

The Senate

Community Affairs
Legislation Committee

Fairer Paid Parental Leave Bill 2015
[Provisions]

September 2015

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MEMBERSHIP OF THE COMMITTEE

44th Parliament

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| | |
|--------------------------|----------------------|
| Senator Jenny McAllister | New South Wales, ALP |
| Senator Larissa Waters | Queensland, AG |

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ABBREVIATIONS

| | |
|------------|---|
| ABINBC | Australian Business Industrial and NSW Business Chamber |
| ACCI | Australian Chamber of Commerce and Industry |
| ACTU | Australian Council of Trade Unions |
| AFEI | Australian Federation of Employers and Industry |
| ALP | Australian Labor Party |
| Department | Department of Social Services |
| PC | Productivity Commission |
| PJCHR | Parliamentary Joint Committee on Human Rights |
| PPL | Paid Parental Leave |
| RTW | Return To Work Bonus |
| SDA | Shop, Distributive and Allied Employees Association |
| WWRGUS | Women and Work Research Group, University of Sydney |

LIST OF RECOMMENDATIONS

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.

Chapter 1

Introduction

Referral

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

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

Background

Paid Parental Leave Act 2010

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

1.4 This report found that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Paid Parental Leave Amendment Bill 2014

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

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

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

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

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

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

Fairer Paid Parental Leave Bill 2015 [Provisions]

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

Key provisions and purpose of Bill

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

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

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

1.17 The Bill is comprised of two schedules.

Schedule 1—Adjustment for primary carer pay, etc

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

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

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

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

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

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

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

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

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

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

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

1.21 These changes are intended to commence from 1 July 2016.²³

Schedule 2—Employer opt-in

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

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

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

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

1.25 These changes are intended to commence from 1 April 2016.²⁶

Conduct of Inquiry

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

1.27 The committee received 55 submissions to the inquiry.

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

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

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

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

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

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

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

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

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

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

Consideration of the Bill by other committees

Scrutiny of Bills

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

Human Rights

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

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

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

Acknowledgement

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

Note on References

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

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

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

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

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

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

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

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

Australian Labor Party Senator's Dissenting Report

Introduction

1.1 The Labor Senators on this Committee hold grave concerns about the unfair and unwarranted changes contained in the Fairer Paid Parental Leave Bill 2015 (the Bill).

1.2 The Bill seeks to cut around \$1 billion in Paid Parental Leave (PPL) payments to new parents. The evidence presented to the Committee shows that these cuts will come at the expense of the family budget. They will undermine valuable workplace retention strategies and employment engagements tools, and as such run contrary to both the design and purpose of the current Paid Parental Leave (PPL) Scheme.

1.3 Labor Senators are of the view that these cuts to PPL will be devastating for new parents, who will be forced to spend less time with their newborn babies in those precious early months of their child's life. Labor Senators oppose the Bill and recommend that it be rejected by the Senate.

The Current PPL Scheme

1.4 In 2011, Labor introduced Australia's first ever national PPL Scheme. The current PPL scheme provides 18 weeks leave at the minimum wage. This amounts to a total of around \$11 800 in support for new parents, to assist them to spend time out of the workforce in the early months of their children's life.

1.5 In addition to the national, government-funded scheme, many parents have negotiated paid or unpaid leave with their employers, which have the effect of 'topping up' the national, government-funded PPL scheme, allowing them to extend their period of leave beyond 18 weeks.

1.6 Since it was introduced, more than 550 000 Australian parents have accessed Labor's scheme. During this time, Labor's PPL scheme has been the subject of extensive evaluation. The final report of that evaluation found clear benefits of Labor's PPL scheme, particularly in extending the period of time new mothers are spending with their children. The final report said:

One of the key findings of the evaluation was that PPL had a clear effect of delaying mothers' return to work up to about six months after the birth of their baby.¹

1.7 The evaluation found that Labor's PPL scheme was particularly important for low and middle income families, many of whom lacked any PPL prior to the introduction of the Scheme. In short, the national, government-funded PPL scheme designed by Labor is doing exactly what it was intended to do.

