



***Unions Tasmania***

**Unions Tasmania Submission in  
Response**

**to the**

**Productivity Commission Inquiry  
Draft Report**

**PAID PARENTAL LEAVE:  
SUPPORT FOR PARENTS WITH  
NEWBORN CHILDREN**

**November 2008**

## **1. Unions Tasmania**

Unions Tasmania is the peak organisation for unions in Tasmania and the State branch of the Australian Council of Trade Unions. Members of Unions Tasmania represent approximately 50,000 union members, from all industry sectors and across both the private and public sectors.

Our long-standing aims are as follows:

- (a) to contribute to the establishment of an economic and social order in which persons can live with freedom and dignity and pursue both their spiritual development and their material well being in conditions of economic security and equal opportunity;*
- (b) to improve the conditions and protect the interests of all classes of labour within the sphere of the Council's influence;*
- (c) to give effect to the Australian Council of Trade Unions' policy as determined from time to time;*
- (d) when requested to assist by conciliation or decision in the settlement of disputes between affiliated organisations;*
- (e) to provide machinery for the just resolution of industrial disputes between employees and employers;*
- (f) to promote, develop, and encourage the study of literature, science, art and other cultural activities amongst affiliated organisations by such means as Council may determine from time to time;*
- (g) to establish Provincial Councils and to assist them in their operations;*
- (h) to do all things expedient or incidental to the carrying out of these objects.*

Unions Tasmania seeks to address some of these issues in this submission to the Productivity Commission which is a response to Productivity Commission Inquiry Draft Report, Paid Parental Leave: Support for Parents with Newborn Children

## **2. Introduction**

**Unions Tasmania is of the view that the model proposed by the Productivity Commission is a positive first step in the provision of Australia's first statutory paid parental leave scheme.**

This organisation welcomes the Draft Report of the Productivity Commission and supports, with some reservations, the proposal for a paid parental leave scheme consisting of 18 weeks paid leave for the primary carer and 2 weeks paid leave for the secondary carer of a new born infant.

In addressing these issues Unions Tasmania adopts and supports the policy position of the ACTU and fully supports the submissions the ACTU has made to the Productivity Commission on this issue.

This submission should, therefore, be read in conjunction with the ACTU submission. We offer further comment from the Tasmanian perspective and particularly wish to highlight issues that were raised at the Paid Maternity Leave Forum held in Hobart on October 19<sup>th</sup> 2008 and attended by Commissioner MacRae. Along with Council affiliate unions, over 30 community organisations also participated in this Forum.

## **3. Recommendations**

### **1. INCREASED ELIGIBILITY**

**Workforce participation - Broadening eligibility for the scheme enhances long term labour market attachment.**

The proposed workforce participation requirement may exclude women who are engaged in paid work.

- 1.1 Unions Tasmania welcomes the Commission's recognition that workforce participation will include all forms of paid work including self employment, casual work and work for multiple employers.
- 1.2 The requirement for parents to have 12 months' workforce tenure will however exclude some women who choose to have several children within a short timeframe and take 12 months off work each time as they are entitled to do under the NES. These employees should be able to access the scheme
- 1.3 In many circumstances these employees will already be mothers of young children and may have broken employment patterns following a period, or periods, of parental leave. The ability to access paid parental leave could be a significant factor when it comes to motivating these mothers to remain attached to the labour market over their lifetimes.
- 1.4 If 12 months continuous work remains the criteria this could also significantly affect employees such as teachers, teacher aides and

sessional teachers in TAFE as well as seasonal workers who are not able to work a 52 week year due to the structures in which they operate.

- 1.5 Reducing the qualifying period to six months, rather than the twelve suggested could help these women maintain workforce attachment

**Recommendation 1: The workforce tenure criteria for paid maternity leave should be 6 months employment across any number of employers.**

## **2. INCREASED ELIGIBILITY - Ensuring periods of paid and unpaid parental leave count as “continuous service”.**

In the light of the issues raised in point 1 another key measure to ensure women with attachment to the workforce but who have several children close together are not excluded from the recommended scheme is to ensure that periods of parental leave are considered to be “continuous service”.

