

Submission to Paid Parental Leave Amendment Bill 2022  
Dr Leonora Risse

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

23 January 2023

Dear Community Affairs Legislation Committee,

Thank you for the opportunity to offer a submission to the Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022.

In my independent submission, I offer my professional expertise as an academic economist specialising in gender equality in the workforce.

If it would be of assistance, I would be pleased to offer support through further analysis and consultation.

Dr Leonora Risse  
PhD Economics (University of Queensland)  
Senior Lecturer in Economics, RMIT University  
Research Fellow, Women's Leadership Institute Australia

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## **Submission to Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022**

### **1. Key comments**

I strongly commend the Australian Government for elevating gender equality as a key value and goal in its policy agenda and ideological commitments. And for recognising the crucial need for national policy settings to evolve and expand, and be informed by best practice and evidence, to steer Australia towards the gender-equal country it aspires to be.

The proposed amendments to the Paid Parental Leave Bill are generally well aligned with the research evidence on what works to support gender equality in economic and societal outcomes and opportunities. The proposed changes constitute a significant improvement and are welcomed.

Of particular note, the amendment to specify a dedicated allocation to fathers or partners, on a non-transferable use-it-or-lose-it basis, is a critically important component. Australia's progress towards gender equality requires expanding the scope of policy to more fully consider men and break down traditional gender norms that limit men's capacity to step into non-traditionally roles. Of all of the possible policy levers that the Australian Government could implement to support its broader goal for gender equality, expanding paid parental leave for fathers through this use-it-or-lose-it provision is among the most crucial steps. It will contribute towards fostering an Australian culture where men's role in caregiving – both paid care roles in the workforce and unpaid care in the home – becomes socially and professionally legitimised, accepted and welcomed as an everyday norm. Achieving this cultural change can have impactful ripple effects for economic and social outcomes, particularly in relation to health and wellbeing.

Removing the labels of "primary" and "secondary" carers, expanding the personal and family income thresholds, and expanding the conditions for a father's or partner's eligibility, are all progressive steps to remove the gender-based assumptions that currently prevail in the existing legislation. Supporting single parents' entitlement to claim the full amount available is also an important equitable step.

To build on these proposed improvements, in this submission, I note several factors for legislators to consider:

- Risks of excessive flexibility in unallocated portion
- Factors to incentivise uptake by fathers
- Accelerating the timing of the proposed expansion to 26 weeks
- Inclusion of superannuation payment
- Provisions for evaluation and review
- Compatibility with international conventions on maternity leave rights

In particular, I would encourage legislators to consider increasing the non-transferable number of weeks specified for each parent/claimant. Relative to the proposed 2 weeks each, I would recommend 6 weeks, with reasons outlined in this submission. While this might be a consideration under the future expansion of the total amount to 26 weeks in future years (as has been indicated in other policy

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announcements by the Government<sup>1</sup>), I would recommend implementing the increase in this non-transferable allocation sooner rather than later, in order to accelerate progress in shifting gender norms and caregiving patterns.

I also note the imperative for government-funded paid parental leave policy to be complemented by mechanisms to better incentivise employers to expand their own provisions of parental and other care-related policies to their employees, including providing payments above the minimum wage rate that are commensurate to forgone earnings. These incentives could be through, for example, corporate tax settings, strengthening accreditation programs (such as expanding the Employer of Choice for Gender Equality (EOCGE) citation program facilitated by the Workplace Gender Equality Agency (WGEA)), promotion of best practice resourcing and information for employers, and innovations to address practical challenges for employers, particularly small and medium-sized organisations. It is important that the delivery of parental leave policy is seen as a *collective* responsibility (of governments, employers and communities) that delivers *collective* benefits across the whole of society.

The *complementary* roles of government-provided parental leave and employer-provided parental leave need thoughtful consideration. Given that the stated objectives of paid parental leave are multi-dimensional and broad in scope, in seeking to achieve these multiple goals, I would encourage the government-funded scheme to focus on the elements that most strongly deliver on the values and priorities that represent our aspirations for our country and that employer-provided schemes are less likely to be based on or motivated by. This is explained further in my points below.

## **2. Strengths of the amendments**

### **2.1. Revised Objects of the Act**

A strength of the amendment is that the revised 'Objects of this Act' are broader in scope and reflect the multiple dimensions of gender equality goals that Paid Parental Leave contributes towards.

These goals include supporting the health and wellbeing birth mothers/birth-givers and their children; supporting the opportunity for fathers and partners to bond with their newborn children as part of healthy family relationships; enabling women's sustained and full workforce participation and earnings capacity; and fostering a balanced sharing of caring responsibilities within families from the beginning of their family formation. These benefits will flow through to further positive outcomes, including towards narrowing gender gaps in economic outcomes, elevating the value of caregiving and shifting social attitudes towards the value of care, and fostering conditions in which men can develop more healthy concepts of masculinity.

