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Ms R Bausch
Inquiry into Paid Maternity, Paternity and
Parental Leave
Productivity Commission
GPO Box 1428
CANBERRA ACT 2601

8 DEC 2008

Dear Ms Bausch

Please find enclosed the Tasmanian Government's submission to the Productivity Commission's Draft Inquiry Report on Paid Parental Leave.

I am pleased to advise that the Tasmanian Government supports in principle the recommendations raised in the Draft Inquiry.

Thank you for the opportunity to make a submission on this issue of national significance. I look forward to learning the outcomes of the Inquiry.

Yours sincerely

David Bartlett MP
Premier

TASMANIAN GOVERNMENT'S RESPONSE TO THE PRODUCTIVITY COMMISSION'S INQUIRY INTO PAID MATERNITY, PATERNITY AND PARENTAL LEAVE

December 2008

Introduction

The Tasmanian Government provided a submission to the Productivity Commission's initial issues paper, Inquiry into Paid Maternity, Paternity and Parental Leave, released in April 2008. The opportunity to provide further comment is welcome.

The Tasmanian Government has already indicated its support for a national paid parental scheme. This is in recognition that paid maternity leave is a key strategy to improving the health and wellbeing of mothers and babies and assists in encouraging workforce attachment. It also ensures that parents can choose when to have a child without the added stress of financial pressure.

Whilst the Tasmanian Government supports a national paid parental leave scheme, there are concerns about some of the proposed recommendations by the Productivity Commission. This response will focus on the recommendations and those concerns.

RECOMMENDATIONS

Draft Recommendation 2.1

The Australian Government should introduce a statutory paid parental leave scheme that provides:

- **Paid leave capped at the adult minimum wage for each week of leave for those covered by adult minimum wages**
 - **But with lower rates – to be set administratively – for juniors and others with hourly wages below the adult minimum**
- **Payments to be taxed and included in income for assessment of any welfare benefits**
- **Leave benefits for parents having twins or higher multiple births to be equal to those for parents bearing one child, supplemented by a payment equivalent to the new maternity allowance for each additional child (draft recommendation 2.6)**
- **Superannuation entitlements calculated on the going wage of the employee or at the relevant capped amount, whichever is the smaller, but**
 - **This would only be available for employees who (a) have met the Commission's eligibility criteria for paid parental leave under draft recommendation 2.4; (b) were entitled to employer superannuation contributions in their jobs before taking paid parental leave; and (c)**

were entitled to unpaid parental leave under the National Employment Standards

- **Super contributions would be limited to the statutory 9 per cent rate**
- **Subject to its practical feasibility, including consideration of its compliance and administrative costs.**

The Productivity Commission indicates its intention to implement certain aspects of the scheme through the federal industrial system and even to align the proposed scheme with the revised National Employment Standards.

However, entitlements to unpaid parental leave at present are contained in both the *Workplace Relations Act 1996* (Cwlth) and in state-based industrial relations systems. Many State Government employees and those working in smaller private sector businesses in Tasmania are currently not under the federal industrial relations system.

It is suggested that the basis of the proposed scheme be included in legislation that allows employees not directly covered by the federal industrial relations system in the future to have access. Such legislation should also specify what occurs where present entitlements exist.

Draft Recommendation 2.2

The Australian Government should fund the cash component of the paid parental leave scheme, partially offsetting these costs by:

- **Removing eligibility for family tax benefit B while parents are on paid parental leave**
- **Replacing the baby bonus with another, differently focused payment as set out in draft recommendation 2.6**

Employers should fund superannuation contributions during the paid parental and paternity leave period, but only under the conditions specified in draft recommendation 2.1

The Tasmanian Government supports this recommendation, however notes that funding the superannuation contributions during the paid parental leave period will be an added cost burden to employers.

Draft Recommendation 2.3

The employer should initially make payments to employees under the statutory parental leave scheme, with subsequent reimbursement by the Australian Government. However, an employer would only act as a paymaster for government where:

- **An employee was also eligible for unpaid parental leave under the national Employment Standards and**

- **a workable method for speedy reimbursement of that employer was feasible**
 - **the Commission's preferred approach is for employers that make at least monthly 'pay as you go' withholding payments to the Australian Taxation Office to receive reimbursement through those payments, with all other employers exempt from the obligation to act as paymaster.**

The Australian Government should pay other eligible parents directly, preferably through a non-welfare agency.

The Tasmanian Government supports this recommendation in principle, however it should be noted that the payment model, whereby the employer is paymaster and pays the superannuation contribution, would add costs for the employer as well as an overhead to what is already a complex administrative task, particularly for small business.

The PAYG credits model would add a further administrative overhead, both at the initiation and subsequent auditing stages. Whilst small businesses in Tasmania would support this in principle, providing repayment is made quickly, a more efficient model might be direct payment from government to the employee, without the requirement for the employer to make the superannuation contributions.

