

Chapter 1

Introduction

Referral

1.1 On 25 June 2015, the Senate referred the provisions of the Fairer Paid Parental Leave Bill 2015 to the Community Affairs Legislation Committee for inquiry and report by 15 September 2015.¹

1.2 The proposal to refer the Bill requests that the committee 'scrutinise the impact of proposed changes to paid parental leave through this legislation'.²

Background

Paid Parental Leave Act 2010

1.3 In February 2008, the Assistant Treasurer, the Hon Chris Bowen MP asked the Productivity Commission (PC) to undertake an inquiry to consider the design and impacts of a paid maternity, paternity and parental leave scheme in Australia. In February 2009, the PC concluded its inquiry and released a report entitled *Paid Parental Leave: Support for Parents with Newborn Children*.³

1.4 This report found that:

Around 280 000 mothers gave birth in Australia in 2007. Of these, around 175 000 were born to mothers who were in the workforce prior to giving birth, with at least 80 per cent of those mothers intending to return to work. Accordingly, there is a large number of employed mothers who need to take leave from work. There have been enduring calls for many years in Australia to introduce a statutory scheme that would provide broad paid parental particularly maternity leave to such parents. Only around half of employed mothers (and a somewhat smaller share of fathers) are currently eligible for paid parental leave as part of arrangements privately negotiated with their employers. Given the recent slowing pace of private provision, it is not clear that the proportion of the workforce covered by paid parental leave will change much over the next decade.⁴

1.5 At this time, the only government provisions with regard to the parental leave period related to a 'legislated unpaid maternity [and paternity] leave guarantee of 52

1 *Journals of the Senate*, No. 102—25 June 2015, p. 2828.

2 Senate Selection of Bills Committee, *Report No. 8 of 2015*, 25 June 2015, Appendix 3.

3 Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, Report no. 47, 2009, Canberra, <http://www.pc.gov.au/inquiries/completed/parental-support/report/parental-support.pdf> (accessed 9 July 2015).

4 Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, Report no. 47, 2009, p. xv, Canberra.

weeks that gives a parent the right to return to [their] job'.⁵ These provisions still exist under the National Employment Standards and the *Fair Work Act 2009*.⁶

1.6 The PC identified a number of reasons as to why a statutory paid parental leave (PPL) scheme should be introduced:

- the improved wellbeing of families, and in particular child and maternal health, associated with an extended period of absence from work around the birth of the baby and secure financial support during this period (see below). For a variety of reasons such as financial constraints parents cannot always take sufficient time off from work;
- in the face of the incentives against work provided by the social welfare and tax system, encouragement of women of reproductive ages to maintain their lifetime attachment to the workforce; and
- the expression of community norms. This includes the view that having a child and taking time out for family reasons is part of the usual course of work and life for many people in the paid workforce, including fathers. It also encompasses the importance of valuing children. These rationales for paid leave are more contentious than others, because while survey evidence suggests most Australians would like to see the introduction of statutory paid parental leave, many also oppose it, especially when it is made clear that someone must pay for the scheme. Nevertheless, social policy provides an important rationale for a government-mandated scheme.⁷

1.7 In response to this inquiry, the Australian Government introduced and passed the *Paid Parental Leave Act 2010* through the parliament.⁸

1.8 The PPL scheme established under this act provided for 'financial support for up to 18 weeks to help eligible parents take time off work to care for a newborn or recently adopted child'.⁹ This financial support is calculated as the minimum wage (before tax) which currently equates to \$657.00 per week (before tax).¹⁰ This can

5 Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, Report no. 47, 2009, Canberra, p. xv.

6 Australian Government Fair Work Ombudsman, *Maternity and parental leave*, <http://www.fairwork.gov.au/leave/maternity-and-parental-leave> (accessed 4 September 2015).

7 Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, Report no. 47, 2009, Canberra, p. xviii.

8 *Paid Parental Leave Act 2010*. Explanatory memorandum and associated documentation can be found at http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r4347 (accessed 10 July 2015).

9 Australian Government Department of Human Services, *Parental Leave Pay*, <http://www.humanservices.gov.au/customer/services/centrelink/parental-leave-pay> (accessed 10 July 2015).

10 Australian Government Department of Human Services, *Parental Leave Pay*.

currently be accessed in conjunction with or in addition to any other forms of leave provided by an employer:

If you are eligible, you can access up to 18 weeks of government funded Parental Leave Pay as well as any of your existing employer provided paid or unpaid leave.

