



Women's Electoral Lobby Australia Inc.

66 Albion St, Surry Hills 2010

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Productivity Commission SUBMISSION COVER SHEET

(not for publication)

Inquiry into Paid Maternity, Paternity and Parental Leave

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This submission was prepared mainly by Eva Cox with contributions from Kathy Macdermott and others, on behalf of WEL Australia 2/6/08

The Women's Electoral Lobby Australia

The Women's Electoral Lobby Australia (WELA) is a feminist, not for profit, self-funded, non-party political, lobby group founded in 1972. Its original intention was to inform women who they should vote for in that year's Federal Election but it continues to act as a research/advocacy group for the continuing issues that still disadvantage women.

We are still proud to call ourselves feminist because societies today are still too often dominated by masculine structures and values. Even where there are more women in senior positions, the way that power and current institutions operate still favour/value masculine types of activities and lives. We work for those changes to family, community, workplaces and power that will recognise and value the contributions made in all these areas in ways which do not create or reinforce inequalities based on gendered assumptions.

WEL is dedicated to creating a society where women's participation and potential are unrestricted, acknowledged and respected; where women and men share equally in society's responsibilities and rewards. WEL aims to improve women's access to decision-making bodies in order to give women input into those decisions that affect their lives.

WEL is an active member of the Womenspeak Network and Security4Women, two of the funded secretariats which give us access to many other national women's groups and the capacity to discuss and debate issues, as well as collaborate on projects and lobbying.

Summary of our case

The Productivity Commission's reference on the economic and social costs and benefits of 'paid parental leave' is an outcome of Government's desire 'to explore ways to make it as easy as possible for working mums to balance their employment with the important job of raising a new generations of Australians'.¹ WELA welcomes the inquiry but remains concerned that the Government should not unduly delay or again avoid introducing industrially based paid maternity leave.

There are three clear arguments for making this payment. There are

- financial reasons for maintaining income in households around the time of birth rather than decreasing it by the loss of an income earner;
- physical/emotional needs that arise from the birth and attachment/breast feeding processes that require time out from the paid workforce;
- the need to promote workforce attachment through a payment linking workers' care roles with their employment that affirms ongoing commitments and connections with workplaces.

Most of the above reasons are clearly related to the workforce participation of the recipient of such a payment, as are other arguments for separating this payment with leave entitlement from welfare payments or tax concessions that are basically

¹ Swan, Macklin and Gillard media release no 0010
<http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2008/010.htm&page>

replacement or financial supplements to other forms of income. The rationale for paid maternity leave, as for other types of paid leave, is to substantially replace lost earnings. Accordingly, it should be paid through the employer and taxed in the same way as other work-related income payments. Ideally, it should be introduced for 26 weeks, replacing earnings up to the minimum wage, with the first 12 weeks targeted specifically to the birth mother. Where this payment is below the level required to replace an employee's usual earnings, employers should be encouraged to top it up, initially through bargaining. All current workers with 26 weeks' paid work in the year preceding the birth should be eligible for such paid maternity leave, as should all long-term casuals, the self employed and contractors. Those currently in the workforce but with less attachment should get pro rata paid leave, with a minimum of six weeks. Mothers should remain eligible for the Baby Bonus and should retain any current paid maternity leave entitlements that exceed the minimum provisions. This is essential so no one loses by the changes.

The long delay in introducing a parental leave scheme has made it harder to draw on previous models for funding leave entitlements. Had parental leave been introduced as part of the compulsory superannuation package, it could have been structured in as part of a contributory scheme. The question of how such a payment should now be funded should take into account the broader context of life-time earnings and savings and the gender distribution in industries. Women tend to have shorter overall time in the workforce, which affects their life time earnings. They also tend to earn less than men in the types of jobs they take on. They cluster in service occupations that tend to be undervalued, such as aged care and other personal services.

