

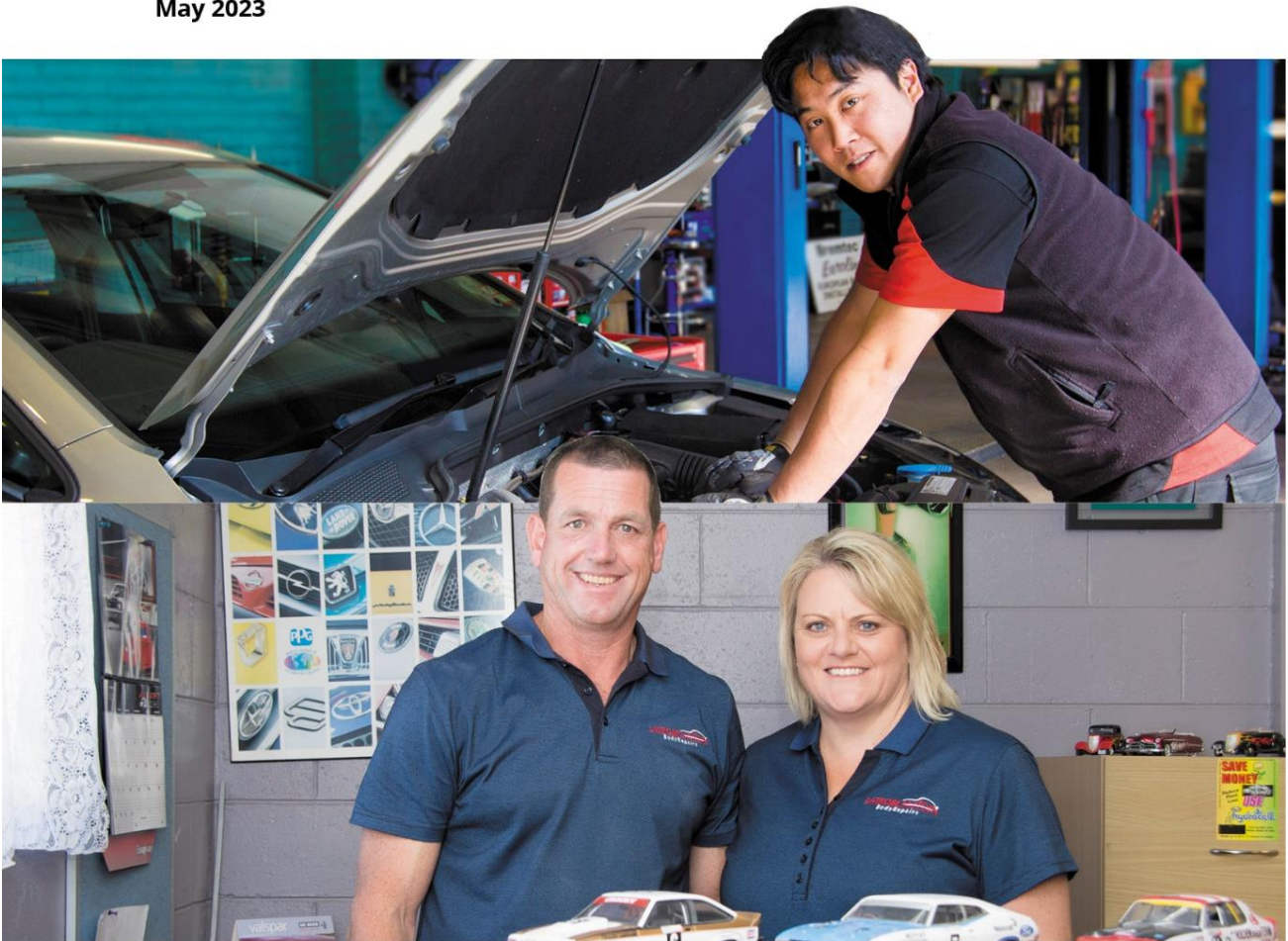


MTAA Submission

# Potential impacts of the Commonwealth Paid Parental Leave Scheme on small businesses and their employees

Senate Education and Employment References Committee

May 2023



## ABOUT MTAA

The Motor Trades Association of Australia (MTAA) is Australia's peak national automotive association. MTAA's membership includes the Motor Traders' Association of New South Wales, the Victorian and Tasmanian Automobile Chamber of Commerce, 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 (96%) 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.

