Senate Community Affairs Committee Inquiry into the Paid Parental Leave Bill 2010

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This supplementary submission seeks to answer two questions put to me on notice by Senator Fisher while I was giving evidence to the Committee on Wednesday 19 May 2010.

"Ratcheting up" Industrial Standards

In my original submission, I highlighted the fact that eligibility to receive parental leave pay under the Paid Parental Leave Bill 2010 is broader than the entitlement to unpaid parental leave under the National Employment Standards (NES) that form part of the Fair Work Act.

I suggested that one way to resolve the inconsistency would be to broaden the eligibility for unpaid parental leave under the NES. Senator Fisher asked why social security legislation such as this Bill should be used to "ratchet up standards under industrial legislation".

My primary answer is that if we want to provide greater incentives to parents to take longer time out of paid work to care for a new child, but still feel they can return to their job, then a right to paid leave is more effective than a right to a social security payment alone. And if that be the case, there is every reason to look again at whether the existing eligibility requirements for parental leave are too strict.

The NES entitlement to parental leave is based on standards that emerged from a series of test cases about award provisions that started in the late 1980s. Those standards were progressively broadened, both by tribunal decisions and legislation. Initially concerned only with maternity leave, they were expanded to cover fathers and adopting parents. They were also amended to apply to long-term casuals, as well as "permanent" employees. So similarly, there is no reason why we should be forever locked into the current assumption that only employees who have at least 12 months' continuous service with the same employer should qualify for parental leave.

I do not suggest that all workers who qualify for the government payment should be entitled to parental leave. Genuine independent contractors and short-term casuals are obvious examples of workers who cannot reasonably expect to be guaranteed a return to the job they were undertaking immediately before leaving the labour market to care for a new child. But an argument can be made that "permanent" employees who have not yet completed 12 months in their current job, but who otherwise satisfy the proposed work test under the Bill, should at least be entitled to take a period of leave equivalent to their eligibility for parental leave pay.

At any event, can I reiterate that the main point in my original submission was not to advocate a change to the NES, but simply to highlight the need for it to be made clear to

employers and workers that the new scheme does not purport to create any right to leave that does not already exist under some other measure.

Offsetting Payments – Why Not?

Senator Fisher's other question was why employers should not be allowed to use payments from the government to offset (ie, count towards) any payments they might be obliged make under an existing industrial instrument.

One answer to that is that it is not the intent of the scheme. This was confirmed by the evidence given to the Committee, also on Wednesday 19 May, by Mr Warburton, Ms Shelley and other departmental officials. Hence the clarification I am proposing is entirely consistent with the idea of the new scheme offering entitlements that are additional to those that already exist, whether under industrial instruments or any other private arrangement.

As to why they *should* be additional, the answer is presumably that the government is looking to create incentives for parents to take longer breaks from work by providing a benefit that does not already exist – not to subsidise voluntary schemes.

At any event, the point of my submission is simply to remove any possible uncertainty over this issue. If the government is clear that an employer should not use a government-funded payment to discharge its obligations under an industrial instrument, then it should have no objection to saying so in the Bill. Conversely, if Senator Fisher or others believe that there *should* be an ability to offset, then they should seek to amend the Bill to that effect.