



SUBMISSION TO:

Exposure Draft of the Paid Parental Leave Scheme Bill 2010

Senate Community Affairs Committee

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Submitted on behalf of the ARA by

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Introduction

1. ARA welcomes the opportunity to provide this written submission into the Committee's inquiry of the Government's Paid Parental Leave (PPL) Scheme.
2. The ARA is a member of the Australian Chamber of Commerce and Industry (ACCI) and supports ACCI's submission to this inquiry.
3. In May 2008 ARA provided a detailed written submissions to the Productivity Commission (PC) Inquiry into PPL supporting a Government funded and administered PPL scheme*.
4. ARA and its members continue to strongly support a Government funded and administered PPL scheme.
5. The following summarises ARA's previously articulated position on the design of a PPL scheme*:

The ARA strongly supports the position that a maternity, paternity and parental leave industry-wide scheme that leads to additional on-costs, substantial or otherwise for small to medium sized retailers will seriously harm the economic viability of the industry group.

The ARA acknowledges that the momentum towards a national parental leave scheme is inevitable – however strongly disputes that such a scheme needs to be supported by employer contributions, beyond the administration of the scheme.

Financial and economic disparities between the largest and smallest of the retail entities that make up the tens of thousands of retailers within the industry will have dramatic consequences on their viability within the industry sector to survive financially.

Small to medium retailers are very quick to respond to on-cost labour burdens by: adapting the nature of their workforce mix; the employment structure of workforce arrangements; the inflationary/cost pressures passed on to consumers and a decision whether or not to remain within the business.

A national parental scheme will need to consider not only the financial cost to the retailer, but just as importantly the consequential responses it will need to confront from issues such as; casualisation of the workforce, effect of any significant length of absence of a staff member on the business, impact of replacement of staff member on paid leave with a casual employee, and the eventual complication created within the enterprise by a right to return to work and position.

The ARA has also stated.*

Retailers will support the concept of paid parental leave that provides employees certainty and security as long as it's designed in a way that eliminates any cost to employers

The draft fails to address essential rebates to small business operators for its administration on behalf of the Government.

Parents taking time off to care for children is a good thing for society but businesses shouldn't have to pay - and while retailers will welcome the Productivity Commission's decision for parental leave to be tax-payer funded - questions about financial burden associated with compulsory administration still remain.

Our submission to the Productivity Commission indicated retailers would support a six-week taxpayer-funded scheme. The draft report goes well beyond this, proposing paid parental leave of 18 weeks but fails to address essential rebates to small business operators for its administration on behalf of the Government. This could be crippling for SME retailers”

SME retailers are already suffering the collapse of consumer confidence ... and should not have to wear any financial burden as a result of a tax-payer funded parental leave

The Government needs to very clear about compensation and reimbursement for employers.

Women in retail

6. Results of ARA survey conducted before our submission was made to the Productivity Commission in May 2008 are in keeping with our understanding of the proportion of female employees in the retail industry sector. They are further summarised as:

The workforce is strongly made up of females – with casual labour being overwhelmingly female (70-100%) in many enterprises.

Only three retailers involved in either the focus groups or the survey responses actually offer paid parental leave of any kind.

Considering the high feminisation of the retail workforce less than 50% of the respondents had staff take up “unpaid parental/maternity” leave in the last twelve months, with only 7% on “paid leave”.

Consultation Process

7. As an incorporated employer body under the Fair Work Act, and after submitting to the Productivity Commission’s Inquiry in May 2008, the ARA received notification by mail that they would be involved in further consultation. The ARA welcomed these impending consultations
8. However, the ARA was never again contacted about further consultation and the ARA is concerned that the Government has not taken on board the genuine concerns of business, particularly small to medium sized retailers, with respect to the ‘paymaster’ function.
9. Despite the ARA being the peak industry body for a sector with a high proportion of young female employees, there was no proper engagement or consideration of the difficulty that the proposed paymaster function proposal would have on small/medium firms.
10. Along with other interested parties, the ARA has had limited opportunity to consider the detail of the exposure draft Bill and associated materials as this significant piece of legislation is being hastily pushed through the Senate Committee inquiry process. The ARA is fearful this legislation will be implemented without addressing small retailers’ concerns about the administrative burden as a result of the employer ‘paymaster’ function.

