



Katherine Wilsons Information & Legal Service Inc.

A community legal centre providing free legal support through
paid and unpaid volunteers. NTACLC helps Katherine
Territory residents with legal issues, such as:

Inquiry into Paid Maternity, Paternity
and Parental Leave
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

By email: parentalsupport@pc.gov.au

Dear Sir/Madam

Submission: Paid Maternity, Paternity and Parental Leave

1. Thank-you for providing the Northern Territory Association of Community Legal Centres (NTACLC) with the opportunity to make a submission on the Productivity Commissions Draft Inquiry Report, *"Paid Parental Leave: Support for Parents with Newborn Children"* (the Report).
2. NTACLC is an association of Community Legal Centres that are based in the Northern Territory. NTACLC provides legal advice, information, casework and legal education to residents of the Northern Territory. The association is particularly focused on providing services for disadvantaged people including Indigenous people, people with culturally diverse backgrounds, women and those living in remote locations.
3. Our submissions are set out in detail below, in short we make the following comments:
 - a. NTACLC supports the introduction of a tax-payer funded paid parental leave scheme in Australia;
 - b. Particular consideration should be given to ensure that disadvantaged groups can access the scheme, including:
 - I. Community Development Employment Projects (CDEP) Recipients;
 - II. Young mothers and low income earners.
 - c. The parental leave scheme should be flexible enough to *"allow for a broad range of families to participate..."*, including Indigenous families.
 - d. NTACLC supports the provision of "Paternity Leave" as a component of the parental leave scheme in Australia. However, rather than the leave being quarantined for the sole use of fathers or other eligible partners, NTACLC submits that

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the primary caregiver should be entitled to elect an alternative support person in the absence of an eligible partner.

NTACLC supports the introduction of a tax-payer funded paid parental leave scheme in Australia

4. NTACLC supports the introduction of a tax-payer funded paid parental leave scheme in Australia. In particular NTACLC supports the following:
 - a. That the improved wellbeing of families, and in particular child and maternal health¹, be a primary goal of the parental leave scheme;
 - b. That the scheme "allow scope for a broad range of families to participate"²;
 - c. That the scheme should, where possible, "avoid being overly prescriptive, allowing families to flexibly adapt the leave scheme to their specific needs"³;
 - d. That the scheme recognises that "a baby has many potential primary carers"⁴;
 - e. That the scheme enables a broader range of employed women, other than those already entitled to maternity leave under the *Workplace Relations Act 1996* and relevant state systems, to maintain "a lifetime attachment to the workforce".⁵

Particular consideration should be given to ensure that disadvantaged groups can access the scheme, including:

5. CDEP Recipients

The Australian Government has committed to deliver a reformed CDEP Program in remote Australia.⁶

Increasing Indigenous Economic Opportunity: A Discussion of the Future of the CDEP and Indigenous Employment Programs,⁷ proposes that the reformed CDEP will include:

- a. *On-the-job work experience* where CDEP workers will work with employers for a minimum of 15 hours per week for a period of up to 12 months. Participants are to be paid "wages directly by the employer".⁸

¹ Productivity Commission *Paid Parental Leave: Support for Parents with Newborn Children* ("the Report"), page XVII

² *Ibid*, page 2.3

³ *Ibid*, page 2.3

⁴ *Ibid*, page 2.16

⁵ *Ibid*, page XVII

⁶ See www.fahcsia.gov.au/internet/fahcsinternet.nsf/indigenous/programs-cdep_intro.htm

⁷ Released by the Federal Government on 18 May 2008

⁸ Page 17

- b. *A minimum of 15 hours per week* where participants in the reformed CDEP would be engaged actively and productively for at least 15 hours a week.
 - c. *CDEP wages would continue to be available until 31 March 2010* so that participants in the existing CDEP program at June 2009 in remote communities would continue to receive CDEP wages. NTACLC notes that participants in the current CDEP program work an average of 16 hours a week.⁹
6. In order to be eligible for parental leave under the Commission's proposed scheme, an employed parent must have:
- a. Worked an average of 10 hours a week in the 12 months preceding the expected date of birth or adoption; and
 - b. Been employed 'continuously' for the last 12 months, though not necessarily with the same employer¹⁰ ("the Eligibility Requirements").
7. In consideration of the Government's proposed reforms to CDEP, there will be circumstances where CDEP participants will be eligible for parental leave. NTACLC submits that:
- a. Where CDEP participants satisfy the Eligibility Requirements, they should be entitled to parental leave;
 - b. The scheme should specifically include CDEP recipients that satisfy the Eligibility Requirements.