These goals are well aligned with many of the dimensions of gender equality that were declared in the Women's Budget Statement in the October 2022-23 Budget.

### **2.2. Specification of use-it-or-lose-it allocation for father/partners**

The provision of non-transferable paid parental leave for fathers has demonstrated to be as a mechanism for strengthening women's attachment to the paid workforce and facilitating a more

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<sup>1</sup> Prime Minister; Minister for Finance, Women and the Public Service; Minister for Social Services (2022) 'Boosting Parental leave to enhance economic security, support and flexibility for Australia's families'. Media Release, Australian Government, 15 October 2022 <https://www.pm.gov.au/media/boosting-parental-leave-enhance-economic-security-support-and-flexibility-australias-families>

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gender balanced sharing of care responsibilities at home. It contributes towards shifting gender norms surrounding caregiving within households.

Concurrency arrangements (that is, allowing for a short period of concurrent care but limiting concurrency overall) are well designed. A short period of concurrency care can support circumstances where birth mothers are recovering from childbirth and can foster family bonding. At the same time, placing limits on this concurrency is important for promoting the conditions for fathers and partners to also independently care for their children, building the foundations for a more balanced sharing of caregiving behaviour.

Canada provides evidence to support the effectiveness of this change. The province of Québec implemented the Québec Parental Insurance Plan in 2006, which provided of five weeks of non-transferable parental leave to fathers, paid at 70% to 75% of wage replacement rate. This had the effect of increasing fathers' contribution to unpaid household duties, as well as increasing women's full-time labour force participation rate.<sup>2</sup> Furthermore, providing parental leave for fathers has been shown to reduce traditional gender role attitudes amongst the next generation of children.<sup>3</sup> An important element of Québec's experience is that the payment rate, being commensurate with forgone income, was attractive enough to incentivise uptake among fathers. Legislators in Australia need to be mindful of this payment element when aiming to optimise uptake.

### 2.3. Expansion of individual income thresholds for mothers

It is a progressive step that the individual income thresholds for mothers has been expanded and I strongly support this change. I understand that there is some contention, within wider policy debates, about the justification for this expansion. Often the argument is put forward that higher-earning mothers and families are not in need of the financial support that paid parental leave offers. This perspective projects a 'welfare approach' to paid parental leave policy, rather than understanding the policy as an employment entitlement and a moral value statement on the part of government that all mothers are entitled to compensation for the paid income they forgo as part of childbearing.

If faced with any opposition or resistance towards this justification, I encourage legislators to understand this rationale through the economic concept of "opportunity cost". This is the income that women forgo if they take time out of the workforce to have children. The more that a women earns, the *higher* opportunity cost she faces – that is, the more income she must give up. The payment component of parental leave is a way to mitigate this cost.

Rather than compare higher-earning women to lower-earning women when considering justifications for eligibility, I would instead encourage critics of this proposal to use a more appropriate comparator: the experiences of higher-earning women to higher-earning men. While (higher-earning) women have to give up their earnings to take time out to give birth, the (higher-earning) men generally do not. Often higher-earning women are in senior roles and leadership positions where women are under-represented, and maintaining their ongoing attachment to employment is important for broader gender equality goals. If these women are on a high enough income, or have access to sufficient employer-funded provisions, that they do not need the government-funded entitlement, then they

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<sup>2</sup> Dunatchik, A. and Özcan, B. (2019) Reducing Mommy Penalties with Daddy Quotas, Working Paper No. CASE/213, Centre for Analysis of Social Exclusion, London School of Economics; Patnaik, A. (2019) Reserving time for Daddy: The consequences of fathers' quotas, *Journal of Labor Economics*, 37(4): 1009-1059; Wray, D. (2020) Paternity Leave and Fathers' Responsibility: Evidence From a Natural Experiment in Canada, *Journal of Marriage and Family*, 82(2): 534-549.

<sup>3</sup> Unterhofer, U. and Wrohlich, K. (2017) Fathers, Parental Leave and Gender Norms, IZA Discussion Paper No. 10712.

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do not need to take it. But providing them this entitlement can be justified as a matter of both gender equity and economic reasoning.

### 3. Omissions and other elements for consideration

#### 3.1. Excessive flexibility of unallocated leave portion

In calibrating the exact design of the policy, it is understandable that some goals of the policy need to be traded off against other goals, and that the overall budget considerations place constraints on the overall generosity of these provisions. In weighing up which elements of the scheme to prioritise, I would encourage legislators and policymakers to mindfully consider how government-funded paid parental leave serves as a complementary policy, but also has a distinct purpose, from employer-funded parental leave.

The design of government-funded policy is a statement of the country's values. It's an assertion of the outcomes that we prioritise as a country and that the Australian Government takes responsibility for. It is an opportunity for the government to provide important elements of the policy that private sector employers cannot necessarily be relied on to deliver.