1 Paid Parental Leave Evaluation Phase 4, p 4.
https://www.dss.gov.au/sites/default/files/documents/03_2015/finalphase4_report_6_march_2015_0.pdf

Impact of the Proposed Changes

1.8 The Labor Senators on this Committee are concerned that the changes proposed in this Bill will undermine the positive impact that PPL is having on families in the early months of a child's life. As Marion Baird from the Women and Work Research group made clear in evidence presented to the Committee:

The proposed changes have the potential to reverse the positive impacts of the current scheme on women and their infants' health outcomes; that the changes will reduce income and may force women to return to work earlier than desired and therefore may impose increased demand on a childcare system already under pressure.²

1.9 The changes proposed in the Bill will result in 80 000 new parents losing access to the national, government-funded PPL scheme. Around 34 000 will lose all of the \$11 800 government-funded scheme and a further 45 000 will lose part of their entitlement.

1.10 According to the submission from the Parenthood:

It is expected that the proposed changes will result in almost half of all of new parents currently entitled to PPL losing a substantial amount of their paid leave.³

1.11 Whilst the Government has sought to argue that the impacts of this Bill will only be felt by public servants on high incomes, data from the Department of Social Services has shown that new parents earning less than \$10 000 a year will also be impacted by the proposed changes.⁴

1.12 The Government's own modelling estimates that 45 000 new mums with a median income of just \$43 000 will lose part of the 18 week government entitlement, receiving around \$4 300 less than they otherwise would have under the current government funded PPL scheme.⁵

1.13 The same figures also show that some new parents earning less than \$30 000 a year will lose \$11 800 in PPL. A total of 34 000 mums with a median income of \$73 000 will lose all 18 weeks of the taxpayer funded parental leave scheme if the changes go through the Senate.⁶

1.14 These changes will impact new parents employed in a range of different sectors, including retail, cleaning, administration, hospitality and public servants like nurses, teachers and police. The Labor Senators on this Committee reject the assertion that this measure will only impact high income earners. Rather, it will significantly

2 Dr Marian Baird, Director, Women Work Research Group, University of Sydney, *Proof Committee Hansard*, p 40.

3 The Parenthood, *Submission 27*, p 2.

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

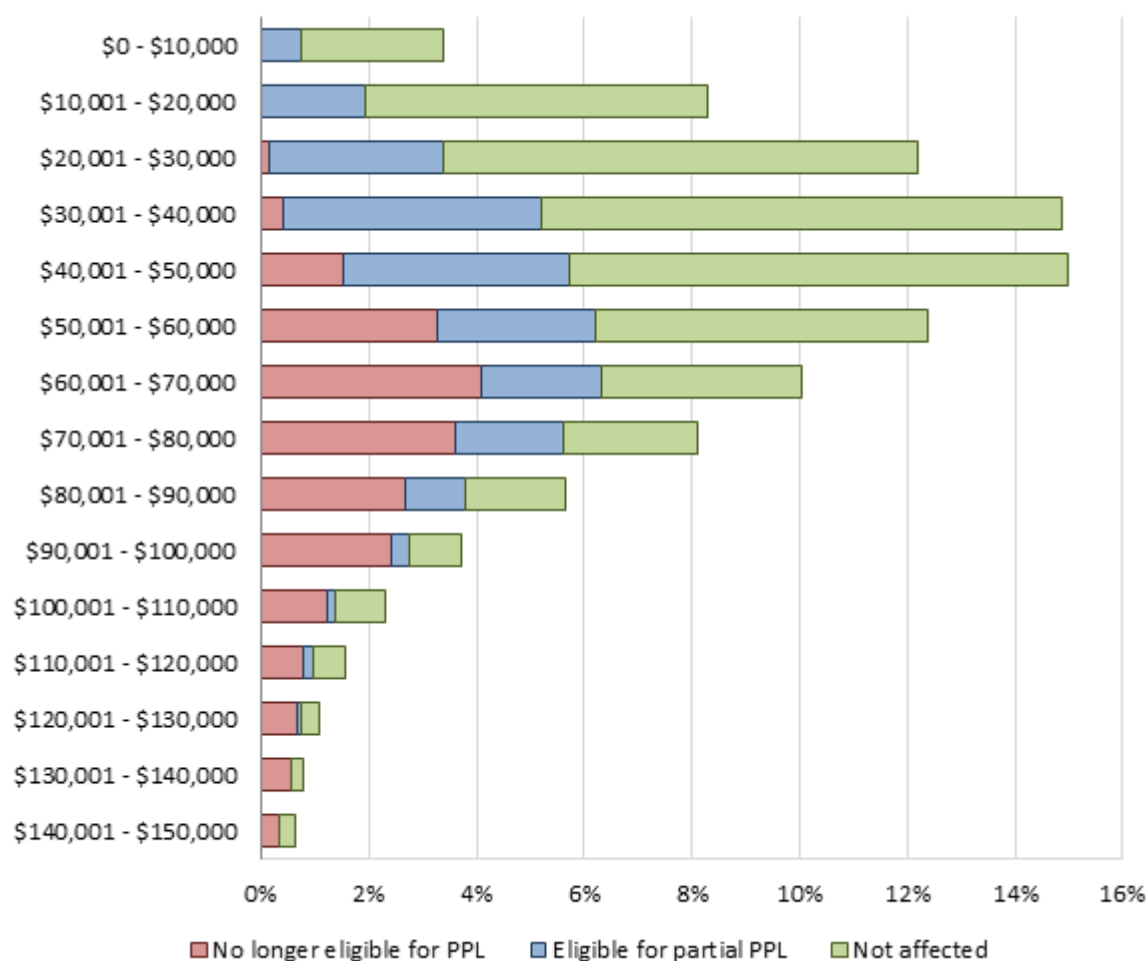
5 Department of Social Services, *Submission 52*, p. 5.