You can take your payment before, during or after any paid or unpaid maternity or parental leave or other employer funded leave entitlements such as annual leave or long service leave.

If your employer currently provides paid maternity or parental leave through an industrial agreement or law, they cannot withdraw your entitlement to that leave for the life of the agreement or law. The scheme does not change any existing employer provided leave entitlements.¹¹

1.9 Although the PPL payment is wholly funded by the Australian Government, it is disbursed by the employer under certain criteria. The employer will manage the payment if the PPL recipient has worked for that employer for 12 months or more; the recipient will continue working for the employer after the period of PPL; and the recipient expects to receive at least eight weeks of PPL. If the employer administers the PPL payment they will also withhold tax and other authorised deductions as appropriate.¹²

1.10 To be eligible for the paid parental leave scheme established under this act, a range of eligibility and work test criteria must be met. These include (but are not limited to) being the primary carer of the child, having an income of \$150 000 or less, and having been in paid employment for:

- 10 of the 13 months before the birth or adoption of your child; and
- [worked] 330 hours in that 10 month period, which is just over 1 day a week, and had no more than an 8 week gap between 2 consecutive working days.¹³

1.11 Qualification for paid parental leave may also entitle a family to other government benefits such as Dad and Partner Pay (covered by the 2010 Act), in addition to Family Tax Benefits and Parenting Payment.¹⁴

Paid Parental Leave Amendment Bill 2014

1.12 On 19 March 2014, the Paid Parental Leave Amendment Bill 2014 was introduced into the House of Representatives by the Minister for Small Business, the Hon Bruce Billson MP. This Bill is consistent with the Government's commitment to

11 Australian Government Department of Human Services, *Parental Leave Pay*.

12 Australian Government Department of Human Services, *Parental Leave Pay*.

13 Australian Government Department of Human Services, *Work test for Parental Leave Pay*, <http://www.humanservices.gov.au/customer/enablers/centrelink/parental-leave-pay/work-test-for-parental-leave-pay> (accessed 10 July 2015). There are other eligibility criteria including residency requirements and that the primary carer must be on leave during the period of PPL.

14 Australian Government Department of Human Services, *Paid Parental Leave*.

'reduce the red tape burden and compliance costs on business by ensuring they are not required to be the paymaster for the government's paid parental leave scheme', this Bill will seek to 'remove the mandatory requirement for employers to administer government-funded parental leave pay to their eligible long-term employees'.¹⁵ This Bill has passed the House of Representatives, and was introduced into the Senate where a second reading has been moved. This Bill is currently listed as Government Business on the most recent notice paper.¹⁶

Fairer Paid Parental Leave Bill 2015 [Provisions]

1.13 On 25 June 2015, the Fairer Paid Parental Leave Bill 2015 was introduced into the House of Representatives by the Minister for Social Services, the Hon Scott Morrison MP.¹⁷

Key provisions and purpose of Bill

1.14 This Bill seeks to amend the *Paid Parental Leave Act 2010* to 'ensure that Government funded payments under the scheme are more fairly targeted to parents who do not also have sufficient access to employer-provided parental leave or similar payments'.¹⁸

1.15 The Bill also contains a number of minor amendments that provide more time than is available under the act for parents to lodge claims for PPL.

1.16 In addition, this Bill also seeks to remove the obligation of employers to act as a paymaster and administer the Paid Parental Leave scheme to their employees.¹⁹

1.17 The Bill is comprised of two schedules.

Schedule 1—Adjustment for primary carer pay, etc

1.18 This schedule proposes to modify the current universal statutory PPL scheme to one that instead targets parents and families that do not receive any employer-provided PPL. The effect of this schedule is that:

Parents will no longer be able to receive employer-provided primary carer leave payments (or other like payments) as well as the full amount of parental leave pay under the Paid Parental Leave scheme.

Parents who are entitled to receive employer-provided payments in excess of the total amount of parental leave pay under the Paid Parental Leave scheme will not receive any parental leave pay under the Paid Parental Leave scheme.

15 B. Billson (Minister for Small Business), 'Second Reading Speech: Paid Parental Leave Amendment Bill 2014', House of Representatives, *Parliamentary Debates*, 19 March 2014, p. 2388.

16 *Notice Paper*, No. 115—15 September 2015, p. 4.

17 S. Morrison (Minister for Social Services), 'Second Reading Speech: Fairer Paid Parental Leave Bill 2015', House of Representatives, *Parliamentary Debates*, 25 June 2015, p. 12.