I highlight this distinction because should be mindful that the original purpose of maternity leave is the protection of birth mother's and children's health as part of mothers' reproductive rights, and the protection of a new mother's job as part of women's employment rights. It is important that the maternal protection element of parental leave does not become fully overshadowed by other purported objectives of the policy's design as it evolves over time. Alongside protecting maternal rights, it has been increasingly recognised that policy needs to be designed in a way that actively promotes gender equality in caregiving, and therefore articulates a role for fathers and partners as part of this childrearing and caregiving activity.

With this in mind, I would caution policymakers against placing too strong a priority on the element of "flexibility" in the policy design. **Flexibility should be considered a mechanism by which to achieve the other objects of the Act, rather than a goal in itself.** The goal of "flexibility for families to balance work and family life" is a goal that is a widely elevated goal, and a common part of the corporate discourse, of businesses and employers. Flexibility can be a tool that supports employers' interests, because it facilitates employees' ability to maintain their ongoing attachment to the workforce, and can be a recruitment and retention tool to attract workers whose personal circumstances don't fit the mould of default employment arrangements.

In relation to government-funded paid parental leave policy, flexibility should be valued but only if it is proven to contribute towards a higher uptake of leave and the achievement of the national goals that the government is striving to achieve and take accountability for – outcomes such as supporting child health and development, supporting both parents' involvement in caregiving, narrowing gender gaps in workforce participation rates and earnings, and ultimately contributing to the improved health and wellbeing of parents and their children.

Some elements of flexibility are certainly a positive feature, especially for accommodating the wide variety of household compositions and different working arrangements that Australian families experience. Allowing greater flexibility in the timing of the days of leave taken (that is, permitting claimants to take leave for as little as one day at a time, rather than a continuous block of time) could contribute towards higher overall uptake by enabling parents to time their usage of leave in a way that best suits their household and work schedules. However, allowing such a generous unallocated proportion of time for parents to choose how to allocate between themselves (i.e. specifying such a

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small number of weeks as non-transferable leave for each parent/caregiver) is likely to do little to change existing gender patterns in care-giving among families and actually could work against other important goals, including protecting birth mothers' recovery from childbirth. It is likely that, in most families, the parent with the lower labour market income will take the full duration of the unallocated portion of leave while the other parent will take the minimal 2 weeks. Given prevailing gender gaps in average earnings, in heterosexual couples it is most likely going to be the birth mother who takes the full or bulk of the unallocated portion, which would have the effect of reinforcing gender norms.

The international experience cautions against a policy with such a sizeable portion of unallocated leave. Denmark provides us with an instructive example: Denmark removed the non-transferable allocation for fathers, leading to a flatlining in fathers' usage of parental leave while the uptake of paid parental leave continued to climb in comparable countries of Iceland, Sweden and Norway which retained a non-transferable portion for fathers. The plateauing of father's uptake in Denmark was most notable among lower-educated men who generally have weaker job security, suggesting that the absence of a designated allocation for fathers also carries the risk of disadvantaging men from lower socioeconomic backgrounds.<sup>4</sup> Australian legislators should note that, in August 2022, Denmark reinstated a policy that contains a non-transferable paid parental leave for fathers, consistent with the new EU Directive.<sup>5</sup>

Iceland, which is well recognised as among the best practice policy designs internationally, has long had a policy in place which allocated one-third of the total allowance to each parent (i.e. 3 months non-transferable, use-it-or-lose-it for each parent) and the remaining one-third (the remaining 3 months) as an unallocated allowance to divide between them as they choose (all paid at 80% of their wage). Recently Iceland increased the overall portion of leave that is the designated for each parent (that is, it reduced the share of leave that is unallocated) while also expanding the overall leave amount.<sup>6</sup>

**It is highly recommended that the non-transferable allocations of government-funded paid parental leave are increased to 6 weeks for each parent/claimant (instead of the proposed 2 weeks each).**

**Specifying 6 weeks for birth mothers acknowledges the importance of maternal recovery from childbirth for maternal and child health. Specifying 6 weeks for fathers and partners legitimises and endorses the role of fathers and partners as part of childrearing and caregiving.**

Through mindful design, government-funded parental leave policy can play a fundamental role in supporting maternal health in recovery from childbirth, supporting child health and development, and nurture a society that moves away from the constraints of traditional gender norms and enables men and women to be both care-givers *and* active workforce participants throughout their lives. "Flexibility" can be part of the architecture of design of the policy, but I would encourage the government to be alert to inadvertently absorbing the corporate rhetoric and objectives of private sector businesses, at the potential expense of the state responsibilities and opportunities that are unique to government. Leaving this "unallocated leave" feature of the policy so open to the variabilities of flexibility is a missed opportunity for government to clearly assert the priorities and

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<sup>4</sup> Rostgaard T. and Ejrnæs, A. (2021) 'How different parental leave schemes create different take-up patterns: Denmark in Nordic comparison', *Social Inclusion*, 9(2): 313–324.

