



Office of the Anti-Discrimination Commissioner

Celebrating Difference, Embracing Equality

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25 November

Parental Leave Inquiry
Productivity Commission
GPO BOX 1428
Canberra City ACT 2601

Dear Inquiry Team,

Re: Productivity Commission inquiry into Paid Maternity, Paternity and Parental Leave

The Office of the Anti-Discrimination Commissioner (OADC) is pleased to provide a submission to the aforementioned inquiry. In essence the OADC supports a national, statutory paid parental leave scheme subsidised by the Government.

By way of background, the OADC administers the Tasmanian *Anti-Discrimination Act 1998* (the ADA). The ADA prohibits discrimination and other specified conduct and provides for the investigation and conciliation of, and inquiry into, complaints in relation to such discrimination and conduct. My other roles and functions as Commissioner include consulting and inquiring into discrimination; disseminating, preparing and publishing guidelines; and undertaking research and educational programs to promote attitudes, acts and practices against discrimination and prohibited conduct.

Relevant to this inquiry, the ADA prohibits discrimination and prohibited conduct on the basis of gender, parental status, family responsibilities, pregnancy, breastfeeding and relationship status in a number of public areas including employment. The ADA makes no distinction between males and females and therefore males and females are equally protected under the ADA.

The OADC is of the view that a paid parental leave scheme is consistent with the spirit of the ADA in that it will promote equal opportunity for women, who in the past were not predominantly in the paid workforce. Now that women represent a significant portion of the workforce and many families are two income families, the scheme will cater to families living in the 21st Century. In addition, it will benefit fathers by recognising their role as significant and providing fathers with the opportunity to take leave to care for a baby or infant.

Often, the OADC receives complaints relating to difficulties experienced returning to work following the birth of a child or after maternity leave, and barriers balancing work and family commitments. The OADC is of the view that a paid parental leave scheme will assist families to balance work and family,

as well as providing a clearer framework for employers when it comes to handling issues of leave during pregnancy and after the birth of a child.

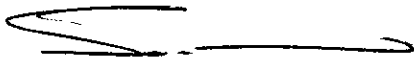
Further to this, a uniform paid maternity leave scheme will reduce discrimination against women by removing perceived, or real, pressure to return to work prematurely after giving birth – thereby benefiting children.

It is also the view of the OADC that a national paid parental leave scheme is likely to encourage women to breastfeed their infant children, or breastfeed for longer, if they have a period of paid leave at home with their baby.

The OADC has responded to a series of questions overleaf.

If the Inquiry team requires further information or clarification, please do not hesitate to contact Catherine Edwards, Complaints Manager.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Sarah Bolt', with a long horizontal flourish extending to the right.

Sarah Bolt
Anti-Discrimination Commissioner

1. Are you in favour of paid maternity leave for mothers?

The OADC strongly supports paid maternity leave for mothers to promote equality and attachment to the workforce, thereby increasing women's participation in the workforce. A statutory paid maternity scheme will also promote bonding between mother and child in the early months, making it easier for women to return to work, knowing that a meaningful bond has been formed.

2. Are you in favour of paid leave for fathers? Should it be a separate entitlement or shared between parents?

The OADC also strongly supports paid leave for fathers, as they have an equally important role in raising children. The OADC is of the view that parenting should be shared. As women in Australia tend to do the majority of child rearing (see *'It's About Time Women, men, work and family'* Final Paper 2007 prepared by the Human Rights and Equal Opportunity Commission), it would be beneficial to have a separate entitlement that can only be utilised by fathers, as recommended by the Commission.

However, the OADC is of the view that fathers should be eligible for paid parental leave for the same amount of time in their own right, regardless of the mother's eligibility, if he is connected to the workforce and the primary carer. This approach, in our view, will help to break down gender stereotypes in relation to child rearing.

3. Who should be included?

- a. **Casual employees, permanent, self employed, contractors, mothers outside the paid workforce, other?**
- b. **What recent employment record, if any, should be the criterion for eligibility?**
- c. **Should adopting families be treated the same way?**

All of the above listed in (a) should be included, except mothers not in the workforce. In relation to (b) the proposed average of ten hours work per week over a 12 month period is supported, but consideration should be given to seasonal workers whose average hours may be less than 10 hours during the 'off season' and some contractors e.g. cleaners. The OADC believes it is critical that adoptive families be treated in the same way, regardless of the age of the child at the time of the adoption.

Further, the OADC is of the view that recognised leave entitlements such as sick leave, carer's leave and long service leave, not break the 12 month eligibility period.

4. What about those with stillborn children or those whose baby dies?

The OADC is of the view that it is critical that parents whose baby has died should be entitled to access paid leave, both to recover from giving birth and for bereavement reasons.

The OADC is supportive of the Commission's proposal in this regard.

