

**Submission to the Productivity Commission on the draft  
Inquiry Report into Paid Parental Leave: Support for Parents with Newborn  
Children**

From Alex Heron, NSW

The Report's recommendations are welcome as, if implemented, they will provide substantial support for working parents at the time of the birth of a child.

In particular, I support the following proposals:

- That the statutory minimum wage is the cap for payments rather than any lower figure;
- That there should be 18 weeks paid leave. Such a period combined with other paid leave and/or a short period of unpaid leave is probably likely to maximise women's attachment to the labour force as well as increase the amount of time off at childbirth working women can afford to take in the immediate aftermath of a birth (as realistically it is women who will be taking this leave);
- That the scheme has as one of the eligibility criteria minimum weekly working hours rather than minimum weekly pay, particularly as employment with different employers will be cumulative. These criteria should benefit often marginalised workers as well as be less complex than a wages criteria;
- That the self-employed, contractors and casuals should be included in the scheme;
- That employer contributions to an employee's superannuation scheme should be continued in most cases;
- That supporting partners will have an independent right to two weeks paid leave;
- That there be a "keeping in touch" provision;
- That the information referred to in draft recommendation 2.9 be provided.

Discrimination whether intentional or systemic on the basis of maternity or potential maternity, is prevalent in labour markets throughout OECD countries. A fundamental aim of a paid parental leave scheme is to assist overcoming such discrimination to enable women to stay attached to the labour force and progress within it on an equal basis to men.

Given the extent of poverty within lone parent households, the likelihood of relationship breakdown and the extent of women's poverty in old age, the concept of providing women with a choice to remain outside the workforce for long periods of time is not in the interests of women, their children, nor society as a whole (in terms of resulting social and economic costs). Policy needs to be directed towards assisting them to return to the workforce after childbirth with as few penalties for maternity related absence as possible.

I would therefore suggest the following are considered:

**1. The likely disruption burdens for employers associated with employees taking longer periods of leave are recognised by reimbursing them for the cost of the proposed superannuation contributions.**

Although the costs per employee of the proposed superannuation contributions are small, in the case of small employers even a limited extra cost at a time when there will be administrative costs associated with paid parental leave<sup>1</sup> may work as a disincentive effect to women's employment in general or to allowing an individual to return to work e.g. if replacement arrangements prove satisfactory.

These costs will increase if the scheme provides for accrual of other leave entitlements during paid parental and paternity leave including sick, recreation and long service leave (as it should). Arguably some over reimbursement, at least a small employers, of the cost of paid maternity leave should be made to recognise the additional cost of this.<sup>2</sup>

Because of the extent of the problems identified with enforcing the right to return (see also below) to the same job, in Australia<sup>3</sup> and internationally,<sup>4</sup> one idea might be to agree to reimburse an employer's superannuation payment for the leave period, if the woman returns to work in the same position (or its genuine equivalent) that she left, and remains in it (subject to promotion or leaving for another job) for e.g. six months. This would also signal the government's policy intentions clearly.

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<sup>1</sup> Such as advertising, interviewing and inducting a new employee, or arranging for other employees to split the work between them of the employee going on leave.

<sup>2</sup> For example, in the UK small employers receive 104.5% of the cost of maternity payments from the government.

<sup>3</sup> See for example, Charlesworth, S. and Macdonald, F. (2007) *Hard Labour? Pregnancy, Discrimination and Workplace Rights*, Office of the Workplace Rights Advocate, Melbourne

<sup>4</sup> The Chief Executive of the UK Equality and Human Rights Commission recently referred to a recent survey of employers found that while two-thirds were perfectly happy for a female employee to return to work after having a child, only one-third were prepared to guarantee that it would be at the same occupational level as she held previously. See: <http://www.equalityhumanrights.com/en/newsandcomment/speeches/Pages/SpeechbyNicolaBrewerlaunchof%27WorkingBetter%27.aspx>

## **2. Accrual of other leave entitlements during paid parental and paternity leave including sick, recreation and long service leave.**

These should continue to accrue as a way of lessening the financial impact of taking leave. If a woman does not accrue these rights during maternity leave, this is unfavourable treatment because of her pregnancy and/or maternity leave and discriminatory. This is the approach taken by European Community law<sup>5</sup>.