<sup>5</sup> Preisler, A. (2022) Dads on equal footing with mums in Denmark's new parental leave law, *Nordic Labor Journal*, 18 August 2022.

<sup>6</sup> The Nordic Council and the Nordic Council of Ministers, *Nordic Cooperation* (undated) Maternity/Paternity leave in Iceland <https://www.norden.org/en/info-norden/maternitypaternity-leave-iceland>

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purpose of the policy, and to lead social change in shifting behaviours and gender norms. A function of government-funded parental leave is of course to also articulate fundamental provisions for workers who do not have employer-funded provisions: the current amendment maternity protection for mothers alongside endorsement of fathers' involvement in caregiving will fail

Personally, I would also contend that I would much prefer to see taxpayers' funding being used in a way supports these specific goals that are good for overall society – that is, supporting maternal rights and child health after childbirth - and endorsing greater involvement by fathers in caregiving – rather than financially supporting families in such an unstructured, open-ended way which may not even lead to improved gender equality.

### 3.2. Optimising uptake and accelerating change

While the proposed expansions to eligibility may help to increase usage by fathers who were previously ineligible, among those who are eligible, there are no policy levers in place to “nudge” father and partners to increasing their existing usage beyond the non-transferable existing amount of two weeks. As such, specification of only two weeks for each parent is sufficient to induce any meaningful shift in current usage patterns among fathers/partners. The current proposal for two weeks for each claimant is unlikely to induce significant change in the sharing of care, due to the “power of the default”. This insight from behavioural design teaches us that the calibration of the policy design sets the “social expectation” for the choices and behaviours that people are likely to take.<sup>7</sup> It is logical to expect that uptake among most fathers is unlikely to go beyond the two weeks allocation as this is the current norm. The fact it is paid at the minimum wage rate and absence of superannuation are further reasons to disincentivise uptake by men if they are the higher income-earner within the household.

While best practice models internationally include an element of flexibility in usage, they also specify that a significant portion of the total leave amount should be in the form of a non-transferable allocation for both parents. In the case of Iceland, for example, one-third of the total leave amount is allocated to the birth mother, one-third to the father/partner, and the remaining third is unallocated for families to choose how to distribute. In contrast, the proposed amendment to the

The Canadian experience also attests to the fear of negative stigma that fathers faced in their own workplaces when aspiring to make use of the parental leave on offer to them, reflective of the power of social norms and default expectations.<sup>8</sup> Beyond this legislation, strategic investment is therefore also needed to shift cultural norms surrounding the expected roles of men in society to make it more socially legitimate for men to take on these caring and parental roles. The Nordic countries, for example, have invested in public campaigns to promote fathers taking leave.<sup>9</sup>

I understand that the Government has already set a path to increase the total amount of PPL available at increments of 2 weeks per year until the scheme eventually reaches 26 weeks in 2026. Presumably this staggered approach is due to the costings issue for the Budget. In making this trade-off between

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<sup>7</sup> Behavioural Economics Team of the Australian Government (BETA) (2018) *Harnessing the power of defaults*, Governance Note, Department of the Prime Minister and Cabinet, Australian Government.

<<https://behaviouraleconomics.pmc.gov.au/sites/default/files/resources/harnessing-power-defaults.pdf>>

<sup>8</sup> Harvey, V. and Tremblay, D.G. (2020) Paternity leave in Québec: between social objectives and workplace challenges, *Community, Work and Family*, 23(3): 253-269.

<sup>9</sup> For example, see Guðrún Helga Sigurðardóttir, photo: Arnþór Birkisson (2020) “Iceland: Paternity leave a boost to men’s identity” <http://www.nordiclbourjournal.org/i-fokus/in-focus-2020/theme-nordic-council-of-ministers/article.2020-01-07.2457767603>

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the costs implications and the full realisation of the scheme, and I would encourage the government and legislators to consider:

- the efficiency costs associated with further amendments to legislation, administrative procedures and public communications each time that an increase to the PPL leave entitlement is made;
- the possibility that mothers will be pressured to delay pregnancy or the timing of their child's birth in order to attain eligibility for more generous entitlements. This timing effect in delaying delivery among expectant mothers was found to have occurred with the introduction and staggered increases in the amount of the Baby Bonus payment, with potentially harmful consequences and risks.<sup>10</sup>
- the possibility that a staggered approach by government will induce inertia in policy development among private employers, if businesses become reliant on government's expanded provision to do the "heavy lifting" and convey a sense of progress. Often employees are unclear about which part of their leave entitlements is government-funded and which part is employer-funded. Increasing the government-provided entitlements in just one or two clear phases makes it clear which part of the policy change is being provided by government. It also provides a more stable policy landscape in which employers can operate and calibrate their own policy provisions.
- the fact that staggering the policy's expansion, while stalling the increased cost implications for the budget, will also stall the economy's capacity to realise the full benefits of this scheme. It means it will take longer for Australia to reap the economic benefits of this investment and to make progress on gender equality goals, and gives more time for existing gender norms to exert their power. It means more time that Australia will continue to lag behind the OECD average in parental leave provisions.<sup>11</sup>

