

Paid Parental Leave Amendment Bill 2014

Portfolio: Small Business

Introduced: House of Representatives, 19 March 2014

Purpose

2.64 The Paid Parental Leave Amendment Bill 2014 (the bill) seeks to amend the *Paid Parental Leave Act 2010* (the Act) to remove the requirement for employers to provide government-funded parental leave pay to their eligible long-term employees. Instead, from 1 July 2014, employees would be paid directly by the Department of Human Services (DHS), unless an employer opted in to providing parental leave pay to its employees and an employee agreed for their employer to pay them.

Background

2.65 The committee reported on the bill in its *Fifth Report of the 44th Parliament*.

Committee view on compatibility

Right to social security and right to just and favourable conditions at work

Removal of requirement for employers to provide government-funded parental leave pay

2.66 The committee sought clarification from the Minister for Small Business as to whether the removal of the requirement for employers to provide government-funded parental leave pay may limit the right to social security and the right to just and favourable conditions of work and, if so:

- whether the limitation is aimed at achieving a legitimate objective;
- whether there is a rational connection between the limitation and that objective;
- and whether the limitation is proportionate to that objective.

Minister's response

Right of everyone to social security, including social insurance

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right of everyone to social security. This right requires a social security system to be established and that State Parties must, within their maximum available resources, ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. Article 26 of the Convention on the Rights of the Child requires that State Parties ensure that right for every child and states that "the benefits should, where appropriate, be granted, taking into account the resources and the

circumstances of that child and persons having responsibility for the maintenance of that child."

Article 10 of the ICESCR further states that, "Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such a period working mothers should be accorded paid leave or leave with adequate social security benefits."

In addition, Article 11 (2)(b) of the Convention to Eliminate all forms of Discrimination Against Women (CEDAW) requires State Parties "to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances."

The Committee has sought clarification as to whether the measures in the Bill may limit the right to social security, to the extent that the measure may result in reduced after-tax income for employees with salary sacrifice arrangements in place.

Payments under the PPL scheme engage the right to social security, and the amendments to the employer paymaster role under this Bill do not limit the essential level of benefits required as part of that right.

Payments under the PPL scheme are currently considered to provide an adequate social security benefit. The proposed amendments do not affect eligibility for PLP or the entitlement to paid or unpaid leave from employment before or after the birth of the child. The proposed amendments also do not affect the rate of pay, which is consistent regardless of whether PLP is paid by their employer or by the Department of Human Services (currently, around 76 per cent of PLP recipients are paid by their employer and 24 per cent are paid by the Department of Human Services).

Under the proposed amendments, in place of the current mandatory requirement their employers pass on PLP to their long-term employees, employers and employees would need to agree to this payment arrangement. Similarly, there will still be capacity to make salary sacrifice deductions against PLP payments where employers and employees agree.

The ability to make deductions for salary sacrificing is unique to PLP amongst all government payments, given the PLP employer paymaster role. This policy allows employers to apply the same treatment to PLP payments they administer on behalf of the Government as for the payment of salary and wages, if they so wish and can afford to do so. The ability for an employee to reduce the tax liability for their PLP payment through salary sacrificing is not guaranteed even under current arrangements. Therefore, there is no limitation to the right to social security as these amendments do not limit this essential level of benefit or limit access to the scheme, and allow the continuation of salary sacrifice arrangements where the employer opts in and agrees.

Right to just and favourable conditions at work

Article 7 of the ICESCR recognises the right of everyone to the enjoyment of just and favourable conditions of work. This Article seeks to ensure fair and equal wages and remuneration, safe and healthy working conditions, equal opportunity for promotion in the workplace, and adequate access to rest, leisure, and periodic paid leave.

As discussed above, Article 11 (2)(b) of CEDAW also refers to women being able to access time off work around the birth "without loss of former employment, seniority or social allowances".

Payments under the PPL scheme do not engage the right to just and favourable conditions at work as they are a government payment which is provided on the basis of past labour force participation in addition to other non-work related eligibility criteria. Access to PLP is not a condition of employment and receipt of PLP through an employer does not ensure the continuation of salary sacrifice deductions.

Despite the PPL scheme not engaging the right to just and favourable conditions at work, access to the scheme encourages the continuing participation of women in the labour force (either as an employee or in another capacity such as self-employment). Generally, a working parent cannot work during the PPL period if they wish to remain eligible for payment, however limited participation is allowed through the use of 'keeping-in-touch' days.

The proposed changes to the mandatory employer paymaster role do not limit the existing right to access 12 months of unpaid parental leave without the loss of employment or seniority within the workplace, nor will the measure affect the standards or provisions contained within the National Employment Standards or the *Fair Work Act 2009*.¹

Committee response

2.67 The committee thanks the Minister for Small Business for his response and has concluded its examination of this matter.

Right to equality and non-discrimination

Potential for reduced after-tax income to indirectly discriminate against women

2.68 The committee sought further information from the Minister for Small Business regarding the potential for reduced after-tax income to indirectly discriminate against women and, accordingly, as to whether the bill is compatible with the right to equality and non-discrimination.

1 See Appendix 2, Letter from The Hon Bruce Billson MP, Minister for Small Business, to Senator Dean Smith, 28 April 2014, [pp 1-3].

Minister's response

Article 2 of the ICESCR recognises the right to non-discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 3 seeks to ensure the right of both men and women to the enjoyment of all economic, social, and cultural rights set forth within the convention.

The Committee noted that the extent the measure is compatible with the right to social security it is also likely to be consistent with the right to non-discrimination.

As outlined above, the proposed amendments do not limit the right to social security. As the enjoyment of the right to social security is not limited by the amendments, this Bill also does not limit the rights to equality and non-discrimination.²

Committee response

2.69 The committee thanks the Minister for Small Business for his response and has concluded its examination of this matter.

2 See Appendix 2, Letter from The Hon Bruce Billson MP, Minister for Small Business, to Senator Dean Smith, 28 April 2014, [p. 3].