## CONTACT DETAILS

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## INTRODUCTION

1. This submission is filed on behalf of the MTAA to help inform the Senate Education and Employment References Committee (the Committee) inquiry into 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.
2. As noted in its recent submission on the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023*<sup>1</sup>, whilst MTAA 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. MTAA noted in that submission, the disproportionate adverse impact the proposed legislative amendments will have on smaller business – including in relation to the administration of the Commonwealth PPL Scheme:

*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 FUPL (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 FUPL entitlement or the amendments proposed in the Bill.*<sup>2</sup>

3. MTAA therefore strongly supports the intent of the current Inquiry into the potential impact of the Commonwealth PPL scheme on small business. However, in assessing the Senate Inquiry’s Terms of Reference, MTAA notes that the focus appears to be limited to the impact of current Commonwealth PLP scheme arrangements – rather than inviting consideration as to the practical impact of the *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Act 2023* (PPL Amendment Act) and the proposed changes under the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023* (PWE Bill).
4. As clearly foreshadowed in the respective Explanatory Memorandums, these legislative changes are of particular relevance to this Inquiry, given that they are intended to “make the [Commonwealth PPL scheme] payment more accessible, more flexible and gender-neutral”<sup>3</sup> and to provide “stronger access to unpaid parental leave (UPL) and complementing recent changes to the *Paid Parental Leave Act 2010* (PPL Act)”<sup>4</sup> through amending the National Employment Standards (NES) parental leave entitlement.
5. Whilst MTAA acknowledges that gathering an accurate understanding of small business’ experience in administering the Commonwealth PPL scheme is of primary importance, given the significant practical impact that the PPL Amendment Act and PWE Bill will have on employers, MTAA submits that a proper examination of the issue also necessitates a consideration of how the entitlement will operate in practice going forward. Accordingly, this submission will also outline MTAA’s concerns relating to the further impact the PPL Amendment Act and PWE Bill changes will have on employer administration of the scheme.

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<sup>1</sup> MTAA Submission to the Senate Education and Employment Legislation Committee Inquiry April 2023.

<sup>2</sup> *Ibid.*, paragraph 7.

<sup>3</sup> Explanatory Memorandum to the *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022*, page 1.

<sup>4</sup> Explanatory Memorandum to the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023*, page iii.

6. In summary, MTAA submits that:

- a. *the current (and future) impost on small business employers to act as the administrative payment intermediary between the Commonwealth and new parent employees is unwarranted and disproportionately adversely impacts smaller businesses.*
- b. *in practice, the current (and future) arrangements do not support the preservation of the employment relationship between small business operators and their employees, rather to the extent that it has an impact, it undermines it.*
- c. *in practice, the current (and future) arrangements do not act as an incentive to employment and boosting female workforce participation in small businesses – the administrative impost creates a burden that undermines the benefits of the PPL scheme that might otherwise arise.*
- d. *employers should not have responsibility for administering payments on behalf of Service Australia – accordingly, of the two options, the ‘opt-in’ model should be adopted for small business (which should be defined as employers with less than 50 employees).*

## EXPERIENCES OF SMALL BUSINESS IN ADMINISTERING THE PARENTAL LEAVE PAYMENT

7. To help inform MTAA’s submission to the Inquiry, it conducted a survey of its respective memberships on their experiences in administering the Parental Leave Payment (PLP) on behalf of the Commonwealth. The survey results support the anecdotal feedback received from MTAA members with respect to the administrative burden, cost impact and general challenges in transacting with Services Australia.
8. In total, 246 automotive businesses completed the survey. Of those businesses completing the survey, **41.1% have previously paid parental leave to a staff member**. Of those, **58.3% had passed on the Commonwealth PLP to staff** – with the remainder receiving payment directly from Services Australia.