**The non-transferable allocations for each parent/claimant should be increased, and this can be achieved as the total amount of leave allowance is increased as part the proposed phased expansion of policy on offer over time.**

**The Government should deeply consider implementing the proposed 26 weeks expansion in one accelerated step instead of a staggered implementation over multiple years.**

### **3.3. Payment of superannuation during leave**

In presenting its recommended model for Paid Parental Leave policy for the Australian Government, Productivity Commission's Inquiry into Paid Parental Leave<sup>12</sup> also included a recommendation that the scheme include superannuation as part of the overall scheme's design:

"Employers should participate in the scheme by ... providing superannuation contributions for long-term eligible employees, though this measure should be deferred for at least three years and reviewed at that time."

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<sup>10</sup> Gans, J.S. and Leigh, A. (2009) Born on the first of July: An (un)natural experiment in birth timing, *Journal of Public Economics*, 93(1-2): 246-263.

<sup>11</sup> OECD (2022) Child-related leave. OECD Family Database, OECD Directorate for Employment, Labour and Social Affairs <https://www.oecd.org/els/family/database.htm>

<sup>12</sup> Productivity Commission (2009), Paid Parental Leave: Support for Parents with Newborn Children, Inquiry Report No. 47, Australian Government.



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The Inquiry recommendations provided the following detail:

*“Depending on a review to be held three years after program inception, payment of superannuation contributions while on leave, with benefits to only apply to the actual salary of the employee or the adult minimum wage, whichever is lower. Mandated contribution rates limited to the statutory 9 per cent rate, but no bar to negotiation for higher amounts.” (p. XXVI) (Noting the statutory rate was 9 per cent at the time of the Inquiry and has since increased)*

*“Employers would fund any future implementation of superannuation contributions, but only to long-term employees (12 months) eligible for super on their wages prior to the scheme.” (p. XXVI)*

The Productivity Commission’s Inquiry included evidence to support this recommendation, especially highlighting the disproportionate impacts of childbearing on women’s labour market involvement, accumulated earnings and superannuation balances.

However, this recommendation was evidently not taken up by the Government and it is not apparent that a review of this particular policy feature was ever conducted either.

The reasoning the Productivity Commission gave for the deferral of the implementation of the employer-funded superannuation payment was the financial impact of the GFC on business costs at the time that the Inquiry was being conducted. Although there are several elements of the Productivity Commission’s proposed scheme that would be progressive to now change (eg. removal of the primary and secondary labels), the reasoning given for the inclusion of superannuation payment still stands. The positive outlook for the Australian economy and strength of Australian businesses (including forecast decline in inflationary pressures for the 2023-24 outlook) means that the justification for deferral is less pertinent now. If a superannuation component is implemented in future years, it will be crucial to engage employers, be alert to potential unintended effects of imposing this cost on businesses, and to monitor for compliance, as was also part of the Productivity Commission’s original recommendation.

**The moral and economic justification still stands for the inclusion of superannuation payments on paid parental leave. An employer-funded model has already been thoroughly considered and proposed by the Productivity Commission. Legislators should consider the inclusion of this element in the current Bill.**

### **3.4. Provisions for evaluation and review**

The 2022 Bill does not appear to make any provision for a legislated review of the scheme, as was previously prescribed in the original 2010 legislation.

The PPL 2010 Act (Section 307A) stated:

#### **307A Review of the operation of this Act**

- (1) The Minister must cause a comprehensive review of the general operation of this Act to be begun by 31 January 2013.
- (2) The review must consider the following matters:
  - (a) the amount of time off work that primary carers are taking to care for newborn or newly adopted children;
  - (b) the availability and amount of leave and payments provided by employers in relation to the birth or adoption of a child, and the interaction of those entitlements with parental leave pay provided under this Act;
  - (c) the operation of the work test;

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- (d) whether primary claimants' partners should be paid parental leave pay separately from, or in addition to, primary claimants;
  - (e) whether employers should make superannuation contributions in relation to parental leave pay;
  - (f) the results of any evaluations conducted in relation to the operation of this Act;
  - (g) the administration of this Act;
  - (h) any other matter relevant to the general operation of this Act.
- (3) The Minister must ensure that public submissions are sought in relation to the review.
- (4) The Minister must cause a copy of a written report of the review to be tabled in each House of the Parliament within 15 sitting days of the day on which the Minister receives the report.

