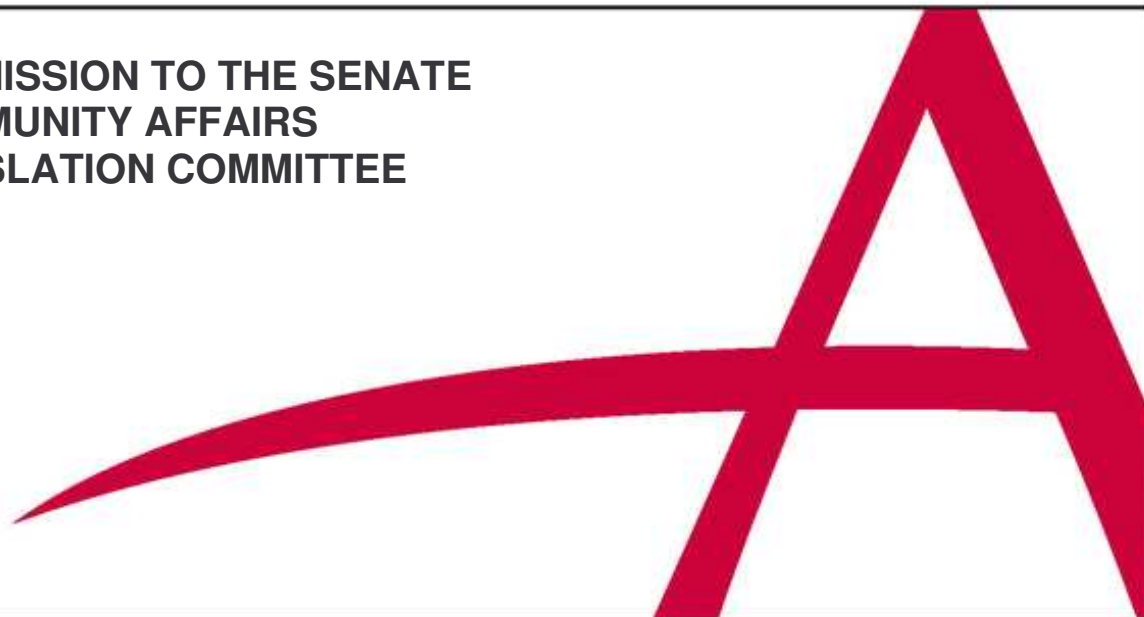


**SUBMISSION TO THE SENATE
COMMUNITY AFFAIRS
LEGISLATION COMMITTEE**



**INQUIRY INTO THE EXPOSURE DRAFT OF THE PAID
PARENTAL LEAVE BILL 2010**



AUSTRALIAN INDUSTRY GROUP

11 May 2010

INQUIRY INTO THE EXPOSURE DRAFT OF THE PAID PARENTAL LEAVE BILL 2010

Foreword

The Government's paid parental leave scheme, as reflected in the Exposure Draft of the *Paid Parental Leave Bill 2010* ("the PPL Bill"), is a sensible approach to an issue which has remained unresolved for too long.

A taxpayer funded scheme providing payments to working mothers of 18 weeks at the level of the minimum wage is consistent with the recommendations of the Productivity Commission and is largely consistent with Ai Group's proposals.

The introduction of an appropriately designed paid parental leave scheme will provide many benefits to the community, not least of which is increased participation by women in the workforce. Increased participation is vital to address Australia's ageing population and looming skill shortages as the economy continues to recover.

Ai Group has been heavily involved in the consultation process during the development of the Government's scheme and we are pleased that the PPL Bill incorporates measures to phase-in some of the administrative requirements upon employers. A few amendments are proposed to the Bill to ensure that the payment processes and related provisions do not operate unfairly for employers.

Once the law has passed there will be a big task ahead to educate employers about the new requirements, given that most employees will receive their parental leave pay through their employer.

Heather Ridout – Chief Executive

1. Ai Group's involvement in the public debate and various inquiries concerning paid parental leave in Australia

Over the past eight years, Ai Group has been heavily involved in the public debate about paid parental leave, and we have made a number of comprehensive submissions on this topic, including the following:

- **July 2002** – submission to the Human Rights and Equal Opportunity Commission in response to its discussion paper *Options for a Paid Maternity Leave Scheme in Australia*;
- **July 2002** – submission to the Senate Employment, Workplace Relations and Education Legislation Committee re. its inquiry into the *Workplace Relations (Paid Maternity Leave) Bill 2002* – a bill introduced into Parliament by the Australian Democrats;
- **June 2008** – submission to the Productivity Commission re. its inquiry into paid maternity, paternity and parental leave in Australia;
- **November 2008** – submission to the Productivity Commission in response to its draft inquiry report on paid parental leave.

