



THE UNIVERSITY OF
SYDNEY

Submission to the Senate Community Affairs Committee
by Professor Marian Baird and Alexandra Heron, on behalf of

The Women and Work Research Group

Faculty of Economics and Business
University of Sydney

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

17 May 2010

1. The aims of the Women and Work Research Group are:

- To provide a scholarly environment in which a community of inquiry on all aspects of women, work, employment, family and community is created.
- To provide a bridge between academic work and policy work and to provide research for the development of evidence based policy in matters pertaining to women, work and family.
- To provide a focal point for collaboration with established and emerging scholars in the field, and with research centres with similar interests in the Asia-Pacific region, the USA, the UK and beyond.

Over the past two years, the work of the Women and Work Research Group (WWRG) has covered parental, maternity and paternity leave, flexible working and carers issues, migrant women and work, pay equity, equal opportunity for women in the workplace and women's health issues at work.

The WWRG strongly supports the government's current proposals for paid parental leave which it has introduced into Parliament in the Paid Parental Leave Bill (the Bill) 2010, the passage into law of these proposals and their coming into operation at the beginning of 2011. It sees the proposed scheme as a first step towards more comprehensive arrangements.

2. The WWRG recommends, however, that the Bill should be amended in the following ways.

2.1 Objectives of the Bill

The objectives currently placed in the Regulation Impact Statement are not entirely clear. The WWRG supports the proposal contained in the submission of the National Foundation for Australian Women that the Bill's objectives should be stated clearly in the Bill itself, broadly along the lines of the ones they suggest:

- Promoting the physical and psychological welfare of children, both as infants and in the longer term.
- Promoting women's capacity for full labour force participation.
- Protecting family welfare by ensuring that absence from paid work due to child bearing does not result in financial difficulties.
- Enabling and encouraging fathers and partners to take a greater role in caring for young children.

2.2 Eligibility for a job guarantee after receiving payment under the Bill

A job guarantee after unpaid parental leave is contained in the Fair Work Act under the National Employment Standards (NES). This has existed since the Parental Leave Test Case in 1979. This was - and remains - a crucial element of the entitlement to parental leave in Australia. Without a job guarantee the notion of leave and the ability to return to work to the same (or similar) job in status and pay for employees on parental leave are compromised.

Eligibility to receive pay under the Bill, however, will encompass more women workers than the NES entitlements to unpaid parental leave and to the right to return to an employee's previous job. We share the concern expressed by Professor Stewart in his submission to the Committee that neither the Bill nor other legislation provide a job guarantee to all those eligible for payment under the Bill.

It appears that the Productivity Commission in its Report, *Paid Parental Leave: Support for Parents with Newborn Children*¹ estimated that approximately 25,000 women eligible for payment under the eligibility criteria they proposed (broadly adopted by the Bill) would not meet the requirements under the National Employment Standards to qualify for unpaid parental leave. They pointed out that these new mothers would not get a job return guarantee.

It states it did not investigate *'the complex issues concerning who should get a job return guarantee under the National Employment Standards, as it involves issues well beyond those relating to a paid parental leave scheme.'*

The WWRG believes that the job guarantee is central to such a scheme particularly in the light of evidence we describe below about problems faced by women maintaining their employment during pregnancy and after childbirth.

We strongly recommend that, at a minimum, a job guarantee for all those receiving payment under the PPL Bill be provided to come into effect when the Bill's payment scheme does

Alternatively, the Government will have to undertake a complex public information campaign highlighting the differences in eligibility between the two rights, the right to pay and the right to unpaid leave and to return to the pre-parental leave position.

2.3 Eligibility of casuals and contract workers for payment under the Paid Parental Leave Bill

Eligibility for paid parental leave should be defined broadly with a view to including as many potential parents as possible who are working before the birth. **We agree with the National Tertiary Education Industry Union in their submission that the Bill be amended to ensure it encompasses academic casuals** who (because of the way in which they are employed in the academic year):

- may have a break of more than 56 continuous days between the end of the second semester and the beginning of the first in the following year;
- are paid for implied hours worked where their express hours would be too few to make them eligible for the scheme.

¹ Appendix E

2.4 A provision to clarify that the payment under the PPL Bill can be taken in addition to existing employer funded schemes

The WWRG is of the view that the Bill should be amended to state clearly that payment made under it does not exonerate the employer from any existing obligation to provide paid leave under any other arrangements. This will then reflect the Minister's intention that payment under the Bill is additional to existing employer funded schemes.² We note that Professor Stewart's submission makes a similar point and we support the same.

The arrangements to be covered must include enterprise agreements and company policies. The latter are particularly important as these are already often seen by employers (whether or not they are correct legally) as discretionary. The WWRG is concerned that payments made under such policies may be particularly vulnerable to adjustment by employers to take account of the payment made to employees under the Bill and provide only a top-up to those payments. We do not think the government intended the parental leave pay to be a subsidy to employers but rather that it is acting to provide paid maternity leave for those employees who do not have it and to extend it for those who do.