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

impact families on lower incomes, to the detriment of parents and children. As the submission from the Parenthood makes clear:

Very few of these parents are "well paid public servants" they include ordinary women working in retail, hospitality, and community services whose employer entitlements rarely extend beyond a few weeks. These hard working, low to middle income women starting or extending their families are the ones expected to be worst hit by the proposed changes.⁷

Graph 1: Estimated impact on Parental Leave Pay customers



SOURCE: Department of Social Services, Submission 52, page 5.

1.15 Similarly, the Labor Senators reject the implication in the majority report that the changes in the Bill will not impact the period of parental leave taken by new parents.

1.16 This position is drawn from a selective reading of the evaluation of the PPL scheme, which found that new parents on higher incomes did not change the amount of parental leave they took as a result of the government-funded scheme.

⁷ The Parenthood, Submission 27, p 2.

1.17 As detailed above however, a broader reading of the report shows that across the board, the government-funded scheme is working to extend the time new mothers are staying at home. This finding was reinforced by the Secretary of the Department of Social Services, who made clear in Budget Estimates that:

Certainty the high level evaluation finding is that PPL has been successful in assisting mothers to stay home with their children longer.⁸

1.18 It is clear that if this Bill is passed, new parents will be forced to return to work before they are ready. As ACTU President, Ged Kearney, stated in her evidence to the Committee:

The cuts to the paid parental leave will increase financial pressure on families with young children; it will force mothers to choose between putting their baby in care at a young age, assuming of course that they can find a childcare place, and quitting their job in order to stay at home and care for their child.⁹

1.19 This was supported by the evidence of Ruth Mead from Women on Boards, who told the Committee:

Women are most probably going to be forced back into the workplace earlier than would otherwise be the case.¹⁰

1.20 This position was also supported by mothers who gave evidence to the Committee. Anita Stirling from the Australian Nursery and Midwifery Federation, explained:

I am currently on maternity leave and utilising the 18 weeks of parental leave money. Without this assistance, I would have been forced to return to work when Angus was 2½ months old in order to make ends meet for our family.¹¹

1.21 The consequences of returning to work early are significant. According to the Productivity Commission's Inquiry into PPL:

There is compelling evidence of child and maternal health and welfare benefits from a period of absence from work for the primary caregiver of around six months and a reasonable prospect that longer periods (nine to twelve months) are beneficial.¹²

8 Mr Finn Pratt, Secretary, Department Social Services, *June 2015 Budget Estimates Community Affairs Committee Hansard*, p 13.

9 Ms Ged Kearney, President, ACTU, *Proof Committee Hansard*, p 14.

10 Ms Ruth Mead, Chair, Women on Boards, *Proof Committee Hansard*, p 8

11 Ms Anita Stirling, Member, Australian Nursery and Midwifery Federation, *Proof Committee Hansard*, p 24.

12 Productivity Commission Inquiry Report, *Paid Parental Leave: Support for Parents with Newborn Children*, February 2009, p 159.

