

Senate Inquiry

Re

The Exposure Draft of the *Paid Parental Leave Bill 2010*

SUBMISSION BY

***SHOP, DISTRIBUTIVE & ALLIED EMPLOYEES'
ASSOCIATION***

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**SDA Response to the Senate Inquiry
re The Exposure Draft of the *Paid Parental Leave Bill 2010***

The SDA congratulates the government on the introduction of this Bill, and welcomes the opportunity to participate in this Inquiry.

The SDA first called on the Federal Government of the day to introduce a national Paid Maternity Leave scheme in 1978, as a government payment to all women, in the 1978 Budget. We have participated in the many Inquiries over the years since, including in the opportunities afforded by the Productivity Commission processes, and have made detailed submissions on the features we would prefer to see in such a Paid Parental Leave Scheme, including that an equivalent payment be made to all mothers no matter their work history. We do not intend to revisit those submissions, but offer the following comments and recommendations on the *Exposure Draft of the Parental Leave Bill 2010*, while at the same time highlighting the need for changes in other Family assistance and industrial measures.

The timing of the commencement of paid parental leave payments to the primary claimant

Clauses 26 and 27 of the Exposure Draft of the PPL Bill provide that if a person makes an effective claim, satisfying the work test, the income test and the Australian residency test, and providing the necessary documents, including the expected date of the birth, employer information, and tax file information, the Secretary may make an **initial eligibility determination**, acting on the assumption that the state of affairs will remain unchanged.

The claim can be made up to 3 months before the expected date of birth and if it was, it would be reasonable to expect that the initial eligibility determination could be made before the woman starts her parental leave, usually in the 6 weeks before the expected date of birth.

Once the initial eligibility determination is made, the woman will be assured of receiving the PPL payment so long as she verifies that the birth took place, whether the baby lives or dies.

Clause 11 (4) refers to the **maximum PPL period start day** which seems to say that if by the **relevant day** (28 days after the birth of the baby) the primary claimant has made an effective claim and verified the birth (including registering the baby) then the earliest the PPL period can start is the day the child was born, and so the first payment can be back dated to then. What is not clear is how soon after verification of the birth that first payment will be.

The drafting does not make it clear as to whether the **payment determination** by the Secretary will be immediately after verification is received, or whether that will not occur until 28 days after the birth. In either case, if the employer is to be the pay master, and an **employer determination** is in place, the payment will then need to be sent to the employer along with the notice of the payment determination, and then the employer will pay the mother on the next due pay date in her pay cycle, which could be in 2 – 4 weeks.

Independent research of SDA members has shown that 6% of women who took parental leave returned to work 1-3 weeks after the birth, and 10% of women who took parental leave had returned within 6 weeks after the birth. Most of these women

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did not think that this was enough time off but needed to return to work due to economic necessity.

We are concerned that the above scenario (as seems to apply in the Draft Bill) in combination with whatever time the woman may have taken off before the birth (which could be at least 6 weeks, and possibly more if the woman has experienced ill health) will mean that the family is under financial stress and she will be forced back to work before the first payment has even been made. This would obviously defeat the aims of the scheme.

The SDA advocates that, provided an initial eligibility determination has been made, that the PPL payment should be available to the mother from the time she starts parental leave, not from the time she verifies the birth and registers the baby's name.

At the very least, it will be very important that the government sufficiently resource the Family Assistance Office to enable quick processing of claims and payments, and that employers pass on the payments as quickly as possible.

It will also be important that sufficient resources are allocated to the functioning of the FAO website and the accessibility of the call centre, given the expected increase in questions in relation to this scheme, as our members have reported difficulties in the ready and consistent access to these avenues of information in the past.

When to claim

If the above recommendation to allow the payment to commence from the start of the primary claimant's parental leave is accepted, then it would be beneficial to amend clause 60 (a) to increase the period before the birth when claims could be made, to provide more time for processing the claim, and making the employer determination.

Clause 60 (b) seems odd as it provides that a claim must be made in the period that ends on the day before the child's first birth day and this is also the last day that a payment may be able to be made.

"Keeping in Touch provisions"

The SDA recommends that it be stipulated in the legislation that attendance at work whilst on paid parental leave must be 'strictly voluntary'. We are still concerned that employees are particularly vulnerable to pressure to attend work, especially where there are ongoing negotiations around return to work arrangements, such as rosters matching child care availability for example, and may feel unable to refuse requests to work.

We would also support the inclusion of a statement providing protection for employees against duress, discrimination or victimisation if they refuse to attend work.

The time period in clause 50(c) provides that a 'keeping in touch' day *is not within 14 days after the day the child was born*. In consideration of the mother's recovery from the birth, the tender age of the baby, issues around the establishment of breast feeding, and the usual need for frequent feeding at this age, including through the night, the SDA recommends that this clause be amended to be *not within 6 weeks after the day the child was born*.

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This timeframe is consistent with the timeframe allowed in the NES where employers may not require an employee to return to work after instances of stillbirth and death of the baby, for at least 6 weeks after the birth of the child.

We support the provision that any time worked on a “keeping in touch day” does not effect the PPL payment. The Explanatory Memorandum foreshadows changes to the Fair Work Act to accommodate such work. Such changes would only be supported by the SDA provided the person was paid at least what they ordinarily would expect to be paid had they worked on that day.

