

Chapter 2

Key issues

2.1 Amendments to the paid parental leave (PPL) scheme are being proposed in order to create a fairer, more targeted scheme and, in the case of the paymaster provisions, to remove unnecessary 'red-tape' for businesses. The Minister for Social Services, the Hon Scott Morrison MP noted in the second reading speech that 'this [2015 budget] measure will ensure government-funded payments under the Paid Parental Leave scheme are more fairly targeted to parents who do not also have sufficient access to employer-provided parental leave or similar payments'.¹ The Minister further noted:

This measure recognises the primary role of government-funded parental leave payments as a safety net. Payments should be aimed at people who need them most because they cannot access employer-funded payments at all or cannot access payments of the same value as, or higher than, the Paid Parental Leave scheme payments.²

2.2 The committee received a number of submissions that were supportive of the proposed changes to the employer paymaster obligations; all were supportive of the backdating provisions. The following issues were highlighted by submitters and witnesses:

- potential impacts on families;
- definition of primary carer pay and primary carer leave (clause 11F of the Bill);
- treatment of return to work bonus and salary sacrifice;
- backdating provisions; and
- paymaster provisions.

A fairer paid parental leave

2.3 In its submission, the Department of Social Services (the department) stated:

The changes will ensure that all eligible working mothers continue to have access to a base level of financial support following the birth or adoption of their child with those who need it most receiving the most support, while contributing to overall Budget capacity to improve the provision of affordable and accessible child care.³

1 The Hon. S. Morrison MP (Minister for Social Services), 'Second Reading Speech: Fairer Paid Parental Leave Bill 2015', House of Representatives, *Parliamentary Debates*, 25 June 2015, p. 7582.

2 The Hon. S. Morrison MP (Minister for Social Services), 'Second Reading Speech: Fairer Paid Parental Leave Bill 2015', House of Representatives, *Parliamentary Debates*, 25 June 2015, p. 7582.

3 Department of Social Services, *Submission 52*, p. 6.

2.4 The department highlighted that this measure will support 'in particular those mothers who are less likely to have access to primary carer pay (those on lower incomes, including self-employed and casually employed mothers)' and will continue to provide the 'full benefit of the Government scheme' to these mothers.⁴

2.5 Australian Business Industrial and NSW Business Chamber (ABINBC) noted that the proposal of a fairer, more targeted PPL scheme is part of a 'broader Budget repair strategy'. ABINBC help place the proposed amendments to the PPL scheme in context:

Timely and successful Budget repair is a crucial national objective; one which is being urged by senior business leaders, economic planners and economists.⁵

2.6 The Australian Chamber of Commerce and Industry (ACCI) agreed noting that the structure of the PPL scheme 'needs to be designed in a way that is fiscally responsible'.⁶

Who will be affected

2.7 Some submitters noted that many employers do not currently provide PPL schemes, meaning that women in these workplaces will see no change to the amount of PPL they receive under the proposed amendments. An evaluation of the current PPL scheme undertaken by the department found that:

Those mothers with higher incomes are more likely to have access to primary carer pay [employer funded PPL] and that mothers who were on lower incomes, self-employed or casually employed were less likely to have access to primary carer pay.⁷

2.8 The Australian Federation of Employers and Industries (AFEI) agreed stating:

The proportion of Australian workplaces (and small workplaces in particular which constitute the majority of Australian employers) offering employer paid parental leave, remains in the minority. Five years after the introduction of PPL, the fact remains that most employers do not pay paid parental leave, nor do they support doing so. Small businesses with 1–19 employees account for 93 per cent of all employing businesses in Australia, with 69 per cent employing 1–4 employees. Access to employer paid parental leave has been found to be more prevalent in the public sector (another avenue of tax payer funding), in large (financially strong) organisations and in relatively high income jobs.⁸

2.9 The Women and Work Research Group at the University of Sydney (WWRGUS) observed that 'the proportion of women employees with no employer

4 Department of Social Services, *Submission 52*, p. 6.

5 Australian Business Industrial and NSW Business Chamber, *Submission 33*, p. 3.

6 Australian Chamber of Commerce and Industry, *Submission 40*, p. 8.

7 Department of Social Services, *Submission 52*, p. 3.

8 Australian Federation of Employers and Industries, *Submission 47*, p. 1.

paid maternity leave is 49 per cent (90 000 mothers)', further noting that these mothers would have no reduction to their government PPL payment.⁹ AFEI also submitted that according to the department's review of the current PPL scheme that:

67 per cent of organisations did not offer employer funded paid leave, while just over half of large organisations (over 200 employees—less than one per cent of businesses), 22 per cent of medium and 7 per cent of small employers in the private sector offered paid maternity leave.¹⁰

2.10 In its submission, the Department of Social Services presented evidence detailing the different income levels at which families will be affected by the proposed changes. This can be seen in Table 1:

Table 1: Median levels of income at which the eligibility for PPL will change under the proposed changes

Eligibility for PPL under this Bill	Number of families affected	Percentage of families affected	Median claimant income	Median Partner Income	Median total family income
Not affected	88 333	53 %	\$39 000	\$63 000	\$102 000
Partially affected	45 000	27 %	\$43 000	\$65 000	\$108 000
No longer eligible	34 000	20 %	\$73 000	\$76 000	\$149 000

Source: Department of Social Services, *Submission 52*.

2.11 The committee notes that under this Bill over half of all families currently eligible for PPL will see no change to the PPL they will receive. Nearly 80 per cent will remain eligible for either a full or part PPL payment from the government. For those receiving a part payment, this will result in an average reduction of \$4 300.¹¹ It is only the remaining 20 per cent—with a median household income of nearly \$150 000—that will not be eligible for government PPL at all under this proposed amendment. The committee is satisfied that this Bill targets the provision of PPL to those families on low incomes with every family remaining entitled to a minimum PPL payment of \$11 824.

Potential impacts on families

2.12 Many submissions highlighted a range of perceived impacts that this Bill may have on families.

9 Women and Work Research Group, University of Sydney, *Submission 54*, p. 4.

10 Australian Federation of Employers and Industries, *Submission 47*, p. 2.

11 Department of Social Services, *Submission 52*, p. 5.

Parental leave period

2.13 The department's evaluation of the PPL scheme found that higher income mothers—who are most likely to lose the payment—'did not significantly change the amount of leave they took after the birth or adoption of their child' as a result of receiving PPL. Conversely, 'mothers who were on lower incomes, self-employed or casually employed significantly extended the time they took off work after the birth of their child' due to government provided PPL. As discussed earlier in this chapter, mothers in the latter group are unlikely to lose the payment, and as such, are not going to be forced to change the amount of time they will spend with their newborn.¹²

Employer funded PPL schemes

2.14 Submissions were divided on whether this proposed amendment may lead to changes in employer funded PPL schemes.

2.15 Some submissions argued that the reduction or removal of government PPL may lead to some employers reducing or removing their employer PPL altogether. The Australian Education Union contended that 'the Government will be eliminating or heavily reducing the value of employer provided PPL'.¹³ Others went further, stating that this amendment would lead to the removal of agreed conditions from current and future enterprise bargaining agreements.¹⁴

2.16 The ACCI disagreed with this argument, noting that a recent review of the current PPL scheme indicated that:

[R]elatively few employers withdrew or reduced their employer funded parental leave provisions as a consequence of the introduction of the PPL scheme, with survey data indicating that:

- 83 per cent of employers made no changes to their maternity/paternity leave policies following the introduction of PPL;
- of those that made changes to their policies, a very small percentage reduced or removed some of their parental leave entitlements but none removed their scheme entirely.¹⁵

This is unsurprising given that those employers who have made a commitment to employer funded parental leave benefits have done so of their own volition or through negotiation, typically as a means of attracting

12 Department of Social Services, *Submission 52*, p. 3.

13 Australian Education Union, *Submission 35*, p. 7.

14 See: Community and Public Sector Union State Public Services Federation Group, *Submission 36*; Australian Manufacturers Workers Union, *Submission 38*; Name and address withheld, *Submission 29*, p. [1]; Goodstart Early Learning, *Submission 22*, p. 2; Finance Sector Union of Australia, *Submission 23*, p. 8; Queensland Council of Unions, *Submission 37*, p. [2].