1.22 There are also likely to be significant increases in demand for child care, if women are forced to return to work early. As Goodstart Early Learning made clear in its submission:

The proposed changes to paid parental leave could have a significant impact on the demand for child care for very young children. ...If mothers of young children have access to less Paid Parental Leave and have to return to work sooner, this is supply imbalance is likely to get worse.¹³

Undermines Operation of Government Funded PPL Scheme

1.23 The proposal to remove access to the government-funded PPL scheme for those who have access to employer funded PPL schemes undermines a critical design element of the government scheme.

1.24 The Federal *Paid Parental Leave Act 2010* states that:

the financial support of this Act is intended to complement and supplement existing entitlements to paid or unpaid leave in connection with the birth or adoption of a child.¹⁴

1.25 A number of submissions to the inquiry highlighted that the government-funded PPL scheme is designed, where possible, to work in combination with employer funded schemes.

1.26 In her evidence to the Committee, Ged Kearney, ACTU, highlighted that the scheme was designed this way to provide as close as possible to the 26 weeks which is recommended by the World Health Organisation as the most appropriate period of time newborn babies should spend in exclusive parental care to enable best health and emotional bonding outcomes for new parents and babies. She said:

The scheme is designed to ensure that the government contribution of 18 weeks at the minimum wage is supplemented by employer funded entitlements that extend the period of paid leave to meet the international standard of 26 weeks, which, as you know, is recommended by the World Health Organisation.¹⁵

1.27 This was supported by the submission from the YWCA:

The 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 of 26 weeks.¹⁶

13 Goodstart Early Learning, *Submission 22*, p. 2.

14 Paid Parental Leave Act 2010, s. 3a(3)

15 Ms Ged Kearney, President, ACTU, *Proof Committee Hansard*, p 14.

16 YMCA, *Submission 19*, p 3.

1.28 Unfortunately, the Government has attempted to misconstrue the design of the Scheme, labelling new parents who access both government and employer funded PPL Schemes as 'double-dippers'. Labor strongly rejects this characterisation.

1.29 As Unions NSW state in their submission to the Committee:

Employer provided schemes which supplement the Government scheme are not an example of greedy parents. Instead they are representative of an effective partnership between business and government seeking to maximise outcomes for parents and children while achieving a significant economic dividend through the increased participation of women in the workforce.¹⁷

1.30 Parents who have been using PPL as it was designed, to spend as close as possible to the recommended 26 weeks with their newborn babies, have been insulted and maligned by this Government in their search for savings measures.

1.31 Parents should not be subjected to this sort of language, simply for wanting the best for their new babies.

1.32 Mothers who appeared before the Committee expressed their distress about the language used by the Government in relation to the proposal in the Bill. In her evidence to the committee Lieutenant Commander Sandra Croft said '[t]o insult us by saying we're double-dippers is very disappointing'.¹⁸

1.33 President of the Community and Public Sector Union, Nadine Flood, conveyed a similar view in her evidence to the Committee, stating:

Particularly distressing was the notion that this was in some way double-dipping or rorting. It simply is not the case. People saw that as a very direct and personal attack on working parents and women in particular who utilise those entitlements.¹⁹

Savings will not be realised

1.34 Labor Senators disagree with the conclusion reached in the majority report, that the 'Bill will not directly influence the PPL payment that employers currently offer or will offer in the future'.²⁰

1.35 Evidence presented to the Committee shows that since the introduction of a national, government-funded PPL scheme 'few employers have 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 the replacement wage'.²¹

17 Unions NSW, *Submission 49*, p 5.

18 Lieutenant Commander Sandra Croft, Parent Member, The Parenthood, *Proof Committee Hansard*, p 5.

19 Ms Nadine Flood, CPSU, *Proof Committee Hansard*, p 22.

20 Majority Report, p. 12.

21 Australian Business Industrial and NSW Business Chamber, *Submission 33*, p. 6.

1.36 Similarly, the ACTU noted in their evidence 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 the national, government-funded PPL, none 'fully reduced or withdrew those entitlements'.²²

1.37 Labor Senators are of the view that this is evidence of employers' acknowledgement of the economic and commercial benefits of providing family friendly work conditions and of engaging women in the workplace.

1.38 As Ms Alana Matheson, Deputy Director, Workplace Relations, Australian Chamber of Commerce and Industry told the Committee:

Those employers who have made a financial commitment to privately fund paid parental leave and other parental related benefits do so for a variety of reasons, including being an employer of choice and to attract and retain working parents.²³

1.39 Labor Senators are persuaded by evidence that some employers may redesign parental leave or related benefits within the conditions of employment they offer to complement a changed government funded PPL scheme.

