

National Tertiary Education Union

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NTEU Submission

to the

Senate Community Affairs Committee

Inquiry into the Exposure Draft of the Paid Parental Leave Scheme Bill 2010.

Organisation: National Tertiary Education Industry Union

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Summary of Recommendations:

- 1. In order to ensure that casual employees in the higher education sector are not excluded from the Paid Parental Leave scheme, NTEU recommends that the definition of the Work Test under Eligibility criteria be amended in the following ways:**
 - i. Increase the permissible break in service from 8 weeks to 12 weeks;**
 - ii. Include, as an additional and alternative means of qualifying under the work test, the existing provision in the NES by which a casual employee qualifies for unpaid maternity leave, subject to retaining the “hours-worked” test. This would mean that to qualify for Paid Parental Leave, the employee would need to:**
 - have been employed on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months and where the employee would have a reasonable expectation of continuing engagement by the employer on a regular and systematic basis; and**
 - have worked for 330 hours during those 12 months.**
- 2. That care be taken in ensuring a fair way of determining what constitutes an hour’s work (refer to NTEU comments under heading “Calculation of Qualifying work/hours” on pages 6/7).**
- 3. The importance of continued superannuation contributions during parental leave should not be underestimated, noting the particular financial disadvantages already experienced by many female workers.**
- 4. All entitlements should continue to accrue to the employee during the period of paid parental leave and should be considered as paid leave for accrual of entitlements with the employer and superannuation.**
- 5. NTEU recommends that the Paid Parental Leave be able to be taken over the maximum two year unpaid parental leave period should the employee’s right to request the additional 12 months of unpaid parental leave be agreed by the employer.**

About the National Tertiary Education Union

The National Tertiary Education Union (NTEU) represents more than 25,000 staff employed in the tertiary education sector in Australia. While academic and general staff in the university sector comprise the vast majority of NTEU's membership, the Union also represents staff of student organisations, English Language Intensive Courses for Overseas Students (ELICOS) and staff working in university companies. In addition, the Union represents an increasing number of staff working in private education providers, TAFE and adult education.

Women comprise 54% of NTEU membership and are well represented in all the Union's representative elected bodies. Women members also participate in the Union's affairs through the Women's Action Committee, which is comprised of women representatives from each State and Territory and an Indigenous representative. It represents the specific interests of women working in Australian tertiary education institutions.

The NTEU welcomes the opportunity to make a submission in response to the Senate Community Affairs Committee Inquiry into the Exposure Draft of the Paid Parental Leave Scheme Bill 2010.

The NTEU primarily supports the submission made by the Australian Council of Trade Unions (ACTU) and makes this submission in relation to specific matters which affect our members.

1. Current Situation in Higher Education

NTEU is in a unique position as our membership is largely employed in a sector which already provides paid parental leave, with 26 weeks paid maternity/parental leave the minimum standard across the University sector and eight institutions providing for up to 36 weeks to staff who are primary carers with a qualifying period of service. These conditions resulted from collective bargaining and are mandated in university specific collective agreements. However, these conditions relate primarily to permanent and fixed term university employees, and to date there is little in the way of employer funded maternity leave for the growing numbers of casual workers in our universities. As such the current situation is that, unless these provisions are gained through the bargaining process, the majority of casual employees are not entitled to paid parental leave.

2. Casual Employment in Higher Education

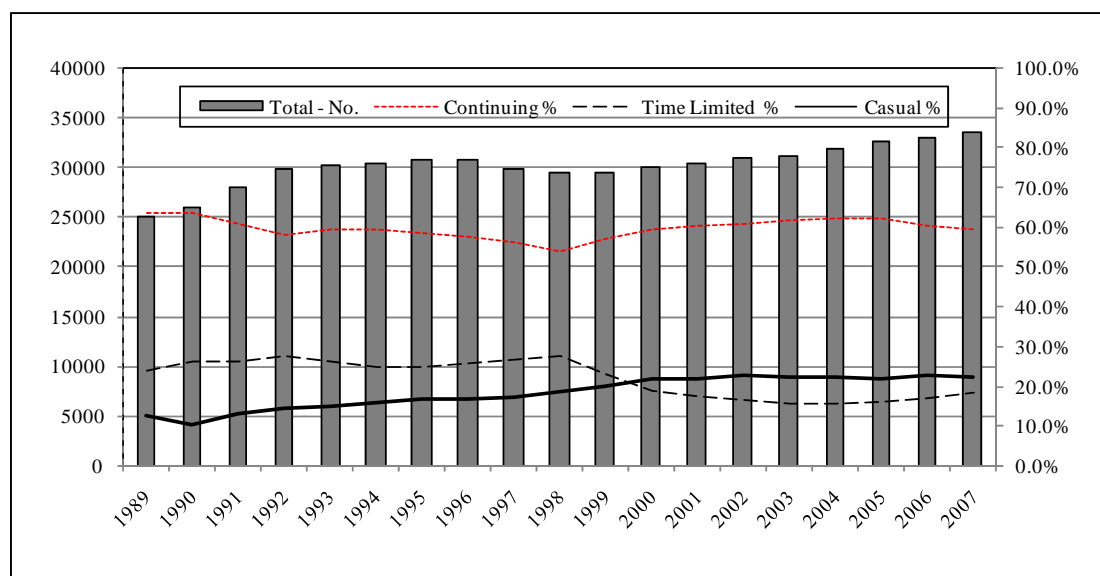
This is an issue of concern for the Union, as the higher education sector is one of the most casualised workforces in Australia.¹ This is due largely to the fact that as the sector has expanded over the last two decades, universities have sought to increase their 'flexible' (or

