

Productivity Commission
SUBMISSION COVER SHEET

*Inquiry into Paid Maternity, Paternity and Parental
Leave*

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Productivity Commission

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SUBMISSION

PRODUCTIVITY COMMISSION

**Inquiry into Paid Maternity,
Paternity and Parental Leave**

Introduction

The Registered Clubs Association of New South Wales t/as ClubsNSW, would like to thank the Productivity Commission for the opportunity to make a supplementary submission to our original submission with respect to the Productivity Commission's Draft Report into *Paid Parental Leave: Support for Parents with Newborn Children*.

ClubsNSW represents over 90% of the approximately 1,500 registered clubs in New South Wales, which include RSL and ex-services, lawn bowling, golf, sporting, recreation, football, ethnic and religious clubs, as well as community and workers, business, social and country clubs. ClubsNSW is also the registered union of employers in the state of New South Wales for the club industry.

As outlined in ClubsNSW first submission, our membership is supportive of the principal concept of a government funded paid parental leave scheme. However, ClubsNSW does have a number of concerns with the Draft Report and in particular with the direct costs imposed on employers, the administrative burden on employers with the proposed scheme and the lack of re-attachment to the workforce. This supplementary submission will concentrate on these specific issues.

ClubsNSW again confirms that we would support a scheme which promotes the objectives of:

- Improved health and development outcomes for the mother and child immediately post birth;
- Assisting parents to achieve better work-life family balance; and
- Increased workforce participation and attachment.

However, we do not believe a national paid parental leave scheme is a "magic wand" in addressing these issues. The NSW club industry employs over 43,000 people, of which a significant portion are women. The feedback from the industry is that access to affordable child care is fundamental to a parent's decision to return to work after child bearing. Accordingly, we question whether a paid parental leave scheme would achieve the above objectives and in particular the last 2 points, more than access to affordable quality child care.

Superannuation Payments

The Productivity Commission's Draft Report at Draft Recommendation 2.1 states:

“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.”*

As stated in our original submission, ClubsNSW does not support any paid parental leave scheme imposing direct costs on employers. Accordingly, ClubsNSW does not support this recommendation.

Firstly, requiring employers to provide superannuation contributions would impose a direct cost on business. As stated in ClubsNSW original submission, employers face considerable costs around parental leave, even in the current legislative requirement for unpaid leave. This includes advertising and recruiting a replacement employee, training and engaging new employees, and then subsuming the reduction in productivity until the employee gets up to speed, which often occurs just before the return of the employee on parental leave. This in particular negatively affects our smaller regional clubs where it is often hard to cover such staff absences, especially when skilled or professional staff are involved.

Secondly, under current payroll tax laws, employers are liable for payroll tax on superannuation contributions, which again imposes a direct additional cost on employers.

ClubsNSW recommends that employers are not required to make superannuation payments for employees on paid parental leave. If the Productivity Commission feel it is essential that superannuation contributions are paid to employees, then it may wish to consider that the Government contributes to the scheme with a potential condition being that the contribution is dependent upon an employee returning to the workforce.

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Administration Costs on Employers

ClubsNSW members are concerned with the Draft's Report recommendation that employers, in the main, become the scheme's administrator and paymaster.

In ClubsNSW original submission we recommended the Productivity Commission should not impose any additional financial or administrative obligations on employers. In particular, we stated:

“From an administrative perspective we would not support any paid parental leave scheme which requires the employer to pay the money to the employee and seek re-imbursement from the Federal Government. In other words, any payments must be made directly by the Federal Government to the eligible employee.”

Draft recommendation 2.3 requires the employer, in most cases, to be the paymaster of the paid parental leave scheme and then claim the money back from the Federal Government through the pay-as-you-go withholding payment system.

ClubsNSW members' concern with this proposal is that this would create a cash-flow burden, especially on smaller clubs. Such clubs would already be paying the wages of the replacement employee, often subsuming the reduction in productivity until the employee gets up to speed, and may not have the sufficient cash-flow to also pay the employee on parental leave and wait to be reimbursed.

Draft recommendation 2.4 outlines the proposed eligibility for the scheme, but does not identify who is responsible for applying or verifying eligibility for the paid parental leave. These responsibilities need to be made clear so as to avoid confusion and ensure that employers are not liable if a mistake is made. It seems that employers will be required to act as administrators which ClubsNSW believe should be the responsibility of Government.

