



14 May 2010

The Secretary
Community Affairs Legislation Committee
Department of the Senate
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Parliament House
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AUSTRALIA

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Dear Secretary

Inquiry into Paid Parental Leave Scheme Bill 2010 Exposure Draft

Thank you for the opportunity to make a submission on the Paid Parental Leave Scheme Bill 2010 Exposure Draft.

If you have any questions about our submission, please contact me.

Yours sincerely

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Submission on behalf of the Australian Federation of
Employers and Industries (AFEI)
Paid Parental Leave Scheme Bill 2010
Exposure Draft

AFEI
Australian Federation of
Employers & Industries

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About the Australian Federation of Employers and Industries

The Australian Federation of Employers and Industries (AFEI), formed in 1904, is one of the oldest and most respected independent business advisory organisations in Australia.

With over 3 500 members and over 60 affiliated industry associations, our main role is to represent, advise and assist employers in all areas of workplace and industrial relations and human resource management.

The members we represent are employers of all sizes and come from a diverse range of industries.

Summary

Our primary comments on the exposure draft concern employers being made paymasters of the scheme. We submit that the scheme should be administered entirely by the Family Assistance Office. Alternatively, all employers, but particularly small employers, should be compensated for the administrative costs of implementing the scheme. Finally, the civil penalty provisions of the exposure draft are punitive and unbalanced.

1.1 Employers as paymasters

Employers will become paymasters for the publicly funded scheme, causing an increase in labour costs. There is no need or incentive for employers to handle the payment, instead the scheme creates additional compliance regulation and potentially complex interaction with yet another government bureaucracy.

The Government's own estimates are that the first year of the scheme will cost small business \$59.1 million and large business \$137.7 million, although these figures probably underestimate the total costs.

We submit that the scheme should be fully run from the Family Assistance Office. In the alternative, we submit that the Government should pay a premium to employers for the cost of administering the system on behalf of the State. We propose 4.5% premium in addition to the cost of the leave.

1.2 Employer penalties

It is appropriate for the Government to have a mechanism to ensure taxpayer money is correctly paid to recipients. However, the penalty regime in the exposure draft is punitive and unbalanced. In particular the civil penalty provisions in the exposure draft are excessive and should be at the most a nominal amount. Further, the ability of courts to make **civil penalty orders**, which exceed the civil penalty provisions are inappropriate and too severe. This amounts to unbalanced regulation. Further, the time limit for an employer to respond to a notice of **employer determination** is too short.

For example, a payment is established by the making of an employer determination. In the exposure draft an employer must respond to an employer determination within 14 days after the date of the notice is given. This time is too short taking into account typical postal times, particularly with the proposed penalties for failing to comply. Corporations face a maximum penalty of \$33 000 if they miss the 14 day cut-off.

This maximum penalty is too severe for an administrative delay or error. We object to any penalty being imposed. The 14 day cut-off should be increased to a 21 day cut-off.

1.3 New workplace law and regulation

The paid parental leave scheme, which employers must administer from 1 July 2011, will start during a period of transition created by large-scale Government changes to employment and industrial law. The *Fair Work Act 2009* and modern awards have only recently fully come into effect, all employers are implementing complex transitional arrangements and a large number of employers are dealing with the changes involved with their transfer to the national system and the Fair Work Act following state referral of powers. This latter group are predominantly small unincorporated businesses who are least resourced and least able to cope with additional red tape burdens.

On 1 July this year employers will start the complicated and costly process of making the transition to modern award wage rates. Unlike employees who have the full protection of take home pay orders, employers have no compensatory mechanism for costs incurred through award modernisation, merely the phased introduction of these costs (and understanding and implementing the phasing itself is a costly and high risk exercise). Any penalty brought against an employer during this transitional phase, between 1 July 2010 and 1 July 2014, which relates to a payroll error, should be considered in the context of the other changes to workplace law and regulation.

1.4 Fair Work Ombudsman

The exposure draft imposes additional obligations on an employer without any ameliorating benefit. It merely relies on employer as the best point of contact for a scheme that otherwise has no link to the employee/employer relationship.

Further, it empowers the new Fair Work Ombudsman to resolve issues over delays, disputes or debts that arise in the payment process. The Government has unilaterally outsourced its administration to the employer and proposes to put the ombudsman in an arbitration role for disputes. This is an unnecessary intrusion, particularly when the ombudsman has an enlarged role in a number of areas under the Fair Work Act, including in the area of anti-discrimination law.

1.5 Understanding impact on employers

It is important that when the Bill is introduced it reflects a practical awareness of the consequences of the paymaster proposal for employers.

Most small business employers don't have a dedicated payroll officer, but someone who performs administrative work as an adjunct to another role. Introducing new payments, or increasing the complexity of existing payments, has a real effect on small employers. They will need to either increase the hours of an existing employee, take that employee away from other productive work or hire a new part time or full time employee in the role. The practical effect on employers should be understood.

1.6 Perceptions about who pays the leave

In addition to the practical implications that exist for the employer as paymaster, there is the clear potential for further costs and regulation in this area. AFEI maintains that individual employers should have the ability to offer, or not offer, an additional paid parental leave period.

Making employers administer the scheme deliberately positions them as the de facto payer. If Government policy changes and removes or reduces the scheme, but an employer chooses not to offer its own scheme, employers will be unfairly be perceived as having withdrawn an entitlement.

1.7 Implications for other employee entitlements

Finally, the exposure draft does not make clear the interaction of parental leave payments with other laws governing employee entitlements, some of which are subject to various state regulations. The parental leave Bill should clarify that these payments will not impact on:

- workers compensation premiums
- superannuation obligations
- payroll tax
- paid leave entitlements and accrual under the National Employment Standards.