11. ARA reiterates that there was a fundamental commitment announced by the then Shadow Ministers Gillard, Macklin and Plibersek on 13 July 2007, that a Rudd Government would “*examine further reforms to support parents with new born children*”, but would not “... *support a system that imposes additional financial burdens or administrative complexity on small businesses or in any way acts as a discouragement to the employment of women*”.¹
12. If the requirement for firms to pass public monies through their payroll remains, with the threat of large civil penalties, this will be viewed by the employer community as directly contrary to Government commitments.
13. ARA welcomes the Government’s amendments to the PC’s September 2008 draft recommendations alleviating employers from additional payments such as superannuation, workers compensation and leave.
14. However, a number of issues remain a concern to retailers:
 - a. The first is the requirement for employers to be the paymaster of the scheme, and the inherent administrative red-tape and additional costs that imposes, particularly to small and medium sized firms. Some of these concerns arise from the following:
 - i) Substantial civil penalty and criminal offences on employers and individuals, if they fail to abide by the detailed and complicated requirements under the Bill.
 - ii) Costs for training retail staff on the PPL Scheme, which the ARA believes should be government funded.
 - iii) Costs for updating pay-roll software and maintaining records.
 - iv) Costs for obtaining professional advice on the PPL Scheme which the ARA believes the Government has underestimated.
 - b. The Government has indicated that employers would not be required to pay additional workers compensation premiums or leave as a result of PPL monies, however it is unclear how this will be achieved.
 - c. The Bill doesn’t exempt employers from having to pay additional payroll tax. We anticipate that this may be addressed by other legislation, including State / Territory laws. However, based on the exposure draft materials, this is not clear. The ARA encourages the Government to work

¹ <www.alp.org.au>

with State/Territory Government, however, if employers are ultimately exposed to additional on-costs, this must be compensated.

The New Zealand Model

15. The New Zealand model (introduced in 2002) appears most appropriate for model which could be considered for Australia. The NZ model is:
 - a. 100% funded and administered by the Government (Inland Revenue);
 - b. Eligible for birth mother or adoptive parent after working for same employer for a qualifying period;
 - c. Paid at the rate of the employee's ordinary weekly pay or average weekly earnings (whichever is greater), up to a maximum payment (currently \$429.79 per week before tax) and subject to taxation. This represents approximately 84% of NZ's minimum wage (currently \$510.00 per week for 40 hours);
 - d. Paid up to 14 weeks (this was increased from 12 weeks in 2004) from the start of the employee's leave and ends upon the employee returning to work, resigns or comes to the end of their fixed term contract. The payments also end if the employee is dismissed, made redundant, pregnancy ended other than by the delivery of a child, no longer cares for the child, or upon the death of the employee or child;
16. The NZ PPL Scheme sits within a broader framework of maternity policy programmes and laws, such as unpaid parental leave, and special maternity leave.
17. According to the latest NZ Government review of the scheme, conducted in 2005/6, approximately 20,000 employees per year access their PPL Scheme.² The NZ Minister for Labour, Hon Ruth Dyson, noted in the introduction the following:

To test the effectiveness of our parental leave legislation, the Department of Labour conducted an evaluation of the parental leave scheme in 2005/06. The purpose of the evaluation was to find out more about the decision-making and experiences of working parents before, during and after parental leave. The evaluation also examined the experiences of parents ineligible for parental leave, as well as those of fathers and employers. Overall, it found that the scheme enjoys considerable support from mothers, fathers, and employers alike. It also identified areas where parental leave could be improved to better meet the needs of parents and employers.