The problem is highlighted by the example of an employee who meets the workforce participation test because she has worked for two or more employers within the last 12 months. We note that in such a scenario the Government would make the payment directly to the employee, but the Draft Report is not clear in regard who is responsible for establishing that the employee is eligible for the scheme. ClubsNSW concern is that the current employer may be unaware that the employee has been in the workplace for 12 months, and advises the employee they are not entitled to the scheme. The employee therefore does not make application to the Government. Does this create an employer liability if the employer is considered administrator of the scheme?

Another example is in the case of an employee who has multiple employers working on average 30 hours a week, but does not work for any employer

more than the minimum 10 hours a week. Again, she would meet the workforce participation scheme requirements, but her employer/s would not be aware that she does. Are the employers liable?

A further complication may arise in the case where an employee works 15+ hours with two employers, giving rise to the possibility that the employee is paid more than once.

These simple but very possible scenarios highlight the need for the Federal Government to administer the whole scheme. ClubsNSW recommends that this is by way of a statutory declaration system. Due to the complexity and diversity of employment relationships, we propose there should be a single clear rule for everyone to enable simplicity and reliability in the administration of the scheme.

ClubsNSW believes the simplest and most appropriate method to administer the scheme is to require a signed statutory declaration from the child's parents (or other eligible partners) who wish to access either the paid parental scheme or the 'baby bonus' replacement scheme. The standard form issued by the Government would ask the applicant if they met the employment and primary carer eligibility requirements. Those eligible would be paid under the paid parental leave scheme, while those ineligible would receive the replacement 'baby bonus' payment. Such a form would provide the Government with all of the relevant information related to when the paid parental leave will be expected and how it will be shared between partners.

In some circumstances ClubsNSW envisages some employers (more likely than not larger ones) may want to be the paymaster, in which case they could 'opt-in' and voluntarily undertake the administration co-ordination with the Government. A scenario where an employer might seek the 'opt-in' option is where there is an existing paid parental leave scheme which is compatible with the Government funded scheme, and the employer may want to continue to make the agreed payment to the employee and then claim the Government funded part of this back.

Other concerns that are not clear in the Draft Report are the scheme's interaction with payroll tax and workers compensation payments.

As noted above, it would seem that employers would be liable for payroll tax under Section 17 of the *Payroll Tax Act 2007 (NSW)* ("**PTA**") to pay payroll tax on superannuation contributions. However, an additional complication is the lack of clarity of whether parental leave payments are considered wages or not, especially in the case when the employer makes the payment directly. Section 10 of the PTA defines taxable wages as wages payable for services performed by the employee, thereby suggesting government funded parental leave payments may not be wages. However sections 13, 14 and 46 leave open an interpretation that government funded parental leave payments might be wages.

We note that s53 of the PTA states that 14 weeks paid parental leave is not 'wages' but anything beyond this amount is, and hence attracts payroll tax obligations for non-excluded employers. Accordingly, we would assume that the first 14 weeks of paid leave will be exempt from payroll tax but not the remaining 4.

Overall, it is not clear whether or not the proposed government funded paid parental leave would attract (the state based) payroll tax. If it is deemed to then we would seek this is met by the Federal Government, as the funder of the scheme, and not employers.

Similar problems arise under the various state workers compensation schemes. In NSW the *Workers Compensation Act 1987* at Section 174 defines 'wages' widely, giving rise to a strong likelihood that both the employer funded superannuation contributions and the government funded parental leave payments might be considered 'wages' and hence create further liability.

Accordingly, ClubsNSW proposes any liability under workers compensation, like payroll tax, be paid by the Federal Government, as the funder of the scheme, and not employers.

Re-attachment to the Workforce

ClubsNSW again affirms its support for the implementation of a national paid parental leave scheme that encourages parents, and particularly mothers, to return to the workforce. As stated in our original submission, clubs like many other employers, are suffering from Australia's skills' shortage. Mothers with carers responsibilities are one area where workforce participation can be increased. Providing the right incentives for women to remain in the workforce before and after child bearing is important to ClubsNSW, particularly in the context of the current tight labour market.

One of the important aims and benefits of linking a paid parental leave scheme to returning to work, is to ease the pressure and cost on employers resulting from the labour supply and skills shortage. Many employers are experiencing difficulty recruiting, selecting and retaining staff as a direct result of the shortage of labour supply and skilled employees.

ClubsNSW believes that there are a number of factors which encourage mothers to engage or re-engage in the workforce and a paid parental leave scheme will not address them all. In consulting with our members, the most important factor in addressing this issue is the affordability of quality child care. Accordingly, any thorough examination of assisting parents achieve better work-life balance and increased workforce participation, must also consider the significance of accessible and affordable child care.