

Paid Parental Leave Bill 2010

Additional Comments By Senator Hanson-Young

Introduction

The Government's Paid Parental Leave Bill 2010 seeks to introduce into Australia the first national paid parental leave scheme, to commence on 1 January 2011. While the Greens welcome the Government's commitment to introduce a fully-funded paid parental leave scheme, the way in which the proposed legislation has been drafted continues to raise a number of concerns.

In May 2009, the Greens introduced legislation for six months paid parental leave plus superannuation with minimum wage. Thankfully since this legislation was introduced, both major parties came to the table in realising that paid parental leave is critical to providing support for families and maintaining female participation levels in the workforce.

While both sides should receive credit for their commitment to delivering a paid parental leave scheme, the question of how we pay for it, and how we deliver it, is one of the most urgent policy questions currently facing Australia.

For decades, women and men around Australia have been calling on governments of all persuasions to legislate for paid parental leave. And while it is often said that Australia is only one of two OECD countries without a universal scheme of paid parental leave, we must remember that more than 50% of American women are eligible for some form of state government-funded paid parental leave, while more than two-thirds of Australian working women continue to miss out.

While the Greens and indeed many of the organisations and individuals who presented submissions to this inquiry fully support the introduction of a national paid parental leave scheme, the fact that we have been waiting decades for Government action on this important policy area does not mean we should refrain from trying to improve it.

Concerns with the Bill

Right to take leave

First and foremost, it should be noted that this proposed legislation is not a paid parental leave scheme in the true sense of the term. While it certainly does provide an entitlement to payment at the minimum wage, nowhere in this proposed legislation does it guarantee an eligible employee with an entitlement to take leave, or the guarantee to get their job back at the end of the leave period.

Despite this clear anomaly, the Minister in her second reading speech states that the purpose of this Bill is to “support women to maintain their connection with the workforce and boost workforce participation.”¹ If this were to be the case, amending the Fair Work Act to include the proposed paid parental leave provisions alongside the unpaid parental leave provisions, would enshrine paid parental leave as a workplace right and ensure that women, in particular, maintain their connection with their place of employment, and thus have an entitlement to actually take leave.

This concern was articulated by Professor Andrew Stewart during the course of the inquiry, who said that “*I think there is no question; it is a social security entitlement. In fact it would be better titled the ‘parental leave pay bill’ rather than ‘paid parental leave’. That may seem a matter of semantics but I think it is fair to say that most people in the community would understand the concept of paid leave to mean you have a right to leave your job and come back to it.*”²

While most parents eligible for payment under the Bill will be entitled to take parental leave under the Fair Work Act, due to the differing eligibility requirements between the two entitlements, there will be some women who will be eligible for payment but not for leave. For these women they have a choice between leaving their job to access the payment or stay in work and give up the benefit of this Bill. It is unacceptable that some women could be forced to make such a choice because they are eligible for the payment but do not have an entitlement to leave.

Recommendation No.1:

The eligibility for payment under the Bill must be matched with an entitlement to take leave from work, preferably by an amendment to the Fair Work Act.

Length of leave provided

There has been strong support throughout the community for the introduction of a six month scheme. The National Foundation for Australian Women, Save the Children, the YWCA, the Commission for Children and Young People, the World Health Organisation, the Public Health Association, the Australian Breastfeeding Association, Unions NSW, and the Community and Public Sector Union, are all advocates for a six month, government-funded paid parental leave scheme to be introduced in Australia.

When you consider that Sweden offer 47 weeks, New Zealand offer 28 weeks, Finland offer 32 weeks, and even Spain offer 27 weeks, the fact that Australia is still behind the eight ball on these basic supports for working families is concerning.

Given women around Australia have been fighting for paid parental leave to be enshrined as a workplace entitlement for decades, this hard work must not be in vain

¹ The Hon Jenny Macklin, Minister for FaHCSIA, *Second reading speech*, 12 May 2010, p. 1.

² Professor Andrew Stewart, *Proof Committee Hansard*, 19 May 2010, p. 15.

when it comes to ensuring that the best possible support is provided for Australian mums and dads.