5. What duration of paid leave do you think is appropriate?

The proposal made by the Productivity Commission of 18 weeks is a good starting point and will not be a significant financial burden on businesses. The proposed duration however should be reviewed, with a view to increasing the period over time.

6. The start date - should it allow for time off before the birth? Should it be able to start later than the six months cut-off proposed by the Commission?

The start date of paid leave should allow time off before the birth. There should be some flexibility around the six months cut off proposed by the Commission in case parents are using other entitlements that bring them outside the 6-month period. In other words, there should be a 'no disadvantage test' in the way the statutory scheme interacts with other entitlements. This would promote the best interests of the child by allowing parents to maximise periods of paid leave to care for children.

7. Should people be able to use sick leave, recreation leave or partly accrued long service leave to extend the period of paid leave? In your experience will low income women especially have enough accrued leave to bring their period of paid leave up from the 18 weeks to the six months accepted as the desirable minimum?

The OADC is of the view that in a modern, flexible working environment people should be able to use sick leave, recreation leave or partly accrued long service leave to extend the period of paid leave. While the OADC does not have any data on the experience of low income women who are mothers, it is quite possible that this group may find it difficult to bring their period of paid leave up from the 18 weeks to the six months accepted as the desirable minimum. Therefore, this issue should be explored, with a view to providing assistance to

this group if required.

The position of some low income women also justifies extending the duration of statutory paid leave entitlements in the future.

8. What level of payment is appropriate, eg minimum wage, replacement, replacement capped at a certain level, other?

Ideally, paid parental leave should be a replacement wage, however, the proposal made by the Productivity Commission, that it be the minimum wage, is a good starting point. The OADC is of the view that the level of payment should be reviewed and increased over time to be economically viable for families.

9. Do you think it should be means tested?

The OADC is not of the view that paid parental leave be means tested, as the aim is to maintain mothers' participation in, and connection to the workforce.

10. How do you think the leave should be funded?

- a. **Government only**
- b. **Employer should pay**
- c. **Government with an employer top-up**
- d. **Government and a levy on all employers, or Government and a levy on both employers and employees**
- e. **HECS style loan, repaid by parent later, or special savings accounts**
- f. **Other and if so, what?**

The OADC does not agree with a HECS style loan as it encourages debt. The OADC is of the view that the scheme should be funded by Government to minimise the impact on business and reduce the potential for discrimination against women in relation to recruitment. The OADC agrees that employers should maintain superannuation payments during the period of paid leave.

11. How should 'self-employed' be defined?

The OADC is of the view that 'self employed' should be defined broadly.

12. Should the leave be able to be taken part-time? In more than one period?

In order to adequately meet the needs of a modern family, the OADC supports flexible options that involve taking paid leave part-time, sharing it with the other parent, or taking leave in more than one period. The OADC is not of the view that a more rigid approach will benefit children or parents, given the diverse make up of families and their work commitments in today's society.

13. What would be the effect on employers of parents extending their leave?

Provided employers are given reasonable notice of planned leave as is presently required, they can make arrangements to cover the worker on leave and recruit staff, with little, or no, negative effect. In addition, there will be an advantage to parents in being able afford to spend adequate time caring for, and bonding with their child.

14. What other Government policy changes should be made, along with or complementing the proposed scheme?

It would be timely to review all family related policies including childcare. The OADC is of the view that there should be continued Government support and education for new parents e.g. through Child Health Nurses or the like.

15. Should other forms of leave (sick, recreation, long service) accrue while the employee is on paid parental leave?

Yes.

16. Should employers be required to continue to pay super entitlements?

Yes.

17. Should a Government funded scheme be paid through employers or direct by Government eg Centrelink

The OADC is of the view that to reduce the impost on business, particularly while adjusting to a new scheme, paid parental leave should be paid through Centrelink or another suitable Government Department.

18. Should small-medium employers receive a payment to compensate them for the costs of short-term replacement hiring? If so, how much?

The OADC is of the view that this may need to be explored in relation to very small businesses and Government should provide advice to businesses that need it. The costs should be the actual replacement costs incurred by the particular business and be able to be substantiated.

19. What are the implications of the Commission's proposal for breastfeeding?

The Commission's proposal will encourage breastfeeding for longer. It will however, be important to ensure that breastfeeding mother's are still accommodated at work, as required by most State and Territory anti-discrimination legislation including the ADA.

The OADC agrees with Draft Recommendation 2.11.

20. What are the implications for the health and wellbeing of the mother and child?

The OADC view is that a paid parental leave scheme will be highly beneficial for the physical, emotional and financial well being of *all* parents and their children.

21. Would you support the option of an income contingent loan in addition to the Commission's recommended scheme? (A loan where the parents did not have to start repaying until their income reached a certain level).

No, as per above, it will encourage debt.