- 2.1 Our concern is that the scheme as proposed by the Commission may not adequately take into account the need to maintain the attachment to the workforce of women who choose to have several children close together.
- 2.2 The Commission states: “The paid parental leave period would be counted as ‘employment’ (as is the case for leave generally), so would not break employment continuity for qualifying for subsequent paid parental leave”.<sup>1</sup> However this same qualification does not apply to unpaid parental leave.

*i.e. a parent who returns to work from a period of unpaid parental leave, works part time (as is common in these circumstances) and becomes pregnant just before or just after returning to work may well be ineligible under the present model.*

**Recommendation 2: Periods of paid and unpaid parental leave should be defined as part of “continuous service” for the purposes of assessing the eligibility of a parent to gain access to the scheme**

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<sup>1</sup> Productivity Commission Draft Report , September 2008, 2.15

### **3. Qualifying Criteria (attachment to the workplace) - The hours of work test**

- 3.1 It is difficult to ascertain on what basis the Commission recommends 10 hours work per week as the minimum for qualifying for the proposed paid parental leave scheme.
- 3.2 The scheme needs to take into account the needs of parents who return to work between having babies, often on a part time or casual basis.

*e.g. A teacher who returns to work for one day a week would work 7 to 7.5 hours for that day.*

**Recommendation 3: The eligibility criteria of average number of hours worked in the year prior to birth should be 7 hours per week.**

### **4. Superannuation**

- 4.1 Why does the Commission's recommended model refer to the employer superannuation contribution being capped at 9%? This has raised the question: Does this mean the employer cannot pay more?
- 4.2 In some cases the employer may need to pay more as part of the requirements of the fund itself, particularly in the case of a "defined benefits" plan.  
  
*e.g. At the University of Tasmania a 17.0% contribution must be maintained for staff with permanent ongoing positions.*
- 4.3 In another instance, the administrative cost to the employer of reducing the superannuation contribution for a 2 week period for a father of a newborn child may exceed the cost of continuing to pay at a current higher rate.
- 4.4 The Commission has subsequently indicated that it did not intend for the wording to be interpreted as superannuation contributions being limited to 9% and that the employer can of course pay more.

**Recommendation 4: The Commission clarify that the Superannuation Guarantee is the minimum contribution required to be made by employers and that parties are free to negotiate for superannuation contributions on paid parental leave above the minimum SG.**

## **5. The timeframe – Having to commence the Commission’s recommended scheme within 6 months of birth may prevent some women accessing it.**

5.1 The proposed model requires the leave be “commenced after any period of continuous leave available at the birth of the child and before 6 months after birth”.<sup>2</sup> Some women have a current entitlement to paid maternity leave through an employer scheme which, taken part time, can see them on maternity leave for 46 weeks or more. Under the recommended model they would be excluded from then accessing the government scheme.

5.2 The six month limit may also restrict the capacity of both employees and employers to bargain for additional entitlements in the future.

**Recommendation 5: The requirement to commence the government entitlement within 6 months of the birth should be amended to include the additional words ‘or upon expiry of existing workplace entitlements, whichever is the latter’.**

## **6. Flexibility in taking leave - Pre-Natal Leave**

6.1 If a woman becomes ill prior to birth of a child she may not necessarily be able to access alternative forms of leave such as antenatal leave, personal/carer’s leave, special maternity or “no safe job” leave. Recreational, annual or long service leave may not be available to some parents. This issue particularly affects seasonal and casual workers.

6.2 Families should be able to take paid parental leave prior to the birth of the child if they need to

6.3 There is considerable precedent for this. Women who are State Government employees in Tasmania are required to commence maternity leave six weeks prior to the expected date of birth unless a medical certificate is provided which enables them to work within this six week period.

