

Additional Comments by the Coalition

Senate Committee into Paid Parental Leave

Coalition members of the Community Affairs Committee thank the organisations and individuals who made submissions and appeared as witnesses before this Inquiry.

Whilst we support the recommendations in the Chair's report, evidence from witnesses cited in that report supports our view that there are numerous other shortcomings in the proposed implementation and administration of the PPL scheme.

These lead us to consider that the scheme will increase costs for employers and confuse both employees and employers, without necessarily achieving what should be the objects of the scheme.

Superannuation concerns

The Government scheme offers 4½ months, or 18 weeks, leave and will deny superannuation payments to those receiving parental payments. This is despite evidence that older Australian women are comparatively poor because their working lives are often interrupted by mothering and caring roles, part-time work choices and lower pay. This erodes women's capacity to accumulate sufficient superannuation or savings to retire independently.

Australian households now often rely upon a second income to help buy their home and meet other costs associated with raising a family. It is no longer common to rely on a single breadwinner.

The Government's paymaster

The Coalition is concerned about the impost on business created by the 'paymaster provision' of the Government's scheme.

The Government's requirement that employers act as paymasters for eligible employees unnecessarily and unjustifiably imposes administrative expenses, payroll and office systems changes, reporting requirements and, potentially, increased liabilities for workers compensation, payroll tax and superannuation. This is exacerbated by risks of exposure to penalty for non-compliance or making mistakes.

We note that the FAO (Family Assistance Office) will administer all paid parental leave payments for the first 6 months and then permanently for an estimated 30% of eligible workers, primarily self-employed and casual workers.

Coalition Senators question why, if it is good enough to put in place initially the systems and the bureaucracy within the FAO needed to administer 100% of the Government's PPL scheme, the FAO cannot continue this role as paymaster permanently, thus relieving businesses of this burden.

New red-tape (and cost) burdens of employees remaining on the payroll could encourage subtle discrimination against women of child-bearing age, as they seek employment.

Requiring the Family Assistance Office (FAO) to administer the government's scheme for the start-up phase delays, but does not prevent, the unjustified costs and unwarranted obligations ultimately forced on businesses.

Uncertainty: interaction with existing employer-provided parental leave

The public sector and some private sector businesses have long provided various forms of paid parental leave. However, access to paid parental leave in Australia can vary with pay rates, skill levels, hours worked, industry or occupation and whether a person is in the public service or the private sector.

The Bill's Explanatory Memorandum states the Bill is intended to 'complement parents' entitlements to unpaid leave such as unpaid parental leave under the National Employment Standards'.¹

While the Government promised that its Paid Parental Leave scheme will be an additional entitlement on top of any existing employer-provided schemes, the Inquiry heard evidence that the Bill doesn't compel this outcome.

Rather, the Government's scheme simply assumes that women will be able to top up their leave with arrangements from their employers. In some respects, this perpetuates perceptions of the "haves" and "have-nots", exacerbating inequalities that have affected parents in Australia for many years.

At best, it remains unclear whether an employer could utilise a payment which an employer is compelled to make to a parent under the Bill, in full or part-satisfaction of an obligation the employer already owes the parent under another instrument (for example, a workplace agreement).

As noted by Professor Andrew Stewart, 'the point is simply that the Bill does not appear to say one way or another whether employers can do this.'²

Coalition Senators note comments by DEEWR that "where an employee has an existing entitlement to paid parental leave under an industrial instrument, it is enforceable in its terms as provided for by the instrument."³

DEEWR's evidence begs the obvious question as to an employer's obligation in the event that 'the terms as provided for by the instrument' fail to expressly rule out satisfying obligations (whether in part or in full) under that instrument by making a

¹ Explanatory Memorandum, p. 1.

² Professor Andrew Stewart, *Submission 92*, p. 1.

³ DEEWR, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

payment under the Bill. In short, if such terms don't specifically preclude the offsetting of these entitlements with the Government's proposed leave, then the situation remains, at best, unclear. This uncertainty is unhelpful.

Uncertainty - entitlement to payment, but no entitlement to leave

Professor Andrew Stewart told the committee;

“A strong argument can be made that the title of the Bill is a misnomer, since the proposed scheme does not confer any entitlement to paid leave, as that concept would generally be understood.”

This means that some prospective recipients of payments under the Bill will lack an accompanying right to take leave from work. Since a person cannot receive payment under the Bill if they remain at work, some will be faced with having to leave their employment in order to receive payment under the Bill.

Professor Stewart agreed, suggesting some workers face "the prospect of having to quit (their) job without any guarantee of a return to work."⁴

Proposed Fair Work Amendments won't fix these uncertainties

Whilst DEEWR informed the committee that consequential amendments would be made to the Fair Work Act 2009, none of the proposed consequential amendments would address uncertainty over either the:

- *Interaction with existing employer-provided parental leave, or the,*
- *Entitlement to payment, but no entitlement to leave.*

Payroll tax liabilities

Under the Government's scheme, employees will receive parental leave payments through their usual pay cycle. This is apparently designed to keep women connected to their workplaces.

FAHCSIA has stated that it is negotiating with the States and Territories to eliminate payroll tax liabilities for employers making these payments to staff on leave.

The Department advised the Committee of its expectation that these problems will be resolved. However the history of Commonwealth-State negotiations does not give the Coalition Committee members heart that these negotiations will be successfully completed in a timely way. In the interim, employers may be forced to pay payroll tax in circumstances in which they have not previously been required to do so.

This is not good practice. This unresolved set of issues adds uncertainty for businesses and risks encouraging discrimination against women of childbearing age.

⁴ Professor Andrew Stewart, *Submission 92*, p. 1.

Communication and consultation

While acknowledging the importance of informing Australian employers and employees about the nature of the Government's proposed Paid Parental Leave scheme, Coalition members of the Committee are concerned about the volume of information being promulgated before time. The material was prepared prior to the introduction of the Paid Parental Leave (Consequential Amendments) Bill 2010 which the Government introduced to the House on 26 May 2010. Nor has the Bill been passed by the Senate.

Given the well-publicised intention of minority parties to seek to amend the Government's Bill in the Senate, the Committee is concerned that despite qualifications in the explanatory material issued by the Department, much of the substance may be superseded, causing confusion, and unnecessary remediation costs, for employees and employers.

Senator Judith Adams

Senator Sue Boyce

Senator Mary Jo Fisher