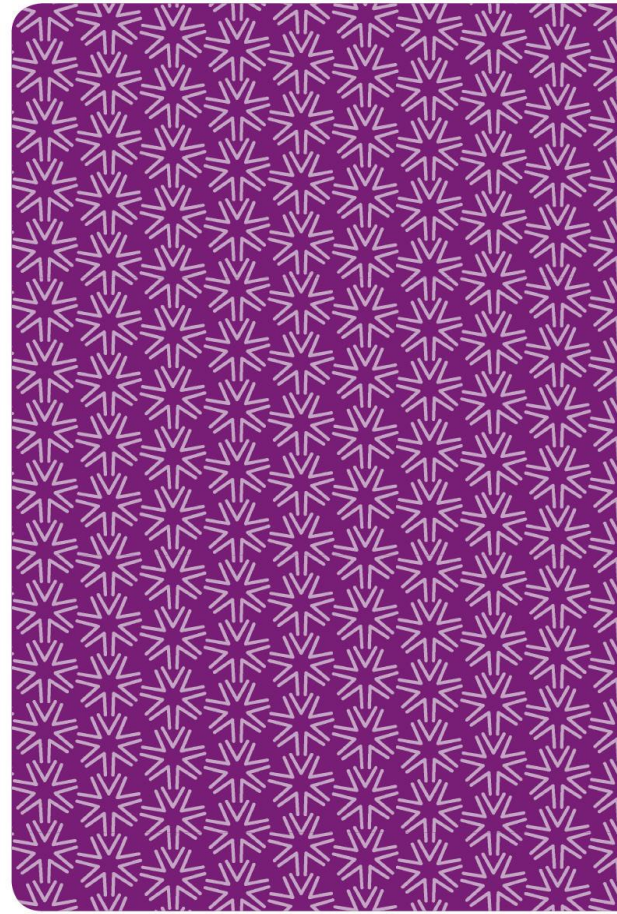
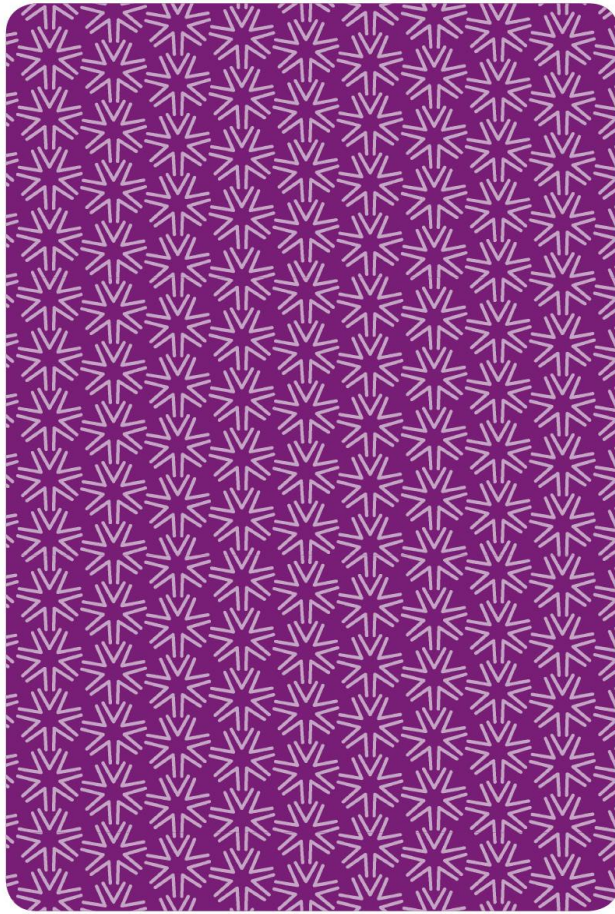


Inquiry into the exposure draft of the Paid Parental Leave Scheme Bill 2010

ABI submission to the Senate Community Affairs Committee



Invigorating Business Representation

About ABI

Australian Business Industrial (ABI) is a registered organisation under the *Fair Work (Registered Organisations) Act 2009*. It is also responsible for NSW Business Chamber's workplace policy and industrial relations matters and its state registered counterpart is also a Peak Council for employers under the *Industrial Relations Act 1996* (NSW).

ABI is a successor to the Chamber of Manufactures of NSW which was established in 1886 to promote the interests of its members in trade and industrial matters. The Chamber was registered under the then operating NSW legislation in 1926. Since its inception, the Chamber and its successor industrial organisations have played a major representational role in industrial relations federally and in NSW.

ABI represents the interests of not only individual employer members, but also other Industry Associations, Federations and groups of employers who are members or affiliates.

ABI Council, which comprises directly elected representatives from its membership, is responsible for determining the policy direction for ABI.

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Introduction

Australian Business Industrial (ABI) welcomes the opportunity to contribute to the inquiry by the Senate Community Affairs Committee into the Government's Paid Parental Leave (PPL) Scheme, as contained in the exposure draft Paid Parental Leave Bill 2010 (the Bill) and accompanying materials.

ABI supports a Government funded and administered PPL scheme to supplement existing, employer initiated, PPL schemes that provide paid parental leave benefits to workers.

ABI is concerned that there has been limited time to consider the details of this complex piece of legislation and associated materials. ABI seeks that the Committee ensures that such a significant reform to Australian workplaces is not implemented without employers' legitimate concerns being addressed.

The exposure draft Bill also indicates that PPL rules and regulations will be required, and have not yet been released, that may create additional concerns that have not been raised in this submission.

In this context, ABI seeks to briefly address some concerns it holds with the proposed scheme and argue in favour of some principles that may be of assistance to the Committee when considering the approach of NSW businesses.

