

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 1**

**Hansard Page:** Written

**Senator** asked:

The exposure draft of the bill does not include objectives of the bill. What are the objectives of the Paid Parental Leave Scheme Bill 2010?

**Answer:**

The Paid Parental Leave scheme aims to achieve three main objectives:

1. Enhance child and maternal health and development;
2. Facilitate women's workforce participation by offsetting the disincentives to paid work generated by social welfare and taxation arrangements;
3. Promote gender equity and work/family balance.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 2**

**Hansard Page:** Written

**Senator** asked:

Is the paid parental leave/paid parental pay under the bill intended to be a social welfare payment or a workplace entitlement?

**Answer:**

The Paid Parental Leave scheme has features of both social welfare and workplace entitlements.

Like social welfare entitlements, Paid Parental Leave is income tested to maintain fairness in the overall support provided by Government to families. Claimants must also be Australian residents. Eligibility for Parental Leave pay will be assessed by the Family Assistance Office.

Like workplace entitlements, a person must work in order to be eligible for Paid Parental Leave. The pay is set at the National Minimum Wage. It will be paid by employers to their long-term employees in a manner consistent with usual the employer pay practices.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 3**

**Hansard Page:** Written

**Senator asked:**

In addition to the information booklets previously provided to the committee, what communication/education will government undertake to inform employees and employers of their rights and obligations under the bill?

**Answer:**

The Paid Parental Leave scheme communication campaign is currently being developed in line with the Australian Government campaign guidelines. Informed by formal developmental market research, the aim of the communication campaign is to increase knowledge and understanding of the PPL scheme as an entitlement, and inform target audiences about their rights and responsibilities.

The post-legislation communication campaign will include stakeholder and intermediary engagement and editorial placement, advertising, information products (one for employers and one for employees), editorial in publications produced by other Australian Government departments and agencies. These activities will be supported with information available on the Family Assistance Office and Centrelink websites, call centre support for parents and employers and Centrelink information products.

Parents will be advised of their rights and obligations when the Family Assistance Office determines their claim for parental leave pay, including the requirement to notify if they cease to be eligible for the payment. If the claim is rejected, the claimant will be advised of their right to appeal.

The Family Assistance Office will notify an employer in writing if they are required to provide parental leave pay to an employee. This advice will include information about the employer's rights and obligations under the scheme, including their right of appeal if they believe the Family Assistance Office has made an incorrect employer determination.

Once the employer determination comes into force, the employer will be required to meet their obligations and notify the Family Assistance Office of changes which affect their funding arrangements or the payment of instalments to their employee. Information on these obligations will be provided to employers by Centrelink.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 4**

**Hansard Page:** Written

**Senator** asked:

Does government intend to consult with employers, employees and other relevant organisations when drafting rules / regulations relevant to the bill? If so, with whom does government intend to consult?

**Answer:**

The Government consulted with key stakeholders about the details of the scheme in the second half of 2009. Feedback from the consultations informed the development of scheme details including the Paid Parental Leave Bill 2010, and will feed into the development of the Paid Parental Leave Rules.

In addition, the Government is establishing an Implementation Group to help finalise the details of the Paid Parental Leave scheme. This Group will build on the successful consultations conducted during 2009. Input from the Group will contribute to the development of final details of the scheme, which could include the Paid Parental Leave Rules.

The following organisations have been invited to join the Implementation Group:

- Australian Chamber of Commerce and Industry
- Business Council of Australia
- Australian Industry Group
- Australian Mines and Metals Association
- Council of Small Business Organisations of Australia
- National Foundation for Australian Women
- Australian Council of Trade Unions
- Unions NSW
- Shop, Distributive and Allied Employees Association
- UnitingCare
- Federal Sex Discrimination Commissioner
- Woolworths
- National Australia Bank.

The Group will also include representatives from the Department of Families, Housing, Community Services and Indigenous Affairs, the Department of Education, Employment and Workplace Relations, and Centrelink.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 5**

**Hansard Page:** Written

**Senator** asked:

The bill does not legislate for a review of the scheme. Why is this the case? Can the review be included in the legislation?

**Answer:**

The Government has given a public commitment to undertake a comprehensive review of the scheme, starting two years after the scheme commences.