¹ Junor (2004) notes conservative Government full-time equivalent (FTE) figures suggesting that 20 per cent of academics and 13 per cent of general staff are employed on hourly casual contracts. In the head-count terms used in other industries, an estimated 40 per cent of academic staff are now casual employees (McAlpine, cited in Buckell 2003:19). Junor notes that this is a higher casualisation rate than for the Australian workforce average of between 23 per cent and 27 per cent, depending on definition (Campbell and Burgess 2001; Wooden and Warren 2003; Pocock et al. 2004).

casual) workforce as a means of accommodating the increased demand. To give an indication of the increase in numbers, between 1989 and 2007 the number of students enrolled in courses at Australian universities increased from 441,000 to over one million

However, as can be seen from Fig 1 below, the increase in demand for teaching (where the majority of short term casual employment lies) has been largely met by a growth in casual staffing.

Figure 1: Teaching Staff in Academic Departments by Employment Status 1989- 2007



Source: Higher Education Staff Collection, Canberra: DEEWR, various years.

Since 1989 the number of university teachers increased by 8,435 full time equivalent (FTE), of which more than half were casual staff. Casual staff numbers increased from 3,162 to 7,440, or approximately 135%. Further, as a proportion of all teaching staff, casual staff have increased from 12.6% of the total in 1989 to 22.2% in 2007. The 20% threshold was crossed in 1999. It should be noted that as these numbers are for full time equivalent the actual numbers of casual staff is likely to be significantly higher. Evidence of this under-estimation can be seen in a recent study commissioned by the Australian Learning and Teaching Council (the RED project) into casualisation in higher education. It was reported the number of individuals recorded to be vastly larger than officially recorded; at one institution, 198 individuals were collapsed into the equivalent of 16 full-time positions. It also found that in two of the 16 universities that took part in the RED project sessional/casual staff were responsible for the delivery of 80% of undergraduate classes.

In contrast, during this period the proportion of continuing staff has decreased from 63.6% to 59.3%, and the proportion of contract positions decreased from 23.8% to 18.5%.

Furthermore, this trend is likely to continue as a result of the Federal Government's recent announcement for further growth for Australia's higher education sector. In particular, the objective of increasing enrolments so that 40% of Australia's 25 to 34 year old age group will have a bachelor degree by 2025 is already seeing institutions over enrol by approximately 10%. It is highly likely that universities will seek to meet the majority of this increase through 'flexible' employment.

3. Casual University Employees and the PPL

With such high numbers of casual employees working in higher education it is vital that the Government's Paid Parental Leave scheme is accessible to the majority, if not all, employees. However, NTEU has identified a number of significant barriers that will in effect exclude most casual university workers from this entitlement:

3.1 The definition of the Work Test in the draft Bill is a significant disadvantage to long-term casual staff employed on a semester by semester and on a seasonal basis by Universities

NTEU acknowledges that the draft Bill attempts to recognise the nature of long term casual work by including a provision that a permissible break of up to 56 consecutive days (ie 8 weeks) will be allowed when determining whether an employee satisfies the work test (*refer Chapter 2 Part 2-3 Division 3 – The Work Test Section 36*).

However, the nature of casual employment in universities is that many casual staff are employed on a semester by semester basis or on a seasonal basis, resulting in a long break in employment periods from the end of second semester to the start of first semester the following year.

Examples include casual academic staff employed to deliver lectures and tutorials during semesters and casual general staff employed as library shelvers usually for nine months of the year during peak periods.

A large number of staff are employed for many years in this type of employment pattern. This results in an employment relationship with the one employer that can be long standing and regular, characterised by a break in service between semesters over the Christmas period or long breaks during non-peak work periods.

To further illustrate this point: many universities finish their exam periods for second semester anytime from mid to late November, with first semester commencing the following year anytime from end of February to early March. This results in a break in employment for many long term casual staff. This break in employment for University staff is greater than the 8 weeks permissible break contemplated in the draft Bill. The break is more likely to be at least 12 weeks (and for some universities the break between semesters can be up to 16 weeks).