1.40 The evidence presented to the Committee was that employers may alter employee benefits, specifically replacing an employer funded PPL scheme for another benefit for new parents, with the aim of preserving the employee's entitlement to the government funded payment.

1.41 In their evidence to the committee, the Australian Chamber of Commerce and Industry, argued that the savings that the Government seeks to harvest from this change to PPL will be eroded by changes to employer funded schemes. Ms Matheson told the committee:

In this regard, the Australian Chamber believes that the cost savings the government has predicted will not materialise as a result of this measure. The changes proposed in the bill could disrupt existing schemes. The Australian Chamber is concerned that the inability of employees to continue to receive both the government-funded and employer-funded parental leave may translate into pressure at the enterprise bargaining table, including for government employees. Given budget repair is the motivation for the change and that the cost savings forecast by the government may not materialise, these considerations raise the question of what net benefits, if any, the change will deliver and whether the risk of disruption or unintended consequences is warranted.²⁴

1.42 Labor Senators are convinced by the evidence that not only will this Bill have a number of negative impacts on new parents and their babies and undermine the

22 ACTU, *Answers to Questions on Notice*, p. 2.

23 Ms Alana Matheson, Deputy Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, p 49.

24 Ms Alana Matheson, Deputy Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, p 50.

design of the government funded paid parental leave, but it will also fail to generate the savings identified in the budget.

1.43 As Chief Executive Officer, Australian Chamber of Commerce and Industry, stated in her evidence to the committee:

The problem with the Bill is it won't achieve what it set out to achieve and that's significant budget savings and at the same time could have unintended consequences.²⁵

The Employer Role

1.44 Schedule 2 of this Bill also seeks to remove the 'Employer Role' from the current PPL scheme.

1.45 Under the current scheme, employers are required to administer payment of PPL to their eligible employees whilst those employees are on leave. The Employer Role was a recommendation of the Productivity Commission, and was included in Labor's PPL scheme to try and maintain a strong link between employers and their employees. It was also a way of enabling women to remain connected to work and their careers when they take time out of the workforce to have a baby or adopt a child.

1.46 However, as the Scheme progressed, Labor listened to business, particularly small business, and understood that some small business were struggling with the administrative burden of the PPL Scheme.

1.47 In the 2013 election campaign, Labor adopted a position that would enable businesses with fewer than 20 employees to streamline administration and have Centrelink make PPL payments to their employees whilst they are on maternity leave.

1.48 This was a sensible reform aimed at balancing the need for employers and employees to maintain a relationship with their employers whilst they are on maternity leave with the need to reduce red-tape for small business.

1.49 This legislation seeks to remove the employer role in its entirety. As such, it does not strike the right balance. Rather, it severs the important link between an employer and its employees. This is not good for women, and it is not good for employers.

1.50 This is not the first time that the Government has attempted to make these changes. In fact, there is already legislation before the Senate, the Paid Parental Leave Amendment Bill 2014, which deals exclusively with this issue.

1.51 When that Bill was brought before the Senate for the first time, Labor introduced amendments which would limit the applicability of the measure to organisations with 20 employees or less. Those organisations will have a choice as to whether they implement it, or Centrelink does. The Labor Senators believe these amendments get the balance right.

25 Ms Kate Carnell, Chief Executive Officer, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, p 51.

1.52 It is not clear why the Government has chosen to introduce new legislation dealing with a matter currently before the Senate. This matter could properly be dealt with through that legislation. As such, the Labor Senators recommend the provisions in this Bill which deal with the employer role be opposed outright.

Conclusion

1.53 Labor Senators are of the view that the proposals in this Bill are regressive, and will negatively affect labour market outcomes, including workplace participation, gender pay equity and economic growth.

1.54 These changes will have a significant impact on the incomes of tens of thousands of new parents, particularly new mothers when they are on parental leave.

1.55 Labor is also concerned by the fact that the impact of the proposal will be felt most significantly by low and middle income earners, with some of Australia's lowest paid female workers up to \$11,800 worse off as a result on the Bill's changes to paid parental leave.

1.56 The changes in this Bill are predicated on the false accusation that new parents who access both government and employer funded PPL schemes are 'rorters'. This is simply incorrect. These new parents are utilising the government scheme as it was designed.