Throughout the various inquiries, and in the above submissions, Ai Group has argued in support of a Government-funded paid parental leave scheme providing payments to working mothers at the level of the minimum wage. In this submission, Ai Group has not sought to repeat the arguments set out in the above submissions.

The scheme reflected in the PPL Bill is largely consistent with Ai Group's proposals.

The Government's scheme closely resembles the scheme recommended by the Productivity Commission after an extensive inquiry in which Ai Group was heavily involved.

2. The case for the introduction of paid parental leave

There is a strong case for the introduction of a government-funded paid parental leave scheme in Australia, as provided for in the PPL Bill. Such case is set out in detail in the Productivity Commission's report on paid parental leave.

The scheme reflected in the PPL Bill would give rise to significant social and economic benefits. Like most developed countries, Australia is facing important demographic challenges. These challenges have implications for economic growth and living standards.

The ability to attract and retain female workers will take on particular significance in the coming decades, as the ageing of the population affects the overall workforce participation rate and labour supply growth.

3. The provisions of the PPL Bill

Chapter 1 – Introduction

A commencement date of 1 October 2010 for the legislation is appropriate, given that the scheme provides parental leave pay to eligible primary carers who have or adopt a child on or after 1 January 2011.

The Guide in section 4 is relatively detailed, compared to many other pieces of legislation, and it provides a useful overview of the Bill.

Chapter 2 – When parental leave is payable to a person

Ai Group supports the approach in the Bill whereby a person is only entitled to parental leave pay if the Secretary has made a payability determination.

Ai Group also supports the general requirements that the person must:

- Satisfy the work test;
- Satisfy the income test;
- Satisfy the Australian residency test;
- Be the child's primary carer;
- Have not returned to work;
- Not be entitled to the baby bonus; and
- Have verified the birth.

We have not identified any difficulties with the work test, income test or Australian residency test in the legislation. Similarly, the definitions of "*primary carer*" and "*returns to work*" appear to be appropriate.

Ai Group supports the "*keeping in touch*" provisions in the Bill.

Chapter 3 – Payment of parental leave pay

Ai Group understands the logic behind the Government-funded parental leave payments being channeled through employers, for employees who are not short-term and who remain attached to the enterprise. Such an approach should reinforce the employee's link with the workplace, and achieve better return to work outcomes.

However, it is essential that the payment processes are simple, effective and fair, and that any implementation problems are monitor and addressed without delay.

We are pleased that the Government has taken on board some of the concerns expressed by Ai Group and other employer representatives during the consultation process and that it has implemented some measures to reduce the impact upon employers, including:

- Delaying the requirement upon employers to provide paid parental leave instalments until 1 July 2011, ie. six months after the scheme comes into operation;
- Giving employers the option of receiving three paid parental leave funding amounts rather than fortnightly funding;
- Ensuring that there is no obligation upon an employer to pay instalments to an employee unless the employer has received sufficient funds from the Secretary;
- Not imposing a requirement upon employers to pay employees who have been employed for less than 12 months or who are eligible to receive less than eight weeks of parental leave pay.

Key elements of the scheme, as it relates to employers, include:

- An eligible employee makes a claim in the approved form, including providing information about their employer and their employment with that employer (s.56);
- After receiving the claim, if a payability determination or an initial payability determination is in force and the Secretary is satisfied that the employer meets the criteria in the legislation, then the Secretary must make an employer determination (s.101);
- If the Secretary makes an employer determination, the Secretary must give the employer and the claimant a written notice advising them of the determination (s.102);
- Within 14 days after the date on the written notice of the determination, the employer must give the Secretary an acceptance notice (including bank account details and other required information) or apply for a review of the employer determination (ss.103 and 104);

- An employer declaration does not come into force until the employer gives the Secretary an acceptance notice or its bank account and pay cycle information (s.107);
- After an employer declaration has come into force the employer must pay the employee the required instalment on each pay day, provided that the employer has been paid enough by the Secretary to fund the instalment (s.72);
- Employers must keep records in the prescribed form and provide a record of payment to the employees who are paid instalments (ss.80 and 81).

Ai Group recognises that the above approach has been devised to minimise the impact upon employers. However, the proposed 14 day period in s.103 is not appropriate and would operate unfairly for employers.

Sub-section 102(4) states that the date on the notice *“must be the date the preparation of the notice was completed”*.

Section 103 provides that within 14 days of *“the date of the notice given under section 102”* the employer is required to give the Secretary an acceptance notice or apply for a review.

