

PAID PARENTAL LEAVE

By Sian Ryan



Much is written about the similarities shared by Australia and the United States. We celebrate our strong alliance and apparent cultural similarities. We are both wealthy, democratic, English-speaking nations. We share a colonial heritage, and our current leaders are apparently continuing in the tradition of being firm friends. But, until now, we have also, unfortunately, shared the ignominy of being the only two industrialised nations without a scheme for paid parental leave.

This is about to change. Australia is now set to join the rest of the industrialised world by finally introducing paid parental leave.

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Way back in 1919, the International Labour Organisation created the first global standard for maternity leave.¹ This was modified, in 1952, to a recommended 12 weeks' paid leave.² At present, the recommendation stands at 14 weeks.³ Around the globe, 119 nations provide 12 weeks as a minimum.

The UN Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) recognises paid parental leave as a way in which a country can specifically fulfil its obligations to provide women with equal employment rights. Of this convention's 163 signatories, 158 provide paid maternity leave.

Up to now, only Australia, Lesotho (it's a very small country in South Africa), Papua New Guinea, Swaziland and the US have not implemented paid parental leave.

PARENTAL LEAVE AND THE REST OF THE WORLD

In the UK, women are entitled to 52 weeks of leave, 39 weeks of which is paid, and in 2010 this will increase to 52 weeks paid. The first six weeks are paid at 90 per cent of full pay and the rest at a fixed rate. The woman's partner is allowed two weeks' paid leave, also at a rate that is fixed. Both partners are allowed additional unpaid parental leave for up to four weeks a year up to 13 weeks.⁴

In Sweden, the world's long-standing Mecca for social benefits, parents can take 450 days of parental leave with benefit. This period of leave may be divided in any way between the parents, though 30 days are reserved for the father alone.⁵ While in Spain, mothers have the right to transfer over to the father up to 10 of their 16 paid weeks of parental leave, provided that they take six weeks off after giving birth, and there are no signs that the swap will endanger their health. This possibility was earlier restricted to the last four of these 16 weeks.⁶

And, closer to home, New Zealand has just introduced 14 weeks' paid leave for men and women.⁷

Contrast this with the American position.

Signed into law by President Bill Clinton, during his first term, in 1993, the *US Family and Medical Leave Act* allows for a total of 12 weeks of unpaid leave during any 12-month period for what is described as 'any serious health condition', including the birth of a child, but only if the organisation you work for has more than 50 employees.

In Australia, although we are entitled to up to 12 months in unpaid parental leave – a generous provision compared with our American cousins – the only paid leave available at this point is what we have been able to negotiate with our employers directly. In 2002, when asked about the implementation of compulsory paid parental leave, Minister Tony Abbott, as he then was, famously retorted 'Over this government's dead body.'⁸

BALANCING WORK AND BABY

It was against this background that, in November 2007, Australia's Sex Discrimination Commissioner, Elizabeth Broderick, commenced a listening tour of Australia. Among

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her findings, she documented concerns from men and women about the difficulties in balancing work and family responsibilities and their disappointment at the lack of a paid parental leave scheme in Australia. She also spoke to women about barriers to career progression and workforce participation. Older women spoke of their fears of embarking on retirement with limited savings due to their moving in and out of the workforce.⁹

Broderick reported to the Human Rights and Equal Opportunity Commission that the experiences of pregnant women, and those who had recently given birth, when they were seeking to return to work, was of particular concern.

It seems that Minister Abbott's quip back in 2002 was prophetic. After the 2007 election, the newly elected Rudd Labor government commissioned a report of Inquiry from the Productivity Commissioner on a Paid Parental Leave scheme.

Productivity Commission Report

In a wide-ranging report, delivered in February 2009, the Productivity Commission recommended a universal scheme of 18 weeks' paid parental leave, to be paid at minimum wage.¹⁰ In support of its recommendation, the Commission considered evidence ranging from the health benefits of breast-feeding to current trends in parental leave. Some of the key findings of the Productivity Commission include:

- In 2007, around 280,000 mothers gave birth. Of those, around 175,000 were in the workforce prior to giving birth and at least 80% of that group intended to return to work.¹¹
- Women's current labour force participation is higher than at any other time in our history. Participation rates in the key reproductive years (25 to 34 years) have risen from 45% in 1978 to 70% (in 2008).¹²
- In 2007, 54% of female employees and 50% of male employees had access to paid parental leave.¹³
- Of mothers in paid work prior to childbirth, 11% return to work within three months of childbirth, 26% within 6 months, 57% within 12 months and 74% within 18 months. Early returns to paid work are positively associated with very high or very low incomes.¹⁴

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The government has proposed introducing a universal scheme of 18 weeks' paid parental leave, paid at minimum wage, from 1 July 2011.

