


Queensland  Council of Unions

**Submission of the  
Queensland Council of Unions  
in response to the  
Productivity Commission  
Draft Inquiry Report**

***Paid Parental Leave: Support for  
Parents with Newborn Children***

**14 November 2008**

## Summary

1. The Queensland Council of Unions (QCU) appreciates the opportunity to respond to the Productivity Commission draft inquiry report *Paid Parental Leave: Support for Parents with Newborn Children* (the Commission report).
2. The QCU enthusiastically welcomes the conclusion of the Commission report that an Australian statutory paid parental leave scheme is not only desirable but affordable and achievable.
3. The QCU and its affiliates have long recognised the benefit of paid parental leave to both its members and the community generally. It is a vital step in supporting all parents and properly recognising the role of women as workers and mothers.
4. The QCU endorse the submissions and recommendations of the Australian Council of Trade Unions (ACTU). Without replicating those submissions, the QCU wishes to make a few specific submissions with regards to the following issues:
  - Quantum of leave;
  - Level of income replacement;
  - Complementary measures; and
  - Interaction between National Employment Standard and Queensland legislation.
5. The QCU welcome the opportunity to make a further contribution to this inquiry during public hearings in Brisbane on 25<sup>th</sup> November 2008.

## Quantum of leave

6. The QCU agree with the Commission report that "...the average desirable duration of postnatal absence from work would be around six to nine months."<sup>1</sup> However the QCU does not agree with the further conclusion that the "...duration of any paid statutory scheme does not have to be equal to the period of absence that most helps parents and their children."<sup>2</sup>
7. While it is true that, largely due to the efforts of unions, many parents in Australia currently have access to periods of paid leave, for a significant proportion of new parents no such leave exists. For these workers, leave available under a statutory paid parental leave scheme would represent the entirety, or the most significant component, of any paid leave available at the time of their child's birth or adoption.
8. Evidence regarding the proportion of parents currently without any substantial paid leave associated with childbirth or adoption has already been provided to this inquiry. It is not the intention of this submission to make any further contribution to the existing wealth of data and statistics. The QCU only wish to give particular focus to the lack of choices available to those parents currently without access to sufficient paid parental leave. Even with the introduction of a scheme as proposed in the Commission report, a return to work prior to the ideal six – nine months will continue to be a practical reality for many parents.

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<sup>1</sup> *Paid Parental Leave: Support for Parents with Newborn Children*, Productivity Commission, 2008, p xx

<sup>2</sup> As above

9. In addition, women now work in a huge variety of different industries and occupations. This has a significant impact on the choices available to them both during pregnancy and in the period immediately after the birth or adoption of their child.
10. The QCU continues to advocate for a statutory paid parental leave scheme that ensures all parents are equally able to dedicate at least six months exclusively to the care of their new child. Accordingly the introduction of a statutory paid leave scheme which provides less than 26 weeks of paid leave must be seen as a positive first step and not the ultimate outcome.

### **Extent of income replacement**

11. The model proposed in the Commission report provides for leave to be paid at the federal minimum wage. For large numbers of women this represents a reduction in real wages.
12. Most importantly this proposal does not fully reflect the importance of a women's income to the family unit. As noted in the QCU's original submission to this inquiry, 63% of families with dependants are a two income earning household. For these families, a women's income is a significant part of a family's total income. For an increasing number of families, a woman's income represents the primary or most significant income.
13. At the present time, there is an increased awareness of the need to address the growing pay inequities between men and women.<sup>3</sup> It is recognised that pay inequity originates from a variety of sources and has a detrimental impact on the community and economy. For many women it is a daily reality and has a significant impact on the choices available to them and their partner as parents of a new child.
14. As stated by one female union member working in a male dominated industry:

*"I strongly support paid maternity leave as a mechanism for valuing women's roles in society and as a way of providing women with job security and the right to fulfilling work in conjunction with raising children.*

*Women will never be equally represented at all levels of employment without access to adequate paid maternity leave which I believe should be a minimum of 26 weeks, to allow for adequate bonding and establishing relationships within the family unit. Absence of this benefit has contributed to the enormous pay equity gap in Australia."<sup>4</sup>*

15. The manner in which families structure their financial arrangements are becoming increasingly complex. Full income replacement is the only way to ensure that women and their partners have a full range of options available to them when caring for their new child.

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<sup>3</sup> See ACTU and Joint State Union Peak Council submission to House Standing Committee on Employment and Workplace Relations Inquiry into Pay Equity and Female Workforce Participation at <http://www.aph.gov.au/house/committee/ewr/payequity/subs/sub125.pdf>

<sup>4</sup> Member of RTBU.