Legislation is not necessary to authorise a review of the scheme.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 6**

**Hansard Page:** Written

**Senator** asked:

When will the review take place? What will be the scope of the review? Will it examine issues in addition to superannuation and paid supporting partner leave, such as extending the scheme to 26 weeks and providing paid parental leave at full wage replacement?

**Answer:**

A comprehensive review of the scheme will be undertaken, starting two years after the scheme commences. The review will consider the emerging findings of the PPL evaluation, in addition to the introduction of a paternity leave component and compulsory employer-funded superannuation contributions.

The PPL evaluation is to determine how effective the scheme is in achieving its objectives. Its scope includes investigation of:

- the impact of the scheme on employers;
- the impact of the scheme on working mothers;
- how effectively the scheme is administered;
- whether there is any change in the availability of employer-funded paid parental leave; and
- whether the scheme is likely to have a long-term impact on material and infant health, women's workforce participation and gender equity and work / life balance.

Both the evaluation and the review are to be completed by the end of 2014.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 7**

**Hansard Page:** Written

**Senator** asked:

Please explain the review process, including any tender arrangements and consultation.

**Answer:**

The review will start two years after the commencement of the scheme and will take into account emerging evaluation findings, the views of stakeholders on the future development of the scheme and economic circumstances at that time.

The Government has not further considered the review and consultation processes at this stage.

The Evaluation Strategy has been developed and processes to select a service provider to undertake the evaluation are underway. On 19 February 2010, a Request for Quotation was sent to two research consultancies and five universities. These were selected from FaHCSIA's Social Policy Research and Evaluation Panel. This tender process is nearing completion.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 8**

**Hansard Page:** Written

**Senator** asked:

Numerous witnesses have expressed concern about the employer as paymaster role, and particularly the impact this will have on small to medium enterprises in terms of money and time. What is the reason the parental leave payment will not continue to be paid by the Family Assistance Office beyond the first six months of the scheme?

**Answer:**

Employers will only be required to provide Parental Leave pay to their long term employees who have a baby or adopt a child on or after 1 July 2011. The Family Assistance office will provide Parental Leave pay to any eligible person not paid by their employer.

The decision to phase in the role of employers over the first six months of the scheme gives employers additional time to prepare themselves for the scheme and ensures that they are not required to update their payroll software halfway through the financial year.

Employers will receive long-term benefits from the scheme as more women of child bearing age stay connected with the workforce and their careers. It will help employers retain their skilled staff.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 9**

**Hansard Page:** Written

**Senator** asked:

The committee has received evidence that current payroll systems will need to be changed to allow efficient processing of parental leave payments. Has the department taken any action to facilitate changes to payroll systems so that relevant upgrades are available in time for employers having to make such payments?

**Answer:**

Payroll software developers were identified as a key stakeholder for the Paid Parental Leave consultations. The Department has been engaging with payroll software developers, through the Australian Taxation Office Software Developers Consultative Group, since July 2009. This engagement will continue until the employer role in the scheme is fully phased in.

Feedback received from payroll software developers and other stakeholders has contributed to the development of the draft Employer Business Requirement Statement, released in May 2010. Payroll software developers have been asked to comment on the draft to ensure the final document is clear and comprehensive. The Business Requirement Statement will be finalised following the passage of the Paid Parental Leave legislation.

Following the passage of the Paid Parental Leave legislation (expected by the end of June 2010), payroll software developers will have at least six months to update payroll software systems before the scheme starts on 1 January 2011.

The delay in the employer role until July 2011 will mean that employers are not required to purchase upgraded payroll software part way through a financial year.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No:** 10

**Hansard Page:** Written

**Senator** asked:

Has government calculated the cost of payroll tax to employers as a result of the bill? Can these costings be provided to the Committee?

**Answer:**

The Government is currently working with the states and territories to ensure Parental Leave pay is exempt from payroll tax.

Costings have not been undertaken by the Government because it is not expected that employers will be required to pay additional payroll tax.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 11**

**Hansard Page:** Written

**Senator** asked:

Has the government or department had discussions with State governments on the issue of payroll tax on the parental leave payment contained in this bill? If so, please outline the nature of these discussions.

**Answer:**

The Department of Education, Employment and Workplace Relations has provided the following response.