**Recommendation 6: Parents should be able to access paid parental leave up to six weeks prior to the expected birth date of the child**

## **7. Accrual of Leave Entitlements (LSL, sick leave, annual leave)**

All entitlements (including leave entitlements) should accrue during the period of paid parental leave.

7.1 The Commission recommends that a national paid parental leave scheme should be “a scheme that intends to signal such normalcy

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<sup>2</sup> Productivity Commission Draft Report , September 2008

should be structured like other normal leave arrangements such as those for recreation, illness and long service leave, rather than being structured as a social welfare measure".<sup>3</sup>

7.2 In general, across the workforce other leave entitlements accrue when a workers is on paid leave.

7.3 The Commission's stated objectives are more likely to be met if periods of paid parental leave, as any other leave entitlement, accrue annual, sick, long service leave entitlements, superannuation and incremental salary progression.

7.4 The Commission also recommends: "The paid parental leave period would be counted as 'employment' (as is the case for leave generally), so would not break employment continuity for qualifying for subsequent paid parental leave".<sup>4</sup> It seems quite contradictory that the paid parental leave period should count as employment for one situation and not for another.

7.5 Periods of leave to have children are a contributing factor to gender pay inequity. The commission must ensure women are not further disadvantaged by loss of accumulated entitlements.

**Recommendation 7: Amend the National Employment Standards and long service leave legislation to provide that paid parental leave of all types is counted as service for the purpose of accrual of annual leave, sick leave, and incremental salary progression and that unpaid parental leave count as service for the purposes of continuity of employment.**

## **8. Youth and Trainee Wages**

**Unions Tasmania fully supports the ACTU statement "Payment of the scheme should be at least at the federal minimum wage for all parents in paid work, including those earning less than the federal minimum wage."**<sup>5</sup>

8.1 Unions Tasmania is of the view that trainees, juniors, apprentices and cadets earning less than the federal minimum wage are entitled to equitable treatment with other workers under the proposed scheme.

8.2 Applying age rates to Paid Parental Leave is unnecessary and paternalistic. The rationale for junior rates has always been that young people are not fully productive until they reach 21 and that junior rates enhance the employment prospects of young people. Both of these arguments are debatable, but are totally irrelevant in the context of maternity leave and when considering the needs of a

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<sup>3</sup> Productivity Commission Draft Report , September 2008

<sup>4</sup> Productivity Commission Draft Report , September 2008, 2.15

<sup>5</sup> ACTU submission in response to the Productivity Commission Draft Report

young mother. Arguably they will need more support and not less. The authors want to remove the incentive for "short sighted decisions"<sup>6</sup>, implying that younger women will get pregnant just to access the money (PML instead of baby bonus and social security). Such a view does not reflect the majority and should be rejected.

- 8.3 A young worker on a traineeship and low wages who becomes pregnant, if not encouraged to maintain connection to the workforce, is quite likely to choose to "opt out" of the paid maternity leave scheme and revert to the baby bonus and other tax benefits. Surely it is such young workers, learning a trade and acquiring skills, who need to be encouraged to stay connected to the workforce, eventually complete their qualifications and provide the skills Australia so desperately needs?
- 8.4 Older workers earning less than the minimum wage because they work part time or on a casual basis are not excluded from receiving the full minimum wage under the Commission's recommended model so it seems illogical and possibly discriminatory that one group should be singled out because of their age.
- 8.5 Workers earning less than the minimum wage are currently entitled to the baby bonus and family tax schemes as any other parent and should not be disadvantaged by the introduction of the new scheme.
- 8.6 The costs of having a baby are not lower for a mother who is under 21.
- 8.7 We have been unable to find any evidence that supports the proposition that an entitlement to paid parental leave will encourage young people to have children. It would be unfortunate if an unsubstantiated "fear in the mind" of certain groups affected the outcome for a 20 year old who has a child.