3. Concerns which need addressing within the next 12 months.

The following issues are ones which the WWRG suggests are addressed within the next 12 months now the Australian economy is on its way to recovery. The Government has proposed that paid partner/paternity leave and superannuation payments be considered when the scheme is reviewed. The WWRG considers this to be an unnecessary delay. It may also let a 'barebones' scheme which does not address issues crucial to promoting gender equality, become entrenched.

3.1 Partner/paternity leave

Two weeks paid partner/paternity leave should be legislated for as soon as possible. Sharing the caring burden in the early stages of family formation is one way to encourage parents to share more equally the emotional benefits and financial burdens of caring. Additionally, it will enhance the child/father or child/supporting partner bond of which rather less is heard than that between the child and its mother, though it is equally crucial to a child's psychological development (Baird et al., 2009).

3.2 Superannuation

The superannuation guarantee should be paid in full for the paid parental leave period. Given the publicity over the past 12 months about the continuing gender pay gap and in particular women's low superannuation balances,³ **the**

² The Government's intention as stated in the Second Reading Speech.

³ See for example the AMP.Natsem report, 'She works hard for the money: Australian women and the gender divide', which says: 'while women's superannuation balances have improved they are still not coming close to that of men.' Downloaded on 13 May 2010 at:

WWRG recommends that there should be early action to implement the payment of the superannuation guarantee for the period during which payment is made under the Bill. Additionally, it is striking that the government has just undertaken to make commitments to a range of superannuation initiatives, which will involve budgetary outlays.⁴

4. Medium term objectives

4.1 Review and evaluation of PPL

Key performance indicators are set out in the Explanatory Memorandum to the exposure draft of the PPL Bill. We welcome these but think certain additions are critical:

- an additional one should be inserted - Rate of return to former job with former employer including status .
- this indicator and the first, second, fifth and sixth should all be broken down by hours worked as it will be important to understand the patterns of work women resuming employment after childbirth are undertaking.

The indicators will then start to give a picture of whether, to what extent and where, systemic discrimination may be occurring in relation to pregnancy and maternity in the Australian workforce.

4.2 Job guarantee

Problems faced by women maintaining their employment during pregnancy and after childbirth

The extent of the problems women face in (a) keeping their employment during pregnancy and, after childbirth (b) returning to their previous employment, (c) in their original position, and (d) with the same career opportunities, has been identified in a range of research in Australia⁵ and internationally.⁶

<https://www.amp.com.au/wps/portal/au/AMPAUMiniSite3C?vigurl=%2Fvgn-ext-templating%2Fv%2Findex.jsp%3Fvgnnextoid%3D67c93e8b696f1210VgnVCM10000083d20daRCRD>

⁴ See the Treasury press release: 'Stronger, Fairer, Simpler Superannuation Banking the Benefits of the Boom, downloaded on 17 April 2010

<http://www.treasurer.gov.au/DisplayDocs.aspx?doc=pressreleases/2010/027.htm&pageID=003&min=wms&Year=&DocType=0>

⁵ See for example, Charlesworth, S. and Macdonald, F. (2007) *Hard Labour? Pregnancy, Discrimination and Workplace Rights*, Office of the Workplace Rights Advocate, Melbourne; Whitehouse, G., M. Baird, C. Diamond and A. Hosking (2006) *The Parental Leave in Australia Survey: November 2006 Report* <http://www.uq.edu.au/polsis/parental-leave/level1-report.pdf>

⁶ Smeaton, D. and A. Marsh (2006) *Maternity and Paternity Rights and Benefits: Survey of Parents 2005*, Policy Studies Institute, Department of Work and Pensions, London. The Chief Executive of the UK Equality and Human Rights Commission recently referred to a recent survey of employers that found that while two-thirds were perfectly happy for a female employee to return to work after having a child, only one-third were prepared to guarantee that it would be at the same occupational level as she held previously. See: <http://www.equalityhumanrights.com/en/newsandcomment/speeches/Pages/SpeechbyNicolaBrewerlaunchof%27WorkingBetter%27.aspx>

The Productivity Commission 2009 (at 3.15-3.16) noted: *'there is....evidence that some employees experience difficulty in obtaining the parental leave to which they are entitled. Community legal centres,[in their submission] indicated that parental leave and the right to return to work are among their most recurring issues. Case examples include women who are dismissed or demoted during pregnancy or during parental leave.'*

The ABS Pregnancy and Employment Transitions Survey in 2005 stated: *'Women who worked in a job while pregnant, and who did not own the business in which they worked, were asked whether they had experienced any difficulties in the workplace while they were pregnant. At least one difficulty was reported by 22% of women who were asked, with the most common forms being: 9% receiving inappropriate or negative comments (43% of those who experienced difficulties); 9% missing out on training or development opportunities; and 7% missing out on opportunities for promotion (32% of those experiencing difficulties). Women were not asked about the reasons for the difficulties, nor whether the difficulties were associated with the pregnancy.'*

