

Chapter 3

Quantifying the impacts of stillbirth

3.1 Stillbirth has far-reaching impacts on individuals, families, communities and Australian society. However, the economic and social costs of stillbirth are not widely recognised, and there has been limited attention to quantifying these costs in the Australian context.

3.2 International researchers found that the direct financial cost of care associated with a stillbirth was 10–70 per cent greater than the cost of care for a live birth, and that the costs were predominantly met by government.¹

3.3 Research conducted in the United States indicated that women whose babies were stillborn, particularly where the cause was unknown, had significantly higher hospital costs during labour and birth than women with live births, while in England and Wales there were increased costs for subsequent births as a result of more intensive surveillance of the pregnancy.²

3.4 More detailed research is required to guide national policymaking, funding decisions and future corporate investment, as well as to better target stillbirth research and education programs.³ According to the Centre of Research Excellence in Stillbirth (Stillbirth CRE):

The economic impact of stillbirth is significant and far reaching and extends further than just the direct costs to the healthcare sector. One important area in which major employer groups might see benefit from targeted stillbirth research is in the impact of pregnancy loss on women and their families in terms of time off work, altered work performance, and other employment-related impacts. Improving bereavement care and recovery after stillbirth has potential beneficial spin-offs for employers and the broader economy, and this could encourage investment from the corporate sector.⁴

1 Centre of Research Excellence in Stillbirth (Stillbirth CRE), *Submission 56*, p. 14.

2 KJ Gold, A Sen and X Xu, 'Hospital Costs Associated with Stillbirth Delivery', *Maternal & Child Health Journal*, vol. 17, no. 10, 2012, pp. 1835–1841, https://www.researchgate.net/publication/233931011_Hospital_Costs_Associated_with_Stillbirth_Delivery (accessed 14 October 2018); Stillbirth CRE, *Submission 56*, p. 14.

3 Public Health Association of Australia, *Submission 66*, p. 6.

4 Stillbirth CRE, *Submission 56*, p. 8.

Direct and indirect costs

3.5 A study prepared by PriceWaterhouseCoopers (PwC) for Stillbirth Foundation Australia estimated the total projected direct and indirect costs of stillbirth to the Australian economy to be \$681.4 million for the five-year period from 2016 to 2020.⁵

3.6 The study analysed projected direct and indirect costs of stillbirth in Australia for the period 2016 to 2020 across 13 categories, as shown in Table 3.1 below.

Table 3.1: Cost of stillbirth in Australia for the five-year period 2016–20, in 2016 present value terms⁶

Cost category	Value (\$ millions)
Direct costs	
<i>Costs associated at the time of stillbirth</i>	
Cost of stillbirth investigations	33.3
Hospital fees	74.5
Cost of counselling	53.2
Cost of investigations 8-12 weeks postpartum	0.6
<i>Cost of a subsequent pregnancy</i>	
Cost of tests	5.6
Cost of counselling	4.9
Sub-total direct costs	172.1
Indirect costs	
Funeral costs	67.1
Absenteeism	129.4
Presenteeism	149.0
Lost productivity from exiting the labour force	70.6
Cost of divorce	37.4
Government subsidy	36.1
Absenteeism (family)	19.7
Sub-total indirect costs	509.3
Total cost	681.4

3.7 The PwC study projected that, if the 2016 stillbirth rate of 7.4 per 1000 births remained unchanged, and assuming an increase in the Australian population and

5 PriceWaterhouseCoopers (PwC), *The Economic Impacts of Stillbirth in Australia*, Stillbirth Foundation Australia, 2016, p.12, <https://stillbirthfoundation.org.au/wp-content/uploads/2016/10/Economic-Impacts-of-Stillbirth-2016-PwC.pdf> (accessed 27 September 2018).

6 PwC, *The Economic Impacts of Stillbirth in Australia*, p. iv. Costs are based on the 12-month period post-loss. They compare the additional costs of stillbirths with no stillbirths. Direct costs are primarily associated with the need for additional health care at the time of stillbirth, after the initial loss and in the case of a subsequent pregnancy. Indirect costs refer to those not directly associated with the stillbirth event including funeral costs, lost productivity associated with absenteeism and workers exiting the labour force, divorce, associated government subsidies and financial impacts on family members. Intangible costs may be associated with mental well-being, personal relationships, relationships with others, other children and financial loss.

number of births in this five-year period, the number of stillbirths would increase from approximately 2500 stillbirths in 2016 to 2700 stillbirths in 2020.⁷

3.8 In addition to the above projection, the study calculated the cost of lost future productivity of the stillborn child in 2016 as \$7.5 billion in 2016. PwC acknowledged that these costs were more difficult to quantify, but noted that they 'have serious impacts on people and society' and are no less important than the readily quantifiable costs included in the study.⁸

3.9 Stillbirth CRE noted that preliminary efforts to quantify stillbirth costs suggest that direct hospitalisation costs associated with the time of birth is \$9630 for women who had a stillbirth and \$6690 (30 per cent lower) for women who did not. This calculation did not take into account the ongoing costs of support, bereavement care and counselling, or the difficulty in returning to work.⁹

3.10 Other research projects are underway that focus on identifying and quantifying the costs of stillbirth to the nation, including a collaborative research project between the Australian Institute of Tropical Health and Medicine at James Cook University and the Stillbirth CRE.¹⁰

3.11 The Hunter Medical Research Institute (HMRI) also noted that there are significant costs to the community as a result of poor fetal health, even when a baby is born alive, and advocated that researchers should not solely focus on stillbirth, but also consider the ongoing risk of babies being born with long-lasting effects.