² <http://www.dol.govt.nz/PDFs/research-parental-leave-evaluation2005-06.pdf>

18. According to the report, there was widespread support from both employees and employers of the Scheme and there appeared to be no issue with the fact that the employers were not the paymaster. In fact, this appeared to be irrelevant to the views of employees. Therefore, the NZ Government has not seen it necessary or desirable to alter the way it administers its scheme.

The Paymaster Function

19. ARA does not accept the proposition that Australian employers should be forced to make PPL payments to employees where direct government payments would be more practical (the preferred approach) or at without compensating employers for the additional administrative burden and costs.
20. During the process of this Inquiry, both the PC and Government recognised this as a community benefit and, therefore, should be funded by the community as a whole through consolidated revenue. In this context, it is inappropriate to force employers to make payments when a more effective Government payment infrastructure is already established through Centrelink.

PROPOSED AMENDMENTS

21. ARA supports ACCI's proposed amendments to recommendations to the PPL Scheme as follows:

No Paymaster Function – Primary Position

22. The Bill should be amended so that the requirement for the employer to be the paymaster (apart from the Government to its own employees) be removed. This would align the design of the system to the NZ model, which ARA supports as the most appropriate system to implement in Australia.
23. As outlined above, employers consider that imposing the paymaster function upon them will do nothing to further maternal and child welfare etc, and may have a detrimental effect on the capacity of some employers to play a further part in supporting parenting.
24. By acting as the paymasters for a government funded PPL scheme, retailers will not only incur administrative costs outlined above, but they will also require training and education on their requirements under the scheme. As highlighted above, this training and education should be government funded – another avoidable cost under a Government administered scheme.
25. In effect, the outcomes sought, can be achieved better by the Government wholly administering and funding any scheme on behalf of employers and the community.
26. We understand this is the approach in New Zealand in which the Government acts as both the paymaster and funding entity for what is quite clearly a genuine PPL scheme.

27. We understand the PC visited New Zealand in its consultation and research process. With the benefit of this information, we specifically request the Government and the Committee to reconsider the operations and administration of the New Zealand model as an option to refine and recast its recommended approach.
28. Specifically, it appears that the New Zealand scheme operates very simply in “transferring” responsibility from the employer to the government at the point the employee proceeds on PPL.

Opt-In Mechanism – Secondary Position

29. The Government has already indicated the requirement for employers to provide monies to employees will not commence until 1 July 2011, with a facilitated ‘opt in’ arrangements for interested employers from 1 October 2010.
30. Considering that the Government will already be providing monies directly to employees, the Bill should continue to allow employers to opt-in to the system, where that suits the business needs and they are able to synergistically deal with the FAO.
31. An opt-in mechanism may appeal to employers who already provide paid parental leave to their employees, with a top-up of the Government’s PPL to be provided by the paymaster function, or for larger retailers who may consider the paymaster function feasible. However, the decision to do this should not be forced onto a business.

Third Alternative Position

32. If the first or second recommendations are not accepted, contrary to employers expectations, a third alternative may provide small to medium sized (SME) businesses relief from the red-tape burden, as promised by the Government, by a specific “small-medium sized employer paymaster exemption”. To be effective, a threshold should be based on annual turnover, full-time equivalent employees.

Australian Retailers Association

Promoting and protecting retailers for over 100 years

For over 104 years, the Australian Retailers Association (ARA) has been the peak national retail association representing the interests of the largest employing industry in Australia. We provide leadership and solutions to improve the long-term viability, productivity and visibility of the retail industry by proactively dealing with government, media and other regulatory bodies on behalf of our members.

ARA members comprise a diversity of sizes and types of retailers reflecting the profile of the retail industry, ranging from large national chain retailers to one-person operators throughout the nation.

The ARA provides a range of comprehensive services, advice and representation suited to both small and large retailers in the areas of employment relations, occupational health and safety, tenancy, consumer law and retail business solutions. This includes a range of retail specific training that supports best practice in retail.

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