15 Australian Chamber of Commerce and Industry, *Submission 40*, p. 11. See also: Department of Social Services, *Paid Parental Leave Scheme Review Report*, 2014, p. 4, https://www.dss.gov.au/sites/default/files/documents/06_2014/paid_parental_leave_scheme_review_report.pdf (accessed 18 August 2014); AFEI, *Submission 47*, p. 2.

and retaining experienced and valued employees and in securing competitive advantage in the labour market.¹⁶

ABINBC agreed noting:

Few employers changed their schemes and the majority of those which did so rearranged their scheme to either or both extend the employee's overall period of paid leave and/or top up to replacement wage.¹⁷

2.17 In answers to questions on notice provided to the committee, the Australian Council of Trade Unions (ACTU) noted that the survey data collected as part of the review of PPL found that of those employers who offered PPL prior to the introduction of government PPL, none 'fully reduced or withdrew those entitlements'.¹⁸

2.18 This position was counterbalanced by a number of other submissions stating that the reduction or removal of government PPL would simply shift the cost of providing PPL to the employer. ABINBC noted that 'in some instances the pressure to reimburse will translate into bargaining pressure'.¹⁹

2.19 In evidence to the committee, Dr Marian Baird, Director of the WWRGUS noted that employers did not withdraw benefits when the government introduced the PPL scheme. Furthermore, it was unlikely that employers would adjust their schemes as a result of this Bill:

I will turn to two pieces of research we have done over the [sic] time. It was one of those questions that are puzzling for academics: if you introduce a government scheme, does that mean employers withdraw?...

But in fact we found on the whole that no, it did not work that way, which is quite interesting. It goes to the theory we have of institutionalism that companies will start to replicate each other's policies as they see those policies becoming an accepted and desirable part of their policy landscape. Many companies did introduce their schemes at the same time or just before the government scheme was introduced—Rio Tinto is an example there—which might surprise people...

I would say the whole understanding of that as a policy had shifted in Australia. Employers widely acknowledge and accept the need for maternity and parental leave and indeed go on to promote it, and many employers have actually expanded their parental leave to be more encompassing, more encouraging of men to use it and really part of their

16 Australian Chamber of Commerce and Industry, *Submission 40*, p. 11. See also: Department of Social Services, *Paid Parental Leave Scheme Review Report*, 2014, p. 4, https://www.dss.gov.au/sites/default/files/documents/06_2014/paid_parental_leave_scheme_review_report.pdf (accessed 18 August 2014).

17 ABINBC, *Submission 33*, p. 6.

18 ACTU, *Answers to Questions on Notice*, p. [2].

19 See: ABINBC, *Submission 33*, p. 6; Independent Education Union of Australia, Queensland and Northern Territory Branch, *Submission 39*, p. 3; Chief Executive Women, *Submission 50*, p. [4].

important suite of work and family policies. I think it has really shifted the dial, if you like, and this is part of the policy landscape now.²⁰

2.20 The committee is satisfied that this Bill will not directly influence the PPL payments that employers currently offer or will offer in the future. For those businesses or organisations that currently offer employer funded PPL, history shows that these conditions will be maintained or improved into the future.

Complementary schemes and childcare

2.21 Many submissions have highlighted their belief that the current government PPL scheme and employer funded PPL entitlement were intended to complement each other. YWCA Australia stated that:

[T]he current scheme is based on the principle that the minimum entitlements provided by the government would be complemented by employer schemes. Together with family contributions the intention was to achieve the optimal leave period recommended by the [World Health Organisation] WHO of 26 weeks.²¹

2.22 On this basis, some submitters argued that the scheme should be extended to facilitate the World Health Organisation's recommendation that paid parental leave should be provided for 26 weeks.²²

2.23 However, the committee notes that the *Paid Parental Leave Act 2010* currently provides for a PPL payment of 18 weeks leave at minimum wage. The Bill does not seek to amend the length of this leave payment, it merely seeks to position it as a safety net.²³

2.24 Another issue raised during the inquiry was childcare. In its submission to the committee, Goodstart Early Learning argued that 'the proposed changes to paid parental leave could have a significant impact on the demand for childcare for very young people'.²⁴

20 Dr Marian Baird, Director, Women and Work Research Group, University of Sydney, *Proof Committee Hansard*, p. 44.

21 YWCA Australia, *Submission 19*, p. 3. See also: Finance Sector Union of Australia, *Submission 23*; ACTU, *Submission 24*; The Parenthood, *Submission 27*; Victorian Automobile Chamber of Commerce, *Submission 28*; Australian Education Union, *Submission 35*; CPSU State Public Services Federation Group, *Submission 36*; Police Federation of Australia, *Submission 46*; University of New South Wales, *Submission 49*.