When the baby does not grow well in utero, the ongoing impact is great—the likelihood of doing well in school and securing a good job is reduced, the likelihood of a decreased life expectancy and developing of heart disease, diabetes and kidney failure is increased, particularly in vulnerable populations. The resulting impact to Australia's economic and social wellbeing is vast.¹¹

3.12 One witness advocated that a longitudinal study on the social and economic impacts of pregnancy loss be undertaken by the National Centre for Longitudinal Data (NCLD).¹²

3.13 The NCLD, funded by the Australian Department of Health, is a national population study examining the health of over 57 000 Australian women. The study includes data on the number who have experienced a miscarriage or stillbirth. However, it does not gather information about how experiencing stillbirth affects the

7 PwC, *The Economic Impacts of Stillbirth in Australia*, p. iii.

8 The study used the concept of 'value of statistical life year', which assumes a young adult to have at least 40 years of life ahead. See PwC, *The Economic Impacts of Stillbirth in Australia*, pp. 15–16.

9 Stillbirth CRE, *Submission 56*, p. 15.

10 Research Australia, *Submission 41*, p. 12.

11 Hunter Medical Research Institute (HMRI), *Submission 36*, [p. 7].

12 Name withheld, *Submission 145*, p. 3.

woman's future health. Professor Gita Mishra, Director, Australian Longitudinal Study on Women's Health, noted that this is an area that demands further research in order to identify women at risk of future health conditions.

I think that's so important—apart from her mental health. It could be an underlying condition that puts her at risk of maybe future cardiovascular diseases, as we've seen with other conditions. So, I think it's a big program that we really need to understand. If there are risk prediction models with accurate prevalence data, we can tell women what they're getting into and how we can avoid that situation for them. But, also, then what happens to her health and wellbeing in the future?¹³

Impact on families

3.14 Evidence presented to this inquiry clearly showed the significant financial impact that a stillbirth has on individual families. Some of the unexpected costs included:

- costs associated with the autopsy process including transporting the baby to the autopsy, travel and accommodation for the parents, and the cost of the autopsy itself;
- costs associated with a funeral, cemetery site and gravestone;
- the cost of grief counselling;
- extended periods of unpaid leave or part-time work;
- costs associated with an inability to return to work; and
- the cost of additional medical care associated with subsequent pregnancies.¹⁴

Autopsy costs

3.15 The Royal College of Pathologists of Australasia (RCPA) reported that costs of autopsies vary depending on complexity, and provided an example of one major public service charging \$2500 per autopsy.¹⁵

3.16 The Victorian Perinatal Autopsy Service reviewed the cost of a perinatal post-mortem examination in 2016, and found that the cost depended on the complexity of the examination, as follows:

- full post-mortem examination: \$1976–\$2673;
- limited post-mortem examination: \$1279–\$1859; and
- external post-mortem examination: \$654–\$866.¹⁶

13 Professor Gita Mishra, Director, Australian Longitudinal Study on Women's Health, *Committee Hansard*, 6 September 2018, p. 31.

14 See for example, Ms Robyn Wilson, *Submission 195*, [pp. 4–5]; Maurice Blackburn Lawyers, *Submission 69*, p. 14; Ms Julia Whitty, *Submission 194*, [pp. 3–4]; Ms Fiona Goss, *Submission 185*, [p. 2].

15 Royal College of Pathologists of Australasia (RCPA), answers to questions on notice, 6 September 2018 (received 18 October 2018).

3.17 Dr Diane Payton, Chair, Paediatric Advisory Committee, RCPA, pointed out that most autopsies are conducted on a voluntary basis due to the lack of funding.

This leads to virtually all of them being done in public hospitals, which for me is a good thing. But it also does mean that in a department, where the director is really looking after his budget and there is no funding for the perinatal autopsy, it really does get pushed to the bottom of the pile. Here is a departmental director who's looking at one of his pathologists maybe spending a whole day, when you add up the performance of the autopsy and the reporting, for which they could have been reporting 60 small biopsies, and they would have had money coming in, or medical benefits accrued—the sort of funding they count on their books—whereas for the autopsy there is nothing.¹⁷

Medicare and other healthcare benefits

3.18 Whilst Medicare benefits are available for standard medical care costs, there are a number of services for which benefits are not available. For example, pathology services performed on stillborn babies do not qualify for payment under the Medicare Benefits Schedule (MBS).¹⁸

3.19 Professor Hamish S Scott and Associate Professor Christopher Barnett noted that current MBS funding for perinatal autopsy only provides for anatomic analysis, and not genetic analysis. They argued that MBS funding processes need to become more flexible in order to deal with such rapid advances in medical research and technology, and estimated that MBS funding of \$4000 per autopsy would provide an answer for up to 50 per cent of cases involving stillbirth or congenital abnormalities leading to death.¹⁹

3.20 The *Parental Leave Act of 2010* (Cth) provides that a person is eligible for Paid Parental Leave or Dad and Partner Pay where the child is stillborn or dies. The welfare payment is linked to an entitlement to unpaid parental leave.²⁰

16 Victorian Perinatal Autopsy Service, answers to questions on notice, 7 September 2018 (received 5 October 2018).

17 Dr Diane Payton, Chair, Paediatric Advisory Committee, Royal College of Pathologists of Australasia (RCPA), *Committee Hansard*, 6 September 2018, pp. 39–40.