Paid Parental Leave does not count as paid leave

The exposure draft of the PPL Bill provides that the PPL period does not count as paid leave. As a result:

- normal leave entitlements do not accrue during this period,
- the superannuation guarantee levy does not apply, and
- the period of paid parental leave will not count for the purpose of the work test for qualifying for a second or subsequent period of paid parental leave.

The SDA strongly believes that the Paid Parental Leave Period should be counted as paid leave, despite the fact that the funding source is the government. As such, leave entitlements should accrue and superannuation payments apply during the PPL period.

We don't think governments should be in the business of family planning, and the close spacing of children should not disqualify parents from receiving the PPL payment for second and subsequent births. There should be no need to re-qualify by having the work test applied over the immediately preceding 13 month period.

This approach is consistent with unpaid parental leave provisions in the NES, which provide that parents remain employed by the employer whilst on parental leave, and so continuity of service is not broken. Consequently, there is no need for the parent to satisfy another length of service test, to be eligible for a second or subsequent period of unpaid parental leave.

If the government insists on applying the work test in the preceding 13 month period for second and subsequent births, then at the very least the paid parental leave period should count for the purpose of the work test.

Parents who will miss out on this payment

In this PPL scheme, the government has created a broader work test than exists in the NES to capture more women than those who are eligible for unpaid parental leave under the NES. Nonetheless, the Productivity Commission identified that under this model, nearly 50% of new parents will not be eligible for this PPL payment. The government position has been that those families will instead be eligible for the Baby Bonus and possibly Family Tax Benefit B.

This makes the Baby Bonus a critically important payment, which should remain. However, based on current payment levels, and taking into consideration taxation,

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we estimate that those receiving PPL payments will receive approximately \$1,900 to \$2,800 more than those receiving the Baby Bonus and Family Tax Benefit B payments. Therefore, there is a substantial inequity in the payments and this should be rectified.

This is not just a matter of having different funding arrangements for those in the paid and unpaid workforce, as there is a range of working parents who, because of their work patterns, or for the reasons identified below, will not be eligible for Paid Parental Leave under the PPL scheme, and will therefore be disadvantaged.

The SDA believes strongly that all families, earning below the upper income limit, should receive an equivalent government payment around the time of having a baby. To achieve this under the proposed arrangements the Baby Bonus should be increased and then over time, there should be a mechanism in place to provide further increases, to keep pace with PPL payments. This is a particularly important point and one which has not yet been addressed. We have a real concern that the current gap in payments could not only be maintained but could potentially increase over time, further disadvantaging those who do not meet the PPL criteria.

Definition of “Employee”

Division 2 -6 The Dictionary, includes a definition of ‘employee’ and states in (b) that it *does not include a person on vocational placement*. The term “vocational placement” is not defined, and needs to be, if this aspect of the definition is to remain.

There is no explanation of this exclusion, and it cannot be justified, if the consequence is that being on ‘vocational placement’ alone, becomes a basis on which to deny eligibility to the paid parental leave payment. It would operate as a deterrent to undertaking vocational placement, and could be argued to be discriminatory.

The SDA therefore recommends that the exclusion of those on “vocational placement” be removed.

When there is a *permissible break*

Clause 36 introduces the concept of a *permissible break* of up to 8 weeks between working days.

The current 8 week *permissible break* would have the effect of excluding many contract teachers and university staff who regularly are not employed over the 3 month Christmas break and then again at Semester breaks, as well as many other casual and seasonal workers. We recommend that it be extended to be up to 12 weeks or 3 months.

Provisions for those who have extended pregnancy related illness or conditions

In some instances mothers need to take extended periods of sick leave and/or special maternity leave before they have reached 6 months pregnant, due to pregnancy related illnesses and conditions. The SDA recommends provisions which

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would allow these periods of leave, in legitimate circumstances, and with the provision of medical certificates, without affecting eligibility for the PPL payment.

When a person is eligible for parental leave pay

The words “are not entitled” in clauses 31 (f) (i) and (ii) are not entirely correct as a criteria, in that the person and person’s partner may be entitled to the Baby Bonus for that child, but are choosing not to access it for the PPL period.

Still born babies and death

This PPL scheme is designed to provide time, with some small measure of financial security, for the mother to recover from the birth, as well as to bond with her baby. Even in instances where the baby is still born or dies within its first few weeks of life, the mother still needs to recover from the birth and the grief associated with the family’s loss. SDA members feel very strongly that this Paid Parental leave scheme should apply in these situations and we congratulate the government for their inclusion in this Bill.

Family Assistance Office assistance with payment difficulties

We support the arrangement where PPL recipients experiencing any delays or disputes in the payment process, are able to go to the FAO in the first instance for management of the problem and then have the matter referred to the Fair Work Ombudsman, if necessary. We also support the continuation of payments by the Secretary, in these circumstances, if necessary.

Conclusion

Paid Parental Leave is a significant issue in the industries we cover, and this scheme will provide a material new benefit for many of our members when it is introduced. We therefore support its introduction, as an important milestone, but as one that is a good basis on which to build in the future. Concurrently, we strongly recommend that inequities in Family Assistance payments to those ineligible for the PPL payment, be rectified.

Especially in the interests of those families who are experiencing severe financial stress in the early weeks after delivery of their baby, we urge the Senate to pass this Bill, to enable the commencement of payments to parents from the 1st January, 2011.