22 See, for example: Finance Sector Union of Australia, *Submission 23*, p. 2; ACTU, *Submission 24*, p. 4; WWRGUS, *Submission 54*, pp6–7.

23 The Hon S. Morrison MP (Minister for Social Services), 'Second Reading Speech: Fairer Paid Parental Leave Bill 2015', House of Representatives, *Parliamentary Debates*, 25 June 2015, p. 7582.

24 Goodstart Early Learning, *Submission 22*, p. [2]. See also: The Parenthood, *Submission 27*; Shop, Distributive and Allied Employee's Association, *Submission 32*; Women and Work Research Group—University of Sydney, *Submission 54*, p. 9.

2.25 As discussed earlier in this chapter, the provision of government funded PPL will only influence the length of parental leave taken for those on lower incomes. The committee has received unequivocal evidence that those on lower incomes will continue to receive the full government PPL payment of \$11 826. As such, it is clear to the committee that the passage of this Bill will not have an appreciable impact on demand for childcare places. In addition, the committee emphasises that this Bill is part of a broader families package announced as part of the 2015–16 Budget. The childcare component of this families package will provide more generous child care subsidies that will 'target low and middle income earners' resulting in more targeted support for those parents wishing to return to work.²⁵ The department estimates that 240 000 families will be 'encouraged to increase their involvement in paid employment because of the new childcare measures'.²⁶

Clause 11F

2.26 A number of submitters raised concerns about section 11F of the Bill—section 11F provides definitions for primary carer pay and primary carer leave—and how that may impact on a range of incentive based PPL payments such as return to work (RTW) bonuses.

Definition of primary carer pay and primary carer leave

2.27 Submitters raised concerns about the definition of 'primary carer pay'. In its submission, WWRGUS notes that:

Clause 11F(1) of the Bill states that the primary carer pay (PCP) from an employer which is to be deducted from Government PPL is 'an amount that an employer is legally obliged to pay an employee, under the terms of the employee's employment, because the employee is on primary carer leave for the child.' Whether a payment under a company policy is such a payment or a discretionary one, may not be obvious to an employee (nor even in some cases to their employer to whom they are likely to turn to for advice). What will occur where the status of an employer policy is unclear? Many employees whose employers have bound themselves to pay PCP [will] be disadvantaged by that commitment compared to those where the payment is discretionary? Are return to work payments/bonuses and superannuation payments to be considered as PCP? What will be stated in the rules which the Bill provides may prescribe which payments are or are not covered by the term PCP?²⁷

2.28 Ai Group agreed noting that 'it will be very difficult to determine whether or not the employer is "legally obliged to pay" the employee the parental leave payments under the employer PPL scheme'. Ai Group argued:

25 Australian Government, *Budget 2015: Supporting Australian Families*, <http://budget.gov.au/2015-16/content/highlights/families.html> (accessed 2 September 2015).

26 Senate Community Affairs Committee, 2015–16 Budget Estimates Hearings, *Answer to Estimates Questions on Notice SQ15–000771*.

27 WWRGUS, *Submission 54*, p. 5.

Employers and employees (large and small) cannot be expected to understand the current status of complex and highly contested principles of employment and contract law when determining whether the payments under an employer's PPL scheme meet the definition of "primary carer pay".

The uncertainty inherent in the definition of "primary carer pay" would be unfair to employers and employees because penalties of up to 60 penalty units (\$51 000) apply for breaches of the PPL Act.²⁸

2.29 During the hearing, Mr Stephen Smith of Ai Group elaborated on where he believed some of the uncertainty may lie if the Bill is passed:

Under the terms of the bill, the entitlement to government payments revolves around the concept of whether or not 'an employer is legally obliged to pay an employee' payments under the government PPL scheme. Where the employer's scheme is incorporated into an enterprise agreement, the issue would appear to be quite clear-cut. But where the employer's PPL scheme is incorporated into a company policy, which is very often the case, then considering whether the policy is a legal entitlement of an employee is an extremely complex issue. It would be necessary to consider the terms of the policy, any exclusion or disclaimers in the policy and in any policy manual; whether the policy is referred to in an employee's written contracts of employment, if such a written contract exists; how the policy is referred to in any written contract of employment, if it is not an express term of the employment contract; and whether it is an implied term of the employee's contract of employment. The issue of whether or not a company policy forms part of an employee's contract of employment has been the source of a great deal of legal argument over recent years.²⁹