18 Royal College of Pathologists of Australasia (RCPA), *Submission 46*, p. 2. The Medicare Benefits Schedule (MBS) is a listing of Medicare services subsidised by the Australian government as part of the Medicare Benefits Scheme under the *Health Insurance Act 1973*; see Department of Health, *Medicare Benefits Schedule Book, Category 6*, Operating from 1 May 2018, p. 59, [http://www.health.gov.au/internet/mbsonline/publishing.nsf/Content/42A5C19503D6BE07CA25826C0009105B/\\$File/201805-Cat6.pdf](http://www.health.gov.au/internet/mbsonline/publishing.nsf/Content/42A5C19503D6BE07CA25826C0009105B/$File/201805-Cat6.pdf) (accessed 20 November 2018).

19 Professor Hamish S Scott and Associate Professor Christopher Barnett, *Submission 54*, [p. 2]. See Chapter 4 for further discussion about MBS funding for stillbirth autopsy.

20 Sections 277 and 277A, *Paid Parental Leave Act 2010*; Department of Human Services, *Dad and Partner Pay*, <https://www.humanservices.gov.au/individuals/services/centrelink/dad-and-partner-pay> (accessed 14 October 2018).

3.21 Parents of a stillborn child may also be able to access Centrelink benefits through the Stillborn Baby Payment, although there are time limits on applying and eligibility criteria in the form of income and/or work tests.²¹

3.22 Insurance policies may also have limitations in relation to health care claims resulting from stillbirth. One submitter discovered that her insurance policy excluded certain depressive and anxiety disorders, meaning that she was ineligible to make a claim as a result of seeking psychological support following stillbirth.²²

Families in rural and remote communities

3.23 As noted in Chapter 2, the closure of small maternity units in rural and remote communities across Australia has had an impact on maternity health outcomes for pregnant women living in those communities, including additional financial impacts as a result of having to travel long distances to receive maternity care, and a higher risk of stillbirth because women may be less likely to leave their community to seek antenatal care until late in their pregnancy.²³

Intangible costs

3.24 The intangible costs of stillbirth are more difficult to quantify, and as such have tended to receive less attention from policymakers. However, it is clear from research that they play a major role in families' circumstances and have a rippling effect across communities.

Stillbirth exacts an enormous psychological and social toll on mothers, fathers, families and society. It is estimated that 60–70% of affected women will experience grief-related depressive symptoms at clinically significant levels one year after their baby's death. These symptoms will endure for at least four years after the loss in about half of those women.²⁴

3.25 Researchers have noted that intangible costs contribute to the longer-term economic burden of stillbirth as a result of the higher level of anxiety and depression in families experiencing stillbirth compared to other families.²⁵

3.26 The PwC study analysed five intangible costs associated with stillbirth in Australia: the impact on mental well-being; relationship with partner; relationship with others (family and extended family); other children; and the effect of financial loss. It found that stillbirth had a profound psychological impact on parents.

21 *Stillborn Baby Payment*, <https://www.humanservices.gov.au/individuals/services/centrelink/stillborn-baby-payment> (all accessed 28 September 2018).

22 Elizabeth Luxford and Nathan Barker, *Submission 202*, [p. 2].

23 National Rural Health Alliance, *Submission 57*, [p. 6]. See Chapter 6 for further discussion of the quality of maternity care in rural and remote communities.

24 Stillbirth CRE, *Submission 56*, p. 5.

25 B Ogwulu Chidubern, LJ Jackson, AEP Heazell, et al, 'Exploring the Intangible Economic Costs of Stillbirth', *BMC Pregnancy and Childbirth*, vol. 15, no. 188, 2016, p. 2.