<b>Recommendation 8: Payment of the scheme should be at least at the federal minimum wage for all parents in paid work, including those earning less than the federal minimum wage.</b>
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## **9. Taxable Income**

Why give with one hand and take away with the other? The impact will vary considerably for individuals depending on timing and other sources of income but if the government is funding the Paid Parental Leave why treat it as taxable income?

<b>Recommendation 9: That income from the Federal Government for Paid Parental Leave does not count as taxable income.</b>
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<sup>6</sup> Productivity Commission Draft Report , September 2008 2.7



## **10. Taking Leave at Half Pay**

Provision should be made for parents to take the paid parental leave entitlement over a longer period at half pay.

- 10.1 This ensures a better budgeting strategy for many families, is not overly onerous to administer and has minimal impact on tax or welfare structures.
- 10.2 It would also bring the scheme in line with many employed parents' existing entitlements to take the paid maternity leave at half pay.
- 10.3 The refusal to allow half pay on the grounds that it would "allow for tax planning"<sup>7</sup> is unreasonable. The majority of PAYE taxpayers have very limited capacity to tax manage their affairs and, if living on the minimum wage, virtually none.
- 10.4 If a family is in a position to budget to allow a parent to be home with a new baby for 36 weeks instead of 18 then that is likely to have positive health and development outcomes for the child and the family. Surely this is in line with the Commissions own statement: "There is compelling evidence of child and maternal health and welfare benefits from a period of postnatal absence from work for the primary caregiver of around six months and a reasonable prospect that longer periods (of up to 9-12 months are beneficial"<sup>8</sup> and "Taking into account the above evidence the average desirable duration of postnatal absence from work would be around six to nine months"<sup>9</sup>
- 10.5 Given the Commission's own view that the desirable period of absence of work after having a baby is 6 to 9 months, it seems contradictory for the model it has proposed to actively prevent some parents from doing precisely that.

**Recommendation 10: That provision be made for parents to choose to take the paid parental leave entitlement at half pay**

## **11. Data Collection, Review and Evaluation**

The European Commission has a current proposed Directive to increase the minimum period of maternity leave to 18-24 weeks at 100% of salary levels by 2011. A staged increase of our scheme over the next few years would ensure Australia maintained alignment with European standards.

- 11.1 While accepting that the Productivity Commission is unlikely to go so far as to recommend such a staged increase, the Commission is certainly in a position to recommend that the appropriate studies collect the data needed to adequately review the recommended scheme in a thorough way, not just its administration.

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<sup>7</sup> Productivity Commission Draft Report , September 2008, 2.28

<sup>8</sup> Productivity Commission Draft Report , September 2008, XVIII

<sup>9</sup> Productivity Commission Draft Report , September 2008, XX

11.2 There is a substantial gap in the data and thus the knowledge we have in Australia regarding the gender pay gap and female workforce participation. It would be indeed most unfortunate if a lack of knowledge and data made a future review of a paid parental leave scheme ineffective.

**Recommendation 11: That the Commission includes in its final recommendations the funding of adequate research resources to provide the data needed to evaluate the effectiveness of Paid Parental Leave scheme.**

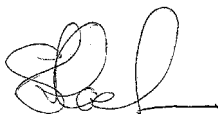
## **12. Taking out a loan to have a baby**

Unions Tasmania was most concerned to note that submissions have been made to the Commission for paid parental leave to be funded via income contingent loans, similar to the HECS system.<sup>10</sup>

12.1 Encouraging families into more debt cannot be seen as responsible, particularly in the current economic climate.

12.2 Such a scheme could also act as a disincentive to low income employees to work more hours, gain extra qualifications and improve their income, given that once they earn over a certain threshold they would have to pay back their loan.

**Recommendation 12: That the Commission does not include a government baby loans scheme as an option in any national Paid Parental Leave scheme.**



Simon Cocker

**Secretary**

**Unions Tasmania**

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<sup>10</sup> CEDA submission to Productivity Commission Paid Maternity, Paternity and Parental Leave Inquiry