In general, small businesses in Tasmania are in favour of supporting families however the impact of paying superannuation is contentious. Some small businesses feel that this is an onerous burden when they are not receiving any return on that money whilst others view this recommendation as a positive one, enabling them to provide an incentive for staff to return to work.

However, for larger employers such as the State Government, these additional costs are not likely to detract from the strong business case supporting improved parental leave entitlements.

Draft Recommendation 2.4

The statutory paid parental leave scheme should be available for an employed parent (including the self-employed and contractors):

- **who has worked an average of at least ten hours a week on a continuous basis for 12 months or more prior to the expected birth date of the baby, and**
- **who is also the primary carer of their baby.**

The Tasmanian Government supports this recommendation in principle, however it is suggested that consideration be given to reducing the ten hours a week eligibility criteria to the equivalent of one day's work per week on average over the previous 12 months. This is preferred because, anecdotally, many women, particularly those who have children already, choose to work one day per week to remain attached to the workforce until their children are

older, when they often choose to work more hours per week. Also, many women would be medically unable to maintain 10 hours per week in their usual employment right up until the time of giving birth.

Draft Recommendation 2.5

The paid parental leave scheme should give:

- **Eligible mothers the initial parental leave entitlement, but allow them to transfer the entitlement to eligible partners who take on the role of the primary carer**
- **Fathers (and other eligible partners) a two week period of exclusive paternity leave on a 'use it or lose' basis, even if the mother was not eligible for statutory paid parental leave**
- **Fathers access to paid parental leave if the mother is not eligible, but only where (a) the fathers meet the employment and primary carer eligibility requirements and (b) there are special circumstances, which would be determined administratively.**

The Tasmanian Government supports this recommendation and believes it to be an important element in any parental leave package. It is noted that the Productivity Commission's Terms of Reference did not include consideration of gender equity issues around a paid parental leave scheme. However, gender equity issues are generally part of the Tasmanian Government's employment reform agenda.

Draft Recommendation 2.6

The existing baby bonus should be replaced with an equivalently-valued, non-income tested maternity allowance, payable only to those parents not using statutory paid parental leave (with the exception of multiple births as set out in draft recommendation 2.1).

However, where a parent takes a shortened period of paid parental leave whose value is less than the maternity leave allowance, the parent would be entitled to a payment equal to the difference.

The Tasmanian Government supports this recommendation.

Draft Recommendation 2.7

The statutory paid parental leave scheme should provide a total of 18 weeks of paid leave for parents of a newborn child who meet the employment test, including:

- **A requirement that (a) the period of leave must commence at birth, or after a period of other continuous leave that commences at the birth of the child;**

(b) must be commenced within six months of birth; (c) leave must be taken in one block; (d) only one transfer of paid parental leave between parents would be permitted and (e) there be no concurrent use of paid parental leave by parents

- **Mothers of a stillborn baby, where the baby meets the requirement for birth registration**
- **Parents of non-familial adoptions, regardless of the child's age, from the time of placement**
- **Custodians of surrogate children, but subject to its compatibility with an impending uniform framework for surrogacy across Australian jurisdictions (with provision for 12 weeks of paid parental leave to the surrogate mother).**

Parents could take any paid parental leave remaining if their baby died.

Any outstanding leave could be transferred to the partner if the primary carer died.

Paternity leave could be transferred to the partner if the primary carer died.

Paternity leave could be taken concurrently with the mother's paid parental leave but would have to be taken within six months of the birth of the child.

The Tasmanian Government supports this recommendation.

Draft Recommendation 2.8

When the National Employment Standards are next subject to revision, the Australian Government should amend:

Section 21 to require an employee on parental leave to provide six weeks notice for an extension to leave, unless an employer agrees to a shorter period

- **Section 15 to provide job return guarantees to adoptive parents equivalent to natural parents.**

The Tasmanian Government supports this recommendation, while noting that the National Employment Standards apply to employers under the federal industrial relations system.

Draft Recommendation 2.9

In addition to publicly provided information on the workings of a statutory paid leave scheme, the Australian Government should provide:

- **Evidence-based advice to employers on how to reduce the disruption burdens associated with increased average durations away from work by carers, with this information especially directed at small business**

- **A web-based calculator that shows which employees would be eligible and sets out any obligations by employers.**

The Tasmanian Government supports this recommendation.

Draft Recommendation 2.10

A paid parental leave scheme should include:

- **A 'keeping in touch' provision that – subject to employer and employee consent – allows the employee to work up to 10 days while on paid parental leave, where that work strengthens the connection to their workplace**
- **Scope for eligible self employed parents to maintain some oversight of their businesses while on leave.**

The Tasmanian Government supports this recommendation in principle, particularly when such a provision would allow continued professional development through training programs, conferences and so on. However it has concerns around the practicality of 10 days employment for certain occupational groups.

