



### **ACTU MEDIA CAMPAIGN – DOMESTIC VIOLENCE & FAMILY FRIENDLY WORK**

The ACTU are preparing a media campaign and are looking for members to speak of their experiences:

- using paid Domestic Violence (DV) leave and how it helped;
- not having paid DV leave and how it would have helped;
- being granted family friendly flexible work arrangements when pregnant or upon returning from parental leave and how that helped; or
- being refused family friendly/flexible work arrangements when pregnant or upon returning from parental leave and how it would have helped.

Employers do not need to be identified and you can remain anonymous.

If you are interested in participating contact the PSA Gender and Equity Analyst at: [jsingleton@psa.asn.au](mailto:jsingleton@psa.asn.au) with a brief outline of your experience. Please include contact details.

### **COMMONWEALTH PAID PARENTAL LEAVE SCHEME – IMPACT ON NSW PUBLIC SERVANTS**

The Commonwealth Paid Parental Leave Scheme is projected to commence on 1 July 2015<sup>1</sup>. The Paid Parental Leave Amendment Bill 2014 details the proposed changes.

If the new Commonwealth scheme is implemented, it will replace all existing schemes.

The scheme is yet to be passed by Parliament.

There is widespread opposition and amendments have already been made.

'Consultation' to date has been primarily with employer groups.

The scheme is complex, and the circumstances of individuals will affect entitlements.

#### **TIME**

The current scheme overall allows for more leave with some form of pay where it is taken at half rate.

The matters dealt with by the PSA indicate that the greatest challenge faced by carers returning to work concerns time, both to balance work and family commitments as well as simply to be with children. Problems accessing the initial period of leave are rare under the present scheme.

Under the current award provisions, women can take up to two years of unpaid maternity leave following the initial period of 14 weeks paid leave which can be taken as 28 weeks on half pay.

The ability to take the leave at half pay (in order to

extend the leave period) as well as unpaid leave afterwards, is not addressed in the proposed Commonwealth scheme.

A further important consideration for NSW public servants is that they are presently able to access *both* the award maternity leave scheme *and* the existing Commonwealth Paid Parental Leave Scheme (18 weeks on the federal minimum award rate of pay).

This provides a total maximum of 46 weeks of paid leave if the initial paid leave is taken at half pay.

However, the Coalition Government has unequivocally stated that if the proposed new Commonwealth Paid Parental Leave Scheme is introduced, there will be "no double dipping". That is, NSW public servants will be able to access either their existing scheme or the new Commonwealth scheme, but not both.

#### **THE WORK TEST**

The 'work test' is the means of assessing eligibility for payment for the proposed Commonwealth scheme.

It is a completely different to the method of assessing eligibility for maternity leave under the Crown Employees Award.

Under the present system, you simply need to be an employee (permanent full time, permanent part time or temporary (full time or part time)) with at least 40 weeks continuous service, to be eligible for some level of paid maternity leave.

In contrast, to be eligible for the Commonwealth Paid Parental Leave Scheme, a woman must have worked for at least 10 of the preceding 13 months *and* for at least 330 hours during that period, with no more than an eight week gap between any two consecutive working days.

The problem with this formula is that if a woman were to take additional leave after the initial six months, and subsequently fall pregnant again, whether she would be eligible for payment under the scheme for the second pregnancy without having to return to work for at least 330 hours.

The proposed Commonwealth Paid Parental Leave Scheme (like the present Commonwealth scheme) does *not* use the term "employed", but rather "worked".

Periods of unpaid leave do *not* count for the purposes of the work test despite being employed for the duration of the unpaid leave. Time taken as paid parental leave under the Commonwealth Paid Parental Leave Scheme also does *not* count as 'work'.

Therefore, a previous period of parental leave including unpaid maternity leave presently available to NSW public servants under the Crown Employees Award, might disqualify a woman from subsequent payment under the proposed Commonwealth Paid Parental Leave Scheme.

<sup>1</sup> COAG Communique, 13 December 2013 at 2

A woman would need to return to work between the births of her children to qualify for a subsequent payment under the proposed scheme. She would also need to go back to work full time to be eligible for the maximum rate of payment.

