



28 July 2015

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

By email: community.affairs.sen@aph.gov.au

Dear Committee Secretary,

Senate Inquiry into the Fairer Paid Parental Leave Amendment Bill 2015

The Australian Human Rights Commission (the Commission) welcomes the opportunity to make a submission to the Community Affairs Legislation Committee in relation to the above Inquiry.

The Commission does not support the passage of the *Fairer Paid Parental Leave Amendment Bill 2015* (the Bill) in its current form.

Introduction

The *Paid Parental Leave Act 2010* (Cth) (PPL Act) came into effect on 1 January 2011.

The PPL Act followed the Productivity Commission 2009 report, *Paid Parental Leave: Support for Parents with Newborn Children*,¹ which made recommendations for the establishment of a Government-funded Paid Parental Leave Scheme (PPL Scheme) in Australia.² The Commission made submissions to and appeared before the Productivity Commission's Inquiry and also made a submission on the draft Exposure Bill. These submissions are contained in Appendix A for convenience.

The intention of the PPL Act is to provide financial support to primary carers of newborn and newly adopted children, as a means of:

- allowing carers to take time off work to care for their child;
- enhancing the health and development of birth mothers and children;
- encouraging women's continued participation in the workforce; and
- promoting equality between men and women, as well as a balance between work and family life.³

Under the PPL Act, individuals are able to access 18 weeks of paid parental leave from the Government at the national minimum wage, in addition to any employer-provided leave entitlements (the PPL Scheme). As Division 1A of the PPL Act states:

The financial support provided by this Act is intended to complement and supplement existing entitlements to paid or unpaid leave in connection with the birth or adoption of a child.⁴

This is in line with the Productivity Commission's 2009 report, which conducted a detailed analysis to determine that most women took at least eight weeks of leave under the arrangements at the time,⁵ and that the provision of an additional 18 weeks of leave would be sufficient to allow nearly all mothers to have the opportunity to take a total of 26 weeks of leave.⁶ The Productivity Commission's recommendation was founded on international evidence pointing to the benefits of approximately six months of paid leave per person for women's employment prospects and wellbeing.

The Second Reading of the Bill also iterates that the PPL Scheme could be taken in addition to existing employer-funded schemes, either consecutively or at the same time. The PPL Scheme was designed to complement and enhance arrangements that many employers already offered.⁷ At the time, the Commission and many other key stakeholders considered the proposed leave period in the PPL Act to be too short and, while passed, the Coalition (opposition) also considered the PPL Scheme to be financially inadequate. However, it also considered that, on-balance, a 'second-rate' scheme was better than no scheme at all.⁸ The Commission and many other key stakeholders welcomed the PPL Act with a view to further improvements of the Act over time.

Evaluation of the PPL Scheme

Results from a recent evaluation of the PPL Scheme, conducted by the University of Queensland and commissioned by the Australian Government Department for Social Services, suggests that the current PPL Scheme is meeting the policy aims of the PPL Act in allowing carers to take time off work to care for their child, encouraging women's participation and return to the workforce, promoting gender equality and a balance between work and family life, and enhancing maternal and child health and wellbeing.⁹

Results from the recent evaluation of the PPL Scheme found that the introduction of the scheme has been associated with a significant reduction in the number of mothers who return to work within 18 weeks of their child's birth,¹⁰ as well as a small improvement in mothers' average physical and mental health.¹¹

The evaluation also pointed to a number of benefits relating to women's participation, including an increased likelihood that mothers would return to work by the time their children were 12 months old,¹² an increase in the proportion of mothers who returned to the same job and conditions as before the birth of their child,¹³ and a small but significant improvement in mothers' perceptions of their career prospects.¹⁴

Furthermore, the number of small and medium-sized businesses providing paid parental leave increased following the introduction of the PPL Scheme,¹⁵ the majority of employers reported that they did not find the scheme onerous to implement,¹⁶ and employers' attitudes to the scheme became more positive between 2011 and 2012.¹⁷

Purpose of the Bill

The Commission understands that the purpose of the Bill is to ensure that:

Government funded parental pay is more fairly targeted to ensure eligible working mothers have access to a base level of financial support on the birth or adoption of their child.¹⁸