Many suffer from grief and anxiety, the effects often lasting long periods of time. Experiencing a stillbirth caused stress and anxiety in subsequent pregnancies and some parents received counselling to deal with this increased level of stress. Stillbirth put considerable strain on marital or partner relationships. Different grieving patterns between men and women, blame, anger and resentment were often cited. Some couples separated after the experience.²⁶

3.27 Other flow-on effects for families may include increased fear and anxiety amongst other children, and social isolation.²⁷ These psychological effects may adversely impact on their daily health, functioning, relationships and employment.²⁸

Costs can no doubt be attributed to each of the above issues by economists, but how do you quantify the impact of a stillborn baby on its family? Without wanting to be overly dramatic, Joshua's death traumatised me in ways I cannot always describe, and impacted on the mothering of my other two children. I was diagnosed with breast cancer six years after Joshua's birth, and although there is no evidence, I strongly believe the grief I experienced after Joshua, and the stress of my subsequent pregnancies played a role in this. I was 36 at the time of diagnosis.²⁹

3.28 In addition to the emotional grief and trauma of stillbirth, bereaved families are often faced with longer-term financial burdens that extend well beyond 12 months after the loss.³⁰

...I keep needing to see new specialists for things that we're still trying to find answers for. Now I'm struggling with infertility, so I'm going through IVF, which is partially Medicare rebated. Counselling is another thing that I've utilised. It has been very helpful to have access to the mental healthcare plan, but I don't think it's enough to subsidise 10 sessions a year for something that's as profound and ongoing as this.³¹

...

My husband and I were both self-employed. I was an IT consultant, and my husband has an electrical contracting business. He couldn't take time off. His staff tried to keep things going, but we had no such thing as paid leave, and ultimately we moved out of Sydney, partly for economics. That was an economic outcome of the death. I completely change[d] careers as a result. We went from a staff of five electricians down to just my husband.³²

26 PwC, *The Economic Impacts of Stillbirth in Australia*, p. iii.

27 PwC, *The Economic Impacts of Stillbirth in Australia*, p. iii.

28 Chidubern, Jackson, Heazell, et al, 'Exploring the Intangible Economic Costs of Stillbirth', p. 1.

29 Ms Wilson, *Submission 195*, [p. 5].

30 Ms Victoria Bowring, Chief Executive Officer, Stillbirth Foundation Australia, *Committee Hansard*, 8 August 2018, p. 17.

31 Mrs Clare Rannard, *Committee Hansard*, 8 August 2018, p. 9.

32 Ms Natasha Donnelly, *Committee Hansard*, 8 August 2018, p. 9.

...

It's fair to say that my productivity was severely impacted by my loss experience. I struggled to concentrate, and I found it difficult to re-discover purpose in my work. I found group situations challenging, including leading meetings and presenting to groups. I had lost all confidence. This was my experience, despite my having accessed extensive bereavement counselling through (then) SIDS and Kids—both individual and support groups, and actively working hard to rediscover hope and happiness after loss.³³

...

...I now find myself mentally unprepared to re-join the workforce in the immediate future due to a lack of drive and mental capacity to be able to fulfil work obligations. Re-joining the workforce too soon may result [in] a phenomenon known as presenteeism, where an employee is physically present, but mentally absent. Further, the prolonged period of remaining at home without an active income will eventuate in financial burden, and potentially a strain on the relationships within the household.³⁴

Impact on healthcare providers

3.29 The College of Nursing and Health Sciences at Flinders University noted that some of the direct and indirect costs of stillbirth are borne directly by healthcare providers. These include increased medical and health care costs, costs associated with subsequent pregnancies which would be regarded as high-risk, and costs associated with stillbirth investigations and reporting.³⁵ As one bereaved parent explained:

Extended leave from the workforce, and impacted productivity are not the only impacts with respect to quantifying the impact of stillbirth on the Australian economy. It is important to also take account of the impact on the public health system of subsequent pregnancy care...This increased level of specialist care by an esteemed, senior medical professional, certainly came at a cost to the public health system. With this replicated more than 2000 times every single year, it is clear to see that we have an unacceptable and unsustainable situation on our hands.³⁶

3.30 The economic impact of stillbirth also extends to clinicians and other health professionals who care for those experiencing stillbirth, although this impact is not accounted for when quantifying the costs of stillbirth. As Ms Victoria Bowring, Chief Executive Officer, Stillbirth Foundation Australia, explained:

Obstetricians, midwives and the nursing staff all feel this loss at the same time, and that wasn't taken into account. I'm sure there would be many workers who find it difficult to return to their jobs, having sat beside a

33 Ms Gillian Graham-Crowe, *Submission 4*, p. 6.

34 Ms Oi-Lai Leong, *Submission 147*, p. 6.

35 College of Nursing and Health Sciences, Flinders University, *Submission 39*, [p. 2].

36 Ms Graham-Crowe, *Submission 4*, p. 7.

family who've gone through this and held their hand and then had to go home and deal with that themselves. So, whilst we have this figure, it is much broader than it seems.³⁷

3.31 The 2018 Victorian parliamentary inquiry into perinatal services also heard evidence that short staffing combined with overtime and double shifts had led to workplace stresses for midwives, leading to increased sick leave, reduction in working hours, or even leaving the workforce.³⁸

3.32 Professor Craig Pennell, Senior Researcher, HMRI noted that, whilst considerable effort goes into training so that staff can deal with the emotional stress surrounding stillbirth, it takes a particular type of person to do so repeatedly. He noted that:

...there are staff who are involved, especially in the unexpected cases or cases that happen in labour, who would not attend work for a week or weeks. I know of staff who have left the profession because of stillbirths that were particularly unexpected, or where the management of those cases wasn't good, or where there was blame or the junior staff were blamed. But every case is, obviously, different.³⁹

3.33 The loss of skilled staff as a result of these pressures is therefore a significant issue that needs to be factored into the calculation of the economic impacts of stillbirth on hospitals and the healthcare system.