This appears to mean that:

- The 14 day period (which is very short) commences when the notice is prepared in the Department – not the date when the employer receives the notice;
- No time has been taken into account for postage to the employer or return postage to the Department;
- Postal delays have not been contemplated; and

- For email communications, transmission delays and other problems have not been contemplated.

This issue is extremely important because under s.146 of the PPL Bill, an employer is exposed to a maximum penalty of \$33,000 for failure to give the Secretary an acceptance notice or apply for a review within the required 14 days.

Similar issues arose during the development of the *Workplace Relations Amendment (Transition to Forward with Fairness) Bill*. Under this legislation, the Workplace Authority was required to send a written notice to the employer of the approval of a workplace agreement and then the employer was required to give a copy of the approval notice to the employees. A maximum penalty of \$16,500 applied for failure to do so.

Following consultation with industry and union representatives, the issue was addressed by providing in the legislation that a workplace agreement comes into operation seven days after approval by the Workplace Authority. This seven day period was designed to allow time for postage delays. The seven day period has been retained under the *Fair Work Act* (s.54(1)). Enterprise agreements come into operation seven days after the agreement is approved.

Ai Group proposes that the PPL Bill be amended as follows:

- The second sentence in section 102(4) should be amended to state that *“The date of the notice must be no earlier than the date that the notice was posted or transmitted to the employer”*;
- The period should be 21 days, not 14 days, to allow seven days to account for postal or transmission delays which will of course occur in some cases;
- The maximum penalty for failing to respond within the required period should be \$16,500, not \$30,000.

Further, it is important that the implementation of the scheme be monitored in conjunction with industry representatives, including Ai Group, and that any problems which employers experience with the payment processes or other aspects of the legislation are addressed without delay.

Also, employers need to be educated about the new requirements before the scheme comes in operation (see **Section 6** of this submission).

Chapter 4 – Compliance and enforcement

It will take some time for employers to understand the requirements of the new legislation.

The maximum penalties for breaches of the legislation are very substantial and it will be important for the Fair Work Ombudsman and other relevant agencies to take an educative approach in ensuring compliance, particularly during the first 12 months.

As set out above, Ai Group submits that the penalty in s.146 of the Bill for a breach of s.103 is excessive and should be no more than 30 penalty units (ie. \$16,500 for a body corporate when the penalty is multiplied by 5 in accordance with s.147(3)).

Chapter 5 – Review of decisions

Ai Group has not identified any problems with this Chapter of the PPL Bill.

Chapter 6 – Miscellaneous

The views expressed in this submission are subject to the important qualification that at the time of drafting this submission Ai Group had not seen a draft of the Paid Parental Leave Rules (s.298) or the Regulations (s.308). These instruments should be developed in consultation with industry representative bodies, including Ai Group.

4. Interaction between the PPL Bill and other legislation

Ai Group has been briefed on the PPL Bill by Departmental Officers. We understand from such briefing that:

- The receipt of parental leave pay under the PPL legislation will not result in the employee being deemed to be on paid leave for the purposes of the National Employment Standards (NES) and other aspects of the *Fair Work Act* (which would result in, for example, annual leave and personal / carer's leave accruing during periods of parental leave);
- The superannuation obligations of employers will not change as a result of the PPL scheme;
- All State Governments have agreed that PPL payments will not be taken into account for the purpose of calculating workers' compensation premiums;
- All State Governments have committed to ensuring that PPL payments will not impact upon the payroll tax obligations of employers, subject to reviewing the terms of the PPL Bill.

The above issues are very important. A change in any of these areas would impose very substantial costs upon employers.

5. Interaction between the proposed PPL scheme and company paid parental leave schemes

The PPL Bill appropriately does not deal with the interaction between the PPL scheme and company paid parental leave schemes and policies, and Ai Group submits that the legislation should not venture into this area.

The design of the PPL scheme means that no changes need to be made to company schemes and policies, and we anticipate that employers will not reduce the paid parental leave benefits which they currently provide.

Many employers offer 4 to 14 weeks of maternity leave paid at the employee's base salary. An employee of an employer offering 8 weeks of paid leave could choose to obtain the company's parental leave payments for the first 8 weeks and then receive payments under the PPL scheme for a further 18 weeks – a total of six months of paid parental leave.

6. Education for employers

The implementation of the PPL legislation will require an education effort for industry.

The impact upon employers will be reduced if the Government worked with representative bodies such as Ai Group in rolling-out an education program for industry.

Ai Group maintains close links with industry, and employers rely on Ai Group for advice and leadership. Education programs which are channelled through respected industry bodies such as Ai Group are likely to be more effective than broad-brush approaches.