As per the 2010 legislation, a review was undertaken which involved a series of evaluation studies conducted by an independent academic team headed by University of Queensland's Institute for Social Science Research.<sup>13</sup> These evaluation studies generated important information on the usage of the policy and the extent to which it was meeting its objectives, and detected barriers to uptake especially among fathers.

Articulating a commitment to evaluate the policy as part of this 2022 Bill's amendment, and specifically to monitor patterns of usage as a result of the amendments, would provide critical information to guide the government's ongoing expansion of the policy, and demonstrate a commitment to evidence-based policy. It would be informative for this evaluative study to be carried out in as timely a way as possible following the introduction of the proposed changes, and for this evaluation process to continue as any further changes are made, so that the findings can inform future policy developments. For example, it would be highly informative for an initial evaluation to be conducted within a year of the amendments taking effect, and for interim evaluations to continue at yearly intervals or whenever further amendments are made. A longer-term evaluation could be conducted as a fuller review in several years' time, following the proposed full expansion to 26 weeks.

It will also be important that the relevant administrative data is made available to facilitate this review, meaning it is also necessary that appropriate data collection and sharing systems and permissions are currently in place to enable this. For example, there will be a need to ensure that data administrative records collect information on patterns of leave uptake for *each* claimant, detailing which claimant is the birth mother and the father/partner. It would also be highly informative for policy providers to collect patterns of concurrent or non-concurrent use, and patterns of the timing of their usage of leave (single days compared to blocks of time), as all of these elements will inform assessment of policy's effectiveness in achieving its stated goals.

**It is recommended that the Bill inserts provisions for interim evaluations and a full review to be conducted to assess the extent to which the Act is achieving its stated objectives.**

### **3.5. Compatibility with international conventions and recommendations**

The Bill states that the Amendment is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*."

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<sup>13</sup> Australian Government Department of Social Services (2021) Review of the Paid Parental Leave scheme <https://www.dss.gov.au/families-and-children/benefits-payments/paid-parental-leave-scheme/review-of-the-paid-parental-leave-scheme>; Paid Parental Leave Evaluation <https://www.dss.gov.au/our-responsibilities/families-and-children/programmes-services/paid-parental-leave-scheme/paid-parental-leave-evaluation>

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The Bill makes reference to the right to maternity leave contained within Article 11(2)(b) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which states that government are required to provide “maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances” and Article 10(2) of the ICESCR (International Covenant on Economic, Social and Cultural Rights) which states that “special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.” The Amendment also notes that the Bill “will not reduce the amount of payment birth parents can receive under the paid parental leave scheme.”

I draw legislators’ attention to the maternity rights that are prescribed under the conventions of the United Nations ILO (International Labour Organization). These ILO conventions prescribe that women should be entitled to a legally protected period of paid maternity leave, as follows:

- The ILO Maternity Protection Convention (C183) specifies that women should be legally entitled to a period of maternity leave of no less than 14 weeks.<sup>14</sup>
- The ILO Maternity Protection Convention (C183) further specifies that this should include a compulsory period of 6 weeks after childbirth for protection of the health of the mother and that of the child.<sup>15</sup>
- The ILO Maternity Protection Recommendation (R191) recommends that this period of maternity leave should be extended to at least 18 weeks.<sup>16</sup>
- The ILO Maternity Protection Recommendation (R191) also specified that, where cash benefits that paid with respect to maternity leave are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman's previous earnings.<sup>17</sup>

These conventions raise the important consideration that a legally protected period of maternity leave for mothers specifically is considered as a right to protect the health of the mother and child. It recognises the specific biological considerations involved with childbirth and the need for recovery of the mother/birth-giver, as part of reproductive rights. These are considerations that are not necessarily incompatible with other objects of maternity/parental leave (such as promoting more balanced sharing of caregiving within the family), however there is a risk that the pursuit of more open flexibility in paid parental leave policy settings could inadvertently compromise on these maternity protections.

Although Australia is a member of the ILO, it has not ratified the ILO Conventions relating to maternity protection. However, legislators should still be mindful that these are the international standards that exist and that it could be contested that Australia’s policy settings (current and amended) do not fulfil these international standards:

- Reducing the non-transferable guaranteed entitlement to 2 weeks for mothers/birth-givers falls short of the 6 weeks that is recognised as a necessary amount for health protection

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<sup>14</sup> ILO C183 - Maternity Protection Convention, 2000 (No. 183)

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312328:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312328:NO)

<sup>15</sup> ILO C183 - Maternity Protection Convention, 2000 (No. 183)

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312328:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312328:NO)

<sup>16</sup> ILO R191 - Maternity Protection Recommendation, 2000 (No. 191)

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312529:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312529:NO)

<sup>17</sup> ILO R191 - Maternity Protection Recommendation, 2000 (No. 191)

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312529:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312529:NO)

purposes under the ILO C183 (and clearly short of the full 14 weeks prescription and 18 weeks recommendation). Although it can be technically claimed that the Amendment provides the mother the right to claim up to 18 weeks in the form of the unallocated portion of leave, the amount that is explicitly designated to a mother/birth-giver can be interpreted as the amount that is protected (i.e. guaranteed) and legitimised (i.e. endorsed by the government). Relative to these international standards, this could potentially be interpreted as a shortcoming of the revised legislation.