Recommendation No.2:

The Bill be amended to provide for six months paid parental leave, reflecting the *Fair Work Amendment (Paid Parental Leave) Bill 2009* introduced by the Australian Greens in May last year.

Superannuation

Paid parental leave must be seen as a workplace entitlement, and this includes ensuring that any payment must be treated as a wage for the purposes of taxation, superannuation and other related laws and agreements.

The importance of recognising paid parental leave as a workplace entitlement is essential, and would ensure that just like long service leave or sick leave; employees would continue to accumulate superannuation payments.

Senior Policy Manager for the Investment and Financial Services Association told the Committee that at retirement *“a typical woman will have 35 per cent less in her superannuation account than a typical man... Women have a greater life expectancy than men and, as a result, will need to live off their superannuation for longer; women are paid less than men; and women are more likely to spend time out of the workforce raising children, meaning that they are not contributing to superannuation during this time. Research shows that a typical woman who spends five years out of the workforce from the age of 27 will save \$95,000, or 26 per cent, less than a woman who does not.”*³ So, when the Government has a new-found commitment to strengthening superannuation, there is no excuse for not including this entitlement in their proposed parental leave scheme.

Recommendation No.3:

The Government’s paid parental leave must be treated as a wage for the purposes of taxation, superannuation and other related laws and agreements.

Existing entitlements to paid leave

A number of witnesses expressed concern that the Bill, in its current form, does not explicitly state that the Government’s paid parental leave payment is in addition to any existing employer funded scheme. While the Government has indicated that this legislation should not be used to discharge an employers existing obligation to provide paid parental leave, nowhere in the Bill does it state that this is the intent.

In fact in Minister Macklin’s second reading speech, it is clear that the Government envisaged that this payment would be an additional entitlement:

³ Mr James Bond, Senior Policy Manger, IFSA, *Proof Committee Hansard*, 19 May 2010, p. 17.

*“The government’s paid parental leave can be taken in addition to existing employer funded schemes, either at the same time or consecutively. The government’s scheme has been designed to complement and enhance the existing family friendly arrangements that many employers already offer.”*⁴

Recommendation No.4:

The Bill should be amended to clarify that the payment made under the legislation is in addition to any existing obligation that an employer may have in relation to paid parental leave.

Review of the scheme

While the Minister refers to the review mechanism in her second reading speech stating “the Government is committed to a review of the scheme two years after the scheme starts...Two issues the Government has committed to look at in the review are paid paternity leave and superannuation contributions for the period of Paid Parental Leave,”⁵ nowhere in the legislation does it require a review to take place.

Recommendation No.5:

The legislation must be amended to specifically provide for a review mechanism that looks into the feasibility of extending the pay period beyond 18 weeks and including superannuation, as well as identifying the impacts, if any, that the Parental Leave Act has had on existing entitlements and any other related matters.

Conclusion

According to a 2009 report commissioned by the Australia Institute, entitled *Long overdue: The macroeconomic benefits of paid parental leave*, the introduction of a paid parental leave scheme in Australia would pay for itself, stimulate the economy and create 9,000 new jobs.

It is clear that support for parents in their efforts to care for their newborn children is an essential component of any Government policy that aims to promote the health and well-being of infants, and invest in the long-term health and educational outcomes of children.

The Greens recognise that the introduction of a parental leave scheme into Australia is indeed a historic moment, but to simply squander this opportunity to get a scheme in place, would be to squander the legacy of all those who have been fighting for this issue, for so long.

⁴ The Hon Jenny Macklin, Minister for FaHCSIA, *Second reading speech*, 12 May 2010.

⁵ The Hon Jenny Macklin, Minister for FaHCSIA, *Second reading speech*, 12 May 2010, p. 7.

We owe it to those activists, and to working parents, to produce the best legislation possible, and the Greens will be doing what we can to ensure that this happens.

A handwritten signature in black ink, appearing to read "Jason Keas". The signature is written in a cursive, slightly slanted style.

Senator Hanson-Young

Greens' Spokesperson on the Status of Women