



New South Wales

ATTORNEY GENERAL
MINISTER FOR JUSTICE
MINISTER FOR INDUSTRIAL RELATIONS

MINISTER FOR WOMEN
MINISTER FOR EDUCATION
AND TRAINING

Mr Robert Fitzgerald AM
Presiding Commissioner
Inquiry into Paid Maternity, Paternity and Parental Leave
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Dear Commissioner

We write to welcome the Productivity Commission's Draft Inquiry Report, *Paid Parental Leave: Support for Parents with Newborn Children*. The draft report's proposal for a national paid parental leave scheme that achieves the objectives of enhancing maternal and child health and development, facilitating workforce participation and promoting gender equity and work/family balance is consistent with the objectives and principles put forward by the New South Wales Government in its submission to the Inquiry.

Above all, we commend the draft report's preference for delivering a paid parental leave scheme through industrial relations entitlements in order to reinforce the normalcy of combining both work obligations and family commitments. This acknowledges the dual function of this public policy to both reflect and reinforce social change. Employees with children or family responsibilities, and families where both parents work, can hardly be characterised as exceptional phenomena in contemporary society.

The New South Wales Government has not formally considered the Draft Inquiry Report's recommendations at this stage. As the Ministers with responsibility for the relevant areas, however, we wish to provide input to particular questions posed by the Productivity Commission for comment. Our comments largely flow from the categorisation of paid parental leave as an industrial relations entitlement. It follows from this that matters of eligibility, accrual of benefits, flexibilities in relation to full or part-time leave, as well as superannuation should be dealt with in a manner consistent with other industrial entitlements.

We note, however, that both our comments which follow and the Productivity Commission's development of the report more broadly, take place against the background of a national industrial relations framework that is itself subject to

change under the Forward with Fairness redesign process. Accordingly, to the extent that the Productivity Commission might adapt its final report, as appropriate, to accommodate the outcomes of this process or to caution against the possible effects of future changes, it should do so.

In response to the issues on which the Productivity Commission has sought feedback we make the following observations:

- **Accrual of leave and other entitlements during paid parental leave**

For paid parental leave to be accepted as a normal leave entitlement such as paid sick leave, paid recreation leave and paid long service leave, it should be treated the same way as those leave entitlements and accrue as time served in the calculation of those and other entitlements.

Treating paid parental leave the same way as paid leave and other entitlements reinforces and promotes the objectives of the scheme. It enhances maternal health over time by ensuring that a mother forfeits neither income nor any leave or other entitlements at the time of birth. It strengthens workplace and workforce attachment by treating paid parental leave as a normal paid absence from work increasing the expectation that the parent will return to work. It is also one of the most important vehicles for achieving the best outcome for women in the long-term. These all contribute to the objective of promoting gender equity and work/family balance.

- **Part-time paid parental leave**

The matter of providing an employee with paid parental leave on a part-time basis should be tested against its consistency with other industrial entitlements as well as with the stated objectives of the proposed scheme. The approach taken in the proposed National Employment Standards is that an employee who is a parent of a child under school age may request from the employer a change in working arrangements for the purpose of assisting the employee to care for the child. The New South Wales Government submits that an employee should be able to request part-time paid parental leave as a working arrangement under the National Employment Standards (where an employer may refuse the request only on reasonable business grounds).

- **The impact of longer periods of parental leave**

Under existing legislation, all Australian jurisdictions provide an eligible employee with a right to unpaid parental leave for 12 months and a guaranteed right to return to the pre-leave or comparable position. Employers, therefore, already have to take account of the cost of providing an eligible employee with 12 months absence from work for parental leave.

- **Fathers' access to paid parental leave**

The Productivity Commission's proposed arrangements for the allocation of leave between parents incorporate important flexibilities that will give families capacity to exercise choice about how leave is used and shared. The ability of the mother to transfer a portion of paid parental leave to the father or her same sex partner, together with the provision of a short period of paid paternity leave that is 'ring-fenced' for the father or supporting parent, will assist in leading community norms about the value of sharing responsibility for parenting.

While these measures will lay the groundwork for fathers and other parents to access paid parental leave, the extent to which fathers will use these provisions is unclear. An evaluation of New Zealand paid parental leave arrangements showed that very few fathers reported taking paid paternity leave, opting instead to take other paid leave such as annual leave. It is suggested that fathers' use of leave arrangements be evaluated in the staged assessment and formal evaluation process proposed by the Productivity Commission.

- **Defining the self-employed / contractors**

The dividing line between employees on the one hand and self employed or contractors on the other is notoriously difficult to pin down. Any consideration of a straightforward test to differentiate the self-employed/contractors from employees (that is a contract of service from a contract for services) for the purposes of eligibility must take into account any relevant provisions that may be included in the proposed substantive Forward with Fairness workplace relations legislation.

Thank you for the opportunity to comment on the Draft Inquiry Report. The New South Wales Government welcomes progress on this important issue. We look forward to the final recommendations of the Productivity Commission to the federal Government.

Yours sincerely



John Hatzistergos
Minister for Industrial Relations



Verity Firth
Minister for Women