In order to achieve this purpose, the Bill proposes to amend the existing PPL Act by removing the ability for individuals to receive employer-provided primary carer leave payments in addition to the full amount of parental leave pay under the PPL Scheme. Under the new Bill, parents or carers who receive employer-provided benefits in excess of the parental leave pay provided under the PPL Scheme will not receive any parental leave pay from the Government, while those who receive less than the total amount of paid parental leave will be ‘topped up’ so as to have access to the maximum rate.¹⁹

The Commission considers that, in removing the ability of individuals to benefit from both an employer scheme and the PPL Scheme (so called ‘double dipping’), the Bill is contrary to the original purpose and foundations of the PPL Act, and of existing Government policies to encourage women’s participation, improve economic outcomes for women and promote gender equality.²⁰

The Bill also provides for the removal of the requirement for employers to provide Government-funded paid parental leave to eligible employees. Under the new arrangement, employees will be paid directly by the Department of Human Services unless the employer and employee both opt for the employer to provide payment.²¹

The Commission considers this a regressive step that may negatively impact upon individual’s connection to their place of work during parental leave and subsequent transition back to the workplace.

Human rights framework

Australia has ratified a range of international human rights treaties that have relevance to the PPL Act. These treaties are outlined in the Commission’s previous submissions.

The Statement of Compatibility (SOC) to the Bill²² identifies that the following human rights treaties and articles are engaged:

- International Covenant on Economic, Social and Cultural Rights (ICESCR):²³ Articles 3 (equality of men and women to economic, social and cultural rights), 7 (just and favourable conditions of work), 9 (social security) and 10 (including widest possible protection and assistance to the family, maternity leave with pay);
- Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW):²⁴ Article 11 (including discrimination against women in the field of employment, maternity leave with pay);

- Convention on the Rights of the Child (CRC):²⁵ Articles 18 (including common parental responsibilities and appropriate assistance), 24 (health) and 26 (social security); and
- International Covenant on Civil and Political Rights:²⁶ Article 17 (privacy).

The human rights impacted by this Bill are principally those contained in the ICESCR (and included in CEDAW and the CRC). Economic, social and cultural rights are to be progressively implemented – that is, improved upon year by year. Any deliberately retrogressive measures require careful consideration and are to be fully justified by reference to all of the rights contained in the Covenant and in the context of the full use of the maximum available resources.²⁷

On its face, the Bill is a retrogressive measure, inconsistent with Australia's international human rights obligations. The SOC acknowledges that the Bill limits certain human rights and states that these limitations are reasonable, necessary and proportionate. However, the SOC fails to provide any analysis to support this statement in light of the Bill's potential impact on gender equality and women's workforce participation. The Commission considers that full consideration and justification is required prior to the introduction of any retrogressive measures.

Impact of the Bill on the gender gap

Australian women continue to be under-represented in the workforce, with 78% of Australian men aged 20-74 years participating in or looking for work in 2013-14, compared with 65% of women.²⁸ This gap widens with the arrival of children, with 57.5% of mothers whose youngest child is aged 0-5 years participating in the labour force, compared with 94% of fathers.²⁹ When employed, women are also more likely to work in part-time or casual roles than men, with women comprising 35.8% of full-time employees in Australia, 75.3% of part-time employees and 57.2% of casual employees.³⁰

Women who do participate are under-represented at leadership levels. Women comprised 20% of board members of Australia's top 200 companies as at June 2015,³¹ and only 26.1% of management positions in November 2014.³²

Australian women also continue to receive lower levels of remuneration compared to Australian men. The national pay gap widened to 18.8% in November 2014, with men earning \$298 more on average per week than women.³³

The gender gap which exists around pay and employment has significant consequences for women's retirement income and savings. The overall gender difference in superannuation balances in 2011-12 was 45.7%,³⁴ indicating that Australian women, on average, currently retire with approximately half the retirement savings of men.³⁵

The proposed amendments to the PPL Scheme would ultimately detract from existing Australian Government policies to improve economic outcomes for women, increase women's workforce participation rates, and reduce the barriers faced by women when balancing work and family responsibilities such as through key initiatives in childcare.³⁶

The implementation of the proposed amendments would exacerbate the current gender pay gap by effectively limiting parental leave payments to 18 weeks on a minimum wage for all women whose employers do not 'opt in' to provide payments exceeding 18 weeks' pay.