Employment-related costs

3.34 Stillbirth has a significant economic impact on employees, employers, and the labour force more generally. Bereaved parents may withdraw from normal social activities, including labour force participation, in the aftermath of stillbirth, with life-long implications for the economic status of women and their families.⁴⁰

3.35 Stillbirth CRE estimated that the annual cost of one mother missing from the labour force as a result of stillbirth was \$33 000 in Gross Domestic Product.⁴¹

3.36 PwC concluded that, even in cases where a bereaved mother has to return to work for financial reasons following a stillbirth, her productivity is estimated to be 26 per cent of her normal rate after 30 days.⁴²

37 Ms Bowring, Stillbirth Foundation Australia, *Committee Hansard*, 8 August 2018, p. 17.

38 Parliament of Victoria, *Inquiry into Perinatal Services: Final Report*, Family and Community Development Committee, June 2018, p. 221.

39 Professor Craig Pennell, Senior Researcher, HMRI, *Committee Hansard*, 8 August 2018, p. 26.

40 Stillbirth CRE, *Submission 56*, p. 14.

41 Stillbirth CRE, *Submission 56*, p. 14. The figure was based on Treasury's GDP formula.

42 PwC, *The Economic Impacts of Stillbirth in Australia*, p. 12. The study estimated the projected additional costs of stillbirth compared to no stillbirth.

Leave following stillbirth

3.37 A key issue raised by witness and submitters in relation to employment matters concerned leave entitlements for parents who experienced a stillbirth.

3.38 According to the International Labour Organisation, compulsory leave of six weeks should be provided to all women in the event of a stillborn child, as a health-related measure. However, only 12 of 170 countries with maternity benefit policies include any specific provision for stillbirth-related leave, while others have leave provisions that protect parents from discrimination based on maternity.⁴³

National Employment Standards

3.39 In Australia, the National Employment Standards (NES) of the *Fair Work Act 2009* (Cth) provide for minimum leave entitlements for all employees in the national workplace relations system. Other leave entitlements available under an award, registered agreement or contract of employment cannot be less than those contained in the NES.⁴⁴

3.40 Parental leave under the NES of the Fair Work Act is unpaid leave, although many employees are entitled to various degrees of paid parental leave under various industrial instruments, including enterprise agreements and some awards. These employees keep this paid entitlement as it is a benefit in excess of the NES entitlement.⁴⁵

3.41 The Fair Work Act provides for two days' compassionate or bereavement leave 'each time an immediate family or household member dies'.⁴⁶

3.42 The Fair Work Act provides for special maternity leave for a pregnant employee who is eligible for unpaid parental leave, where 'the pregnancy within 28 weeks of the expected date of birth of the child otherwise than by the birth of a living

43 Community and Public Sector Union New South Wales (CPSU NSW), answers to questions on notice, 14 September 2018, p. 6 (received 14 September 2018).

44 'Leave', Fair Work Ombudsman, <https://www.fairwork.gov.au/leave> (accessed 22 October 2018).

45 'Paid parental leave', FairWork Ombudsman, <https://www.fairwork.gov.au/leave/maternity-andparental-leave/paid-parental-leave> (accessed 21 November 2018); *Fair Work Act 2009*, section 22. Section 4 of the *Family Law Act 1975* defines the meaning of 'child' to include a stillborn child. A summary of special parental leave provisions in selected Enterprise Agreements and Awards across Australia is provided in Appendix 3.

46 'Compassionate and bereavement leave', Fair Work Ombudsman, <https://www.fairwork.gov.au/leave/compassionate-and-bereavement-leave> (accessed 21 November 2018); 'Maternity and parental leave', FairWork Ombudsman, <https://www.fairwork.gov.au/leave/maternity-and-parental-leave/pregnant-employee-entitlements> (accessed 20 September 2018).

child'. If an employee takes leave because of a stillbirth, the leave can continue until she is fit for work.⁴⁷

3.43 An eligible pregnant employee can reduce or cancel their period of unpaid birth-related parental leave if their pregnancy ends due to their child being stillborn, or if their child dies after birth.⁴⁸

3.44 State and territory parental leave provisions apply only to those employees not covered by the parental leave component of the NES (that is, employees who are award/agreement free). The majority of state and territory laws are generally consistent with the provisions provided for in the Fair Work Act. Only New South Wales, Queensland, Western Australia, South Australia and Tasmania have applicable laws, while the ACT, Northern Territory and Victoria are essentially governed by the Fair Work Act alone (with some exceptions regarding public service).⁴⁹

Parental Leave Pay

3.45 The Australian government's Paid Parental Leave Scheme, introduced on 1 January 2011, provides access to 18 weeks of parental leave pay for eligible working parents when they take time off from work to care for a newborn or recently adopted child. It is fully government-funded. Parental leave pay is not a leave entitlement, but a payment made to an eligible employee while that employee is on leave.