Therefore women earn less overall and some employers will have many potentially baby bearing workers while others will have few. On the basis of the above, there are strong arguments for the use of taxpayer funds to cover a substantial proportion of the costs. This type of funding fits in with the rationale for a substantial public subsidy to employment related superannuation² and the payments for the army reservists. It also deals with the problem of expecting individual employers to carry the costs of paid maternity leave in a context of occupational segregation. It does not negate the option of a pooled fund of employer contributions for top-ups being considered at a later date.

Taxpayer funding of maternity and parental leave is appropriate as a redistribution of funds over the parenting life cycle and as a payment that partially balances the lower levels of superannuation accrued by mothers who have taken time out. Such changes would also assist in making time out more legitimate for either parent, further shifting the gender balance and creating better models of child rearing. Our arguments are covered in more detail below.

Introduction

The Commission has a broad brief to look at the effects of paid maternity leave schemes on children, mothers, fathers, employers and the community. This submission explores the question from a feminist viewpoint, one that clearly explores how women can benefit from such schemes. While we support the growing wider involvement of men in the roles around child rearing, the reality is that it is still

² This tax expenditure incidentally massively favours higher earning men.

primarily women who take parental leave, reduce time and/or juggle the conflicting demands of babies and paid workplaces because:

- there are physical needs for some time out of the workforce that are directly related to birth and breastfeeding;
- there are socio/psychological reasons for taking such time out that are built into assumptions about the desirability of parental attachment and building emotional ties with the child;
- there are social pressures that still make assumptions about what constitutes good mothering and parenting roles;
- there are economic reasons for mothers to take leave as most are lower paid than their male partners and lose less if out of the paid workforce;
- there is a widespread assumption that women freely 'choose' the mothering role, although such an assumption generally does not take lack of alternative services and socio economic pressures into account.

The Commission raises greater gender equity in the home and in the workforce as possible objective of policy change, and this is also our starting point. As long as there continues to be a clear separation of male and female spheres in the workplace, there will be no gender equity in either sphere. As long as women tend to take time out to care for children without this leave being seen as a legitimate and desirable working condition, the two spheres will continue to be treated as though they are unequal and unrelated. Over the longer term, paid maternity leave should encourage the sharing of parental leave which recognises both parents' roles, and reserves some elements of total leave for each parent.

Background and recurring issues

This is the third time a federal government has indicated an interest in questions related to maternity leave. The first time was during the Keating Government in February 1996, when the first modern maternity payment was introduced as the equivalent of 6 weeks' parenting income support in the form of a lump sum. The second time was during the Howard Government in 2004, when the current Baby Bonus was originally labelled a Maternity Payment and absorbed the remains of the earlier one³. It was introduced following the 2002 Human Rights and Equal Opportunity Commission report which recommended 13 weeks of government paid leave at the minimum wage, and offered as a clear alternative to paid maternity leave.

In both cases, the arguments against the payments being associated with maternity leave came from many politicians and commentators who contended that it was not fair to fund babies for those in paid work as against those not in paid work. The results in both cases were payments that were not workplace-related, but rather defined as welfare because they were direct cash payments made through the social security system. It is worth noting here that the then Howard had no qualms about introducing a payment Family Tax Benefit B that blatantly advantaged single income families against most dual income earners, and so discouraged second income earners from workforce participation. The argument then was that Family Tax Benefit B would give these non-earners some income of their own, as it was not means tested on family income, only their own. In contrast, there is no payment targeted specifically to mothers in paid work, as even the Child Care Rebate is available to

³ (http://www.aph.gov.au/Library/pubs/online/children_parta.htm)

those without a workforce connection, albeit for fewer hours (24) than for those with such a connection.