The Government is currently working with the states and territories to ensure Parental Leave pay is exempt for the purposes of payroll tax.

The Department commenced discussions with States and Territories in July 2009. In October 2009, the Deputy Prime Minister wrote to State and Territory Treasurers seeking a commitment that Parental Leave pay would not attract payroll tax.

On 12 May 2010, the Deputy Prime Minister wrote to state and territory Treasurers, asking them to consider the Paid Parental Leave Bill and implications that the scheme may have for payroll tax legislation, in particular, whether Parental Leave pay would be exempt under existing legislation, or alternatively, whether States and Territories could amend legislation prior to 1 January 2011, if necessary. The States and Territories have been asked to respond by 3 June 2010.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 12**

**Hansard Page:** Written

**Senator** asked:

Does the bill only provide an entitlement to receive parental leave pay but not an entitlement to leave?

**Answer:**

The Department of Education, Employment and Workplace Relations has provided the following response.

Yes.

The Paid Parental Leave Bill provides eligible parents with up to 18 weeks of parental leave pay but it does not provide an entitlement to leave.

Parents eligible for parental leave pay are able to access existing leave entitlements.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 13**

**Hansard Page:** Written

**Senator** asked:

Does the bill guarantee a parent the right to return to their job following a period of paid parental leave?

**Answer:**

The Department of Education, Employment and Workplace Relations has provided the following response.

The Paid Parental Leave Bill provides eligible parents with up to 18 weeks of parental leave pay but it does not provide a return to work guarantee.

Parents wishing to return to their job following the end of their paid parental leave period are able to access existing return to work guarantees.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 14**

**Hansard Page:** Written

**Senator** asked:

The committee has heard evidence that the bill discriminates against mothers in unpaid work, and particularly mothers who have chosen to stay-at-home. Why does the bill specifically provide parental leave pay to parents in the paid workforce?

**Answer:**

The introduction of Paid Parental Leave does not reduce current assistance to mothers who are not in paid work and does not disadvantage stay at home mothers. Currently non-working mothers tend to obtain more assistance than working mothers, even where both look after their newborn child full-time for the first six months after birth.

The new scheme is about achieving better outcomes for mothers in the paid workforce. It does not skew assistance to working mothers at the expense of non-working mothers.

Women's workforce participation has increased dramatically over the last 30 years, with women now making up 45 per cent of the workforce. However, Australian women's workforce participation during the peak child-bearing years is lower than for women in other leading industrialised countries.

Current access to employer-funded Paid Parental Leave in Australia is highly uneven and is likely to remain so. In 2007, around 54 per cent of female employees and 50 per cent of male employees had access to some form of Paid Parental Leave (PC Final Report, page XVI). However, only around one third of working women who actually had children received Paid Parental Leave from their employer. Comprehensive access to Paid Parental Leave for all working women is unlikely to occur without action by the Australian Government.

The Government agrees with the assessment made in the Productivity Commission Inquiry Report, *Paid Parental Leave: Support for Parents with Newborn Children; February 2009*, that there is compelling evidence of child and maternal health and welfare benefits from a period of absence from work for the primary caregiver of around six months and a reasonable prospect that longer periods (nine to twelve months) are beneficial.

Paid Parental Leave will help mothers who are in the workforce stay at home with their newborn infants longer before returning to work.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 15**

**Hansard Page:** Written

**Senator** asked:

The committee has received evidence that the bill is discriminatory on the basis that the money provided to mothers under the paid parental leave bill is more than that provided to mothers who stay at home caring for children. Please explain the link between the parental leave payment and payments provided to stay at home mothers, including the baby bonus. Will all payments be indexed over time at the same rate?

**Answer:**

The introduction of Paid Parental Leave does not reduce current assistance to mothers who are not in paid work and does not disadvantage stay at home mothers.

Currently non-working mothers tend to obtain more assistance than working mothers, even where both look after their newborn child full-time at home for the six months after the birth.

The Paid Parental Leave scheme is about achieving better outcomes for mothers in the paid workforce. It does not skew assistance to working mothers at the expense of non-working mothers.