3.46 Parents of a stillborn child are eligible for parental leave pay, although the same income caps and activity tests apply as for paid parental leave which effectively excludes many employees.⁵⁰

Inconsistent leave provisions

3.47 The Community and Public Sector Union New South Wales (CPSU NSW) noted that the Fair Work Act appears to contradict the federal allowance provided under the Paid Parental Leave Scheme. Section 77A, for example, states that 'Pregnancy ends (other than by birth of a living child)', which appears to allow the employer to cancel unpaid leave in the instance of a stillbirth and require the worker to return to work. In other words the entitlement is removed.⁵¹

47 *Fair Work Act 2009*, section 80, http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fwa2009114/s80.html (accessed 21 November 2018).

48 'Applying for parental leave', FairWork Ombudsman, <https://www.fairwork.gov.au/leave/maternity-and-parental-leave/applying-for-parental-leave> (accessed 21 November 2018).

49 *Fair Work Act 2009*, sections 60 and 741–748.

50 Australian government, *Paid Parental Leave Guide*, 2.1.1 Eligibility differences between PLP & DAPP, <http://guides.dss.gov.au/paid-parental-leave-guide/2/1/1> (accessed 22 October 2018).

51 Community and Public Sector Union New South Wales (CPSU NSW), answers to questions on notice, 8 August 2018 (received 14 September 2018); also see Mr Andrew McBride, *Submission 102*, p. 3; *Fair Work Act 2009*, section 77A, http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fwa2009114/s77a.html (accessed 21 November 2018).

3.48 Mr Troy Wright, Branch Assistant Secretary, CPSU NSW, pointed out that the relevant provisions of the Fair Work Act (sections 77A and 80) are inadequate because they discriminate between mothers whose children are born full-term and mothers whose children are not.

Mothers who give birth to a child are recipients of the government's Paid Parental Leave scheme, whereas mothers experiencing a stillbirth or miscarriage are reliant upon unpaid parental leave [and] requires a series of medical certificates in the event of a miscarriage or stillbirth...somehow the issue of stillbirth and miscarriage is still treated as a medical issue industrially and is still reliant on medical certificates.⁵²

3.49 The CPSU NSW recommended that section 80 of the Fair Work Act be amended:

...to reduce the threshold from 12 weeks pregnancy and also to ensure that workers are paid special maternity leave at a rate equal to their pre miscarriage level regardless of the employment status of the worker.⁵³

Inadequate leave provisions

3.50 Even where bereavement or other types of paid leave were available to them, some bereaved parents found that the period of leave was not sufficient and were forced to take additional unpaid leave.⁵⁴ Tim and Leanne Smith explained that it took time to deal with the grief and trauma of a stillbirth:

I was not a functioning member of society or the workforce for at least 6 months. I believe that people need to be given sufficient time away from the workforce in the first instance to deal with the emotional and physical turmoil.⁵⁵

3.51 Mrs Jackie Barreau agreed, arguing that the two days' compassionate/bereavement leave provided under the Fair Work Act is not enough to manage the emotional, physical and mental impact of losing a child and planning for a funeral. She recommended that this leave should be extended to five days, and that flexible workplace arrangements in both public and private sectors should extend to stillbirth to allow for the bereavement of a family member.⁵⁶

3.52 Mrs Clare Rannard testified that, whilst she was able to access a combination of workplace maternity leave, paid parental leave and unpaid leave, she found it

52 Mr Troy Wright, Branch Assistant Secretary, CPSU NSW, *Committee Hansard*, 8 August 2018, p. 57.

53 CPSU NSW, *Submission 68*, [p. 5].

54 See for example, Britt Jacobsen and Samuel Haldane, *Submission 82*, [p. 4]; Mrs Rannard, *Committee Hansard*, 8 August 2018, p. 9; Mrs Megan Warren, *Submission 151*, [p. 5].

55 Tim and Leanne Smith, *Submission 77*, [p. 5].

56 Mrs Jackie Barreau, *Submission 215*, [p. 3].

difficult to work in a full-time capacity following her daughter's stillbirth, with implications for her employment security.⁵⁷

3.53 Ms Lisa Martin found that she was ineligible for parental leave because of strict provisions regarding the classification of 'stillborn'.

My son Carter Jake Martin was born at 19 weeks 6 days and 2 & half hours just making him a few hours shy of a classified stillborn, therefore not entitled to recognition of a birth or parental leave. Not only did I endure the birth I faced the cold hard reality of what was to come after that which was the effect on our family, my sons and friends, the impact on my job and the financial position we were in which may see us lose our home.⁵⁸

Employer discretion

3.54 The committee heard evidence about the difficulties and inconsistencies experienced by employees when seeking access to leave following a stillbirth, highlighting that employers may lack awareness of the trauma associated with stillbirth and exercise considerable discretion and control over access to parental leave entitlements.⁵⁹

3.55 Nick and Elena Xerakias noted that, while Ms Xerakias was not able to work full-time and could not commit to a full-time position, Mr Xerakias's employer and colleagues were supportive and, upon his return to work, he was provided with flexibility in his work hours.⁶⁰

3.56 Ms Naomi Herron was advised by her employer that she had been made redundant whilst on leave and that she would not receive a payout. She stated that she worked in a male-dominated industry and her employers seemed to be unaware of their responsibility to their employees.⁶¹

3.57 Sands Australia noted that '[s]tillbirth does not satisfy Centrelink/government maternity leave requirements and this is often the case for employer maternity leave entitlements'.⁶² Access to maternity leave may be granted at the discretion of the employer. One submitter stated that her employer had honoured their maternity leave policy 'even though I had no baby', and this had enabled her to work through her grief and not worry about losing her home.⁶³

57 Mrs Rannard, *Committee Hansard*, 8 August 2018, p. 9.

58 Ms Lisa Martin, *Submission 176*, [p. 1].

59 See for example, Mrs Clare Rannard, *Submission 179*; Tim and Leanne Smith, *Submission 77*; Flinders University, *Submission 28*.