## **3. That the Commission advocates a stronger job return guarantee than that provided in the recently published National Employment Standard and better enforcement of it.**

The NES in the recently published Fair Work Bill 2008 at s.84 states the return to work guarantee as being:

‘On ending unpaid parental leave, an employee is entitled to return to:

- (a) the employee’s pre-parental leave position; or
- (b) if that position no longer exists—an available position for which the employee is qualified and suited nearest in status and pay to the pre-parental leave position. ‘

As mentioned above, the right to return guarantee is often not honoured by employers. As sex discrimination law may not adequately protect an employee due to the need for a comparator and a limited construal of what constitutes causation in pregnancy and maternity leave discrimination cases,<sup>6</sup> the NES needs to offer an effective protection.

It should state that a woman’s right to return to the same job can only be defeated where a genuine redundancy has taken place. For example, reallocating the work she used to do is an insufficient reason to refuse to let her return. The obligation should be on the employer to show that a genuine redundancy has occurred. If it has, the employer should be under an obligation to offer any suitable alternative position to the employee on maternity leave in preference to other employees.<sup>7</sup>

More help needs to be available to women through their union or NGO advice agencies to challenge refusals of the right to return.

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<sup>5</sup> See for discussion, Chapter 5 Maternity and Parental Rights, Palmer et al (Legal Action Group, UK, 2006)

<sup>6</sup> For example, *Sterling Commerce (Australia) Pty Ltd v Iliff* [2008] FCA 702 where it was not sex discrimination to refuse an employee the right to return as the reason for the refusal was that the employer preferred the replacement and was not due to the employee’s maternity leave. (In this case there was a breach of the WRA return to work guarantee.)

<sup>7</sup> This is the position in the UK, see Maternity and Parental Leave Regulations 1999, regs 10 and 20(1)(b)

#### **4. That paid parental leave be allowed to be taken part-time.**

Because PPL is relatively short this option may not be much taken up, but it would provide a useful gradual return to work in situations where an employer will not agree to part-time work over the longer term. It exists in several other countries.<sup>8</sup>

#### **5. Paid supporting partner/paternity leave be able to be taken flexibly and the notice required to the employee's employer be kept to a minimum**

Complicated or lengthy notice requirements should be avoided as these could unnecessarily disenfranchise partners especially the least well informed. Making paid partner leave easy to take should increase take-up rates.

#### **6. Work with employers and unions be undertaken to promote their awareness of the new entitlements and provide tools to assist organisations with implementing them especially in relation to paid supporting partner/paternity leave, building on draft recommendation 2.9.**

Australian evidence identifies the need for organisations to support managers in implementing parental leave rights, to facilitate take-up by women and men. Research findings from other countries with paid supporting partner/paternity leave indicates that positive workplace attitudes to taking such leave are relevant to take up rates. In Portugal where it is compulsory to take the five days fully paid paternity leave, take-up was still only 41% in 2006. National experts conclude that "traditional gender role attitudes in workplaces often play a role in depressing take-up".<sup>9</sup>

Research by the principal advice agency federation in the UK indicates that *There is significantly less acceptance by employers (and especially small employers in low profitability sectors of the economy) of the paternity and parental rights of working men [than of women's rights]*<sup>10</sup>

International evidence also shows that partners/fathers do not take low-paid parental leave however easily transferable.<sup>11</sup> However, the take-up of "use it or lose it" paid partners/paternity leave can be improved by formal and informal support for taking it provided to employees by employers.<sup>12</sup>

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<sup>8</sup> See, for example, *International Review of Leave Policies and Related Research 2008*, Eds Peter Moss and Marta Korintus (BERR 2008)

<sup>9</sup> Op cit n.8, Chapter 2.20

<sup>10</sup> *Hard labour: Making maternity and paternity rights at work a reality for all*, published by Citizens Advice, 2005 at:

[http://www.citizensadvice.org.uk/index/campaigns/policy\\_campaign\\_publications.htm](http://www.citizensadvice.org.uk/index/campaigns/policy_campaign_publications.htm)

<sup>11</sup> Op. cit. n. 8, Chapter 1.3.1

<sup>12</sup> Op.cit. n. 8, Chapter 1.2.1 for an overview of the relevant research including reference to the EU Euro barometer survey where one of the most commonly cited views as to what would

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encourage fathers to take parental leave was “a more open-minded attitude towards [it] from superiors and colleagues at work” (European Opinion Research Group, 2004).