The WWRG considers there are significant indications that the effectiveness of the existing job guarantee contained in the National Employment Standards is inadequate. We **propose that a review of its effectiveness in practice be undertaken by the Government and proposals to enhance its effectiveness be made.** This review should be conducted at the same time as the reviews of the PPL Bill.⁷

4.3 Extending parental leave, sharing it between parents and increasing payment levels

Early consideration needs to be given to extending paid parental leave to 52 weeks and in the interim 26 weeks, to be taken flexibly and shared between parents. The WWRG notes that the evidence from Australia and internationally of the optimum duration of leave is mixed. In the first instance optimum means different things to employers, employees and their infants (Whitehouse etc al. (2008)). Secondly the optimal period of time for parental leave does change as community attitudes alter and as support facilities (notably child care) develop. Thirdly, what is optimal will be affected by the nature of sharing the leave between parents and whether there are dedicated periods of time for a mother and a father (on a use it or lose it basis). This last issue should be urgently investigated. Flexibility in taking such leave should also be enhanced as is the case in several other countries.⁸

⁷ For example, *Sterling Commerce (Australia) Pty Ltd v Iliff* [2008] FCA 702 where it was not sex discrimination to refuse an employee the right to return as the reason for the refusal was that the employer preferred the replacement and was not due to the employee's maternity leave. (In this case there was a breach of the WRA return to work guarantee.)

⁸ See, for example, *International Review of Leave Policies and Related Research 2008*, Eds Peter Moss and Marta Korintus (BERR 2008)

Payment needs to be increased substantially to help to achieve the goal of reducing the gender pay gap. International evidence also suggests that men will not/cannot afford to share parental leave with their partners unless they receive a payment nearing replacement rates for the leave they take.⁹ In the interests of gender equity in caring, therefore, payment levels need to be increased.

4.4. Can reliance be placed on collective bargaining to extend the incidence of paid parental leave?

Evidence exists that collective bargaining is unlikely to achieve significant extensions to paid parental leave in the short term, either in terms of time taken or payment levels achieved.

In Paid maternity and paternity leave and the emergence of 'equality bargaining' in Australia: an analysis of enterprise agreements, 2003-2007, Baird, Frino and Williamson evaluated the outcomes for paid maternity and paternity leave in Australia under enterprise bargaining after examining 1865 currently operating federal and state registered collective agreements made between 2003 and 2007. A copy of the paper is attached to this submission for the Committee's information.

One of their principal conclusions was that paid maternity and paternity leave agreements were more likely to be found in the non-profit and public sectors than in the private sector. They conclude that *'enterprise bargaining is not a guaranteed way of diffusing paid maternity or paternity leave entitlements to private sector employees.'* The introduction of the proposed payment under the PPL Bill will greatly benefit low-paid female employees in female dominated sectors which they found were particularly lacking in access to paid maternity leave through enterprise agreements (e.g. retail and wholesale). Nevertheless, improvements on the basic statutory scheme are unlikely to be won by the majority of women in the private sector in low to middle income positions. This will continue the inequity in the availability of this employment entitlement as between different sectors of the labour market.

REFERENCES

AMP.Natsem report (2008), *She works hard for the money: Australian women and the gender divide*, Downloaded on 13 May 2010 at:
<https://www.amp.com.au/wps/portal/au/AMPAUMiniSite3C?vigurl=%2Fvgn-ext-templating%2Fv%2Findex.jsp%3Fvgnnextoid%3D67c93e8b696f1210VgnVCM10000083d20d0aRCRD>

⁹ See Moss and Korintus, above.

Baird M, Frino B and Williamson S (2009), 'Paid Maternity and Paternity Leave and the Emergence of 'Equality Bargaining' in Australia: an Analysis of Enterprise Agreements, 2003-2007', *Australian Bulletin of Labour*, 35(4), pp. 671-91.

Baird, M., J. Whelan and A. Page (2009), *Paid maternity, paternity and parental leave for Australia: An evaluation of the context, evidence and policy options*, Women and Work Research Group, The University of Sydney.

Charlesworth, S. and Macdonald, F. (2007) *Hard Labour? Pregnancy, Discrimination and Workplace Rights*, Office of the Workplace Rights Advocate, Melbourne.

Peter Moss and Marta Korintus (eds) (2008), *International Review of Leave Policies and Related Research 2008*, BERR/HMSO, London

Productivity Commission (2009), *Paid Parental Leave: Support for Parents with Newborn Children*, Report no. 47, Canberra.

Smeaton, D. and A. Marsh (2006) *Maternity and Paternity Rights and Benefits: Survey of Parents 2005*, Policy Studies Institute, Department of Work and Pensions, London.

Whitehouse, G., M. Baird, C. Diamond and A. Hosking (2006) *The Parental Leave in Australia Survey: November 2006 Report*
<http://www.uq.edu.au/polsis/parental-leave/level1-report.pdf>;

Whitehouse G, Hosking A and Baird M (2008), 'Returning too soon? Australian mothers' satisfaction with maternity leave duration', *Asia Pacific Journal of Human Resources*, 46 (3) pp. 288-302.