In 2009-10, an eligible mother who has not worked prior to the birth of a baby will receive the \$5,185 tax free Baby Bonus and up to \$3,829 in tax free FTB-B in a full financial year. This is a total of \$9,014 in Government support that is free of tax.

A mother receiving the taxable PPL will obtain the equivalent of the Baby Bonus and an average net additional gain of \$2,000. If the mother has income over \$23,817 she will not receive any FTB-B.

Government expenditure on FTB-B was \$4.5 billion dollars in 2008-09 (2008-09 FaHCSIA Annual Report) of which around \$2.6 billion was paid to two parent families who had one parent primarily out of the workforce. Net expenditure on PPL will be around \$250 million per year.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 16**

**Hansard Page:** Written

**Senator** asked:

Concern has been raised about whether seasonal, seasonal, contract and casual employees, as well as employees currently on maternity leave or on a graduated return to work, will qualify for the scheme given the continuous service and permissible break requirements. How might the bill address these concerns and enable these types of workers, with a demonstrated connection to the workforce, to be eligible for paid parental leave?

**Answer:**

Under the Paid Parental Leave scheme, a person will demonstrate connection to the workforce by satisfying the work test.

The Productivity Commission considered that a critical prerequisite for eligibility to paid parental leave is a genuine attachment to the labour market. In its draft report, it noted that very low hour and tenure requirements would create perverse incentives for people to enter the labour force merely to qualify for the benefit. In its' Final report, it made changes to its recommended work test to make re-qualification for statutory leave easier for existing mothers and to allow scope for interrupted work and unpaid prenatal leave.

Under the Bill, a person meets the work test if they have been engaged in paid work for a total period spanning at least 10 of the 13 months prior to the expected birth or actual birth (whichever is the earlier) or adoption of the child and worked at least 330 hours in that 10 month period. A person who works just over one day per week over the 10 month period will meet the work test.

The work test has been designed to make it easier for seasonal, contract and casual employees to qualify for the scheme, as they can have a break of up to eight weeks between consecutive working days and be regarded as having worked continuously.

A person only has to work for one hour on a day for it to count as a working day.

A period of paid leave, such as annual, recreation and employer funded maternity leave, counts as work for the work test.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 17**

**Hansard Page:** Written

**Senator** asked:

Why under the bill is an employee on paid parental leave unable to accrue other work entitlements such as sick and recreational leave?

**Answer:**

The Productivity Commission recommended that Parental Leave pay not result in the accrual of additional paid leave entitlements. The Productivity Commission noted that the accrual of additional paid leave entitlements would result in an additional financial impost on employers.

The Government's Paid Parental Leave scheme is designed to complement existing workplace entitlements. It provides eligible workers with a payment. It does not provide an entitlement to leave, and does not result in the accrual of additional leave entitlements for employees.

The underlying leave that is used while employees are in receipt of Parental Leave pay will dictate whether or not additional leave is accrued. For instance, if Parental Leave pay is received while the recipient is on long service leave, accrual rules pertaining to long service leave will operate.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 18**

**Hansard Page:** Written

**Senator** asked:

Why under the bill is there no provision for an employee on paid parental leave to be paid superannuation?

**Answer:**

In its final report, the Productivity Commission proposed that requiring employers to pay superannuation contributions as part of the scheme be delayed, with the issue to be part of a review of the scheme after its introduction. The Productivity Commission recommended this delay to reduce costs for business during the scheme's establishment and to take account of current economic uncertainties.

The Government has committed to a review of the scheme commencing two years after the scheme starts. The introduction of compulsory employer-funded superannuation contributions will be considered in the review.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 19**

**Hansard Page:** Written

**Senator** asked:

Would an employer be responsible for paying workers' compensation on paid parental leave payments as contained in the current bill?

**Answer:**

The Department of Education, Employment and Workplace Relations has provided the following response.

Clause 98 of the Paid Parental Leave Bill provides that the payment of an instalment of parental leave pay is not to be taken into account for the purposes of the provisions of any Commonwealth, State or Territory law dealing with workers' compensation or accident compensation.

This clause ensures that parental leave payments would not affect premiums or other contributions required in relation to compensation arrangements.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 20**

**Hansard Page:** Written

**Senator** asked:

The Productivity Commission report recommended a period of paid supporting partner leave. Why is this not included in the bill?