Overview

ABI is concerned that the Bill proposes that employers take on the role of paymaster for the PPL scheme. ABI contends that this will place a significant and avoidable cost impost on employers that will disproportionately affect small and medium sized enterprises.

ABI submits that a Government funded PPL scheme should be administered by the Family Assistance Office (FAO), possibly with the capacity to allow employer to opt-in to become paymaster where this role suits the operations of their business.

It is also likely that the administrative burden arising from the scheme is far greater than envisaged by the Bill, particularly in relation to situations where an employer interacts with the FAO or in addressing employee concerns over their involvement in the scheme.

ABI's position is largely consistent with the submission made by the Australian Chamber of Commerce and Industry (ACCI). In particular, ABI notes the research conducted by ACCI in relation to the New Zealand model and commends this approach to the Committee.

Employer as paymaster

The PPL scheme envisages that the employer will administer the payment of entitlements for employees who meet specific criteria from 1 July 2011. ABI is concerned by that this role will create an administrative burden for employers and significant additional costs. It will also add completely new obligations on employers and the consequential risk of breach, a problem particularly for small and medium sized employers.

ABI contends that the administrative burden on business and the complicated relationship that will arise between employers, the FAO and employees would not be necessary if the Government made payments directly to employees through the FAO.

ABI notes that the process for direct payments will exist under the proposed system, in instances where a person is not a long term employee, and could therefore readily be extrapolated across a greater number of eligible persons. This option would also remove the need for two separate tests to determine the nature of a person's employment.

The Employer Business Requirement Statement recognises that an employer must now have extensive dealings with the Family Assistance Office (FAO). Employers will be required to provide the following information or meet the following requirements for each employee involved in the scheme:

1. The employer must provide required details to the Family Assistance Office so that it can advance the employer Paid Parental Leave funding amounts. This will include the employer's bank account details and the employee's pay cycle details.
2. The employer must provide Parental Leave pay to its employee for the Paid Parental Leave period.
3. The employer must provide Parental Leave pay to the employee in accordance with the employee's normal pay cycle.
4. The employer must withhold tax from the Parental Leave pay under the usual PAYG withholding arrangements and include Parental Leave pay in the total amounts on the employee's annual and part-year payment summary (statements produced and given to the employee for tax purposes).
5. The employer must provide the employee with access to a record of their Parental Leave pay – usually a pay slip.
6. The employer must keep written financial records of receipt of Parental Leave pay funds from the Family Assistance Office and of the Parental Leave pay paid to an employee.
7. The employer must notify the Family Assistance Office:
 - if and when an employee returns to work
 - if and when an employee is no longer engaged with the employer
 - if the employer changes their bank account details or employee's pay cycle
 - if the employer had been advanced an incorrect Paid Parental Leave funding amount by the Family Assistance Office, or if the employer is unable to provide Parental Leave pay to the employee.
8. Employers must return any unpaid Paid Parental Leave funding amounts to the Family Assistance Office.

9. A Paid Parental Leave employer must notify the Family Assistance Office in advance of ceasing to trade, selling the business, transferring ownership or merging with another business.¹

ABI does not believe it is appropriate that employers should shoulder the costs that will result from training staff on the PPL scheme, updating pay-roll software and maintaining records to prove compliance for each of the above matters. Further, most firms, and in particular small and medium sized employers, will also need to obtain professional advice on how to understand the detailed rules and procedures surrounding implementation of the scheme.

ABI contends that if the Government made payments directly to employees, many complex eligibility rules and procedures would also not arise. For example, situations where an employee applies for less than 8 weeks, where the employer does not have an ABN or where the employee has not been a long term employee would not create additional administrative issues around whether the employer is required to act as paymaster.

ABI is also concerned that the Bill proposes substantial civil penalty and criminal offences that can be imposed on employers and individuals if they fail to abide by the detailed and complicated requirements under the Bill, some of which are listed above. This also includes on-the spot fines, in the form of infringement notices.

Pending further consideration of the Bill, it also appears to ABI that the Bill may expose employers to offences and litigation in relation to debt recovery. This is suggested in the Employer Business Requirement Statement when it states that if the FAO does not believe it can help resolve a dispute, it will be referred to the Fair Work Ombudsman (FWO) for investigation. The statement notes that “the FWO will undertake this investigation in line with its existing processes for investigating an allegation that wages have not been paid”² which may involve litigation.

It is clear to ABI that the role as paymaster will significantly increase costs for all employers. Small and medium sized employers will likely be disproportionately affected as they are least able to manage such a significant administrative burden.

Additional administrative requirements

ABI’s interpretation of the Bill suggests that there will be additional administrative requirements arising from the scheme than those currently envisaged by the Bill or accompanying information.

For example, in situations where a person approached the FAO and claims eligibility for the scheme without sufficient documentation, it is likely that an employer will be called upon by

¹ Employer Business Requirement Statement, p 5

² Employer Business Requirement Statement, p 19

either the employee or the FAO to provide proof of employment and employment records to substantiate eligibility.

Employers will also likely face considerable additional work arising from employee queries and uncertainty relating to the implementation of the scheme and individual eligibility. In instances where an employee and employer disagree over a person's eligibility, the Employer Business Requirement Statement envisages a multi-stage approach that will create considerable uncertainty and leave an application unresolved for a considerable period of time.

This approach involved an employee initially seeking a decision from the FAO as to their eligibility. If an employer disagrees with the finding, they can apply to the FAO to review the decision. If the employer is not satisfied with the outcome of the review, the employer may appeal the decision to the Social Security Appeals Tribunal.³

It is clear to ABI that, pending the release of additional consequential legislation or regulations, there will be significant additional administrative requirements placed on employers as a result of this scheme.

³ Employer Business Requirement Statement, p 19

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