

SUBMISSION TO SENATE COMMUNITY AFFAIRS COMMITTEE

INQUIRY INTO EXPOSURE DRAFT PPL BILL.

On 18 March 2010 the Senate referred the release of the exposure draft of legislation relating to the implementation of the Government's proposed Paid Parental Leave scheme to the Community Affairs Legislation Committee for inquiry and report by 3 June 2010.

Introduction

The NFAW has been engaged with this issue for a considerable time, including working to generate support for a Productivity Commission inquiry, before the election of the current Government and conducting community consultations on the Commission's Report to Government prior to the Cabinet decision to proceed with the introduction of a national scheme.....

Government Proposal

In terms of the capacity of families to achieve work-life balance and economic security this legislation ranks in significance with the introduction of Child Endowment in 1941 and the Harvester Judgement of 1907. In its recognition of the importance to the infant and society of optimising opportunity for child-parent bonding and the significance of the early months for the development of the infant brain, the policy can be compared to the 1939 introduction of the Lady Gowrie Child Centres, the Commonwealth's first step in providing financial support for early childhood social, health and educational services..

From first steps, major developments flow over time. The difference between the first Child Endowment payment to today's edifice of cash benefits and tax transfers to support families with the cost of children is vast.

Over time, we anticipate that from this foundation there will be further additions and developments in an evolving national system of paid parental leave.

We congratulate the Government for this initiative. In particular, we congratulate the Hon. Jenny Macklin and her colleague the Hon. Tanya Plibersek for their continued support and shepherding of this policy through the Cabinet and Budget Processes. We place on record our appreciation of the work by the Department of

Families and Housing Community Services and Indigenous Affairs, and salute the fashion in which the Minister has been the champion of this issue from before the election of this Government. We congratulate the Hon. Tony Abbott, Leader of the Opposition and his Shadow Minister for Women, the Hon. Dr Sharman Stone for their support for a policy to introduce a national paid parental leave scheme, and their undertaking to ensure passage of this legislation, and we congratulate Sen. Hanson-Young and her colleagues from the Australian Greens for their continued efforts to maintain a policy spotlight on the issue. We also congratulate the former Australian Democrats Senator, Natasha Stott-Despoja for her work in past Parliaments to bring this policy to fruition.

Recognition is also due to former Sex Discrimination Commissioners Prue Goward and Susan Halliday for their earlier work and recommendations to Government.¹ The work of a number of academic researchers has been a vital step in the developments to this point. The Parental Leave in Australia Study² - by Professors Marian Baird and Gillian Whitehouse together with work by Dr Sara Charlesworth and Professor Barbara Pocock has been invaluable. The support from community groups such as the Business and Professional Women's Association of Australia, and of the union movement has all contributed to the current situation of draft legislation awaiting report and enactment.

More recently, we have received letters of support from a wide range of individuals and organisations offering us their support in urging the timely passage of the Government's Bill.

NFAW has a number of proposals for future development of the paid parental leave program which we wish to place on record.

Objectives

We believe that all public programs require clear objectives and regular evaluation of these.

The draft Bill does not actually state clear objectives, as is customary with Commonwealth legislation. These should be spelled out in the Minister's Second

¹ http://www.hreoc.gov.au/about/media/speeches/sex_discrim/index.html

² <http://www.polsis.uq.edu.au/index.html?page=54055> Parental Leave in Australia Study

Reading Speech. There are objectives in the regulatory impact attachment to the Explanatory Memorandum, but these seem unlikely to attract wide recognition from that location. We see the objectives of a paid parental leave scheme as being:

- Promoting the welfare of children, both as babies and in their longer term welfare in terms of physical and mental health, maximising their physical, cognitive, emotional and social health. Current evidence points to the effectiveness of intimate family care, and preferably breast-feeding, in the first six months of life as having significant long term benefits on all these issues.
- Protecting women's capacity for full labour force participation by recognising their dual role as workers and as child-bearers. Investment in women's human capital and their contribution to the economy and public life are critical to a prosperous society as well as gender equity. However, without appropriate arrangements for parental leave, child care and family friendly working conditions, women's labour force and child-bearing roles are in conflict, with either or both being jeopardised.
- Protecting family welfare by ensuring that absence from paid work due to child bearing does not result in family financial crisis. Child bearing should be accommodated as part of the normal life-cycle of working families.
- Enabling and encouraging fathers and partners to take a greater role in caring for young children.