**Answer:**

The Government decided to defer the introduction of the two-week paid paternity leave component to reduce the cost to the Government and employers of the scheme.

The bill does allow a father or same sex partner to receive Paid Parental Leave (PPL). If a primary claimant (usually the mother) returns to work before they have received all of their PPL entitlements, they may be able to transfer the unused part of their PPL to their partner (usually the father). The partner must meet the PPL eligibility requirements. A primary claimant is able to transfer all or part of their Parental Leave pay to an eligible partner.

The Government will undertake a comprehensive review of the scheme, starting two years after the scheme commences. The introduction of the paid paternity leave component will be considered as a part of the review.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No:** 21 and 22

**Hansard Page:** Written

**Senator** asked:

Concern has been raised about the interaction of existing employer-provided paid parental leave scheme and the government's paid parental leave scheme. Can an employer use the government-provided parental leave pay to meet part of the cost of a paid parental leave scheme provided in an industrial instrument?

Please explain if an employer can use funds received for the paid parental leave scheme to offset payments due to an employee for a paid parental leave entitlement contained in an industrial instrument.

**Answer:**

The Department of Education, Employment and Workplace Relations has provided the following response in relation to questions 21 and 22, as well as questions raised during the hearing on 19 May 2010, recorded on pages 49 and 54 of the Hansard.

Parental Leave pay is in addition to any existing entitlement under an enterprise agreement or contract of employment.

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. This includes entitlements to paid leave that are contained in enterprise agreements made under the *Fair Work Act 2009*, agreements made under old federal or State workplace laws that remain in force and common law contracts.

In the case of where a company policy for paid parental leave has been incorporated as part of the contract of employment then a common law action may be available to the employee.

The Paid Parental Leave Bill establishes a separate statutory obligation on an employer to pay an instalment where the relevant conditions are satisfied. An employer must pay an instalment of Parental Leave pay if required under the PPL Bill.

Meeting this obligation under the Paid Parental Leave Bill does not offset an obligation under an existing industrial instrument.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 23**

**Hansard Page:** Written

**Senator** asked:

Is there any intention to change the National Employment Standards or any other aspect of the Fair Work Act to accommodate the paid parental leave scheme?

**Answer:**

The Department of Education, Employment and Workplace Relations has provided the following response.

Consequential amendments to the *Fair Work Act 2009* (Fair Work Act) will be made.

The proposed amendments are:

- Inclusion of a keeping in touch provision in the National Employment Standards. Employees accessing 12 months' unpaid parental leave under the National Employment Standards could work up to 10 days for the purposes of keeping in touch with their employer without that work breaking the employee's single continuous period of leave. The provisions will be comparable to those included in the Paid Parental Leave Bill.
- Inclusion of a note in Section 536 of the Fair Work Act 'Employer obligations in relation to pay slips'. This note will refer employers to their obligations to provide written notice of parental leave pay under the Paid Parental Leave legislation.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No:** 24

**Hansard Page:** Written

**Senator** asked:

Given employment entitlements are primarily provided to employees covered by the federal workplace relation system under the Fair Work Act and associated industrial instruments, is it appropriate to provide what may be seen as an employment entitlement, under a separate piece of legislation?

**Answer:**

The Department of Education, Employment and Workplace Relations has provided the following response.

The Paid Parental Leave scheme will be implemented under stand-alone legislation having regard to the independent operation of the *Fair Work Act 2009* (Fair Work Act) and the administrative arrangements of the scheme.

The development of stand-alone legislation recognises that the Paid Parental Leave scheme does not provide an entitlement to leave and has broader application and differing eligibility criteria to the National Employment Standards for unpaid parental leave.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No: 25**

**Hansard Page:** Written

**Senator** asked:

The committee has received evidence that the payment provided under the bill, may encourage some employers, when re-negotiating, to reduce the paid parental leave entitlement contained in their enterprise agreements. Please comment.

**Answer:**

The Department of Education, Employment and Workplace Relations has provided the following response.

The Government's Paid Parental Leave scheme is designed to complement existing workplace entitlements.

Employers who currently offer paid parental leave differentiate themselves as 'employers of choice.' Employers provide paid parental leave because it is good for their business and they benefit in the long-term from increased workforce participation of parents and retention of skilled staff. For this reason, the Productivity Commission in its final inquiry report considered that a withdrawal from existing Paid Parental Leave schemes was unlikely.