Therefore, whilst many casual employees in universities will easily exceed the threshold of 330 hours of qualifying work in the qualifying period provided in the draft Bill, the nature of semester-based work in universities means that there will be a substantial break of at least 12 weeks and up to 16 weeks between employment periods.

In such circumstances it would be grossly unfair to deny a long term casual employee the entitlement to paid parental leave when the employee is otherwise able to demonstrate a regular and long term relationship with the employer and where they have an expectation of continuing work with the employer.

This unfairness is further compounded when The National Employment Standards is taken into account.

3.2 Inconsistency between The National Employment Standards and the Draft Paid Parental Leave Bill for Casual Employees

NTEU believes there should be a link between the Paid Parental Leave Bill and The National Employment Standards (NES) as they relate to casual employees. In circumstances where an employee fails to satisfy the criteria of the work test as proposed in the draft Bill, account should then be taken of an employee's employment history in line with the NES criteria.

The National Employment Standards provide at Division 4 – Parental leave and related entitlements Subdivision A, Section 14(2) Casual Employees:

14 (2) A casual employee is not entitled to leave (other than unpaid pre-adoption leave) under this Division unless:

(a) the employee has, or will have, been engaged by the employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months immediately before:

(i) if the leave is birth-related leave – the date of birth, or the expected date of birth, of the child; or

(ii) if the leave is adoption-related leave – the date of placement, or the expected date of placement, of the child; and

(b) but for the birth or expected birth of the child, or the placement or the expected placement of the child, the employee would have a reasonable expectation of continuing engagement by the employer on a regular and systematic basis.

(Emphasis added)

In light of the above entitlement under the NES, there will be situations where a casual employee has an entitlement to 12 months of unpaid parental leave but will not qualify for the payment of Paid Parental Leave under the draft Bill as it currently stands. NTEU does not believe that this is a logical or just outcome for long term casual employees.

3.3 Calculation of Qualifying work/hours

NTEU notes that there is a proposed requirement that employees work for 330 hours in the period prescribed in the draft Bill. In a number of professional occupations, by no means limited to academic work, casual staff are paid on a basis which “implies” time that is actually worked beyond the “hour” actually paid for.

For example, in higher education, the hourly rate of pay for a lecture is struck on the basis that one hour standing in front of a class necessarily includes two, three or even four additional hours work required in preparation and student consultation. So for example, while

the “hourly” rate of pay for a casual employee in the relevant classification is for example \$35 the rate of pay in the Award or Agreement is expressed as \$105 in formal recognition of the fact that a lecture consists of 3 hours work.

In other words, if one hour of lecturing represented only one hour’s “work” then to work for 330 hours in a year would require the employee to actually be doing as much teaching as some full-time academic staff. This would be an extremely unjust outcome.

It is important that the legislation or any subordinate regulations ensure that the apparent intention of the Bill is not frustrated by weak drafting. NTEU submits that in order to avoid doubt, this matter should *at the very least* be dealt with clearly in the Explanatory Memorandum.

3.4 Quantum of Paid Parental Leave, accrual of entitlements and superannuation

NTEU’s view is that the minimum standard should be 26 weeks paid parental leave structured as 26 weeks paid maternity leave for all mothers of new born babies, funded by the Government at the federal minimum wage, with 12 weeks of this leave alternatively available to:

- another parent if she or he is to be the primary carer; or
- a parent adopting a child under the age of 5.

NTEU further recommends that employers should contribute to the scheme by topping up the tax payer funded entitlement to full income (noting that relying on bargaining for full income top up from employers continues to disadvantage those who are unable to bargain).

The draft bill makes no provision for the payment of superannuation during the period of paid parental leave and we believe this is a serious shortcoming of the proposed scheme. The importance of continued superannuation contributions during parental leave should not be underestimated, noting the particular financial disadvantages already experienced by many female workers.

Further, all entitlements should continue to accrue to the employee during the period of paid parental leave and should be considered as paid leave for accrual of entitlements with the employer and superannuation.

3.5 Greater flexibility

NTEU acknowledges that the draft Bill attempts to provide flexibility regarding the timing of payments of paid parental leave before, after or at the same time as any employer-provided paid leave such as recreation, annual and employer-provided maternity leave.

However, NTEU believes that the provision that an employee cannot receive any paid parental leave after the child’s first birthday is unnecessarily restrictive.

Families should be able to access entitlements in a more flexible manner and NTEU recommends that the Paid Parental Leave be able to be taken over the maximum two year

unpaid parental leave period should the employee's right to request the additional 12 months of unpaid parental leave be agreed by the employer.

4. Conclusion

In principle NTEU supports the majority of the provisions within the Exposure Draft. We strongly agree with the premise that paid parental leave is vital if we are to increase the lifetime participation of women in the workforce and improve work life balance for families. However, it is imperative that long term casual employees in higher education are entitled to the same provisions as those available to other working women, and as such NTEU requests that the qualifying criteria be amended as recommended.

Should it be required NTEU would be pleased to provide additional information in support of our submission.