The concept raised in recent political exchanges of Australia's Paid Parental Leave system being a 'world class system' ought to extend also to measured affordability and effectiveness in achieving policy objectives, not to payment levels alone. There should always be clearly defined objectives and benchmarks stated against which any new Government scheme can be measured. We are aware that the tender process for the promised Review is in process, and while we have no detail, we hope that this approach is being followed.

On-Going Responsibility and Monitoring

A national paid parental leave scheme contains elements of health policy, of income support policy, of industrial relations policy. Its impact ranges across portfolios.

We consider it highly desirable that the Government should establish a position of Parliamentary Secretary responsible for work-life balance, including the national paid parental leave scheme, working with close links to Ministers responsible for health, industrial relations and social security policies.

While many women on middle to higher incomes, working for large enterprises or in the public sector, have access to some form of employer funded maternity leave schemes, few low income women do. This Bill should remedy that.

Changes can be expected in private enterprise agreements once the new national system is in place. It is desirable that the current patterns should be benchmarked prior to the operation of the new national Scheme, and regularly monitored thereafter.

A national system has the potential to bring about significant changes in attitudes to women's workforce participation among small business employers. We ought to ensure that these changes are positive, and there ought be monitoring of any changes, positive or negative.

Having a Parliamentary Secretary with a responsibility to oversee all forms of paid parental leave would contribute to better public policy in the longer run, and expand public knowledge and acceptance of paid parental leave as a work-force entitlement.

NFAW's submission to the Productivity Commission enquiry

The policy position of the National Foundation for Australian Women on the issue of a national system for paid parental leave is firmly grounded on our aims to achieve social justice and equity in public policy, to advocate for optimal supports for the needs of women and their children, and to promote public policies which are affordable and effective in meeting their stated policy objectives.

In our submission to the Productivity Commission inquiry we supported the concept of a universal system of paid maternity leave at income replacement levels which would be financed by a 0.5% to 1% levy on payroll across all employers, the revenue being pooled with a government contribution, and which would ensure an equitable platform of income for low income and casual workers. We supported leave duration of at least six months, having regard to knowledge on child development. We have supported paternal /partner leave as well as maternal leave.

We supported the provision of the employer paid compulsory superannuation guarantee payments during the period of leave.

In the event, the Productivity Commission considered that the levy-financed scheme proposed by NFAW would not be acceptable to small business, and instead put forward a scheme which ensured generous treatment of low income earning women, and assumed that industrial and contract provisions would continue, perhaps grow, and remain a significant top-up for higher earning women.

The Commission also remarked that Australia did not have a system of insurance based social payments and benefits. We respectfully dispute that, having regard to superannuation, workers compensation and the role of private health insurance as a top-up to Medicare. In any case, the lack of such a scheme on a wider basis does not argue against its suitability to address the particular case of paid parental leave. We now note the current Productivity Commission inquiries into new modes of financing care for people with a disability, and for aged Australians, and observe that levy or insurance based systems are under contemplation.

The Commission proposal was to pay the PPL at the adult minimum wage; fully government funded, and with an employer funded contribution to superannuation during the period of leave. The leave would be able to be shared between both parents, and there would in addition be a period of specific paternal leave.

This is very substantially the proposal now put forward by the Government. We note that an undertaking was given in the Budget 2009-10 context to consider the superannuation and paternal leave questions at the time when the initial scheme is to be reviewed.

We support the introduction of the scheme as recommended by the Productivity Commission, with the modifications proposed by the Government. We see the Government's scheme as the basic building block on which future expansion can occur when the economy permits.

However, an eventual national scheme which provides the basic equitable building block for low income women, supplemented by an (all) employer funded income replacement scheme on top would be in our view the best model, something to which the nation should aspire over time.

Reconciling employment based paid parental leave and the Government's plan

Recent decades have seen a marked growth in Australia of work-force participation of women with dependent children.