- Payment at the minimum wage rate means that the leave payment is, on average for most women taking leave, below two-thirds of their previous earnings.

Also of note is the World Health Organization's recommendation that newborns are exclusively breastfed for 26 weeks.<sup>18</sup> Australia's limited duration of total paid parental leave – even if it eventually reaches a total 26 weeks to be shared across both parents – is not conducive to helping all families achieve this health recommendation. This limitation points to the importance of incentivising employer-provided provisions to build on government-provided components, as well as supporting parents' usage of legislated unpaid parental leave where necessary.

Ideally, Australia's paid parental leave policy settings will eventually expand to a period greater than 26 weeks, which will simultaneously support maternal recovery and child health, facilitate the recommended period of breastfeeding (for mothers and families that aspire to achieve this), and facilitate a greater involvement of fathers and partners in caregiving.

#### 4. Supportive material

If it assists legislators with their assessment of the current Bill, I can offer some data on employees' self-reported access to employer-provided parental leave, disaggregated according to some key characteristics of the job. This data was sourced from the HILDA Survey.

This data indicates that employer-provided parental (maternity/paternity) leave is less likely to be available to the following workers. In other words, **these are the workers who are counting on government-funded leave to support them and where the design of government's policy can make the biggest difference:**

- casual employees
- part-time employed
- smaller sized organisations and in the for-profit private sector
- Technicians and Trades Workers; Machinery Operators and Drivers, Labourers (noting these are traditionally male-concentrated industries)
- Agriculture, Forestry and Fishing; Construction (noting these are traditionally male-concentrated industries)
- Accommodation and Food Services; Administrative and Support Services (noting these are industries characterised by high staff mobility and turnover)

Please see Appendix at the end of this document for a tabulation of the data.

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<sup>18</sup> WHO (2023) Breastfeeding [https://www.who.int/health-topics/breastfeeding#tab=tab\\_2](https://www.who.int/health-topics/breastfeeding#tab=tab_2)

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## 5. Minor notes about Explanatory Memorandum

I note there are some statements in the Explanatory Memorandum where the wording could possibly be confusing and potentially misinterpreted.

The Memorandum states, in reference to the proposed Amendment, that:

“Generally, claimants who are partnered at the time they first claim parental leave pay will be able to receive a maximum of 18 weeks of parental leave pay *each*, with a maximum of 20 weeks between them per child.” (p. 3) (my italics added)

I query whether the use of the term “each” here is correct: as far as I understand, claimants each *have the right to receive* a maximum of 18 weeks, but between them, they will not each *be able to receive* 18 weeks.

Specification of “20 weeks maximum between them per child” helps to clarify this, but the initial statement itself could cause confusion.

The Memorandum states:

“A person can *never* receive more than 20 weeks of parental leave pay for a child.” (p. 3) (my italics added)

It seems needlessly definitive to use the word “never” here, instead of simply using the word “not”, especially since there are plans for the total number of weeks available to eventually expand to 26 weeks in total by 2026.

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## Appendix

Table 1: Share of employees with access to employer-provided Paid Maternity/Paternity Leave, 2020