For Tasmanian State Service employees for example, in most circumstances the duties performed by a person taking a long period of leave are assigned to another person, often through specific recruitment. In addition, Tasmanian State Service employees do enjoy the right to request part time return to work. Therefore, while acknowledging the merit of the Productivity Commission's proposal, the Tasmanian Government indicates that the following needs to be considered:

- Increased administrative and wages costs
- Potential difficulties accommodating the employee, where a replacement employee has been temporarily engaged.
- Potential tension between the employee on leave and the employee temporarily performing 'their' duties.
- Changes in the workplace, or a desire to accommodate part time return to work, might mean that the employee is to be assigned different duties on their permanent return to work.
- There may be occupational health and safety or work related reasons that a person cannot perform work on such an ad hoc basis (such as changed procedures).
- Including a provision raises an expectation for employees that may not be possible for the employer to meet.

In general, small businesses view the "keeping in touch" provision as a positive step in supporting employees to return to work.

Draft Recommendation 2.11

The Australian Government should provide more resources to allow effective support for breastfeeding during the first six months of an infant's life, with a focus on the post-initiation stage.

As an employer, the Tasmanian Government is already committed to providing support for workplace breastfeeding facilities wherever possible. The Tasmanian Government also supports the Productivity Commission's recommendation that the Australian Government provide resources to allow effective support in the workplace for breastfeeding during the first six months of an infant's life.

Draft Recommendation 2.12

The Australian Government should undertake:

- **Ongoing assessments of the interaction of the paid parental leave scheme with the tax and welfare system**
- **An evaluation of the administrative aspects of the scheme two years into its life**
- **A comprehensive evaluation of the impacts of the scheme five years into its life.**

The Tasmanian Government supports this recommendation.

OTHER ISSUES

Interaction with existing employer funded scheme

The Productivity Commission speculates that if a statutory scheme was to be introduced, employers providing existing 'private' voluntary paid leave schemes (including present State Service Award provisions) could respond in several different ways including:

- Abandoning the private scheme.
- Continuing the existing parental leave benefits in parallel with statutory entitlements.
- Topping up payments from the statutory scheme to full replacement wages for the duration of the statutory arrangement.
- Providing alternative/additional employment benefits in order to differentiate itself from other employers and signal it is an employer of choice.

The Tasmanian Government sees itself as an employer of choice and its employees currently enjoy:

- Up to 52 weeks of unpaid leave associated with the birth or adoption of a child.

- 12 weeks of paid postnatal maternity leave or adoption leave (included in the 52 weeks)
- The right to request part time work until the child is school aged.
- An area suitable for breastfeeding wherever practicable.
- Use of other forms of leave.
- Availability of further leave without pay up to a further 12 months (total 24 months) for child care purposes.
- Separate 2 weeks parental leave for partner.
- Adoption leave provisions as part of parental leave provisions.

The Tasmanian Government expects to continue the existing parental leave benefits for State Service employees in conjunction with the proposed new statutory entitlements, but notes the Productivity Commission's findings that full replacement wages during the additional proposed 18 weeks statutory leave for highly educated, well paid women would be very costly and, given the already high level of attachment to the labour force, would have few incremental labour supply benefits.

Paid Parental Leave at half pay

Whilst the Tasmanian Government does not favour allowing statutory paid parental leave to be taken at half pay within the State Service, this should not prevent a degree of flexibility being available by agreement. As already noted women have access to many options, including annual leave, long service leave and leave without pay, enabling them to extend their parental leave. Additionally, the administrative costs associated with managing a statutory paid parental leave scheme at half pay, including the proposed payment of superannuation, could be prohibitive for some employers.

Accrual of Entitlements

Whilst not necessarily in favour of accrual of sick and recreational leave for employees participating in a statutory paid maternity leave scheme, small businesses in Tasmania are more likely to support the accrual of long service leave.

SUMMARY

The Tasmanian Government supports the Productivity Commission's proposal of a taxpayer funded paid parental leave scheme as part of a social policy agenda and employment attraction and retention strategy. The proposal is to provide postnatal (or post adoption) leave of

18 weeks for eligible parents (plus two weeks quarantined paternity leave) paid at the rate of the federal adult minimum wage. Such leave is to be in addition to any private employer funded scheme. Support for the proposal is based on the Productivity Commission's evidence that the average desirable duration of postnatal absence from work would be around six to nine months.

The Tasmanian Government notes the Productivity Commission's expectation is that the proposal would bring the following benefits:

- An increase in the duration of postnatal (or post adoption) leave by an average of nine weeks (up to 50 per cent of the proposed statutory scheme duration of 18 weeks) of a child, bringing child and maternal health and welfare benefits.
- The positive impact on lifetime employment of women.
- The positive impact on employee retention, with reduced costs for training and recruitment for the employer.
- The promotion of the normalcy of combining care of children with employment.

As an employer, the Tasmanian Government will continue to assist employees to balance work and family commitments by supporting its workforce in leading by example with a comprehensive range of parental leave entitlements. The general thrust of the Productivity Commission's proposal is supported, providing that the Commission is able to address the specific details of implementation raised in this paper in its final report to the Federal Government.