We have noted the recent interest in Australian public policy debate about the need to enhance and expand female work-force participation as a means of improving productivity, in part as a means of financing the increasing costs of an ageing population (whilst also noting the contested nature of some measures of those costs). It is also the best strategy to reduce child poverty, and reduce financial gender inequality over the life course.

We have noted the gradual growth in government support for and expansion of targeted maternal and child health services, of early childhood care and education services, and as well of care services for school age children of working parents.

We have observed the gradual expansion of industrial award and contract based schemes of paid maternal and/or parental leave, while noting that there is great variation in coverage and degrees of 'generosity'. We have noted the introduction in industrial law of the 'right to request' unpaid leave as well as family friendly working conditions.

We note that most women without current access to any system of paid maternity leave are clustered in occupations which were low paid, often with small business employers.

We note that almost all private provision of paid parental leave, while being at wage replacement levels is significantly shorter in duration than the 26 weeks we regard as appropriate for infant and maternal wellbeing.

It has been suggested in some quarters that a basic government funded scheme could be supplemented by individual employers topping up for their own employees. We strongly oppose the alternative of having a direct employer-funded top-up as it would jeopardise the position of women in the workforce.

As with other forms of paid leave from employment, it is appropriate that the cost of parental leave be borne by employers as part of labour costs. However because

it applies predominantly to women of child-bearing age, the cost should be pooled rather than paid directly by individual employers to individual employees.

We consider that a national system of paid parental leave should be an integral element of the nation's framework of industrial law and contracts: a system which is separate from yet complements the existing generous system of direct income and tax benefits for families including parents not in the workforce. It should also be informed by specialist scientific and medical knowledge about both the infant and maternal well-being.

Government funding

While placing on record our appreciation of the work so far by the Department of Families and Housing Community Services and Indigenous Affairs, and saluting the fashion in which the Minister has been the champion of this issue from before the election of this Government, we register our view that at an appropriate time the national paid parental leave scheme should become the policy responsibility of a Parliamentary Secretary, working closely with Ministers for industrial relations, health and social welfare.

The social security system in Australia, complemented by the taxation system, provides a range of supports to individuals and families who are not able to provide for themselves entirely through personal effort.

As noted above, we have a very generous, by international standards, system of family payments for all families.

We have a national system of means tested age pensions, supplemented by a system of compulsory retirement savings through superannuation.

We have a national system of invalidity pensions, supplemented to a degree by worker and accident compensation schemes, which has many critics. We note that there is currently discussion around a possible new approach to financing disability services through something similar to the Medicare levy.

We provide through the social security system pensions and other supports for carers who must leave the work-force to provide full-time care for a family member.

Eligibility for these social security payments is tested on both income and assets basis, and payments are most commonly flat-rate.

We note that whenever the possibility of a government funded paid parental leave scheme is discussed in the media; there are those who demand that it should be made available to stay-at-home mothers, in addition to other existing benefits.

We are aware that within recent times initial Governmental policy approaches to paid parental leave (Keating and Howard Governments) have quickly morphed into across the board maternal benefits-(maternity allowances versions 1 and 2 later the baby bonus). These were flat rate, publicly funded and originally intended to be paid in instalments and only to previously employed mothers. The link to previous employment was soon abandoned in the policy development process because of similar media and public pressures.

Some of us fear also that the current Government's paid parental leave scheme has the potential over time to encounter the political problem of demands from other social security payees: from non-eligible parents, from carers, and from people with disabilities seeking equal level payments, viz, at adult minimum wage.

This would become even more so if the Government-funded payment were to be income replacement for moderate and higher income earners as has been suggested by some.

.This is why we believe that the income replacement component should be paid by a levy on employers' payroll, rather than through consolidated tax revenues. However, unlike other forms of employer-provided paid leave, the unique demographic up-take of parental leave makes it unsuitable to be paid directly by the employer at the time the leave is taken.

Reform around financing disability services or aged care along the lines of a Medicare levy could also modify likely demands for comparable treatment.

However, given the high numbers of working women aged 40-60 years who are caring both for children and frail older family members, we should not discount a demand before too long from the so-called 'sandwich generation' for an income-related Carer payment or at a minimum a social security payment at a parity with paid parental leave.

