

Submission from Senator Natasha Stott Despoja to the Productivity Commission's Inquiry into Paid Maternity, Paternity and Parental Leave

On May 16 2002, I introduced Australia's first federal paid maternity leave legislation: a fully costed model for 14 weeks Government-funded leave at the minimum wage. Six months later, on November 28, the Human Rights and Equal Opportunity Commission, under then Federal Sex Discrimination Commissioner Pru Goward, called for the same model. I reintroduced my updated Bill to the Senate in September last year.¹

This submission draws on this model for paid maternity leave and outlines the way in which it would operate.

GENERAL OUTLINE:

The *Workplace Relations (Guaranteeing Paid Maternity Leave) Amendment Bill 2007* amends the *Workplace Relations Act 1996* and builds upon the existing provisions for unpaid parental leave to provide a system of paid maternity leave that will assist all eligible Australian working women who take time off from employment when they have a child.

The Bill provides 14 weeks Government-funded paid leave at or around the birth or adoption of a child for all eligible Australian working women, at the level of the minimum wage. If they earn less than this (eg. part-time or casual workers), the pay would be at their average wage.

Fourteen weeks is a minimal period by international standards, such as among developed countries, many of which have moved to extend the period of payment. This is a desirable outcome in the long term.

This Bill ensures women's labour force participation is recognised and, allows for superannuation payments to continue during the period of leave.

The scheme proposed in the Bill is minimalist. Preliminary costings² indicate that it would cost the Government in the vicinity of \$591.6 million in the first year of operation, not including offsets from Family Tax Benefit A and B and childcare.

However, this is much less than the estimated cost of \$1.23 billion for the current financial year alone.³

¹ *Workplace Relations (Guaranteeing Paid Maternity Leave) Amendment Bill 2007* September 13 2007

² Parliamentary Library costings '*Workplace Relations (Guaranteeing Paid Maternity Leave) Amendment Bill 2007* Explanatory Memorandum

³ 2008-09 Budget papers

The current minimum wage is set at \$522.12 per week. Employees who earned the minimum wage or above, on average, in the 12 months prior to their leave will be entitled to the minimum wage payment of \$7310 before tax for 14 weeks, unless they negotiate employer top-ups.

Paid maternity leave is overdue. I have had legislation on the Senate Notice Paper for more than six years, and yet, neither major party has supported such a scheme.

While this inquiry is charged with looking into various models of paid supports for working families, my model for paid maternity leave has already received support from a number of key business and industry groups including the Council of Small Business of Australia, Australian Industry Group, the Australian Hotels Association, Business and Professional Women and the ACTU, among others.

Legislating for a 14 week government-funded scheme at the minimum wage as the first step, represents the International Labor Organisation Maternity Leave Convention 183, and is also an affordable model that avoids burdening small business.

PAID MATERNITY LEAVE AS THE FIRST STEP:

This Bill specifically recognises ‘maternity’ and proposes that it is not to be transferred between parents except in exceptional circumstances.

This recognises the physical demands of the latter stages of pregnancy, birth, recovery from birth and establishment, where possible, of breast feeding. In this way, paid maternity leave is different from parental leave, to which both parents have access.

Considering this Bill recognises the importance of paid leave upon the birth or adoption of a child as a key component to restoring the balance between work and family life, legislating for paid maternity leave is the essential first step – before looking at models for paid parental leave.

The active participation of men in parenting is important, and deserves practical support by governments and employers. Some countries with advanced systems of work and family support provide paid parental leave for parents and leave it for parents to decide. In the longer term, it is hoped that Australia will move in this direction and improve the condition of general parental leave. At this point however, in the evolution of Australia’s work and family system, the fairer provision of a payment to more than two thirds of Australian women who do not receive any such payment is the pressing priority.

14 WEEKS AS THE MINIMUM STANDARD:

The Bill enshrines the International Labour Organisation Maternity Protection Convention 183 that stipulates “a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks.”⁴ This is a minimal

⁴ C183 Maternity Protection Convention, 2000 <http://www.ilo.org/ilolex/english/convdisp1.htm>

period by international standards among developed countries, many of which have a much longer period of leave.

ELIGIBILITY FOR PML:

The Bill provides the PML payment to full-time, part-time and casual women who have had at least 12 months continuous service with their employer.

The exclusion of employees with fewer than 12 months continuous employment with their employer is a fair requirement, given gestation is nine months.

This Bill requires that the amount of paid maternity leave granted to employees will be pro-rata, to ensure that employees who work less than the average hours of a full-time employee are only eligible for the paid maternity leave entitlement in accordance with the hours worked.

This Bill also provides a payment to eligible female employees other than employees of Federal, State and Territory governments, on the expectation and belief that these governments should provide at least equivalent paid maternity leave for their employees. It is unwieldy and unnecessary to make a federally-funded payment to State and Territory employees, whose employment costs are already met by taxpayers. Federal public servants currently receive 12 weeks paid maternity leave.

I have also included a provision within the Bill that requires the Workplace Relations Minister to direct the Department to hold a public inquiry into the possibility of extending paid maternity leave to self-employed and farming women. The inquiry would investigate the overall cost of the extension, recognising the importance of self-employed/farming women in the workforce.

The Workplace Relations Minister would also hold a review into effectiveness of the scheme where employers choose to make voluntary top-ups to employees, in addition to the minimum government paid maternity leave, as well as providing for an in-depth analysis on the impact of increasing an employee's payment from the minimum wage to a greater agreed amount.

EMPLOYED VS THE UNEMPLOYED:

This Bill aims to provide a system of paid maternity leave for working women, meeting a serious gap currently in our system of workplace practices.

Women who are not in the paid workforce can receive additional benefits for staying at home – ie Family Tax Benefit Part B gives extra assistance to single parent families and to families with one main income where one parent chooses to stay at home or balance a small amount of paid work with caring for their children.

A paid maternity leave scheme allows women to maintain their attachment to the labour force and also promotes retention of the skills and knowledge that they bring to the workforce.

Paid maternity leave as a workplace entitlement would help address women's disadvantage and inequality in the workforce as much by the legitimacy it gives working mothers, as by the financial incentive it offers.

SMALL BUSINESS:

While there has been concern in some areas of business about the potential costs of paid maternity leave, this Bill does not propose an employer-funded scheme of paid maternity leave, recognising the burden it would place on small businesses.

BABY BONUS AND PML:

Essentially, it is up to the Government to determine whether or not the Baby Bonus would still be available.

While the Baby Bonus does provide a reasonable payment to mothers on the birth of a child⁵, it fails to recognise the importance of women's labour force participation, or allow superannuation payments to continue throughout the leave period – something paid maternity leave recognises.

However, Subsection (14) within my Bill highlights that the paid maternity leave entitlement set up in this Bill would not affect the employee's entitlement to any related Commonwealth maternity payments, such as the Baby Bonus.



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⁵ Current payment for Baby Bonus is \$4258 and is due to increase to \$5000 on July 1. Figures derived from Centrelink <http://www.centrelink.gov.au>