1.57 For these reasons Labor Senators recommend that the Senate reject the Bill.

Recommendation 1

1.58 Labor members of the committee recommend that the Fairer Paid Parental Leave Bill 2015 be opposed.

Senator Carol Brown

Senator Nova Peris OAM

Senator Claire Moore

Senator Jenny McAllister

Australian Greens Senator's Dissenting Report

1.1 The Australian Greens oppose this bill, which would prevent employees accessing the Commonwealth paid parental leave scheme to supplement any private parental leave agreement beyond a cumulative total of 18 weeks paid leave at the minimum national wage.

1.2 This Bill goes against international trends towards more generous parental leave, the government's own pre-election policy, and the economic advice of the Productivity Commission. It represents a partisan attack by this government on working women.

1.3 The Australian Human Rights Commission said in its submission that 'on its face, the Bill is a retrogressive measure, inconsistent with Australia's international human rights obligations'.¹

1.4 The Australian Greens will continue to oppose this bill, which would prevent employees accessing the Commonwealth paid parental leave scheme to supplement any private parental leave agreement beyond a cumulative total of 18 weeks paid leave at the minimum national wage.

1.5 The CPSU noted that in August 2013, the Coalition's Paid Parental Leave Policy in August 2013 argued that 26 weeks paid leave 'is the optimal outcome for new mothers', which was the outcome that the 2010 bill aimed to achieve.

1.6 The Department of Social Services submission noted that the current PPL was successful in increasing the time mothers spent away from work following the birth of a child, and importantly 'increased the likelihood that they return to work by the time their baby is 12 months old'.²

1.7 Representative organisations for business have come out against the changes. For example, the Chamber and Commerce and Industry WA called them 'a backwards step in promoting gender equality...erod(ing) attempts by employers to address gender inequality in the workplace'.³ Women on Boards have come out against the changes, calling them 'completely contrary to the advice of national and international bodies with expertise in child development'.⁴

1.8 The effect was even more substantial for low income mothers. The beneficiaries of Commonwealth Paid Parental Leave are overwhelming lower-income women, with 76.2% of recipients earning less than the average Australian income.⁵

1 Australian Human Rights Commission, *Submission 26*, p. 3.

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

3 Chamber of Industry and Commerce WA, *Submission 9*, p. 3.

4 Women on Boards, *Submission 8*, p. 5.

5 Department of Social Services, *Submission 52*, p. 2.

1.9 Despite their rhetoric about getting women into work, the Government is engaging in a piece of social engineering that will hit women hard. The best way to look after children and to support women getting back to work is by legislating 6 months of paid parental leave, not by taking the axe to the current minimum entitlement. The current Paid Parental Leave scheme was always intended to be a floor, not a ceiling.

Recommendation 1

1.10 That the Fairer Paid Parental Leave Bill 2015 not be passed.

Senator Larissa Waters

APPENDIX 1

Submissions and additional information received by the Committee

Submissions

- 1** Confidential
- 2** Ms Gaye Mallinson
- 3** Name Withheld
- 4** Mrs Anne Johnson
- 5** Ms Anthea Hegarty
- 6** Endeavour Forum Inc
- 7** Ms Michelle Kenworthy
- 8** Women on Boards
- 9** Chamber of Commerce and Industry of Western Australia
- 10** Ms Stacey Wilson
- 11** Name Withheld
- 12** Save the Children Australia
- 13** National Foundation for Australian Women (plus 2 attachments)
- 14** Community and Public Sector Union
- 15** Permanent Care and Adoptive Families
- 16** Public Service Association of NSW
- 17** Victorian Trades Hall Council
- 18** Ms Phoebe Brick
- 19** YWCA Australia
- 20** Ms Anita Stirling
- 21** Dr Sue Williamson
- 22** Goodstart Early Learning