18 Fairer Paid Parental Leave Bill 2015, Explanatory Memorandum, p. 1.

19 Fairer Paid Parental Leave Bill 2015, Explanatory Memorandum, p. 1.

Parents who are entitled to receive employer-provided payments of less than the total amount of parental leave pay under the Paid Parental Leave scheme will receive a top-up to ensure they can access the maximum rate.²⁰

1.19 In addition, this schedule seeks to 'provide more generous backdating provisions so parents have more time to lodge a claim in certain circumstances'.²¹

1.20 The Australian Government foreshadows savings over the forward estimates of \$967.7 million if this Bill is passed.²²

1.21 These changes are intended to commence from 1 July 2016.²³

Schedule 2—Employer opt-in

1.22 This schedule proposes to remove the obligation on employers to administer the payment of statutory PPL to their employees:

[E]mployees will be paid directly by the Department of Human Services, unless an employer opts in to provide parental leave pay to its employees and an employee agrees to their employer paying them.²⁴

1.23 This Bill duplicates provisions in the Paid Parental Leave Amendment Bill 2014.

1.24 The Australian Government foreshadows an increased cost of \$7.0 million over 5 years if this Bill is passed.²⁵ The increased cost is due to the Department of Human Services assuming the paymaster responsibilities of PPL payments from employers.

1.25 These changes are intended to commence from 1 April 2016.²⁶

Conduct of Inquiry

1.26 Details of the inquiry, including a link to the Bill and associated documents, were placed on the committee's website.²⁷ The committee also wrote to 39 organisations and individuals, inviting submissions by 30 July 2015. Submissions continued to be submitted after that date.

1.27 The committee received 55 submissions to the inquiry.

1.28 The committee conducted a public hearing on 1 September 2015 at Parliament House in Canberra.

20 Fairer Paid Parental Leave Bill 2015, Explanatory Memorandum, p. 1.

21 Fairer Paid Parental Leave Bill 2015, Explanatory Memorandum, p. 1.

22 Fairer Paid Parental Leave Bill 2015, Explanatory Memorandum, p. 1.

23 Fairer Paid Parental Leave Bill 2015, Explanatory Memorandum, p. 1.

24 Fairer Paid Parental Leave Bill 2015, Explanatory Memorandum, p. 15.

25 Fairer Paid Parental Leave Bill 2015, Explanatory Memorandum, p. 1.

26 Fairer Paid Parental Leave Bill 2015, Explanatory Memorandum, p. 1.

27 See: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs

1.29 A petition was tabled on 19 August 2015 by Senator Anne McEwen requesting 'that the Senate oppose cuts to the Paid Parental Leave Scheme'.²⁸

Consideration of the Bill by other committees

Scrutiny of Bills

1.30 The Senate Standing Committee for the Scrutiny of Bills made no comment on this Bill.²⁹

Human Rights

1.31 The Parliamentary Joint Committee on Human Rights (PJCHR) considered that the Bill appears to give rise to human rights concerns. The PJCHR noted in respect to schedule 1 of this Bill that it may engage and limit:

- the right to social security;³⁰
- rights at work and the right to maternity leave;³¹ and
- the right to equality and non-discrimination (indirect discrimination).³²

1.32 The PJCHR noted in respect to schedule 2 of this Bill that the committee has 'previously considered these measures as part of its consideration of the [Paid Parental Leave Amendment Bill 2014]'. In its eighth report, the PJCHR 'concluded its consideration of these matters as being compatible with Australia's international human rights obligations on the basis of the further information provided by the minister'.³³

Acknowledgement

1.33 The committee thanks those organisations who made submissions and who gave evidence at the hearing.

Note on References

1.34 Reference to the committee *Hansard* is to the proof *Hansard*. Page numbers may vary between the proof and the official *Hansard* transcript.

28 *Journals of the Senate*, No. 109—19 August 2015, p. 2988. The committee received extensive correspondence relating to this inquiry.

29 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 7 of 2015*, p. 30.

30 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report, Twenty-fifth report of the 44th Parliament*, 11 August 2015, p. 50, http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Completed_inquiries/2015/Twenty-fifth_Report_of_the_44th_Parliament (accessed 19 August 2015).

31 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report, Twenty-fifth report of the 44th Parliament*, 11 August 2015, p. 52

32 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report, Twenty-fifth report of the 44th Parliament*, 11 August 2015, p. 53

33 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report, Twenty-fifth report of the 44th Parliament*, 11 August 2015, p. 55.