

Submission

on the

Paid Parental Leave Bill 2010 (Exposure Draft)

to the

Senate Community Affairs Committee

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1. Introduction

On 18 March 2010 the Senate passed a motion “That on the release by the Government of any exposure draft of legislation relating to the implementation of its announced paid parental leave scheme, the document or documents stand referred to the Community Affairs Legislation Committee.”

On 4 May 2010 the Government released an exposure draft of a *Paid Parental Leave Bill 2010* along with an exposure draft of an explanatory memorandum.

The Community Affairs Legislation Committee has invited public submissions on the exposure draft of the Bill. Submissions are due by 11 May 2010. The Committee is due to report on 3 June 2010.

2. Picking favourites: the work test

The exposure draft of the *Paid Parental Leave Bill 2010* would provide for the payment of Paid Parental Leave (PPL) to “eligible” persons following the birth or adoption of a child.

Among the conditions of eligibility the distinctive condition in the proposed PPL scheme is “the work test” which is set out in Sections 32-36 of the Bill.

To be eligible for any payment of PPL a parent must have been in paid employment for a total of 330 hours during a period of 295 consecutive days on which, allowing for gaps of up to 56 consecutive days on which no paid work is done, at least one hour of paid work per day is done.

Those who meet this work test – along with the other conditions of eligibility such as Australian residency and an income lower than \$150,000 – would be eligible to receive PPL.

Section 65 of the Bill would provide for PPL recipients to receive a maximum payment of 18 weeks PPL at a rate based on the national minimum wage hourly rate (5 week days per week x 7.6 hours per day). The current federal minimum wage is \$543.78 per week. Assuming the national minimum wage rate applicable in 2011-12 will be raised to keep pace with CPI rises it is likely to be about \$571.85. Gross PPL payments to those eligible for the maximum PPL period of 18 weeks would then be about \$10,293 each.

PPL would be taxable. The 2011-12 budget projections in the 2009-10 budget papers indicate that the Government is anticipating some 148,000 recipients of PPL will receive average net after tax payments of \$7342.

By comparison the Baby Bonus, which is indexed to CPI, could be about \$5452 in 2011-12. The budget projections for 2011-12 suggest that about 158,000 parents – 10,000 more than the anticipated recipients of PPL – would receive this form of parental support following the birth of a child.

The PPL scheme would therefore favour a minority (48%) of Australian families by giving them nearly \$2000 (\$1890) more than the majority (52%) of Australian families following the birth of a child.

This \$2000 deficit in support would be likely to apply particularly to women who have a second or subsequent child who are less likely to be able to meet the work test. These mothers would have been busy taking care of their first child at home, rather than clocking up paid employment so they could be rewarded by the favoured status of PPL eligibility.

The Productivity Commission has observed:

The nature of employment among pregnant women differs significantly between those expecting their first, second or third child. ...women with more children are more likely to be outside of paid work, and therefore less likely to be associated with formal maternity leave.¹

The Australian Bureau of Statistics has identified the decline in the percentage of women having three or more children as one of the key drivers of the below replacement level total fertility rate.² This percentage has declined rapidly from 54% in 1976 to 32.6% in 2006.

A parental payment scheme, which by its eligibility requirements would exclude most women with two children, is not likely to help reverse this trend.

Nonetheless, the Productivity Commission has attempted to justify this overt discrimination. It says that mothers in the paid workforce need incentives to achieve child and maternal health benefits by absenting themselves from work after their babies are born – whereas stay-home mothers already do the right thing, so they don't need any help:

- *a stay at home parent does not require incentives to prolong an absence from work.³*

Stay at home parents are just ordinary women who like all other women have to weigh up the advantages and disadvantages of working outside the home or of being a full time carer for their children. Government provision of income support for the first 18 weeks after the birth of a second or subsequent child would encourage some women to go ahead with having another child rather than possibly returning to paid employment.

