issue that the Productivity Commission must consider in its final report is that entitlements including leave entitlements must accrue during the period of paid parental leave.

The accrual of entitlements during paid parental leave is not an onerous cost to employers given the short (18 weeks) period of time. Further, it ensures that women are not further disadvantaged by taking periods of paid parental leave.