The loss of the two earlier campaigns by women's groups and some unions to meet the standards set by ILO Convention 183, Maternity Protection (2000) and Recommendation 191, Maternity Protection (2000), and to remove the reservation in Article 11.2 of the Convention on the Elimination of all Forms of Discrimination against Women applying to paid maternity leave, shows why there is a certain anxiety about the present push. Our previous experiences with both ALP and Coalition governments were identical and show a continuing problem of convincing governments to recognise that mothers with paid jobs are as legitimate paid workers as those without and this does not disrespect mothers not in paid work.

The Baby Bonus questions

Because it was made a universal, non work-related payment, the current Baby Bonus payment was always in question. Income tests applied in the Budget indicate that any such payment will always be subject to questions of legitimacy. The change to paying it in instalments seems to be mainly a response to scare stories of 'irresponsible' spending on plasma TV and other apparently non child-related expenses. Spreading it out over 26 weeks could also be seen as an indication that the Government wants it to be seen as a form of maternity leave, which is not appropriate.

There are a number of reasons why using the current Baby Bonus payments as a basis for a maternity/parental leave scheme is a very problematic:

1. Firstly, the Baby Bonus, in its new version, is a small cash payment (less than \$200 per week) that is not connected with any entitlement to take leave and return to that job. In this respect it ignores those who are not covered by the current legislated 12 month maternity leave entitlement that depends on being a permanent worker with at least a year's service. Any payment labelled **paid leave** needs to combine money and leave entitlements.
2. The Baby Bonus is now income tested, albeit with only about 7% excluded. Income testing—as opposed to income taxing—undermines the argument that this payment ever equated to maternity leave in any way. No form of work leave payments are income tested. A workplace leave payment is an accepted work related entitlement, with no one questioning, for example, whether long service leave should be offered to those who can fund their own time out.
3. The Baby Bonus is not paid through the workplace or workforce status-related. It now will offer all low and presumably middle income mothers a payment regardless of their workforce attachment and eligibility for any other leave payment.

It currently costs over \$1.2 which will rise by about 20% next financial year. It is also not taxable income which any form of leave payments should presumably be.

Who should fund it?

The benefits publicly funded paid maternity/parental leave should barely require a public debate, but in Australia it is not yet clearly supported by many politicians,

even though a July 2007 survey commissioned by the National Foundation for Australian Women and the NSW Commissioner for Children and Young People showed a clear majority (76 per cent of respondents) of the public accept the idea.⁴

There are direct benefits to working families in being able to access paid maternity leave. There are also wider benefits for children in having a parent, presumably the mother, available in the first months, and maybe the other parent for more the first year. This is already recognised through the high costs and subsidies associated with achieving adequate quality care for small babies.⁵ These benefits can be seen as personal and familial, but they are also related to the public good, as they can pertain to better outcomes for future citizens. Public subsidisation of maternity leave is thus consistent with a range of other child related subsidies and services in education and health areas, such as immunisation and preschool education.

The employment-related arguments for paid maternity leave go to the importance of retaining women's skills in the workplace and the workforce—particularly given the current call for female participation because of the skill shortage. Younger women tend to be better qualified than males in many areas, so their education and training need to be used and extended. Recognising their workplace experiences, and encouraging a workforce attachment that will result in their longer term contribution to both the tax system and their own superannuation. At the same time, there needs to be a public investment in validating the public benefits of time out from of their workplace and spent with their children.

The long delay in introducing a paid parental leave scheme has made it harder to propose a system based on a direct analogy with long service or annual or sick leave. Australia has no social insurance system, and the only contributory payments system is superannuation. Had parental leave been introduced as part of the compulsory superannuation package, it could have been structured in as part of a contributory scheme. As it was not, the opportunity was lost and in the interim, government payments have raised expectations, particularly amongst small business and those less concerned about their workers, that any such payments should be publicly funded.

Some good employers have shown interest in supporting higher income workers during maternity leave in order to retain expertise, and some industries have voluntarily offered paid maternity leave, but usually for quite limited periods. Estimates of the incidence of use of paid maternity leave are about 30% but and ABS, in 2005 found around 44 per cent of women were eligible for paid maternity leave from their employers,⁶ including in particular public sector employees and those in more privileged white collar employment. However, as the Commission has noted, conditions and eligibility provisions for these employees vary substantially in terms of the type of leave provided, the length of leave allowed, and other conditions. Other employers have shown little interest, particularly in smaller, often female-dominated industries.