The Productivity Commission's report cites an Association of Professionals, Engineers, Scientists and Managers (APESMA) survey in which 80 per cent of the women said they believed they would have to downgrade their career ambitions in order to start a family.¹⁵

It also cites the research of Breusch and Gray (2004), which shows that mothers' lifetime earnings are significantly lower than non-mothers. They found that a woman of middling education forgoes around 31 per cent of her potential income for a first child, an additional 13 per cent for a second child, and a further 9 per cent for a third child.¹⁶

In making a recommendation for paid parental leave, the Commission cited three broad areas of benefit. The first is the benefit to family well-being, concluding that removing financial constraints would allow a longer period of leave and would enhance both child and maternal health. The second is the incentive for women to maintain their attachment to the workforce. And the third is expressed as 'the expression of community norms'. The idea that paid time away from the workforce in connection with having babies and raising children is part of the normal working life of parents.¹⁷

The report of the Productivity Commissioner was well received. The research is compelling, the argument well reasoned. In mounting an argument around increased labour force participation and incentives to breed future tax-payers, it is hardly surprising that the report was particularly well received in the halls of government.

And so, in a move that drew little criticism, the government largely adopted the findings of the Productivity Commission and announced, as part of the 2009 budget, that a Paid Parental Leave scheme will be introduced from 1 July 2011.¹⁸ I noted with pleasure, in researching this piece, that even the former Minister Abbott has become a convert and is now apparently a supporter of some form of paid parental leave. (In fact, a Google search of Tony Abbott and paid parental leave draws at least one hit involving a publication titled *Essential Baby*.)

In the second half of this year, the federal government will consult with unions and business and fine-tune its proposals. What we have now is proposed legislation that

allows for 18 weeks of paid parental leave at the minimum wage, which stands at \$543.78, at present. The scheme is means-tested, with a cut-off point of \$150,000 for the primary carer's adjusted taxable income in the previous financial year. And it will be available for primary carers who have been in paid work continuously for at least ten of the previous 13 months prior to the expected birth or adoption of a child and have performed at least 330 hours of paid work in the ten-month period.¹⁹

Paid Parental Leave (PPL) will cover employees, including casual workers, as well as contractors and the self-employed.

In implementing the scheme, the government has considered the Productivity Commission's estimate that it will cost taxpayers around \$310 million annually in net terms (with an additional net cost to the economy of \$70 million if superannuation contributions are introduced in the future) and its recommendation that significant offsets from reduced social welfare payments (including removal of the baby bonus for parents using the scheme) and the tax revenue from paid leave.

Importantly, the payments are made through the employer as a wage, as distinct from payments through the Family Assistance Office, or Centrelink. This is a measure which is paid only in connection with employment and is aimed squarely at maintaining the connection between a new parent and (usually) her workplace.

The financial benefit of this scheme to working women who, currently, have no access to paid maternity leave, cannot be under-estimated. The Productivity Commission report estimates that the scheme will allow an average of ten additional weeks of time away from work with a newborn child for women in low-income brackets who currently have no access to paid parental leave.²⁰

WHERE TO FROM HERE?

But what of the other stated objectives? Of maintaining a connection to the workforce and normalising periods of leave in connection with the birth of children.

What is supposed to happen at the end of those 18 weeks? Do we simply return to work as if it never happened? Does a period of legislated leave create an expectation that everybody can resume life as normal after that magic cut-off point?