60 Nick and Elena Xerakias, *Submission 193*, [p. 5].

61 Ms Naomi Herron, *Submission 204*, [p. 1].

62 Sands Australia, *Submission 59*, p. [11].

63 Ms Jana Hall, *Submission 216*, [p. 1].

3.58 Australian Public Service (APS) employees may be able to access accrued personal leave and paid maternity leave, but parental leave policies in the private sector are inconsistent and ambiguous.⁶⁴

3.59 Mr Andrew McBride stated that he and his wife were both in the APS at the time of their stillbirth, and were able to access paid personal and maternity leave. However, he recalls meeting a newly-grieving mother who had to return to work because she had no leave and could not afford to take time off and, when he was later employed in the private sector, he observed that corporate parental leave policies were often ambiguous as to whether parents of stillborn babies were entitled to paid parental leave, because they tended to mirror the provisions contained in the Fair Work Act.

3.60 Since then, he has been working with corporate leaders to ensure recognition of stillbirth in paid parental leave policies becomes the norm, and that parents of stillborn children are afforded the same rights as other parents.

Our ask of companies has been straightforward: a commitment to review company parental leave policies to ensure that employer funded paid parental leave is available in the circumstance of stillbirth.⁶⁵

3.61 Mr McBride recommended that the provisions for paid parental leave needed to be clarified in order to encourage private employers to ensure that employees who experience stillbirth have access to such leave.⁶⁶

I do not believe that the ambiguity in existing company parental leave policies was through ill-intent but simply neglect—companies have tended to take the mandated legislative provisions in the Fair Work Act of 2009 (that focus on unpaid parental leave) and overlay their own paid parental leave policies, which tend to be cast around the care-giving aspect of parental leave and just don't consider the circumstance of stillbirth. Consequently, clauses from the Fair Work Act, such as Section 80 on “Unpaid special maternity”, are confusingly included in policies that are addressing paid parental leave.⁶⁷

3.62 Annette Kacela and Christopher Lobo reported that, whilst they had access to some paid leave, their respective experiences of returning to work were starkly contrasting.

Following the stillbirth of our son Thomas, neither Christopher nor I were capable of immediately returning to work due to the sheer devastation, grief and crippling mental effects. We have since returned to our respective employers to different departments. Christopher's employer granted him paid leave for 2 months who was exceptionally supportive of the circumstances and even contacted him on multiple occasions to ensure his

64 Mr McBride, *Submission 102*, p. 2.

65 Mr McBride, *Committee Hansard*, 7 September 2018, p. 2.

66 Mr McBride, *Committee Hansard*, 7 September 2018, p. 6.

67 Mr McBride, *Submission 102*, p. 3.

and our family's wellbeing. My employer dealt with Thomas's passing in stark contrast, I was on leave for four months where I was required to use all of my personal and annual leave entitlements which I had been accumulating in preparation for Thomas live birth, the remainder of the time was un-paid...The non-supportive work culture demonstrated by my employer compounded the situation we were already in. I was also requested to complete my 'on-call' shifts over the Christmas period that I had to decline, this gesture clearly demonstrated the lack of awareness stillbirth has across various domains including the healthcare industry.⁶⁸

Best practice employment models

3.63 The Centre for Midwifery, Child and Family Health advocated a review of employment laws across Australian jurisdictions, using a 'stillbirth lens' to ensure that bereaved parents are protected and supported in legislation.⁶⁹

3.64 Stillbirth CRE recommended the following benefits to reduce the financial burden on parents of stillbirth:

- minimum paid period of time off work;
- respite child care if there are other children or care responsibilities;
- Medicare reimbursement for psychiatric or psychological referral; and
- equity of parental leave support post stillbirth for both mothers and fathers.⁷⁰

3.65 One submitter noted that 'parents of babies who die are subjected to a lot of misinformation on their rights and responsibilities in the workplace', and recommended that the Office of the Fair Work Ombudsman develop a best practice guide for employees and employers, and a national stillbirth in the workplace campaign to assist employers and employees to navigate the return to work after a stillbirth.⁷¹

3.66 In 2017 Stillbirth Foundation Australia called on private employers to review their parental policies to ensure that their company extended paid parental leave in the case of stillbirth. The Foundation listed the economic and social benefits including removing financial pressure from the bereaved family, recognising the birth of a child and allowing time for bereaved mothers to recover from the birth.⁷²