	Paid Maternity Leave				Paid Paternity Leave			
	Yes	Unsure	No	Sum	Yes	Unsure	No	Sum
All employees	49.0%	16.2%	34.9%	100%	41.7%	21.8%	36.4%	100%
<b>Gender</b>								
Men	38.0%	17.3%	44.8%	100%	41.1%	19.8%	39.1%	100%
Women	53.0%	15.1%	32.0%	100%	42.3%	23.7%	34.0%	100%
<b>Employment contract</b>								
Permanent	65.5%	15.4%	19.1%	100%	56.2%	22.4%	21.4%	100%
Casual	15.7%	24.7%	59.6%	100%	11.7%	28.8%	59.5%	100%
<b>Working hours</b>								
Full-time	56.2%	14.0%	29.8%	100%	49.4%	19.2%	31.4%	100%
Part-time	35.8%	20.0%	44.2%	100%	27.8%	26.6%	45.6%	100%
<b>Sector</b>								
Private for-profit	35.8%	19.3%	44.9%	100%	30.4%	23.4%	46.2%	100%
Private not-for-profit	81.2%	7.0%	11.9%	100%	72.5%	14.6%	12.9%	100%
Public	82.8%	7.5%	9.7%	100%	72.5%	15.9%	11.6%	100%
<b>Geographic remoteness</b>								
Major city	51.8%	15.4%	32.9%	100%	44.3%	21.1%	34.7%	100%
Inner regional	44.2%	18.0%	37.8%	100%	37.5%	23.6%	38.9%	100%
Outer regional, Remote, Very remote	43.4%	16.4%	40.2%	100%	36.5%	22.2%	41.3%	100%
<b>Organisation size (number of employees)</b>								
Fewer than 20	24.6%	23.9%	51.5%	100%	19.5%	25.3%	55.2%	100%
20 to 99	39.4%	19.3%	41.3%	100%	31.9%	24.1%	44.1%	100%
100 to 499	54.3%	19.5%	26.2%	100%	43.7%	27.4%	28.9%	100%
500 to 999	62.4%	16.5%	21.1%	100%	53.5%	22.2%	24.4%	100%
1000 to 4999	70.5%	12.3%	17.3%	100%	62.1%	18.6%	19.3%	100%
5000 to 19999	76.1%	9.9%	14.0%	100%	66.5%	17.2%	16.3%	100%
20000 or more	77.0%	10.2%	12.7%	100%	68.3%	17.3%	14.4%	100%
<b>Occupation</b>								
Managers	53.1%	10.8%	36.1%	100%	47.0%	14.1%	38.8%	100%
Professionals	66.7%	9.2%	24.2%	100%	56.0%	16.9%	27.0%	100%
Technicians and Trades Workers	33.8%	21.0%	45.3%	100%	32.1%	23.3%	44.7%	100%
Community and Personal Service Workers	44.0%	18.4%	37.6%	100%	35.9%	25.5%	38.6%	100%
Clerical and Administrative Workers	55.9%	15.2%	28.9%	100%	46.7%	22.5%	30.9%	100%
Sales Workers	34.4%	24.1%	41.5%	100%	27.2%	30.9%	41.9%	100%
Machinery Operators and Drivers	30.7%	25.4%	43.9%	100%	29.0%	27.9%	43.2%	100%
Labourers	25.6%	26.9%	47.5%	100%	20.2%	30.9%	48.8%	100%
<b>Industry</b>								
Agriculture, Forestry and Fishing	16.8%	21.5%	61.8%	100%	15.2%	23.6%	61.3%	100%
Mining	61.1%	16.1%	22.8%	100%	57.8%	16.1%	26.1%	100%
Manufacturing	39.4%	21.3%	39.4%	100%	35.2%	24.0%	40.9%	100%
Electricity, Gas, Water and Waste Services	63.9%	16.0%	20.2%	100%	63.0%	14.3%	22.7%	100%
Construction	26.1%	17.4%	56.6%	100%	26.1%	17.5%	56.4%	100%
Wholesale Trade	40.1%	21.4%	38.5%	100%	31.1%	26.7%	42.2%	100%
Retail Trade	41.1%	21.9%	37.0%	100%	32.0%	30.4%	37.6%	100%
Accommodation and Food Services	18.2%	27.9%	53.9%	100%	13.2%	32.1%	54.7%	100%
Transport, Postal and Warehousing	43.7%	17.7%	38.6%	100%	37.3%	23.3%	39.4%	100%
Information Media and Telecomm.	60.9%	12.5%	26.6%	100%	56.9%	15.4%	27.7%	100%
Financial and Insurance Services	69.0%	8.7%	22.4%	100%	63.0%	13.7%	23.3%	100%
Rental, Hiring and Real Estate Services	31.0%	21.4%	47.6%	100%	23.8%	29.4%	46.8%	100%
Professional, Scientific and Technical	44.3%	14.4%	41.3%	100%	36.9%	19.4%	43.8%	100%

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Administrative and Support Services	24.2%	22.0%	53.8%	100%	20.6%	25.6%	53.8%	100%
Public Administration and Safety	84.0%	6.3%	9.6%	100%	78.3%	10.8%	10.8%	100%
Education and Training	70.7%	11.2%	18.0%	100%	60.6%	19.8%	19.6%	100%
Health Care and Social Assistance	58.5%	13.8%	27.7%	100%	45.6%	23.0%	31.4%	100%
Arts and Recreation Services	41.6%	15.5%	43.0%	100%	32.4%	22.5%	45.1%	100%
Other Services	28.9%	16.3%	54.8%	100%	25.0%	21.4%	53.6%	100%

Source: Author's calculations using Household, Income and Labour Dynamics in Australia (HILDA) Survey, 2020. Based on a total number of respondents of 9,259 individuals who were employed at the time of the survey. Each bar sums to 100%. Survey asks the question: *"Following is a list of conditions and entitlements that employers sometimes provide their employees. For each, please indicate whether you, or other employees working at a similar level to you at your workplace, would be able to use these if needed."* The survey gives respondents the option to answer "Don't know" which is reported in the table as "Unsure". Previous analysis suggests that respondents who answer "Don't know" are more likely to *not* have access, rather than have access.