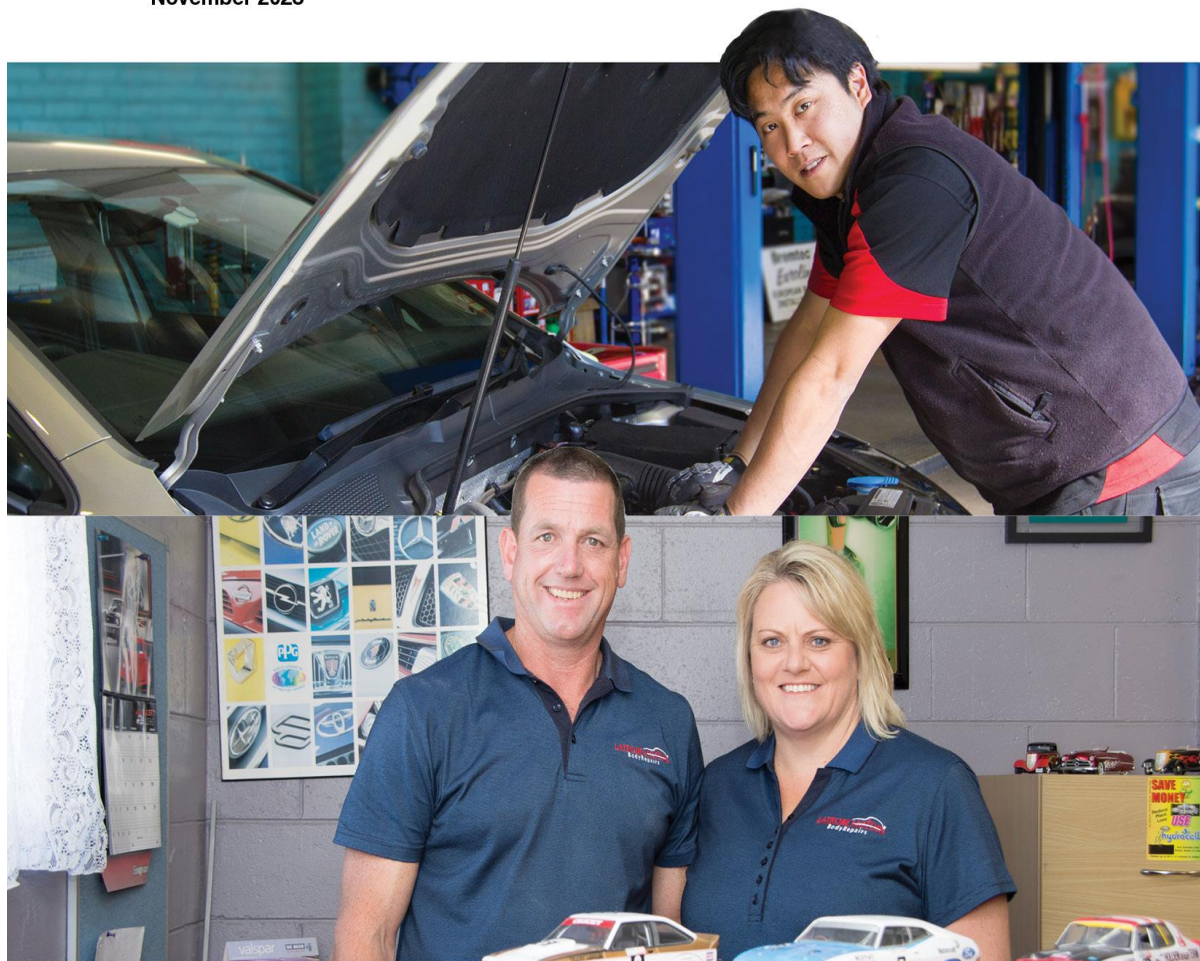


Paid Parental Leave Amendment (More Support for Working Families) Bill 2023

Senate Community Affairs
Legislation Committee

November 2023



**MOTOR TRADES
ASSOCIATION
OF AUSTRALIA**

ABOUT MTAA

The Motor Trades Association of Australia (MTAA) is Australia's peak national automotive association. MTAA's membership includes the Victorian Automotive Chamber of Commerce, the Tasmanian Automotive Chamber of Commerce, the Motor Traders' Association of New South Wales, the Motor Trade Association of South Australia and Northern Territory, the Motor Trade Association of Western Australia, and the Motor Trades Association of Queensland.