The Productivity Commission has also claimed that paid parental leave would increase women's paid workforce participation:

- *[PPL aims to encourage] women of reproductive ages to maintain their lifetime attachment to the workforce.⁴*

The Commission argues that PPL would stimulate the lifetime employment rates of women – potentially contributing around six months of net additional employment per woman.⁵

It is hard to see what overwhelming benefit to the country this relatively minor increase in net additional employment of women would deliver, especially as such a net increase is at the cost of an equivalent decrease in the net time women spend with their infant children.

The Commission also claims that PPL would help engineer social change by promoting workforce participation while caring for children as normal:

- *[Introducing PPL would] promote some important, publicly supported social goals, and in particular, the normalcy of combining a caring role for children and working⁶*

The Commission notes that only 51% – just over half – of all mothers are engaged in paid work some 18 months after giving birth. Evidently nearly half of those most closely concerned about this issue – mothers themselves – do not think it desirable to combine “a caring role for children” – at least children under 18 months – “and working”.

Moreover it is inconsistent for the Commission to promote this kind of “social engineering” role for PPL when by its own admission, mothers need to stay out of the paid workforce for up to a year for child and maternal “health and welfare benefits”.⁷

Recommendation 1:

The Bill would, if passed, give effect to a scheme of support for parents of new born children that is overtly discriminatory against women who choose to be full time carers of their children, and particularly against women having a second or subsequent child. There are no persuasive public policy grounds to justify this discriminatory scheme. The Bill should therefore be opposed.

3. Return to work six to nine months after birth

The PPL scheme that would be introduced by the Bill is designed to facilitate a return to paid work about six months after birth for many women, and perhaps up to nine months for those who already have access to paid parental leave through employment contracts.⁸

However, the Productivity Commission has acknowledged that:

Overall, there is compelling evidence of child and maternal health and welfare benefits from a period of absence from work for the primary carer of around six months and a reasonable prospect that longer periods (of up to nine to 12 months) are beneficial.⁹

It seems illogical then to be proposing a scheme that is not even targeted at increasing the number of mothers who would abstain from work for the probably beneficial period of 12 months.

The discriminatory impact on women having a second or subsequent child is pertinent here.

For a woman to qualify for PPL for a second child she would have to return to paid employment at least 42 weeks before the birth of the second child. To allow for 12 months absence from work caring for her first child – the probably beneficial period for her health and that of the child – she would be obliged to space her children at least 22 months apart.

It is perverse for Government policies to be directly implicated in intimate family decisions about the spacing of children.

In any case there is evidence that suggests the Commission's limit of "12 months" before return to paid work as beneficial is far too short.

Jay Belsky has reported the main findings from the NICHD Study of Early Child Care in America, in which over 1200 children from 10 communities were followed from birth through to starting school.¹⁰

Critics of earlier research had suggested the problem of day care was all to do with poor quality, but the new study found that even when controlling for the quality of care, the quantity of day care still mattered. Children who spent early, extensive and continuous time in the care of non-relatives were more likely to show later behavioural problems, such as aggressiveness and disobedience, as indicated by ratings from their caregivers, their mothers and eventually their teachers.

The type of care mattered too. The study found children who spent more time in a child care centre (as opposed to in another person's home with a non-relative, or in a home with a relative other than their mother) tended to show benefits in terms of their cognitive and linguistic development, but to also show more behavioural problems, being more aggressive and disobedient.

Finally, and not surprisingly, the quality of care was also found to be relevant, in terms of how attentive and responsive carers were, and how stimulating the care environment was. Low

quality care was particularly detrimental to the children of mothers who lacked sensitivity. High quality care on the other hand was associated with later superior cognitive-linguistic functioning.

Given these results, and similar findings from British studies such as the EPPE Study¹¹, Belsky concluded that policies should be introduced to discourage parents from putting their children into day care for too long, including the expansion of parental leave, and tax policies to reduce the economic factors that encourage parents to leave their children in the care of other people.¹²

Debate about child care often includes a claim that “good quality” child care does not have the adverse effects found in these studies.