Treatment of return to work bonus, top-up bonus and salary sacrifice

2.30 Unions NSW questioned what payment types may be included in the definition of 'primary carers wage'.³⁰ It is common in the retail industry for paid parental leave entitlements to be split into 2 payments, 'one at the commencement of the leave, the other as a bonus upon returning to work. Many employers do this to create an incentive for employees to return to work after the period of parental leave'.³¹

2.31 For example, Bunnings Hardware has a policy to provide:

28 Ai Group, *Submission 48*, p. 7.

29 Mr Stephen Smith, Head of National Workplace Relations Policy, Ai Group, *Proof Committee Hansard*, p. 46.

30 Unions NSW, *Submission 49*, p. [8].

31 Shop, Distributive and Allied Employees Association, *Submission 32*, p. 10.

8 weeks [PPL]...for 12 months service split in to 2 payments, 4 on commencement of leave and 4 RTW bonus upon completion of 6 months service after return.³²

2.32 This submission and others raise the question as to how these RTW payments will be factored into calculating a government PPL entitlement—will individuals receive PPL from the government only to repay part or all of this due to the delayed RTW payment? The Shop, Distributive and Allied Employees Association (SDA) states:

Due to the nature of the retail industry and the high proportion of part-time employees who often work varying numbers of hours and the built in complexities of the employer schemes, the proposed changes to the government PPL scheme will create a range of complexities for our members when they lodge a claim for the government scheme.

Many of our members will not be able to apply for the government scheme until after they receive the payment from their employer as they will be unable to accurately work out what their payment should be.³³

2.33 Other submissions have raised questions as to how other non-standard payments such as top-up payments will be viewed under the new scheme. For example, Bupa has a "top-up" program of paid parental leave that provides a top-up to the government PPL to allow for an employee to 'take the first 12 weeks of their paid parental leave...based on their ordinary rate of pay'. The Australian Nursing and Midwifery Federation state that it is unclear 'how such arrangements will continue in the event the [Bill] is enacted. On the face of it, employees who currently receive these paid parental leave provisions in their enterprise agreement will lose these benefits'.³⁴ The ACCI argued that 'it is important that payments linked to a primary carer's return to work should not be considered primary carer's pay for the purposes of determining eligibility to access the PPL scheme'.³⁵

2.34 SDA also discussed another area where complexities may arise in calculating a PPL entitlement, particularly those working in the retail sector or in jobs with variable working hours. Ms Katie Biddlestone of the SDA noted:

[T]he other complexity is: a lot of our members are part-time employees and they work fluctuating hours, so they might have a base number of hours they work but over a period of time they will work additional hours on top of that.

When it comes to working out their paid parental leave payment, most of the schemes for the employers are based on an average number of hours worked in the preceding six months.

32 Shop, Distributive and Allied Employees Association, *Submission 32*, p. 9.

33 Shop, Distributive and Allied Employees Association, *Submission 32*, p. 15.

34 Australian Nursing and Midwifery Federation, *Submission 41*, p. 18. See also: Ai Group, *Submission 48*, p. 8.

35 ACCI, *Submission 40*, p. 12.

Under the current scheme, our members are able to confidently put in an application for the government payment preceding the birth of their child. I think they have up to three months to apply, and they can nominate what date they want that payment to start, taking into account their employer payment, their annual leave and their long service leave if they have any. Under the new proposal, most of our members would not be able to calculate what their employer payment will be until they have received it, because it would be too complex to work that out, which means that many of our members will then have a break in income while they are on parental leave. For someone who is low paid, living from week to week, a break in their income can have a severe financial impact on them and their whole family.³⁶

2.35 Salary sacrifice provisions were another area where concern was expressed with regard to the proposed paymaster changes. At the moment:

Parental leave payments administered through the employer may attract the benefits of salary sacrifice. The Explanatory Memorandum confirms, under the proposed administration of the new Commonwealth scheme, payments made by government will not attract the benefits of salary sacrifice.³⁷

2.36 The Women Lawyers Association of NSW noted:

On a practical level, if the employer is not the pay-master, how is the payment accounted for in the employees' payment summary at the end of the year? Particularly for employees who salary sacrifice, this is an important consideration.³⁸

2.37 The Australian Nursing and Midwifery Federation note that salary sacrifice, and RTW and top-up bonuses are likely to present an unnecessary layer of complexity for employees:

It places an onerous and unfair responsibility on the employee who will be required to understand and apply the new parental leave provisions, interpret their entitlements under the enterprise agreement and have regard to any laws or regulations.³⁹

2.38 The committee acknowledges these genuine questions posed by families and other stakeholders. In answer to these issues about top-up and other payments, Ms Jody Anderson of the Department of Employment noted the small number of workplace agreements that contain these types of payments:

Since the scheme commenced, only 0.66% of enterprise agreements have included top-up arrangements in their enterprise agreements. So I suppose,

36 Ms Katie Biddlestone, National Women's Officer, Shop, Distributive and Allied Employees' Association, *Proof Committee Hansard*, pp 31–32.

37 Australian Nursing and Midwifery Federation, *Submission 41*, p. 18. See also: Ai Group, *Submission 48*, p. 17; Regulation Impact Statement, p. 4.

38 Women Lawyers Association of NSW, *Submission 53*, p. 7.

39 Australian Nursing and Midwifery Federation, *Submission 41*, p. 19.

in the scheme of things, we are talking about a fairly minor or small number of EBAs that actually have top-up arrangements.⁴⁰

2.39 The department has foreshadowed a consultation process that will provide a forum to ensure that this Bill is understood in the community and that the rules relating to these planned amendments are able to interact with the many types of workplace agreements.⁴¹ The committee is confident that the department's planned consultative process will allay many of the fears relating to clause 11F of the Bill, including definitions of primary carer pay/leave and how different types of payments will interact with the new scheme.

Other provisions of the Bill

Backdating provisions

2.40 The department explained how the backdating provisions will work:

These changes will provide parents with more time to lodge a claim by allowing them to backdate a claim by 28 days but not before the child's date of birth, regardless of when they lodge a claim during the child's first year.⁴²

2.41 Ms Jane Dickenson of the department described the basis for the proposed changes:

Under the current rules backdating is allowed for 28 days only if it is within 28 days of the birth. We thought it would improve the arrangements if someone had not quite gotten around to applying in the first month, and if they did go back to work or even if they had not gone back to work but were intending to go back to work before the 18 weeks were up and transferring to their partner, they could at least backdate for four weeks, because once you have actually gone back to work you are not eligible for PPL.⁴³

2.42 All submissions and witnesses were supportive of the backdating provisions proposed in the Bill. The ACCI note that:

The limitations on backdating to date have reflected the role of the scheme in providing financial support as part of the social safety net. The more

40 Ms Jody Anderson, Branch Manager, Participation and International Labour Branch, Workplace Relations Policy Group, Department of Employment, *Proof Committee Hansard*, p. 54.

41 Ms Jody Anderson, *Proof Committee Hansard*, p. 56; Ms Barbara Bennett, *Proof Committee Hansard*, p. 60.

42 Ms Barbara Bennett, Deputy Secretary, Department of Social Services, *Proof Committee Hansard*, p. 54.

43 Ms Jane Dickenson, Director, Paid Parental Leave, Department of Social Services, *Proof Committee Hansard*, pp 56–57.

flexible provisions proposed in the Bill will not compromise this and affording parents with greater flexibility to backdate claims is supported.⁴⁴

Paymaster provisions

2.43 Submissions and witnesses were divided on the issue of the paymaster changes outlined in Schedule 2 of the Bill.

2.44 The WWRGUS, citing the review of PPL conducted by the department, stated that:

[T]he majority of employers found it easy to organise PPL. More than four-fifth of organisations (81 per cent) agreed or strongly agreed with the statement "It was easy to organise payments for the scheme". Just 17 per cent of all organisations disagreed or strongly disagreed with this statement. There were no significant differences across organisational size or sector.⁴⁵

2.45 Other submitters also stated their opposition to the changes. The ACTU observed that:

PPL has particular objectives that are different to those of the welfare system. In particular, PPL is designed to encourage employees to take time off work to care for a newborn whilst remaining in employment. To be able to deliver on this fundamental objective the scheme needs to ensure that PPL provides a strong connection to the workplace. One of the ways that this is achieved is by requiring the employer to handle PPL payments.⁴⁶

2.46 The Finance Sector Union of Australia went further stating that:

[R]emoving the employer payroll function undermines the intention of the Act "to signal that taking time out of the paid workforce to care for a child is part of the usual course of life and work for both parents".⁴⁷

2.47 In contrast, others have agreed with schedule 2 of the Bill and advocated for the paymaster obligations to be made voluntary. The department has described this proposed change as easing 'the administrative burden on business by removing the requirement for employers to provide PPL scheme payments to their eligible long-term employees'.⁴⁸

44 ACCI, *Submission 40*, p. 13. See also: Ai Group, *Submission 48*, p. 6; Mr Stephen Smith, Ai Group, *Proof Committee Hansard*, p. 47.