⁴ See <http://www.nfaw.org/paid-maternity-leave-newspoll-results/>

⁵ While current child care subsidies are not age related, they should be so current ratios of carers to babies can be increased, as recommended rates are 1-3 and there are pressures to make this mandatory, not 1-5. Child Care rebated and tax credit de facto are related to cost levels, so will rise if standards change.

⁶ ABS, Employee Earnings, Benefits and Trade Union Membership, Australia, Aug 6310.0, 2006

The continued gender segregation of the Australian workforce also means that some employers would have greater liabilities than others. A publicly funded paid maternity leave component would increase equity among employers. It would also arguably offer advantages for low income women in feminised areas, as their employers would be less likely to oppose such a scheme than one to which employers were expected to contribute.

Public funding of retirement income is partly provided through income-tested pensions, but is also substantially provided through very generous tax concessions, mainly going to higher income earning men. The virtually bi-partisan superannuation policy can be used as an example of how government legislation can be used to set up an employment-based payment system that is most generously publicly supported. Although there are contributions to superannuation from employers and arguments for employee contributions, the success of the scheme is largely dependent on the very generous tax concessions that subsidise such contributions. The optimum benefit of these tax concessions is delivered to high income males. Public funding of paid maternity leave would counter some of the \$20B based indirect discrimination against women in paid work within the superannuation system.⁷

A further workplace equity argument for the provision of paid maternity leave can be based on the longstanding leave policy that recognises payment during leave to train for the military reserve; birth related leave should be given the same importance.

The introduction of genuine, work related maternity/parental leave payments should be the beginning of further discussions of better family friendly workplace provisions. The arguments for employer support for such provisions are widely canvassed and accepted: where employers maintain links with the employees, those employees much more likely return to the same organisation after time out; and an employer of choice will attract bright young women looking for future options.

WELA Detailed Proposals for a New Payment

WEL Australia recommends the introduction by 2009 of a publicly funded paid maternity leave ideally for at 26 weeks but at least for 14 weeks, which should be clearly differentiated from the Baby Bonus scheme. It should include 2/4 weeks of partner leave.

- This payment would replace work income up to the level of the minimum wage. The scheme would add on the order of a further \$500 M to government spending.
- Maternity/parental leave payments should be taxable as they will be a form of workplace income, and should include superannuation.
- All existing entitlements provided in current industrial awards and agreements should be protected so no employee would be 'worse-off'.
- Where employees receive a paid maternity leave entitlement that goes beyond the national scheme, the top-up should remain. A 'no-disadvantage test' ought to be applied.

⁷ <http://www.treasury.gov.au/contentitem.asp?NavId=022&ContentID=1333>

- Payments should be made through the employer, and paid in the usual way, or in a lump sum like other leave entitlements. They should where possible be integrated with any 'top-up' employer contributions and other payments such as partner leave.
- Eligibility for other welfare payments, eg parenting payments, would continue for those whose income was low⁸ and had no current workforce attachment⁹
- The existing Baby Bonus should continue to be paid to eligible households as it will therefore offer income where there is no or very limited workforce attachment.
- Where a family receives elements of both maternity leave payments and the Baby Bonus, the payments should be separated by clearly having different names and payment sources.
- Paid maternity leave should be available to all with six month of continuous or broken employment in the year preceding the birth, and pro rated with a minimum of six weeks paid or unpaid actual leave for those with less service.