8. Young mothers and low income earners

The Commission has recommended that eligible employees earning below the minimum wage (including employees that are less than 21 years of age) be entitled to a reduced rate under the scheme.¹¹

- 9. The Commission's justification for reducing the rate of payment for low income earners, including young mothers, is to reduce the risk of creating "a bigger incentive for having a baby than the current baby bonus" and reduce the risk of triggering "short-sighted decisions by some young people."¹²
- 10. The Commission has indicated that, on average, the additional new money families would receive from the parental leave component would be around \$3,200.¹³
- 11. NTACLC submits that:
 - a. \$3,200 is not a substantial incentive for young people to have children;

⁹ The Australian, May 01, 2008 "CDEP hides social breakdown: leader" Natasha Robinson

¹⁰ Productivity Commission *Paid Parental Leave: Support for Parents with Newborn Children* ("the Report"), page 2.15

¹¹ Ibid, page 2.7

¹² Ibid

¹³ Ibid, page 9.12

- b. The Report contains no evidence that a relatively minimal cash incentive will have an effect of triggering young people to have children;
- c. In the event that a young person decides to have a child, and that young person satisfies the Eligibility Requirements, the Australian Government should encourage that person to maintain their attachment to the workforce;
- d. Young people and their newborn children need at least the same level of support as other mothers and their babies;
- e. The improved wellbeing of the mother and child should be the paramount consideration;
- f. All people that meet the Eligibility Requirements should have access to the full rate of parental leave entitlements.

A parental leave scheme should be flexible enough to “allow for a broad range of families to participate...”, including Indigenous families.

- 12. The Commission proposes that *“only an employed person who is a parent and primary carer of a child should be able to access the scheme.”*¹⁴ These eligibility requirements are said to reflect the goal of the scheme “to encourage exclusive parental care of children”.
- 13. The Commission has sighted significant evidence to establish that an infant is benefited by being cared for by a primary person. For example, the Australian Family Association is cited to have said that:

*“Child care has not been shown to be a perfectly satisfactory and equivalent substitute to mother care or other care by significant loving attachment figures in the child’s life...If we recognise the seriousness of infant needs to be cared for in the context of an attachment relationship, then it becomes imperative that child care be of a very high quality providing a care ratio of at the most 1:3 and preferably 1:1 for infants.”*¹⁵
- 14. NTACLC provides legal advice and assistance to, among other people, Indigenous Australians living in remote communities. The experience of the association is that Indigenous families living in remote Australia often approach the care giving role as a communal responsibility. Grandmothers and aunts are often the primary care-giver of a child.
- 15. Literature focusing on the ‘growing up’¹⁶ of Aboriginal children details protective measures which are used by communities when raising Aboriginal children. These measures include positive attention from parents, supportive relationships with other adults and extended family and family harmony.¹⁷

¹⁴ Ibid. page XXVI

¹⁵ Ibid. page 4.37

¹⁶ See generally Professor Robyn Penman (2006) *“The ‘growing up’ of Aboriginal and Torres Strait Islander children: a literature review”* Occasional Paper No. 15 Australian Government Department of Families, Community Services and Indigenous Affairs.

¹⁷ Centre for Community Child Health 2000. *A review of early childhood literature*, Department of Family and Community Services

16. NTACLC recognises that an infant is benefited by being cared for in the context of an attachment relationship. It is noted, however, that the Report contains no evidence that an infant is disadvantaged by developing an attachment relationship with a primary caregiver other than their parent.
17. The Report recommends that, "(the mother) should have the power to transfer the leave to the father (or same-sex partner) – so long as they assume the role of primary caregiver and meet the employment eligibility criteria".¹⁸
18. NTACLC submits that, in circumstances where parents are not able to care for an infant, the parental leave should be transferable to another "significant loving attachment figure"¹⁹ – so long as they assume the role of primary caregiver and meet the employment eligibility criteria".²⁰
19. The Report recommends that the proposed scheme should be accessible by parents that have adopted children.²¹ Adoption is a common practice in Aboriginal communities. NTACLC submits that traditional adoption (whereby children are transferred permanently from one family to another) should be treated in the same way that other adoptions are dealt with in the proposed scheme.
20. NTACLC submits that the scheme should:
 - a. Be accessible by a person that satisfies both a "primary carer" test and the Eligibility Criteria when both parents of an infant are unable/unwilling to provide that infant with an attachment relationship;
 - b. Deal with traditional Aboriginal adoption in the same way other adoptions are dealt with.

NTACLC submits that the primary caregiver should be entitled to elect an alternative support person for the "Paternity Leave" entitlement in the absence of an eligible partner.

21. The Commission proposes two weeks of paid paternity leave to recognise:
*"...the benefit of their involvement early in the life of the child."*²²
22. NTACLC submits that the provision of so-called paternity leave should recognise the importance of a mother being supported in the time following the birth of her child. It follows that all mothers, whether they are partnered or not, should have access to a support person.
23. NTACLC submits that:
 - a. In the absence of an eligible partner the so-called "Paternity Leave"²³ entitlement should be available to a support person that is elected by the mother/primary caregiver;

¹⁸ the Report, page 2.17

¹⁹ See paragraph 15

²⁰ the Report, page 2.17

²¹ Ibid, page 2.27

²² Ibid, page 4.45

²³ Ibid, page XI

- b. The "Paternity Leave" allowance should be re-named to the "Support Person Allowance" so as to reflect the inclusion of same-sex couples and single mothers.

Thank-you for considering NTACLC's views on paid parental leave. Please contact us if you would like to discuss our comments further.

Yours faithfully,

A handwritten signature in blue ink, appearing to read "Aimee Murphy".

Signed by a member organisation
On behalf of the NTACLC