MTAA represents new and used vehicle dealers (passenger, truck, commercial, motorcycles, recreational and farm machinery), repairers (mechanical, electrical, body and repair specialists, i.e. radiators and engines), vehicle servicing (service stations, vehicle washing, rental, windscreens), parts and component wholesale/retail and distribution and aftermarket manufacture (i.e. specialist vehicle, parts or component modification and/or manufacture), tyre dealers and automotive dismantlers and recyclers.

The automotive industry is a vital contributor to Australia's economy, employing approximately 385,000 people across 13 sectors and 52 trades, and contributing 2.1% of Australia's Gross Domestic Product (GDP). The automotive industry is also one of the largest employers of apprentices and trainees nationally, and the majority of automotive businesses (97%) are small and family-owned enterprises.

As the national-level body, MTAA represents the unified voice of Australia's automotive industry, identifying and monitoring issues affecting the automotive sector, and informing and advising Government on relevant industry impacts, trends, and proactively participating in the development of sound public policy on issues impacting the retail motor trades, small business and consumers.

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INTRODUCTION

1. This submission is filed on behalf of the MTAA to help inform the Senate Community Affairs Legislation Committee (the Committee) inquiry into the *Paid Parental Leave Amendment (More Support for Working Families) Bill 2023* (the Bill).
2. MTAA notes that the Bill seeks to amend the *Paid Parental Leave Act 2010* (the Act) to extend the Paid Parental Leave (PPL) scheme by increasing the maximum number of flexible PPL days in relation to the child by 2 weeks each year from 1 July 2024 to 26 weeks (130 flexible PPL days) from 1 July 2026. According to the Explanatory Memorandum (EM), increasing the maximum parental leave pay entitlement:

“will improve flexibility and access to the Paid Parental Leave scheme to better support the needs of working parents and carers.”¹

3. The Bill also seeks to increase the reserved period for partnered claimants by one week each year from 1 July 2025 to 4 weeks (20 flexible PPL days) from 1 July 2026. Accompanying this change is an increase to the limit on the number of flexible PPL days that can be taken concurrently (i.e. by more than one person at a time) from 10 flexible PPL days to 20 flexible PPL days by 1 July 2026. According to the EM, extending the reserved period for partnered claimants will:

“... complement the increase to the maximum parental leave pay entitlement. It will continue to encourage fathers and partners to take a greater share of caring responsibilities by increasing the time that fathers and partners can take off work around the time of the child’s birth or adoption.”²

and increasing the number of days that can be taken concurrently by parents and carers will:

“continue to assist parents to share caring responsibilities, and provide fathers and partners an opportunity to also provide care for birth parents to support their health, while ensuring parents are encouraged to return to work ... The concurrency limit will also support and encourage families to share caring responsibilities more equally, which can in turn help improve women’s workforce participation”³

4. Whilst these objectives may be admirable from a societal perspective, MTAA notes that no consideration has been given to the practical impact these changes will have on the ability of employers (and smaller businesses in particular) to effectively operate their businesses. As noted in its submission on the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023*⁴, whilst MTAA strongly supports the important role parental leave plays in assisting employees manage their work and care responsibilities, the needs of employees must necessarily be balanced with the operational capacity of the business for which they work.
5. The following concerns raised in that submission regarding the disproportionate adverse impact those legislative amendments would have on smaller businesses, including in relation

¹ EM, page 1.

² Ibid., page 2.

³ Ibid.

⁴ MTAA Submission to the Senate Education and Employment Legislation Committee Inquiry April 2023.

to the administration of the Commonwealth PPL Scheme, therefore remain apposite in relation to the current Bill:

“Whilst it may be considered trite, small and medium-sized enterprises are not ‘little big businesses’. They do not have the same resources as public sector and large private sector employers to accommodate an unfettered employee right to FULPL (or for that matter, to administer the newly amended paid parental leave scheme). In this context, the MTAA notes that whilst the FW Act itself acknowledges the special circumstances of small and medium-sized businesses, this is not reflected in either the existing FULPL entitlement or the amendments proposed in the Bill.”⁵

6. MTAA submits that the Bill’s failure to address the impact of recent (and currently proposed) legislative changes to parental leave on employers, and small businesses in particular, is a shortcoming that must be addressed.

