



12 May 2010

Naomi Bleeser
Committee Secretary
Senate Standing Committee on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

By e-mail to: community.affairs.sen@aph.gov.au

Dear Ms Bleeser

Exposure Draft of the Paid Parental Leave Scheme Bill 2010

The Law Institute of Victoria ("the LIV") welcomes the exposure draft of the Paid Parental Leave Bill 2010 ('the Bill') and strongly supports the introduction of a Paid Parental Leave Scheme ("the Scheme") that will enhance maternal and child health and development, facilitate workforce participation and promote gender equity and work/family balance.

We appreciate the opportunity to make a submission to the exposure draft, but express disappointment at the significantly restricted timeframe within which to make comments, for what is a historically significant step towards the realisation of women's human rights in Australia, and the increase in Australia's parental leave benefits up to an accepted international standard.

The LIV welcomes and supports new provisions in the Scheme providing for:

- Flexibility for the primary carer to return to work during the 18 week period, and to transfer the remaining leave to the other parent/carer.
- Parents to seek a review of their eligibility for the Scheme, internally through government, the Social Security Appeals Tribunal or Administrative Appeals Tribunal.
- Parents to receive paid parental leave at the same time as existing entitlements, such as employer-provided paid maternity leave.

As expressed in our submission of 2 December 2008, the LIV holds the view that leave entitlements should continue to accrue during the period of paid parental leave in order to support a Scheme premised on entitlement, rather than welfare. The LIV notes that the issue of leave entitlements has been omitted from the Bill, and that this exclusion will be reconsidered as part of the proposed 2 year review of the operation of the Scheme. We recommend this be immediately reconsidered during the drafting process.

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The Bill stipulates that the paid parental leave must be paid in one continuous 18 week period and has rejected the provision for the primary carer to claim the parental payments on a part-time basis. The LIV emphasises the importance of flexibility in the Scheme, particularly in light of the suite of recent Federal and Victorian laws that mandate employers to provide reasonable flexibility for those in the workplace with family responsibilities¹. The LIV holds the view that it is reasonable to allow women the choice to take 18 weeks paid parental leave at half pay for 36 weeks to provide some flexibility and autonomy over their own finances. The LIV again emphasises a Scheme of entitlement that supports maternal health and allows women to best manage their parental leave arrangements while supporting their return to work.

The LIV strongly supports the introduction of a mandatory “partner leave entitlement” component to the Scheme, (to include a partner of a same-sex couple whose partner has given birth to or become the primary caregiver of a new child, rather than limiting to the suggested “paternity leave” component). The Regulatory Impact Statement to the Bill suggests that this component potentially be deferred. The LIV recommends this proposal be rejected, and that the component be included in the Bill. In support, we draw attention to the Productivity Commission’s original report to the Inquiry in May 2009 titled “Paid Parental Leave: Support for Parents with Newborn Children”, which states that there is evidence that paternity leave has emotional benefits for fathers (or partner of primary care giver), positively affects children’s emotional and educational achievement and provides support for the mother.

The LIV welcomes any opportunity to participate in the development of the Scheme in the future. If you have any queries, please contact Francesca Harrison, Lawyer for the Workplace Relations Law Section, at the Law Institute of Victoria on (03) 9607 9389 or by email on fharrison@liv.asn.au.

Yours sincerely


Michael Brett Young
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¹ Equal Opportunity Amendment (Family Responsibilities) Act 2008 (Vic), National Employment Standards, Fair Work Act 2009 (Cth).