Where an employee has an existing entitlement to paid parental leave under an agreement, it is enforceable in its terms as provided for by the agreement. This includes entitlements to paid leave that are contained in enterprise agreements made under the *Fair Work Act 2009*, enterprise agreements made under old federal or State workplace laws that remain in force, AWAs and ITEAS as well as common law contracts.

An enterprise agreement can only be varied during its period of operation in accordance with the requirements in the *Fair Work Act 2009*, including that a majority of employees must approve a variation. It is only once an enterprise agreement passes its nominal expiry date, the parties are permitted to re-negotiate its terms and make a new agreement.

The Government will be working with employers to consider how existing schemes will interact with the Paid Parental Leave scheme and what initiatives employers who do not currently offer paid parental leave can introduce to complement the Government's scheme.

A comprehensive review of the scheme will be undertaken, starting two years after the scheme commences. The review will consider the emerging findings of the PPL evaluation, which is determine how effective the scheme is in achieving its objectives.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

**Question No:** Refer Hansard page

**Hansard Page:** CA43

**Senator ADAMS**—I would like to ask about the booklets *Paid Parental Leave: Information for Parents*, May 2010 and *Paid Parental Leave: Information for Employers and Consultation Outcomes* and the flyer which is headed *Planning to Have a Baby?* Firstly, what was the cost of producing this information?

**Mr Warburton**—I can tell you the cost of printing the booklets. We obviously do not have disaggregated the departmental resources that went into producing the booklet. The cost of printing the two booklets was \$22,104.

**Senator ADAMS**—Is the flyer *Planning to Have a Baby?* included in that \$22,104?

**Answer:**

The cost of producing the two booklets and the brochure is as follows:

Brochure Costs	
Brochure Design	\$737
Brochure Research	\$23,870
Brochure Print	\$2,061
<b>Brochure Total</b>	<b>\$26,668</b>

Booklet Costs	
Booklet Design	\$2,775
Booklet Research	\$13,145
Booklet Print	\$22,105*
<b>Booklet Total</b>	<b>\$38,025</b>

- Note: The cost of printing the booklets is \$1 more than the figure provided at the Hearing.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

Senator **Fisher** asked on 19 May 2010, Hansard page [52].

**Question**

*[Consultations with referring states and territories in relation to Fair Work Act 2009]*

**Senator FISHER** — Fair point. I will move on to my final area of questioning around amendments to the Fair Work legislation. What is the process for that, given the states' referral of powers now?

**Ms Shelley**—Under the multilateral intergovernmental agreement for the national workplace relations system signed by the referring states there is a requirement to consult with the referring states and territories. There is a three-month period for that consultation in relation to any amendments to the Fair Work Act.

**Senator FISHER**—Have those consultations started? In other words, has the three-month period been triggered yet?

**Ms Shelley**—Yes, it has.

**Senator FISHER**—When did it get triggered?

**Ms Shelley**—I would have to take that on notice.

**Senator FISHER**—Please do, in respect of every state that has referred its powers. Obviously whether or not it has expired by the time the government presumes that parliament will be considering this bill is kind of critical, isn't it?

**Ms Shelley**—I will take it on notice.

**Answer**

The Department of Education, Employment and Workplace Relations has provided the following response.

On 20 April 2010, the Hon Julia Gillard MP, Minister for Employment and Workplace Relations, wrote to all Workplace Relations Ministers of Referring States and the Territories notifying them of the Australian Government's intention to commence consultations under clause 2.11 of the Multilateral Intergovernmental Agreement for a National Workplace Relations System for the Private Sector regarding the proposed consequential amendments to the *Fair Work Act 2009* arising from the Paid Parental Leave scheme.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

Senator **Fisher** asked on 19 May 2010, Hansard page [52- 53].

**Question**

*[Consultations with referring states and territories in relation to Fair Work Act 2009]*

**Senator FISHER**—Any aspect. Under the referral of powers the states have referred their workplace relations powers to the Commonwealth under the auspices of the Fair Work legislation. If the federal government were to bring about, in a separate bit of legislation, some change to employers' workplace relations obligations I would have thought there might be something—for example, in the intergovernmental agreement underpinning the referral—that the states would have something to say about.