Another instance which may create difficulties is where leave is exhausted and more than eight weeks unpaid leave has been granted. This period would not count as 'work', meaning that a woman would not be eligible under the proposed scheme despite continuing employment and the leave having been approved. Under the present employer scheme, a woman in this situation would likely to be entitled to payment of the normal maternity leave offered by her employer as she would still be employed by the Department.

### **THE ABILITY OF UNIONS TO ADVOCATE**

Employer funded maternity leave is a condition of employment. As such, unions can advocate for members who experience difficulties in this area.

The Commonwealth Paid Parental Leave Scheme however is administered by the Family Assistance Office, not the employer. As such, it falls outside the scope of the employment relationship. This may result in unions not having jurisdiction to represent members in this area should they experience difficulties.

One of the arguments the Coalition Government have proffered in relation to the benefit of the proposed scheme is the 'reduction of administrative burdens' of parental leave on employers. However, this may just be a smokescreen for the removal of unions from the picture.

### **CASUAL, SEASONAL AND TEMPORARY EMPLOYEES**

Casual, seasonal and temporary employees are technically eligible to apply for payment under the proposed Commonwealth scheme.

However, they would also be subject to the 'work test' and many workers in this type of employment may have difficulty meeting the criteria of this test where work is not fairly regular and ongoing.

It should be noted that all of the above classifications of workers can access the present paid parental leave scheme administered by the Office of Family Assistance and the 'work test' will remain the same. Thus, the proposed new scheme does not 'broaden the net' with regards to access.

The present Commonwealth scheme is paid for 18 weeks at the federal minimum award rate. The proposed Commonwealth scheme might not be more generous financially for this group on a weekly basis, even if they qualify, where they earn close to the minimum award wage. It would however, provide those who qualify with 26 weeks instead of 18 weeks paid leave.

Casual and temporary employees are disproportionately women.

### **PAYMENT**

The impact of the proposed Commonwealth scheme is

largely dependent on individual circumstances.

Women earning over \$100,000 will have payments capped at \$100,000.

Those earning under \$100,000 but more than the federal minimum award rate (\$640.90 per week as of 1 July 2014) will be paid at their current rate of pay for six months.

Women earning less than the federal minimum award rate will receive the minimum award rate (\$640.90 per week as of 1 July 2014).

### **SUPERANNUATION**

Superannuation will be paid by the scheme for the duration of the leave (six months).

<b>Present scheme for NSW public servants</b>	<b>Proposed Commonwealth Paid Parental Leave Scheme</b>
Able to access both the scheme under the Award which is employer funded <i>and</i> the Commonwealth Scheme.	Access only to the Commonwealth Scheme <i>or</i> their existing scheme.
Payment at ordinary rate of pay for fourteen (14) weeks, plus up to 18 weeks of the existing Commonwealth scheme at the federal minimum award rate of pay.	26 weeks pay on ordinary rate of pay, capped at \$100,000 (or \$50,000 over six months) or the federal minimum award wage – whichever is greater.
Maximum amount of paid leave: 44 weeks (inclusive of periods on half pay, 'other parent' leave on half pay and 18 weeks at the federal minimum award rate of pay).	Maximum amount of paid leave: 26 weeks
'Other parent' can take either one week on full pay or two weeks on half pay in addition to the above.	Up to two weeks but this will be deducted from the 26 weeks.
Other parent pay is paid at the secondary carer's normal rate of pay	Other parent pay is pegged to the primary carer's rate of pay. Women currently earn on average 18.2% less than the average male wage in Australia.
The initial 14 weeks can be taken on half pay, giving 28 weeks.	No decision about whether the leave can be taken over one year on half pay.
Available only to permanent (full time and part time) and temporary (full time and part time) employees (provided the respective leave falls within the duration of the temporary contract period) only, after 40 weeks continuous service. *Excludes casual employees.	Technically available to all, including casual, contract and self-employed women provided they meet the 'work test' (worked for at least 10 of the preceding 13 months and at least 330 hours during that period with no more than an eight week gap). Casual and some temporary employees will be the likely 'winners'.
Scheme administered by the employer.	Scheme administered by the Family Assistance Office.
Employer funded following lengthy union negotiations.	Government funded. How the revenue to fund the scheme will be raised is uncertain. The Commonwealth Government allege it will be funded by a levy on large corporations. However, cuts have been made to women's services generally, and consideration has been given to having states remit some funding from the present scheme.