

2 December 2008

Commissioner Robert Fitzgerald and
Commissioner Angela MacRae
Productivity Commission
Paid Parental Leave Inquiry
Locked Bag 2, Collins St East
Melbourne VIC 8003, Australia

Dear Commissioners,

Paid Parental Leave: Support for Parents with Newborn Children

The Law Institute of Victoria (LIV) welcomes the opportunity to comment on the draft inquiry report *Paid Parental Leave: Support for Parents with Newborn Children* (Draft Report) released by the Productivity Commission on 29 September 2008. Thank you for providing an extension of time in which to make our submission.

The LIV strongly supports the objectives of the proposed scheme outlined in section 1.4 of the Draft Report, being:

- enhancing maternal and child health and development
- facilitating workforce participation
- promoting gender equity and work/family balance

For the purpose of this submission, the LIV will comment on the third objective.

Research has acknowledged that women face inequalities in the work force in terms of opportunities, salary and participation. It has been observed that higher proportions of women in Victorian Workplaces receive a lower rate of pay than men and that large proportions of women work in part-time roles where there are fewer opportunities for promotion and advancement. Additionally, difficulty in accessing childcare and flexible working arrangements limit work options for women with children.ⁱ It has been observed that providing for paid maternity leave would assist to address the wage disparity between men and women by providing financial support for women for a period of reduced paid labour due to childbirth.ⁱⁱ

The United Nations (UN) and the International Labour Organisation (ILO) have set international standards in relation to paid maternity leave.

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The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) states at Article 11 (2)(b) that:

In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

The Maternity Protection Convention 2000 (or Convention 183) of the ILO also creates an international standard of 14 weeks paid maternity leave.ⁱⁱⁱ

As at 2004, 39% of Australian female employees had access to up to 7 weeks paid maternity leave.^{iv} This statistic reflects a lesser entitlement than that promoted by the UN and ILO standards. The LIV notes that when ratifying CEDAW, Australia made a reservation with respect to Article 11(2)(b) stating that:

“ The Government of Australia advises that it is not at present in a position to take the measures required by article 11, paragraph 2 (b), to introduce maternity leave with pay or with comparable social benefit throughout Australia”

The LIV also notes that ILO Convention 183 has not been ratified by Australia. The LIV would nevertheless support any effort by the Australian government to adhere to international standards on paid parental leave.

Additionally the LIV observes that despite the state based nature of the Victorian Charter of Human Rights and Responsibilities Act 2006(Vic), the creation of a scheme for paid parental leave would also align with that piece of legislation in terms of protecting the best interests of children and promoting gender equality.^{vi} Another Victorian Act, the *Equal Opportunity Amendment (Family Responsibilities) Act 2008* (Vic), additionally imposes positive obligations on Victorian employers to accommodate their employee's family responsibilities by giving consideration to employee requests for flexible work arrangements.

In relation to the specific feedback requested by the Productivity Commission:

The practicality and merit of allowing paid parental leave to be taken part-time.

The LIV observes that allowing parental leave to be taken part-time would be consistent with the recent developments in discrimination legislation in Victoria regarding family responsibilities (see *Equal Opportunity Amendment (Family Responsibilities) Act 2008* (Vic)) and, additionally, with the National Employment Standards expected to become operational 1 January 2010. The Victorian laws on family responsibilities and the National Employment Standards provide for flexible working arrangements for employees with parental responsibilities.

Whether other leave entitlements should accrue during the period of paid parental leave.

Given the emphasis in the Draft Report on creating a system of leave entitlement rather than welfare, combined with the aim of creating workforce attachment, it is the LIV's view that leave entitlements should continue to accrue during the period of paid parental leave. The LIV does not have a view as to whether this cost should be borne by the government or the employer.

The LIV will review the Productivity Commission's final report with interest and thanks the Commission for the opportunity to comment on the scheme. The LIV seeks to be consulted on any potential legislation on the issue.

Please contact Heidi Brown, Lawyer, Workplace Relations Section, hbrown@liv.asn.au in connection with this matter.

Yours faithfully



Anthony Burke
President
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ⁱ http://www.business.vic.gov.au/BUSVIC/STANDARD//PC_50526.html

ⁱⁱ http://www.aph.gov.au/library/intguide/ECON/maternity_leave.htm

ⁱⁱⁱ <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C183>

^{iv} http://www.aph.gov.au/library/intguide/ECON/maternity_leave.htm

^v <http://daccessdds.un.org/doc/UNDOC/GEN/N06/309/97/PDF/N0630997.pdf?OpenElement>

^{vi} Charter of Human Rights and Responsibilities Act 2006 section 8 and section 17