- 23** Finance Sector Union of Australia
- 24** ACTU
- 25** The Australian Workers' Union
- 26** Australian Human Rights Commission
- 27** The Parenthood
- 28** Victorian Automobile Chamber of Commerce
- 29** Name Withheld
- 30** Name Withheld
- 31** Dr Dani Milos
- 32** Shop, Distributive and Allied Employees' Association
- 33** Australian Business Industrial and NSW Business Chamber
- 34** National Tertiary Education Union
- 35** Australian Education Union
- 36** Community and Public Sector Union State Public Services Federation Group
- 37** Queensland Council of Unions
- 38** Australian Manufacturing Workers' Union
- 39** Independent Education Union of Australia, Queensland and Northern Territory Branch
- 40** Australian Chamber of Commerce and Industry
- 41** Australian Nursing and Midwifery Federation
- 42** Central Coast Community Legal Centre
- 43** Name Withheld
- 44** Health Services Union
- 45** Pharmacy Guild of Australia
- 46** Police Federation of Australia (plus a supplementary submission)
- 47** Australian Federation of Employers and Industries
- 48** Ai Group

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- 49 Unions NSW
 - 50 Chief Executive Women
 - 51 United Voice
 - 52 Department of Social Services
 - 53 Women Lawyers Association of NSW
 - 54 Women and Work Research Group, The Business School, University of Sydney
 - 55 Confidential

Additional Information

- 1 Statements, from The Parenthood, received 3 September 2015

Answers to Questions on Notice

- 1 Answers to Questions taken on Notice during 1 September public hearing, received from the Australian Nursing and Midwifery Federation, 2 September 2015
- 2 Answers to Questions taken on Notice during 1 September public hearing, received from the Australian Council of Trade Unions, 3 September 2015
- 3 Answers to Questions taken on Notice during 1 September public hearing, received from the Pharmacy Guild of Australia , 10 September 2015
- 4 Answers to Questions taken on Notice during 1 September public hearing, received from the Department of Employment, 11 September 2015
- 5 Answers to Questions taken on Notice during 1 September public hearing, received from the Department of Social Services, 14 September 2015

Tabled Documents

- 1** Case studies, tabled by Australian Council of Trade Unions, at Canberra public hearing 1 September 2015
- 2** Analysis of potential reductions to current entitlements, tabled by Australian Nursing and Midwifery Federation, at Canberra public hearing 1 September 2015

Form Letters

- 1** The committee received correspondence from 291 individuals in relation to this inquiry. The committee has noted and accepted this correspondence.

Correspondence

- 1** Correspondence clarifying evidence given at Canberra public hearing on 1 September, from Department of Social Services, received 14 September 2015

APPENDIX 2

Public hearings

Tuesday, 1 September 2015

Parliament House, Canberra

Witnesses

The Parenthood

CROFT, Lieutenant Commander Sandra, Parent Member
GREEN, Ms Rachel, Parent Member

Australian Council of Trade Unions

KEARNEY, Ms Gerardine, President
McCOY, Ms Erin, Adviser

Community and Public Sector Union

FLOOD, Ms Nadine, National Secretary
van BARNEVELD, Dr Kristin, Director, Research

Australian Nursing and Midwifery Federation

BUTLER, Ms Annie, Assistant Federal Secretary
SHEPHERD, Ms Emily Irene, President, Tasmania Branch
STIRLING, Ms Anita, Member
THOMAS, Ms Lee, Federal Secretary

Shop, Distributive and Allied Employees' Association

BIDDLESTONE, Ms Katie, National Women's Officer
DWYER, Mr Gerard, National Secretary and Treasurer
FOX, Ms Julia, National Industrial Officer and National OHS Officer

Women on Boards

MEDD, Ms Ruth, Chair
COLEMAN, Ms Marie Yvonne, AO, PSM, Chair, Social Policy Committee, National Foundation for Australian Women

Pharmacy Guild of Australia

DOWNING, Mr Peter Alan, Member
GATENBY, Mr Christopher John Arnold, National Manager, Government and Stakeholder Relations

Women Work Research Group, University of Sydney

BAIRD, Dr Marian, Director

Australian Industry Group

SMITH, Mr Stephen, Head of National Workplace Relations Policy

Australian Chamber of Commerce and Industry

CARNELL, Ms Kate, Chief Executive Officer

MATHESON, Ms Alana, Deputy Director, Workplace Relations

Department of Social Services

BENNETT, Ms Barbara, Deputy Secretary, Family and Communities

CARAPPELLUCCI, Ms Flora, Branch Manager, Birth, Adoption and Care

DICKENSON, Ms Jane, Director, Paid Parental Leave

Department of Employment

ANDERSON, Ms Jody, Branch Manager, Participation and International Labour Branch, Workplace Relations Policy Group

COSTELLOE, Ms Sarah, Director, Participation and International Labour Branch, Workplace Relations Policy Group