68 Annette Kacela and Christopher Lobo, *Submission 232*, [pp. 2–3].

69 Centre for Midwifery, Child and Family Health, *Submission 21*, p. 6.

70 Stillbirth CRE, *Submission 56*, p. 15.

71 Name withheld, *Submission 145*, p. 5.

72 Victoria Bowring, 'Paid parental leave should include the parents of stillborn children', *Huffington Post*, 15 October 2017, https://www.huffingtonpost.com.au/victoria-bowring/paid-parental-leave-should-include-the-parents-of-stillborn-children_a_23241984/ (accessed 27 September 2018). Stillbirth Foundation Australia hosts a register of companies that publicly support this initiative and have updated their corporate policies accordingly. See Stillbirth Foundation Australia, *Corporate Register*, <http://stillbirthfoundation.org.au/corporate-register/> (accessed 28 September 2018).

3.67 The committee identified two examples of best practice currently operating in Australia that contain specific provisions for employees who have experienced stillbirth.

Australian Public Service

3.68 The *Maternity Leave (Commonwealth Employees) Act 1973* (Cth) covers APS employees and ensures that mothers of stillborn children are entitled to the same maternity leave as mothers of children born live.

3.69 The Act provides for a maximum period of absence of 52 weeks. Under the Act, a person is required to commence maternity leave six weeks before the expected birth of the child. Where the child is born earlier than six weeks before the expected date of birth, the required absence commences on the date of birth and continues for six weeks. In this case, the 52 week period of maternity leave absence commences from the date of birth.

3.70 Eligible employees may access the Paid Parental Leave Scheme (PPL Scheme) or Dad and Partner Pay (DAPP) in addition to entitlements to paid and unpaid leave provided under individual agency Enterprise Agreements.

Ausgrid Enterprise Agreement

3.71 Maurice Blackburn Lawyers and the CPSU NSW advocated that the provisions for stillbirth and miscarriage in the Ausgrid Enterprise Agreement, as negotiated with the Electrical Trades Union, represented best practice and should be included in the NES. Section 30.8 of the Ausgrid Enterprise Agreement reads as follows:

30.8 Cessation of pregnancy - stillbirth and miscarriage

30.8.1 Where the pregnancy ceases by way of miscarriage between 12 and 20 weeks gestation then subject to providing a medical certificate:

(a) the birth parent will be entitled to six weeks paid special parental leave; and

(b) the non-birth parent will be entitled to compassionate leave in accordance with Clause 29 of this Agreement.

30.8.2 Where the pregnancy ceases by way of stillbirth after 20 weeks gestation to birth then subject to providing medical certificate:

(a) the birth parent will be eligible for 16 weeks paid special leave; and

(b) the non-birth parent will be eligible for one week of paid special leave.

30.8.3 The leave set out above in this Clause 30.8 may be added to with approved accrued leave including annual leave, personal carer's leave and accrued personal leave.⁷³

73 Maurice Blackburn Lawyers, answers to questions on notice, 9 August 2018, p. 4 (received 14 August 2018); see also CPSU NSW, *Submission 68*, [p. 5].

Committee view

3.72 Stillbirth has significant and far reaching economic effects for Australia that extend well beyond the direct costs to the healthcare sector. The committee acknowledges that further research and education is required to understand the full extent of these impacts and to inform public policymaking and awareness-raising, including:

- the impact on bereaved parents and their families, including additional financial pressures associated with additional health care, funeral costs and, for many, extended periods of unpaid leave, part-time employment or unemployment;
- the impact on employers and employees in relation to time off work, the process of returning to work, and altered work performance;
- the impact on society when skilled clinicians and health professionals leave the workforce as a result of the pressures of dealing with stillbirth;
- the potential benefits for employers and the Australian economy of improving bereavement care and recovery after stillbirth; and
- the potential for greater investment in innovative research and education from the corporate sector if the economic benefits of improved bereavement care and recovery are more widely recognised.

3.73 The committee recognises that providing protection and support for employees who have experienced stillbirth is a priority across Australia's jurisdictions. It urges the federal, state and territory governments to review employment laws and policies with a 'stillbirth lens' and make necessary changes to ensure that appropriate protection and support provisions are in place.

3.74 The committee acknowledges the success of the Stillbirth Foundation Australia campaign in urging private employers to formally recognise stillbirth in their corporate policies by ensuring that their company extends paid parental leave to employees who have experienced stillbirth. The committee agrees with the approach proposed by Mr McBride and the CPSU NSW, that the relevant provisions of the Fair Work Act should be clarified and strengthened to encourage private employers to review their workplace policies and afford employees who experience stillbirth the same access to paid parental leave as other parents.

Recommendation 1

3.75 The committee recommends that the Australian government reviews and amends the *Fair Work Act 2009* (Cth) and provisions relating to stillbirth in the National Employment Standards (NES) to ensure that:

- **provisions for stillbirth and miscarriage are clear and consistent across all employers, and meet international best practice such as those contained in the Ausgrid Enterprise Agreement; and**

- **legislative entitlements to paid parental leave are unambiguous in recognising and providing support for employees who have experienced stillbirth.**