## **Complementary Measures**

16. The QCU welcomes the proposal of two weeks concurrent paid paternity leave as part of the statutory paid parental leave scheme. This goes some way towards giving parents an opportunity to parent together.
17. The QCU re-state the recommendation made in its original submission to this inquiry for the right to request eight weeks of unpaid concurrent leave for the partner of the primary care giver. This is consistent with the decision of the Australian Industrial Relations Commission in the 2005 Work and Family Test Case. The QCU supports this measure as a cost neutral inclusion in a statutory paid parental leave scheme.
18. The QCU also re-state recommendations made in its original submission to this inquiry with regards to breastfeeding breaks for breastfeeding mothers and paid leave to attend ante-natal appointments. These measures represent important complementary elements in a robust paid parental leave scheme.

## **National Employment Standard (NES) and Queensland legislation**

19. The ACTU submission addresses the inconsistency between the eligibility criteria for parental leave in the proposed NES and model statutory paid parental leave scheme. Recommendations to remove those inconsistencies are included in the ACTU submission. The QCU support those recommendations.
20. The QCU wish to draw to the attention of this inquiry to further inconsistencies between the NES and existing Queensland legislation. In Queensland, the *Industrial Relations Act 1999* contains general employment conditions including family leave and more specifically parental leave.<sup>5</sup> The extent of these inconsistencies is outlined in Appendix 1.

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<sup>5</sup> *Industrial Relations Act 1999 (Qld)* Chapter 2, Part 2, Division 2, ss 16-38

## Appendix 1

### **National Employment Standard** (released 16 June 2008) and **Industrial Relations Act 1999 (Qld)**

#### **Same sex couples**

The Qld Act (s.4) defines spouse broadly to include same sex couples. Under the NES the definition of defacto partner is extended to include a couple living on a genuine domestic basis regardless of gender. However the general entitlement to parental leave in ss. 16(1) which includes same sex partners would seem to be narrowed by ss. 16(2) and (3) to exclude a non-biological parent from accessing a period of unpaid parental leave.

#### **Casual – eligibility**

The NES places a caveat on long term casual being eligible for parental leave (()). At ss. 14(2), the NES requires a reasonable expectation of continuing engagement by the employer in order for a casual otherwise engaged on a regular and systematic basis to be eligible for leave. No caveat exists in the Qld Act.

#### **Notice**

The NES provides that written notice for accessing leave must be given 10 weeks prior to taking leave (s. 20). The Qld Act requires the employee not to have to provide exact start and finish dates until 4 weeks prior to commencing leave (s. 19).

#### **Special maternity leave**

The special maternity leave provision of NES is unclear as to whether paid personal/carer's leave can be accessed prior to taking the unpaid "special" maternity leave (s. 26). The Qld Act provides for the taking of either unpaid special maternity leave and or paid sick leave for as long as the doctor certifies it as necessary (s.37).

#### **Transfer to safe job**

The NES only provides for the transfer to safe job during pregnancy (s. 27). The Qld Act allows the transfer to occur for both pregnancy and during breastfeeding (s. 26).

#### **Return to work**

The NES refer to an employee returning to the employee's pre-leave position or "if that position is no longer available" an available position (s. 29). The Qld Act refers to the position no longer existing (s. 32).

#### **Return to work & casuals**

The Qld Act further protects casual employees by indicating that if a long term casual employee's hours were reduced because of pregnancy before starting leave, then those hours must be restored (s. 32(5)).

**Length of leave:** The Qld Act allows an employee to request the shortening of parental leave (s.30). The NES has not equivalent provision.

#### **Extending leave**

When faced with a request to extend leave, the Qld Act requires an employer to give consideration to a broader range of factors, including the impact of a refusal on the employee as a caregiver and the employee's dependants (s. 29D). Under the NES an employer is only required to consider business factors (s. 21 & 22).

**Consultation**

The NES requires an employer to consult an employee on parental leave in respect of change that has a significant impact on the employee's "status, pay or work location" (s. 28). The Qld Act contains a broader requirement for an employee to be consulted about any "significant change in the workplace" (s. 38A & 38B).

**Ceasing to have responsibility for child**

The NES allows for the ceasing of parental leave where an employee ceases to be responsible for a child (s. 24). The Qld Act anticipates more complex circumstances and requires consideration of all the factors where determining if an employee is no longer a primary care giver (s. 31)

**Dismissal**

The Qld Act provides that an employee cannot be dismissed due to pregnancy (s. 34). The NES provides no specific protection.