45 WWRGUS, *Submission 54*, pp 10–11.

46 ACTU, *Submission 24*, p. 19. See also: National Foundation for Australian Women, *Submission 13*; Australian Human Rights Commission, *Submission 26*; Shop, Distributive and Allied Employees Association, *Submission 32*; Australian Education Union, *Submission 35*; CPSU State Public Services Federation Group, *Submission 36*; Australian Manufacturers Workers Union, *Submission 38*; University of New South Wales, *Submission 49*; Women and Work Research Group, University of Sydney, *Submission 54*.

47 Finance Sector Union of Australia, *Submission 23*, p. 8.

48 Department of Social Services, *Submission 52*, p. 6.

2.48 Others were supportive on the basis that it would remove red-tape for businesses. In its submission, ACCI described the paymaster obligations as:

Imbalanced [and] unjustifiably imposing a significant compliance burden upon employers and unsupported by any proper policy basis.⁴⁹

2.49 This submission noted that although the PC's 2009 Report into PPL stressed the importance of vesting the paymaster obligation with the employer, it provided no 'firm evidentiary foundation' for this assumption.⁵⁰ The department concurred, with its own review into the PPL finding that 'most employers felt it was too early to see if the PPL scheme would lead to improved rates of retention in the organisation following periods of parental leave'.⁵¹

2.50 Further, ACCI stated that a survey of its members found that '84.3% of businesses surveyed either agreed or strongly agreed "that the Government should not require employers to be the paymaster for the PPL scheme"'.⁵² The department noted that as part of its review into the PPL scheme it found that 'the estimated cost of implementing the PPL scheme ranged from \$250 to \$1 000'.⁵³ These costs represent an unnecessary and unfair regulatory burden on small business that, in some cases, may only attribute these costs to one employee. The Pharmacy Guild summarised the cumulative deleterious effect that this and other regulatory burdens place on businesses and employers:

[E]very time you add five hours to the administrative burden—and there have been plenty of those in pharmacy in the many years that I have been involved—it is a sort of death by a thousand cuts. Every little bit counts. Every few hours adds that additional burden.⁵⁴

2.51 During the hearing, The Pharmacy Guild highlighted existing provisions in the *Fair Work Act 2009* that act to protect an employee's connection to their workplace during the parental leave period.⁵⁵ These pre-date the *Paid Parental Leave Act 2010* and include:

- (a) access to 12 months unpaid parental leave;

49 ACCI, *Submission 40*, p. 5.

50 ACCI, *Submission 40*, p. 6.

51 Australian Parliamentary Library, 'Fairer Paid Parental Leave Bill 2015', *Bills Digest No. 12, 2015–16*, 19 August 2015, p. 5.

52 ACCI, *Submission 40*, p. 5. See also: Chamber of Commerce and Industry Western Australia, *Submission 9*; Victorian Automobile Chamber of Commerce, *Submission 28*; ABINBC, *Submission 33*; Pharmacy Guild of Australia, *Submission 45*; Ai Group, *Submission 48*.

53 Australian Parliamentary Library, 'Fairer Paid Parental Leave Bill 2015', *Bills Digest No. 12, 2015–16*, 19 August 2015.

54 Mr Peter Downing, Member, The Pharmacy Guild of Australia, *Proof Committee Hansard*, p. 37.

55 Mr Peter Downing, Member, The Pharmacy Guild of Australia, *Proof Committee Hansard*, p. 37.

- (b) return to work guarantee—either in their pre-leave position or if that has been made redundant, the next most appropriate position; and
- (c) keeping in touch days—that allow an employee to return to their job for a day or part day to briefly work. This enables an employee to 'keep in touch' with their job and their colleagues.⁵⁶

2.52 Mr Christopher Gatenby of The Pharmacy Guild noted that the Bill allows 'for an independent organisation to opt-in if they wanted to continue to provide those payments [employer paymaster] as well'.⁵⁷ Importantly, it is this flexibility within the Bill that allows larger organisations with more advanced or dedicated payroll resources to continue making the PPL payment if they choose, whilst at the same time allowing businesses or organisations that find the paymaster role to be an unnecessary burden to pass that responsibility back to the department.