The negotiations that you are talking about deal with amendments to the Fair Work Act but if it is not proposed by the federal government to amend the Fair Work Act to deal with workplace relations—in fact, they propose to put workplace relations stuff in the Paid Parental Leave Bill—does that comply with the deal done with the states to refer their workplace relations powers?

**Ms Shelley**—The intergovernmental agreement only requires consultations in relation to the Fair Work legislation. That includes the Fair Work Act and the Fair Work regulations.

**Senator FISHER**—Is there anything else? To the extent that there are other things that underpin or form part of the referral of the states' workplace relations powers to the Commonwealth, do those things prevent the sort of amendment that I am talking about, or would providing workplace relations stuff in the PPL legislation comply with those agreements or arrangements?

**Answer**

The Departments of Families, Housing, Community Services and Indigenous Affairs and Education, Employment and Workplace Relations have provided the following response.

The Commonwealth would not be required to consult with Referring States and the Territories regarding amendments to the Paid Parental Leave Bill.

The Paid Parental Leave Bill would be supported by the Commonwealth 'social services' power under s 51(xxiiiA) of the Constitution, the external affairs power (s 51(xxix) of the Constitution), the corporations power (s51(xx) of the Constitution) and the incidental power (s 51(xxxix) of the Constitution). The Bill would be enacted exclusively in reliance on Commonwealth legislative powers.

State references that support the *Fair Work Act 2009* (the Fair Work Act) would not be involved, except to the extent necessary to support amendments to that Act that are consequential to the Paid Parental Leave Bill.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

Under clause 2.11 of the Multilateral Intergovernmental Agreement for a National Workplace Relations System for the Private Sector, the Commonwealth is required to consult with Referring States and the Territories regarding proposals and amendments to the Fair Work legislation.

‘Fair Work legislation’ is defined in the intergovernmental agreement as meaning the *Fair Work Act 2009*, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009*, the *Fair Work (Registered Organisations) Act 2009*, the Fair Work Regulations 2009 and regulations made under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009*, and the *Fair Work (Registered Organisations) Act 2009* as in force from time to time.

**Senate Community Affairs Committee**  
**ANSWERS TO ESTIMATES QUESTIONS ON NOTICE**  
**FAMILIES, HOUSING, COMMUNITY SERVICES AND**  
**INDIGENOUS AFFAIRS PORTFOLIO**

**Exposure Draft and Paid Parental Leave Bill Inquiry, 19 May 2010**

Senator **Furner** asked on 19 May 2010, Hansard page [57].

**Question**

**[Leave]**

**Senator FURNER**—Lastly, I have an issue with the argument about this not being leave. What is your definition of leave?

**Answer**

The Department of Education, Employment and Workplace Relations has provided the following response.

The employment relationship is a contractual relationship based on reciprocal obligations of an employee to render service to an employer, or to be ready and willing to do so, and the employer to pay wages to the employee in respect of that service. At common law, if an employee does not render service, or is not ready and willing to do so, the employer is not obliged to pay wages in respect of that period. Also, if the employee does not, or is not ready and willing to, render service to their employer, the employee may be in breach of their obligations under the employment contract.

This situation has been modified by the introduction in legislation and other instruments of certain 'leave' entitlements for employees. Certain leave entitlements are incorporated in all employment contracts and provide circumstances where an employee is entitled to be absent from work without breaching the employment contract. Where there is no entitlement to be paid for the period of the absence, the employee would be on unpaid leave. In some circumstances, the employee is also entitled to be paid in respect of that absence, and this would be paid leave.

Entitlements to leave may be derived from a number of sources including federal, state or territory laws, as well as awards, agreements or contracts of employment. For example, the Fair Work Act provides leave entitlements in a number of circumstances, including:

- Annual leave;
- Personal/carer's leave;
- Parental leave;
- Community service leave;
- Compassionate leave; and
- Public holidays.

As leave entitlements relate to the employment relationship, these entitlements are, generally, relevant to employees only, and not to the self-employed, for example. Under the Paid Parental Leave Bill, parental leave pay is payable to broader categories of persons than employees.