

Paid Parental Leave: Dad and Partner Pay

Submission by Professor Marian Baird* and Professor Andrew Stewart#

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This brief submission is made in response to the policy statement on *Paid Parental Leave: Dad and Partner Pay*, released on 4 September 2011.

We strongly support the proposal to implement the Productivity Commission's recommendation to create a new, government-funded benefit for secondary carers. While an argument can be made for a more generous entitlement, we believe that the proposed payment is appropriately targeted and will serve as a useful adjunct to the entitlement for primary carers created under the *Paid Parental Leave Act 2010* (PPL Act).

In terms of the name given to the new benefit, we would prefer 'partner pay' to the more awkward term 'dad and partner pay'. It is simpler and less gimmicky. We do though applaud the move to avoid any suggestion that the new benefit involves a form of leave.

However, it is our concern over the interaction between the proposed new payment and the leave entitlements available under the *Fair Work Act 2009* (FW Act) that has prompted this submission.

It is clear that there will be employed claimants who can satisfy the work test to make them eligible to claim partner pay, yet who have not worked for a single employer (or for two or more related employers) for the 12 months preceding the birth or adoption. That means they are not entitled to unpaid parental leave under the FW Act, by virtue of the eligibility requirement in s 67.

The question then is how such a claimant is to be able to take the time off work necessary to access the government payment. They may have access to employer-funded 'paternity leave', or have worked for long enough to accrue two week's annual leave. But under the proposed scheme – and for reasons which we understand and support – no payment can be claimed for any period during which the claimant is taking paid leave.

We can see nothing in the policy statement, nor know of any relevant research, that suggests that a secondary carer should have to have been in their current job for at least 12 months in order to qualify for the payment and meet the objectives of secondary carer leave. Yet in practical terms that may be the effect of the proposal, as it stands. If an employer denies such a claimant unpaid leave – as on the face of it they are permitted to do under the FW Act – then the claimant cannot satisfy the requirement to be away from work. The same would apply if the employer insisted that the employee take paid leave. The employee's only choice in such a situation, if they wanted to spend time with their newborn or newly adopted child, would be to quit their job. That would hardly seem to accord with the objective to encourage secondary carers (and fathers in particular) to spend more time with a new child.

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What we propose is that a complementary amendment be made to the FW Act, either at the same time as the PPL Act is amended to provide for partner pay, or at least prior to the start of the new scheme in 2013. The amendment would create a new right to up to two weeks of 'short parental leave', to be available to all employees either regardless of length of service, or after a very short qualifying period (say, one month). This might be made contingent on the need to qualify for partner pay, or indeed on an application having been made for partner pay.

In raising this issue we note that there are other difficulties with the interaction between the FW Act and PPL Act. Those difficulties – which include the differing eligibility rules for leave under the FW Act and parental leave pay under the PPL Act, and the different conceptions of 'care' in the two statutes – are ones that we have previously highlighted in other writings or submissions. In putting forward the recommendation above, we do not mean to suggest that this is the only 'interaction' issue that should be addressed. We remain convinced of the need at some point for a broader re-examination of how the two statutes operate to provide paid leave for the care of new children. That is a matter on which we are happy to expand should the occasion arise.