2.53 The committee notes that there appears to be bipartisan support for consideration of changes to the employer paymaster provision. Although the Australian Labor Party (ALP) has noted previously that it will not support either of the measures in this Bill, the Shadow Minister for Families and Payments, the Hon Jenny Macklin MP has indicated that the ALP is prepared to consider modification to the employer paymaster provision:

[D]uring the 2013 campaign Labor took to the election a policy to enable businesses with fewer than 20 employees to streamline administration and have Centrelink make paid parental leave payments to their employees while on maternity leave. This was a sensible balance between the need to maintain a relationship with their employers while they are on paid parental leave and the need to give small businesses the option of having their paid parental leave administered by Centrelink.⁵⁸

56 Australian Government Fair Work Ombudsman, *Parental leave and related entitlements*, <http://www.fairwork.gov.au/about-us/policies-and-guides/fact-sheets/minimum-workplace-entitlements/parental-leave-and-related-entitlements#taking-unpaid-parental-leave> (accessed 4 September 2015). See also: *Fair Work Act 2009*. The committee notes that these provisions only apply to those who have worked for an organisation for 12 months or more. The current paymaster provisions also require an individual to have been employed by an organisation for 12 months or more before that employer is obligated to provide the paymaster duties for the PPL.

57 Mr Christopher Gatenby, National Manager, Government and Stakeholder Relations, Pharmacy Guild of Australia, *Proof Committee Hansard*, p. 38.

58 J Macklin, 'Second reading speech: Paid Parental Leave Amendment Bill 2014', House of Representatives, *Debates*, 29 May 2014, p. 4827, (accessed 29 July 2015). See also: Australian Parliamentary Library, 'Fairer Paid Parental Leave Bill 2015', *Bills Digest No. 12, 2015–16*, 19 August 2015, p. 6, http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1516a/16bd012 (accessed 26 August 2015).

2.54 The ALP tabled amendments to the Paid Parental Leave Amendment Bill 2014 in the Senate to exempt businesses with fewer than 20 employees from having to comply with an employer determination.⁵⁹

Committee view

2.55 The committee is satisfied that this measure will most likely affect those families with high median household incomes, whilst at the same time shielding those on lower incomes from any change. The committee reiterates that 53 per cent of families will see no change as a result of this Bill, whilst nearly 80 per cent will remain eligible for either a full or part payment. It is only the remaining 20 per cent—with a median household income of nearly \$150 000—that will not be eligible at all for government PPL under this proposed amendment. It is important to note that these households will still remain eligible for employer funded PPL. It is also clear to the committee that this Bill will not lead to any reduction in the length of parental leave taken, or any reduction or removal of employer funded PPL entitlements.

2.56 The committee is confident that the planned consultation process to be facilitated by the department will allay any concerns relating to the roll-out of the new PPL scheme. The committee highlights the need to consult on issues relating to clause 11F of the Bill, specifically in relation to primary carer pay/leave and how payments such as RTW and top-up bonuses will be administered within the scheme.

2.57 The removal of the employer paymaster obligations will relieve the unnecessary administrative costs on businesses, in particular small business. Whilst retaining these obligations as voluntary will allow larger organisations with dedicated payroll resources to continue providing the payment of government PPL if they choose. Finally, the committee notes there is strong unanimous support for the backdating provisions in this Bill.

Recommendation 1

2.58 The committee recommends that the planned comprehensive consultation process is established and conducted to ensure that concerns relating to primary carer pay and primary carer leave are resolved to provide clarity for all parents.

Recommendation 2

2.59 The committee recommends that the Senate pass the Bill.

59 Australian Parliamentary Library, 'Fairer Paid Parental Leave Bill 2015', *Bills Digest No. 12, 2015–16*, 19 August 2015, p. 6. See also: Parliament of Australia, 'Paid Parental Leave Amendment Bill 2014', Amendments to be moved by Senator Moore, on behalf of the Opposition, in committee of the whole, Australian Parliament website, 17 June 2014, accessed 29 July 2015.

Senator Zed Seselja
Chair