Nothing in the foregoing should be read to suggest that the NFAW does not wish to see improvements to levels of support for these groups. We have noted recent proposals for a review of the basis of determining income support payments to ensure an adequate basic level supplemented by specific payments for unique needs.

Rather, our point is that were the national paid parental leave scheme to be more clearly located in the framework of industrial awards and contracts then the system would be more clearly recognised as work-related rather than a social security benefit.

We also flag our view that an early priority in second and subsequent years for the expansion of the national Paid Parental leave Scheme should be its expansion to 26 weeks, followed as soon as possible by introduction of a superannuation payment, and leave specific to partners.

The development of a system for a levy financed income replacement system, built on this foundation, will, we think, take some years of public discussion to achieve more widespread acceptance. Several years of successful operation of the foundation scheme should help to build acceptance among small business employers and reduce their anxieties.

We have already expressed concerns that the new Scheme should contain certain specific provisions, viz.:

- Leave before birth - most countries have an optional or mandatory period of leave;
- Allowance for dangerous workplaces: Many countries have provision for leave or subsidised transfer if the woman's work/workplace is potentially damaging to pregnancy or to breast-feeding;
- Provisions should a second pregnancy starts while a person is on parental leave or during the qualifying period. Does the maternity leave count towards the qualifying period for the next birth?
- Unpaid family workers: unpaid wives who work on farms or in small businesses, who don't lose pay but have to be replaced by someone who is paid.

We are concerned, as is the Government that this new Scheme does reach and assist casual and contract workers, in a wide range of industry settings.

We draw to attention the issue of the inter-related issues of needs for access to child care and to paid parental leave of casual workers in agriculture. We attach a submission dealing specifically with the shearing industry, and recognise that other industries such as horticulture may have similar issues needing to be resolved.

Turning to the specifics of the Exposure Draft Bill, and the Explanatory Memorandum.

1. There is provision in the Draft Bill for unpaid workers on farms who receive a return in kind for their work

2 There are provisions for appeals, to either the Fair Work Ombudsman or the Social Security Appeals Tribunal.

We think this introduces a degree of complexity, and seek also some reassurances on timeliness in settling disputes.

3. We consider that there is a problem with the degree of complexity in the Explanatory Memorandum.

4. There are no clear objectives stated.

5. Perhaps it would be better if all women who have been in the workforce when they get pregnant should have the entitlement and should be free to manage their own complications. As is the case with the Baby Bonus really.

When something such as this is designed it should be as simple as possible and should not try to specify every conceivable situation - there are always some which are overlooked.

6. It is possible that the Implementation Working Group will be able to assist in identifying and resolving some such problems, provided they are quickly identified and brought to the Group/

7. We fear that there will be many people who miss out for not very good reasons. In particular we are concerned about women who can't work right up until the birth - especially casuals who can't get sick leave.

7.1 The lack of scope for people to combine PPL with intermittent work, e.g. very

part-time work, if they can't make ends meet with their mortgages by being on the minimum wage only for 18 weeks is a concern to us.

8 The provisions are very restrictive with regard to secondary and tertiary carers. Almost everyone who takes it will be the mother, but there are a few cases where someone else will be the claimant and the process as described is very complicated.

RECOMMENDATIONS

We Recommend that:

The national paid parental leave scheme as outlined in the legislation be introduced, with payments to commence in early 2011;

The scheme be clearly identified and agreed as the basic building block onto which future improvements will be added over time as the economy permits;

The next two priority areas for low income women's parental leave should be an extension of time to 26 weeks, and the payment of the compulsory superannuation guarantee;

The position of Parliamentary Secretary for Paid Parental Leave and Work-Life Balance be created, supported by a dedicated policy unit;

The role of the Implementation Working Group be clarified, and implementation issues be quickly identified and referred, if that is the planned role.

The concerns outlined in our paragraphs 5-8 above should be further examined by the Department. Efforts should be made to simplify processes to the extent possible.

We endorse future development of an employer funded system, set firmly in the industrial relations context, payments at income replacement level made from a pool of income from employers and government, with a Government contribution ensuring equity for low income earners.

We consider that a scheme taking into account these proposals would be workable, equitable and politically defensible.