The recent evaluation of the PPL Scheme showed that throughout the 2011-12 financial year, more than 24,000 employers provided parental leave pay to over 75,000 employees, and approximately 48.5% of recipients of the PPL Scheme received paid parental leave from their employer.³⁷ This suggests that restricting the eligibility for employees to access paid parental leave from their employers in addition to the public scheme will essentially reduce the extent of income support provided to a significant proportion of women.³⁸ Furthermore, research conducted by Mercer on the probable impact of the proposed changes to the PPL Scheme indicates that women in corporate roles at the income levels of \$150,000, \$100,000 and \$50,000 would have their paid parental leave reduced to 23% of their total income, from current levels of 31%, 35% and 46% respectively.³⁹ This research reinforces the potential impact of the proposed amendments to the PPL Act, particularly for women at the lower income levels.

The proposed amendments might also prove detrimental to women's workforce participation rates. Research has shown that if a leave period is too short in duration, participation outcomes are weakened as many women are forced out of the labour market.⁴⁰

Furthermore, the proposal to remove the requirement for employers to administer the Government-funded parental leave pay to employees risks further exacerbating the issue of women's workforce participation, by weakening women's connections to their employer in situations where employers choose not to 'opt in' to provide payments. The Commission has consistently advocated the importance of continuing to frame paid parental leave payments as workplace entitlements that should be made by the employer wherever possible, and not simply as welfare payments.⁴¹

International best practice

The implementation of the amendments outlined in the Bill would also undermine internationally recognised evidence on the benefits of a paid parental leave period of approximately six months (26 weeks).

As previously highlighted, the PPL Act came into effect as a result of the Productivity Commission's 2009 Inquiry report, which recommended a paid postnatal period of 18 weeks, not including additional co-funding options such as self and employer funded leave.⁴² The Productivity Commission stated in its report that the combination of public and employer funded leave would 'allow almost all infants to be exclusively cared for by their parents for the first six months of life'.⁴³ The Productivity Commission also recommended that superannuation entitlements be provided to mothers, subject to certain conditions.⁴⁴

The Productivity Commission's recommendation is supported by international evidence which points to the benefits of approximately six months of paid leave per person on women's labour-force attachment and longer-term employment trajectories.⁴⁵ There is compelling evidence to suggest that postnatal absence from

work for the primary caregiver of approximately six months also positively impacts maternal and child health and wellbeing.⁴⁶

In addition, international best practice suggests that extending father/partner quotas (on a 'use it or lose it' basis), in addition to the provision of sufficient paid parental leave which may be shared by either partner would be beneficial for greater gender equity.⁴⁷

In its 2008 submission to the Productivity Commission's Inquiry, the Commission noted that the international human rights standards, as set out in the International Labour Organisation's Recommendation 191 (concerning the revision of the Maternity Protection Recommendation, 1952), state that pay rates for parental leave should aspire to a system that provides full replacement wage for mothers. The Commission has consistently advocated for the adoption of a paid parental leave scheme of 26 weeks at full replacement wages, which includes superannuation benefits and an extension of father/partner quotas, to promote maternal and child health and wellbeing, increase women's workforce participation rates and encourage greater gender equality.⁴⁸

Other issues for consideration

While workplace entitlements through the PPL Scheme are vital to promoting women's workforce participation and economic wellbeing, they remain only one part of the solution.

The results of the Commission's 2014 National Review, *Supporting Working Parents: Pregnancy and Return to Work*, revealed that one in two (49%) mothers reported experiencing discrimination in the workplace at some point during pregnancy, parental leave or on their return to work.⁴⁹ These experiences, in turn, contribute significantly to women's under-participation in or withdrawal from the workforce. One in five (18%) mothers surveyed reported that they were made redundant, restructured, dismissed or their contract was not renewed either during their pregnancy, when they requested or took parental leave or when they returned to work, while 32% of all mothers who had been discriminated against at some point either went to look for another job or resigned.⁵⁰ Furthermore, 22% of mothers who reported experiencing discrimination during their pregnancy did not return to the workforce, compared to 14% of mothers who reported they did not experience discrimination.⁵¹ The National Review report and recommendations can be viewed in full at <https://www.humanrights.gov.au/our-work/sex-discrimination/projects/supporting-working-parents-pregnancy-and-return-work-national>.