SPECIAL CIRCUMSTANCES OF SMALLER BUSINESSES

7. Small businesses remain the dominant building blocks of the Australian economy, with “97.3% of all Australian businesses were small businesses in June 2023.”⁶ This is reflected in the automotive industry and by MTAA’s membership, of which approximately 97% are small businesses – and in the legislative objectives of the *Fair Work Act 2009* includes an acknowledgment of the “special circumstances of small and medium-sized businesses”⁷.
8. As noted above, it is well established that smaller businesses are disproportionately adversely impacted by regulation because they have fewer resources than larger businesses and are unable to take advantage of economies of scale in order to understand, comply with and benefit from regulation. As noted by a 2017 Paper published by The Treasury, a recognition of this fact by the adoption of a tiered approach to regulatory policy can increase the net benefits of regulation:

“Reducing the burden of regulation and making it easier to comply with will typically increase the net societal benefits of small business regulation by increasing compliance rates while reducing the costs of compliance. In designing tiered approaches, policy makers should take into account possible incentive effects of different thresholds and minimise the complexity of the overall regulatory system by selecting simpler options for dealing with policy problems, regardless of which size business is affected, and regularly reviewing the burden of regulation as a whole. Eliminating excessive regulation and reducing complexity will disproportionately benefit small business, even where regulatory reforms are not ‘tiered’ or targeted at small business, and would also benefit large businesses.”⁸

9. In addition to gaining better compliance outcomes, a tiered approach also recognises the practical realities of running a small business. A reality in which the need to ‘do it all’ to keep

⁵ *Ibid.*, paragraph 7.

⁶ Australian Small Business and Family Enterprise Ombudsman, *Number of small businesses in Australia*, Australian Government, August 2023, page 2.

⁷ Section 3(g)

⁸ Douglas, J and Pejaska, AL, *Regulation and small business*, Australian Government Treasury, August 2017, page 14.

the business afloat, including keep up with changes to government regulations, has directly contributed to what may be described as a mental health crisis for small business operators. In addition to having been recognised as a priority “high risk” group for workplace mental health intervention by work health and safety regulators such as WorkSafe Victoria⁹, a recent survey conducted for the Australian Government found:

“The 2022 Survey results indicate that small business owners continue to experience high levels of mental ill-health. Twenty-two per cent – just over 1 in 5 – small business respondents reported having been diagnosed with a mental ill-health condition by a doctor or health professional in recent months ... These survey results may underrepresent the prevalence of mental ill-health conditions in the small business sector ... Of the 1,007 small business owners surveyed, 58 per cent said that they would not consider turning to a GP, psychologist, counsellor, or other mental health professional.”¹⁰

10. Accordingly, it is important that the policy objectives of the Bill do not come at the cost of Australian small business owners . MTAA notes that women currently account for approximately one third of these small business owners and that this figure is growing at a rate more than three times that of their male counterparts.¹¹ In its current form, the Bill does nothing to better support the needs of small business owners, including those who are working parents and carers.

INQUIRY INTO POTENTIAL IMPACTS OF PPL SCHEME ON SMALL BUSINESS

11. MTAA notes that on 30 March 2023, the Senate referred the potential impacts of the Commonwealth Paid Parental Leave (PPL) Scheme on small businesses and their employees (both before and after legislative changes come into effect from 1 July 2023) and related matters to the Senate Education and Employment References Committee for inquiry and report by 31 August 2023 (the Inquiry).
12. Whilst the Inquiry did not directly address the impact of the increased flexibility, quantum and concurrency of parental leave on the ability of employers to operate their businesses, it extensively examined the current administrative arrangements of the Commonwealth PPL Scheme. Relevantly, the Inquiry’s Terms of Reference included a particular focus on the experiences of small businesses in administering the Parental Leave Pay (PLP) on behalf of the Commonwealth; the relevant contribution of current arrangements in preserving the relationship between small business employers and employees while an employee is on parental leave; and current Commonwealth PPL arrangements acting as an incentive or disincentive to employment and boosting female workforce participation in small businesses.
13. MTAA provided a detailed written submission to the Inquiry and gave evidence at the public hearing held on 14 August 2023, drawing upon the feedback provided by its membership. This included survey responses from its small business members on their experiences in administering the Commonwealth’s parental leave payment, which found that 96.1% of respondents preferred Services Australia to make the payment directly to staff – with 91.8% reporting that it was an increased administrative burden; 90.8% reporting that it added to

⁹ WorkSafe Victoria, *Mental Health Strategy 2021-2024*, November 2021.