British childcare researcher Penelope Leach has made some useful observations on this issue.

It is fairly clear from data from different parts of the world that the less time children spend in group care before three years, the better. Infants spending as little as 12 hours a week in day nurseries - this is such a low threshold that it covers almost all infants in this childcare setting - showed slightly lower levels of social development and emotional regulation (less enthusiastic cooperation, concentration, social engagement and initiative) as toddlers.

The tendency of government policy for more day-nursery provision to the exclusion of other types of childcare is extremely short-sighted; it's easier for an infant to catch up on cognitive skills later on, but they can't catch up on insecure attachment. The trend towards more day nurseries is out of kilter with what the research is finding.

We know from research that staff in nurseries tend to be firstly, more detached - less sensitive and responsive - towards the children and there is more 'flatness of affect', a subtle but very important characteristic which means that there is no differentiation in response to a child, a sort of blandness.

Somewhere after two years, as the children begin to relate more to each other than to the adult, then high-quality, group-based care becomes an unequivocal benefit. But for the first 18 months, all the international research shows us the importance of lots of attention from a carer who thinks the infant is the cat's whiskers. It may even be less important that those caring for the under two-year-olds are trained, as that they have the right attitude to children - that they are warm, responsive, talkative and funny.¹³

Leach concludes that while it might be possible to provide good-quality nursery care with well-paid, highly motivated staff for the under-3s, it is very expensive because the ratio of carers to infants needs to be as close to one-on-one as possible.

The recent UNICEF report card highlights the key concepts to emerge from recent neuroscientific research:

They include: the sequence of 'sensitive periods' in brain development; the importance of 'serve and return' relationships with carers; the role of love as a foundation for intellectual as well as emotional development; the fostering of the child's growing sense of agency; the ways in which the architecture of the developing brain can be disrupted by stress; and the critical importance of early interactions with family members and carers in the development of stress management systems.”¹⁴

The report notes that

Neuroscience is beginning to confirm and explain the inner workings of what social science and common experience have long maintained – that loving, stable, secure, stimulating and rewarding relationships with family and caregivers in the earliest months and years of life are critical for almost all aspects of a child’s development.”¹⁵

In the light of the evidence from long term studies demonstrating adverse outcomes from day care for under three year olds; the neuroscientific research confirming the importance of one-on-one relationships based on love to the development of the child in its early years; and the very high costs of quality childcare for under-3s, it would be good public policy to avoid any scheme which provided direct or indirect encouragement to use childcare for under-3s.

The PPL scheme that would be put into effect by this Bill is such a scheme.

Recommendation 2:

The Bill is designed to give effect to a scheme which would encourage women to return to work about six months after the birth of a child, notwithstanding that there are health benefits to both mother and child from a longer period – nine to twelve months of absence of the mother from work. Early return to work is associated with earlier placement of children in long term day care. There is evidence that long term day care is harmful for children under 3. The Bill would therefore not be in the best interest of women, children and families and should therefore be opposed.

4. An alternative proposal

As the PPL scheme that would be given effect to by the Bill would only provide a benefit to less than half of the women who give birth each year, it should be replaced with an equitable proposal that treats all mothers fairly.

A nationwide Galaxy poll commissioned by the Australian Family Association in late March 2010 found that 64 per cent of Australians wanted taxpayer-funded parental leave to be paid equally to all mothers, whether or not they are in the paid workforce. Only 30 per cent disagreed.¹⁶

The 2011-12 budget projections indicate that the total anticipated net expenditure on PPL and the Baby Bonus would be \$1,947,235,000.

Dividing this expenditure equitably between the total 306,000 anticipated recipients of either PPL or the Baby Bonus would enable payments of \$6363 to be made to each mother of a new born child.

Of course this could be increased to the level that the PPL scheme would have given favoured mothers. The net cost of doing so would be just \$300 million in 2011-12.