The availability and accessibility of childcare is also a critical issue for women who are returning to the workforce following a period of parental leave. Recent research conducted by the Australian Bureau of Statistics shows that approximately 37% of the 276,500 women surveyed who wanted to start work or work more hours but were unavailable reported that 'caring for children' was the main reason for their unavailability.⁵² Further, 53% of people with children or who were caring for children reported that the incentive that was 'very important' to them to join or increase participation in the labour force was 'access to childcare places'.⁵³

The Commission is concerned about the rationale contained in the SOC which indicates that future investment in childcare services justifies the proposed changes to the PPL Act. Specifically, the SOC states that the proposed amendments will:

enable Government resources to be refocused on other complementary measures to support working parents, including increased childcare support.⁵⁴

The Commission considers that a multi-faceted approach to supporting working parents, promoting women's workforce participation and ensuring economic security is necessary. This approach must involve investment in affordable and accessible childcare services and increased protections for employees from pregnancy and return-to-work discrimination.

Conclusion

The Commission considers that a national PPL Scheme should be continuously improved over time in order to bring Australia into line with international best practice. The proposed Bill introduces a retrogressive measure which is inconsistent with Australia's international human rights obligations. The Bill is also inconsistent with the object of the PPL Act and with other Government policies aimed at addressing gender equity and equality in Australia.

On this basis, the Commission recommends that the Bill not be passed in its current form.

I hope this submission assists in your consideration of the Bill.

Please do not hesitate to contact the Commission should you have any queries about this submission.

Yours sincerely

Elizabeth Broderick
Sex Discrimination Commissioner

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- ¹ Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, Report No. 47 (2009). At <http://www.pc.gov.au/inquiries/completed/parental-support/report>.
- ² Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, Report No. 47 (2009), XVI. At <http://www.pc.gov.au/inquiries/completed/parental-support/report/parental-support.pdf>.
- ³ *Paid Parental Leave Act (2010)* Cth, Section 3A.
- ⁴ *Paid Parental Leave Act (2010)* Cth, Section 3A.
- ⁵ Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, Report No. 47 (2009), L.19. At <http://www.pc.gov.au/inquiries/completed/parental-support/report>. The Productivity Commission did provide a caution that while detailed analysis of the projected additional leave was undertaken and presented, there were compelling reasons why caution should be used before basing policy decisions on the analysis.
- ⁶ Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, Report No. 47 (2009), L.19. At <http://www.pc.gov.au/inquiries/completed/parental-support/report>.
- ⁷ Commonwealth, *Parliamentary Debates*, Senate, 15 June 2010, 3215 (Senator Sherry, Assistant Treasurer).
- ⁸ Commonwealth, *Parliamentary Debates*, Senate, 15 June 2010, 3328 (Senator Fifield, Deputy Manager of Opposition Business in the Senate).
- ⁹ University of Queensland, *Paid Parental Leave Evaluation: Phase 3 Report* (2014), 7. At https://www.dss.gov.au/sites/default/files/documents/03_2015/finalphase3report_6_march_2015_0.pdf; University of Queensland, *Paid Parental Leave Evaluation: Final Report* (2014), 3. At https://www.dss.gov.au/sites/default/files/documents/03_2015/finalphase4_report_6_march_2015_0.pdf.
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- ¹⁵ University of Queensland, *Paid Parental Leave Evaluation: Phase 3 Report* (2014), 15. At https://www.dss.gov.au/sites/default/files/documents/03_2015/finalphase3report_6_march_2015_0.pdf.
- ¹⁶ University of Queensland, *Paid Parental Leave Evaluation: Phase 3 Report* (2014), 34, 42. At https://www.dss.gov.au/sites/default/files/documents/03_2015/finalphase3report_6_march_2015_0.pdf.
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- ¹⁸ Explanatory Memorandum, *Fairer Paid Parental Leave Bill 2015* (Cth), 2. At http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr5508_ems_b75827c4-eee2-4439-b333-2c70c36e26db%22.
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- ²⁵ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).
- ²⁶ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).
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- ⁴² Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, Report No. 47 (2009), 4.1. At <http://www.pc.gov.au/inquiries/completed/parental-support/report>.
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- ⁴⁶ Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, Report No. 47 (2009), XVIII. At <http://www.pc.gov.au/inquiries/completed/parental-support/report/parental-support.pdf>.
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