The Social Policy Research Centre recently released a report which suggests that, although mothers have made gains in the area of part-time work, they continue to perform the majority of household duties and child-rearing. So that rather than gaining the satisfaction and independence that usually comes with paid employment, working mothers actually do that on top of, rather than in place of, home duties.²¹ The *Sydney Morning Herald* reported that the traditional Australian family now involves a male bread-winner, working long hours, with a woman working part time in paid employment and still taking care of the household and all children.²²

Based on my experience as a lawyer, in this field, the most common complaints that I encounter in connection

with parents – almost exclusively women – seeking to return to work following the birth of children and encountering obstacles are that the baby cannot be fed, the position cannot be accommodated part time, the replacement employee turned out to be more talented, more willing, more available or that the promotion cannot be given to somebody who is not working full-time hours and cannot give a commitment that her role as a mother will not interfere with her career.

These are the real problems that people with children are facing when re-entering the workforce. Does the proposed scheme address this? In my view, it doesn't, but it could.

The Productivity Commission availed itself of all sorts of evidence in reaching the conclusions that it did, not least of which was evidence about the health of mothers and babies when recovering from the exhilarating, although often difficult and medically challenging, experience of labour. It also availed itself of evidence around feeding, disturbed sleep and the nurturing process that comes with the birth of a baby.

The point that I wish to make is this. The Productivity Commission has allowed quite a decent period of time for the natural experience that follows the birth of an infant. If a paid parental scheme is seriously to address the objective of increasing women's participation in the labour market and if it is to make any difference at all in the way that we divide labour – in the household and at work – then we must include somebody other than the person giving birth. In most cases this will be the dad, but conceivably would include the non-birth parent or, in the case of a single-parent family, a grandparent, relative or friend.

If the scheme included a provision for transference of leave – that is, a shared entitlement – then every couple or family or whatever loving group is rearing this young life would be encouraged to sit down and have a conversation about how the leave is to be shared. I do not seek to diminish the role of mothers – far from it. But if this scheme is about increasing labour-force participation and raising children in a fair and equal environment, then why shouldn't their fathers have the opportunity to participate in that?

Paid parental leave should be just that: paid parental leave. Let's start a conversation about both parents accessing these benefits, not just mums. Time off after the birth of a baby is precious. But we ought not to confuse that with the choice and indeed the responsibility of all household members to contribute equally to the raising of their children, to the contribution to their household and to an equal discourse about labour-force participation. ■

Notes: **1** Maternity protection at work, *Report of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)*. ISBN 92-2-110336-6. International Labour Office, Geneva, 1997. **2** *Ibid.* **3** *Ibid.* **4** http://www.direct.gov.uk/en/Parents/Moneyandworkentitlements/Parentalleaveandpay/DG_10029285. **5** Maternity Protection ILO Convention No. 183, June 2001, International Confederation of Free Trade Unions, the Public Services International and

Education International. **6** *Ibid.* **7** *Ibid.* **8** <http://www.abc.net.au/pm/stories/s613611.htm>. **9** Human Rights and Equal Opportunity Commission, *2008 Gender equality: What matters to Australian women and men: the Listening Tour Community Report*, July 2008; www.hreoc.gov.au/sex_discrimination/listeningtour/index. **10** 'Australian Government Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children: Inquiry Report*, No. 47, 28 February 2009; www.pc.gov.au/projects/inquiry/parentalsupport/report. **11** *Ibid.*, *Overview*, p xv. **12** *Ibid.*, *Appendix C, Trends in Parental Leave*, p1, Productivity Commission, February 2009. **13** *Ibid.* **14** *Ibid.* **15** *Ibid.*, Section 5.2, *The female labour market experience*, see p5.4. **16** *Ibid.* **17** *Ibid.*, see *Overview* p xviii, Productivity Commission, February 2009. **18** http://www.aph.gov.au/library/Pubs/RP/BudgetReview2009-10/Welfare_ParentLeave.htm **19** Productivity Commission Inquiry Report *Paid Parental Leave: Support for Parents with Newborn Children No. 47, 28 February 2009*. **20** *Ibid.* **21** M Blaxland, K Mullan and L Craig, 'Trends in Time: Australian Work and Public Policy Review 1990 – 2007'; *Social Policy Research Centre Report 03/09*, Social Policy Research Centre. University of NSW. June 2009. www.sprc.unsw.edu.au/reports/2009/Policy_review **22** A Horin, 'Women Stretched to Snapping Point', *Sydney Morning Herald*, 4 July 2009.

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