Such a proposal would save all the administrative costs involved in establishing and maintaining the PPL scheme, as well as avoiding the imposition on employers – calculated by the Productivity Commission as almost \$200 million for the first year and \$100 million in subsequent years.¹⁷

Recommendation 3:

The Bill should be opposed in favour of an equitable scheme of giving all parents of new born children an increase in payments of between \$1000 and \$2000.

5. Stillbirth or neonatal deaths following abortion

Section 31 (3) of the Bill would allow for the payment of PPL following a stillbirth.

The definition of a stillborn child is given in Section 6 of the Bill:

stillborn, in relation to a child, means a child:

- (a) *who weighs at least 400 grams at delivery or whose period of gestation was at least 20 weeks; and*
- (b) *who has not breathed since delivery; and*
- (c) *whose heart has not beaten since delivery.*

Before PPL can be paid evidence for the birth (live or stillborn) of a child must be provided in a birth verification form.

It seems that there is nothing in the Bill that would preclude the payment of PPL in the case of a child who is either stillborn or who dies shortly after birth as a result of a procured abortion.

The birth of such children is registered in the usual way.

This problem was drawn to the attention of the Productivity Commission. However, the Commission positively endorsed the payment of PPL following a procured post-20 week abortion.¹⁸

In the draft report the Commission recommended that the full period of the paid parental leave scheme be available to eligible parents who have an infant that dies in uterus (20 weeks in gestation or more) or shortly after birth. In response to this recommendation, Family Voice Australia noted that the rules for birth registration (babies weighing more than 400 grams or more than 20 weeks in gestation) also apply to babies who die shortly after birth as a result of procured abortion and argued that 'it would be inappropriate and offensive for the baby bonus, a maternity allowance or paid parental leave to be funded by the taxpayer in the circumstances of a procured abortion' (sub. DR298, p. 3).

While statistical data on abortions in Australia is not systematically collected, international evidence suggests that a small proportion of abortions (around 1 per cent) occur after 20 weeks of gestation and the vast majority of these are undertaken because of foetal abnormalities or to protect the health of the mother.

As such, the Commission continues to recommend that mothers having stillborn babies that meet the requirement for birth registration in Australia be eligible for full entitlement to paid parental leave.

However, post-20 week abortions are legally permitted in some Australian jurisdictions, such as Victoria and the ACT, on request, that is without there being a foetal abnormality or any threat to the health of the mother.

The Bill would not put in place any mechanism to stop a woman from intentionally becoming pregnant and terminating the pregnancy at 20 weeks simply in order to qualify for PPL.

Aborting a child for eugenic reasons – reasons of disability – should not lead to a payment which is supposed to be supporting mothers to *care* for a child.

Recommendation 5:

The Bill should be amended to exclude eligibility for PPL following the stillbirth or neonatal death of a child that is brought about by a procured abortion.

6. Endnotes

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3. *Paid Parental Leave: Support for Parents with Newborn Children*, Productivity Commission, 2008, p xxvii.
4. *Ibid.*, p xxviii.
5. *Ibid.*, p xiv.
6. *Ibid.*, p xiv.
7. *Ibid.*, p 4.44.
8. *Ibid.*, p xxi.
9. *Ibid.*, p 4.44.
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14. UNICEF, “The child care transition, Innocenti Report Card 8”, 2008, UNICEF Innocenti Research Centre, Florence, p 5; http://www.unicef-irc.org/publications/pdf/rc8_eng.pdf
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16. “Full-time mums get bad deal”, *The Australian*, 30/3/10; <http://www.theaustralian.com.au/news/nation/full-time-mums-get-bad-deal-family-groups-say/story-e6fmg6nf-1225847179189>.
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18. *Paid Parental Leave: Support for Parents with Newborn Children*, Productivity Commission Inquiry Report No. 47, 28 February 2009, p 4.56; http://www.pc.gov.au/_data/assets/pdf_file/0003/86232/parental-support.pdf