¹⁰ Australian Government Treasury, *Mental health and the small business sector*, December 2022, pages 4-5.

¹¹ The Hon Julie Collins MP, *Backing women in small business*, 8 March 2023.

payroll processing time; and 32.1% finding that it created cashflow problems for their business.

14. MTAA's submissions to the Inquiry also included small business member survey feedback on whether current administration arrangements helped to preserve the employment relationship – with 81% confirming that it did not play an important role. As one survey respondent put it: *"Employees don't care who pays them the PPL. They just want to receive it."* And as another noted: *"if there is a problem staff tend to blame the employer when its got nothing to do with the employer ... it creates friction between employee and employer which it should not do"*.

15. MTAA submissions to the Inquiry further noted that rather than acting as an incentive to boost female workforce participation, the requirement to act as the administrative intermediary can be a significant disincentive for smaller businesses. These submissions included the blunt feedback provided from one small business survey respondent, who stated:

"The question to ask in your survey would have been "will these changes lead to your business laying off staff". Because in our case the answer will be yes. We just can't deal with all this Red Tape anymore, a small business like ours simply can't cope with it."

16. Accordingly, MTAA submitted to the Inquiry that smaller businesses should not have responsibility for administering payments on behalf of Services Australia. This was supported by 86.3% of its small business member survey respondents, who favoured an 'opt-in' model.

17. MTAA notes that its position was consistent with the submissions provided by employer groups and the Australian Small Business and Family Enterprise Ombudsman; as well as parental leave research¹² conducted by the Grattan Institute in 2021. Based on its research, and as part of its recommendation to make the parental leave scheme more flexible and accessible, the Grattan Institute Report found that:

*"Employers should no longer be the paymaster. Instead, all payments should be made directly by Centrelink."*¹³

18. Relevantly, the Grattan Institute Report also found that:

"Involvement of employers in the administration of payments appears to add unnecessary complexity. Parents receiving their payments through their employer are twice as likely to report problems as those receiving payments directly from Centrelink. And employers gain little from their involvement in the process ... In a survey conducted by the Australian Chamber of Commerce and Industry, 84 per cent of employers agree or strongly agreed with the Statement, 'The Government should not require employers to be the paymaster for the Paid Parental Leave Scheme'.

*... given that applicants must still apply through Centrelink, the benefits involving the employer in a paymaster role appear minimal, and the drawback for employers and applicants are significant..."*¹⁴

¹² Grattan Institute, *Dad days: how more gender-equal parental leave would improve the lives of Australian Families*, 4 September 2021.

¹³ *Ibid.*, page 4.

¹⁴ *Ibid.*, pages 35-36.

19. Unsurprisingly then, the first (and primary) recommendation of the Inquiry Report was clear and unequivocally aimed at reducing the administrative burden on small business owners:

“The committee recommends that the Paid Parental Leave Act 2010 be amended to require the Secretary, as defined by the Act, to pay Parental Leave Pay instalments directly to employees of small businesses (defined as businesses employing fewer than 20 employees) except in cases where a small business opts to pay Parental Leave Pay instalments directly to an employee”.

20. MTAA notes that this important recommendation has not yet been implemented.

CONCLUSION

21. The Bill, like the recent legislative changes that preceded it, proceeds on the presumption that all businesses have the same resources and capacity to accommodate the legislative changes (and continue to administer the Commonwealth PPL Scheme) as the public sector and other large businesses.
22. As the real-world testimony provided to the Inquiry by those operating small businesses (as reflected in the Inquiry Report) clearly demonstrates, this is a false assumption. It is simply not the case. In practice, smaller businesses are disproportionately impacted by both the burden of administering the Commonwealth PPL Scheme and the requirement to accommodate an increasing quantum of flexible parental leave absences.
23. MTAA submits that an amendment to reflect the aforementioned Inquiry Report recommendation would therefore be a small, but important, step in the right direction of ensuring outcomes in practice that are consistent with the policy objectives of the Bill for small business operators and their employees.
24. Accordingly, MTAA calls on the Committee to recommends the amendment of the Bill to give effect to the Inquiry Report recommendation.