Making sure women can take leave

To apply for parental leave, an employee is required to have completed at least 12 months of continuous service with their employer by the expected date of birth. The entitlement to parental leave is extended to eligible casual employees. An eligible casual employee is defined as a casual employee who has worked on a regular and systematic basis for at least 12 months (or a sequence of periods totalling at least 12 months) with the same employer and has a reasonable expectation of continuing employment by the employer (other than the period of parental leave). As many women in paid work have less than 12 months service with their current employer, (an estimated 17 per cent of mothers¹⁰) and many more are ineligible casuals, this leaves many of them without the right to take any actual maternity leave, or to access any payments that may be associated with a maternity leave entitlement.

- This entitlement needs to be enacted as a basic employment condition to ensure that those not currently covered are entitled to some leave in proportion to their level of workforce attachment.
- There needs to be a right for all women to take up to 6 weeks leave from any regular paid position that they have held for at least 3 months under the

⁸ These include: Parenting payment, either single \$546.80 pf or partnered \$394.40 per fortnight; Family Tax Benefit part B \$125.02 per fortnight; and Family Tax Benefit part A \$145.46. A single mother (eg student or unemployed) would be eligible for \$408.64 a week plus some extra payments and concessions, and an eligible partnered woman (eg with student partner) would be eligible for \$332.44, plus nearly \$200 from the baby bonus. They are actually better off with such payments because of access to health care cards and other concessions, as well as some additional bonus payments. Those on paid maternity leave, unless very part time, would generally not be eligible for FTB B, possibly only part of FTB A and not Parenting Payments. Some members of WEL have concerns at this differentiation

⁹ WELA recognises that a few members are uncomfortable about this differentiation.

¹⁰ Whitehouse, G., Baird, M., Diamond, C. and Hosking, A. 2006b, The Parental Leave in Australia Survey: November 2006 Report <http://www.uq.edu.au/polsis/parental-leave/level1-report.pdf>.

- assumption that it would be ongoing employment, whether casual or permanent.
- No employer should have the right to terminate or casualise a woman's employment because she is pregnant.

Existing providers of PML

As indicated above, around 44 per cent of women in paid employment already have access to varied periods of paid leave through their employers. In terms of use of the entitlement, the data show that of the female employees who worked while they were pregnant and took time off for the birth, 37 per cent used paid maternity leave.¹¹ These women are mainly in the public sector or in jobs with bargaining power. Outside the public sector, women's capacity to retain their current entitlements will depend on their bargaining power in the workplace. Employers who have voluntarily made paid maternal leave available should retain their current financial commitment. Where they make savings as a consequence of passing on to employees the Government payment, they can apply those savings to additional periods of leave and so get the benefit of their financial commitment by enhancing their position as an employer of choice.

- We recommend that the government should meet the entitlements of all eligible employees up to the minimum wage, even where this will in effect reimburse employers who are already paying this standard or more, at least in the private sector.
- Where employers are currently providing an entitlement that is above the minimum, they should continue to top up the government payment to the level of employees' existing entitlements, and to apply any remaining funds to additional periods of leave. **The retention of current levels may require a no disadvantage clause in the legislation**
- The government could explore possible incentives in the tax system to encourage employers to top up the minimum wage to salary replacement level. For example, employers maintaining or enhancing their top-up could attract 110% deductions for voluntary employer contributions in their first year of operations.
- Those not making maternity leave payments beyond the resources provided by government may need an incentive to take on the payments, which may be usefully offered for an initial three years.

The core of the changes recommended is to make sure that any maternity leave payment is clearly paid work related, that is, that it is a payment which combines recognition of workers' roles in becoming parents as meriting paid leave similar to those training to participate in the military reserve, jury duty or provision of emergency services, and is paid by government and employers.

This should mean that additional resources to provide replacement income for higher earners and to extend the period of leave for the mother and her partner should be arguable with most employers. We propose that the debates about mandating such changes be postponed until we get the principle of paid maternity (parental leave) accepted to increase employer support.

¹¹ ABS, Maternity Leave Arrangements, Australian Social Trends, cat. no. 4102.0 2007.