**For those who passed on the Commonwealth payment:**

- **it added to the payroll processing time for 90.8% of respondents;**
- **increased the administrative burden on the business for 91.8% of respondents; and**
- **created cashflow problems for 32.1% of respondents.**

**Unsurprisingly, 96.1% of respondents stated that given a choice, they would prefer Services Australia to pay the Commonwealth PLP directly to staff.**

9. The survey results are consistent with anecdotal feedback received from MTAA from small business members, who regularly raise concerns regarding underpayments, overpayments, delays, record keeping and payroll issues. MTAA notes that the reality of underpayments and overpayments with respect to the administration of the Commonwealth PPL scheme is acknowledged through its Employer Guidance<sup>5</sup> material.

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<sup>5</sup> Paid Parental Leave scheme Employer Toolkit, Services Australia, sub-section 5.7.

10. Even where the process goes smoothly, there is a significant administrative impost placed on the employer – with a significant amount of time to access and assess the necessary information, provide required direction to payroll staff, make any necessary changes to payroll software (including through obtaining professional assistance), and then conduct a reconciliation exercise at the end of the process.
11. Things however do not always go smoothly. For example, smaller businesses often have payroll systems that cannot easily accommodate payments to employees without triggering an automatic accrual of paid leave entitlements, leading to overpayment of leave entitlements in some instances. MTAA is also aware of instances of ‘double payment’ of the entitlement, as the following example illustrates:

*The employer in question was required to administer the Commonwealth PLP and had been doing so for a number of weeks. The issue subsequently arose when the employee notified Services Australia of a change in their personal circumstances, resulting in the Commonwealth PLP commencing to be paid directly by Services Australia.*

*As neither the employee, nor Services Australia, notified the employer of this change, the employer continued to automatically make payment through their payroll system – leading to a double payment of the employee that lasted for approximately 6 weeks. The employee was asked to rectify the overpayment of approximately \$5,000 and subsequently resigned without doing so. The response from Services Australia was to advise the small business employer to commence its own debt recovery action.*

## RELATIVE CONTRIBUTION TO PRESERVING THE EMPLOYMENT RELATIONSHIP

12. The survey also asked respondents whether they felt that delivering Commonwealth PLP through their payroll played an important role in maintaining a strong relationship between the business and employees whilst on parental leave – with **81.1% of respondents confirming that this was not the case**. Respondents were also provided an opportunity to explain why they felt that way. Of the 87 responses received, the rationale was broadly consistent:

*“Employees don’t care who pays them the PPL. They just want to receive it. I was a receiver of PPL whilst being on mat leave myself, I also am responsible for processing payroll for our company and I can assure you, it makes absolutely no sense for the employer to be responsible for processing PPL. As a receiver of PPL, I personally felt it made no difference in connecting me to the business.”*

*“Absolutely not! The money goes directly from payroll to an account. The process is 100% devoid of any contact. Maintaining personal relationships would have to do with the desire to do so on a personal level.”*

*“I can maintain a close relationship with my staff on Parental Leave by personally contacting them and keeping in touch without the added burden of administrative processes.”*

*“it did not change the relationship at all – just a burden on the business”*

13. MTAA notes that the clear and unambiguous feedback from the survey is entirely consistent with anecdotal feedback from its respective memberships – i.e., that the administrative

impost on smaller businesses of being the payment intermediary between the employee and the Commonwealth does not assist employers maintain a strong relationship with their employee whilst on parental leave.

14. Rather, as the example provided earlier in this submission illustrates, the experience of small business employers in the automotive industry is that current arrangements can actually fracture the employer–employee relationship. That is, whilst the vast majority employees are aware the payment is coming from the Commonwealth, rather than from their employer, they will invariably blame the employer if anything goes wrong – i.e. allegations of “wage theft” against the employer, regarding any delays in payment or underpayment by Services Australia.
15. This sentiment was echoed by a significant number of survey respondents:

***“This arrangement for leave is a commonwealth program so they need to handle this if there is a problem staff tend to blame the employer when its got nothing to do with the employer, when there is a problem it creates friction between employee and employer which it should not do.”***

***“If we delivered payment all enquiries would be directed to us and not to the relevant agency”***

#### CURRENT ARRANGEMENTS ACTING AS AN INCENTIVE OR DISINCENTIVE

16. Whilst MTAA supports the objective of the Commonwealth PPL scheme in encouraging employment and boosting female workforce participation in smaller businesses (i.e. SMEs), this good intent is undermined by the administrative impost inherent in the current arrangements. Therefore, whilst the provision of parental leave payments to employees under the scheme should assist in making small businesses an attractive place to work on the basis that smaller businesses typically do not have the means/resources to fund an employer funded parental leave, the (unnecessary) requirement for the small business to administer the scheme serves to undermine this good intent – acting to negate any well-intentioned benefit.
17. Employer frustration with the administrative impost is perhaps best illustrated by the following response to the survey received from a member of the VACC:

***“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”***

18. This sentiment was echoed by a significant number of survey respondents:

***“This will cause additional pressure to already time poor [administrative] employees.”***

***“it only creates more financial hardship for small businesses.”***

***“Just another requirement government legislation would like to throw on small business”***

***“another reason to quit being in business.”***

*“this is just another cost put on the employer that should be handled by the commonwealth right the way from start to finish”*

*“I cannot support any more taxes and costs to running small business, I’m done, close doors june 30”*

## MERITS OF AN OPT-IN OR OPT-OUT MODEL

19. The survey found that given the choice, **86.3% of respondents favoured the ‘opt-in’ model**, rather than an ‘opt-out’ model.
20. However, the overwhelming message coming from respondents was that the responsibility for administering the payment should be Services Australia’s alone:

*“This does not significantly impact our business, as we have few staff eligible for paid parental leave. However it does seem it would be easier for Services Australia to administer the payment, and reduce admin time for small businesses who already have difficulty finding staff to fill positions”*

*“Would be better to leave it 100% to Services Australia for consistency throughout the industry”*

*“Parental leave should be between the parent and the government [and] not involve the employer except for verification in the first instance”*

*“This is a commonwealth payment and should have nothing to do with the employer”*

*“I feel like the system is double handling. The employer has to pay the employee, then claim the money back from Services Aust. It would be more efficient for Services Aust. just to pay the employee”*

*“It is nothing that is agreed with us, the government allows this payment, they should administer it.”*

21. As detailed in a subsequent section of this submission, the incoming legislative changes will make the administration of the Commonwealth PPL scheme more difficult, with the introduction of unilateral flexibility arrangements for employees, resulting in less certainty for employers (and Services Australia).
22. Accordingly, MTAA submits that of the two choices, the ‘opt-in’ model should be adopted – consistent with employer feedback above, serious consideration should be given to Services Australia taking over the responsibility entirely.

## PROCESS FOR BETTER ENGAGEMENT

23. MTAA’s general position regarding engagement from governmental departments, is to emphasise the need for genuine consultation and with a broader cross-section of organisations representing small business to enable better consideration to be given to practical implementation issues. For example, such consultation could assist in avoiding

circumstances of the illustrative example provided above, where the employer was effectively left to pursue legal avenues to recover overpayments on behalf of Services Australia.

24. However, as the survey responses attest, the simplest and most effective way of improving engagement is to remove employers from being an unnecessary intermediary between the financial arrangement between the Commonwealth and the individual (employee) beneficiary.

***“We have only done a partner pay experience and its confusing and complicated. Unsure who pays what and how much etc.”***

***“Do not have time to deal with government departments.”***

***“It is up to the individual to claim it. There is already a financial burden on small businesses to provide this leave whether it is paid or unpaid, it is time away.”***

25. Small businesses generally lack both the time and resources to engage with Services Australia in this matter. They should also not be forced to go to the Administrative Appeals Tribunal in the event that they don't accept Services Australia's determination of their obligation to be the intermediary.

## OTHER RELATED MATTERS – THE MAJOR IMPACT OF INCOMING CHANGES

26. As stated earlier, MTAA submits that a proper examination of this issue must necessarily take into consideration the impact of the incoming changes that are aimed at making the payment 'more accessible, more flexible and gender-neutral' - in respect to how the entitlement will be utilised in practice going forward.

27. Specifically, with respect to the proposed changes to the flexible unpaid parental leave (FUPL) under the PWE Bill, MTAA has previously identified the following concerns needing to be addressed to improve fairness and certainty for employers and employees and help ameliorate the 'administrative nightmare' that will otherwise arise for small businesses in particular:

- *the disproportionate adverse impact on smaller businesses;*
- *confusion over the quantum of the entitlement for part-time and casual employees;*
- *insufficient detail in employee notification requirements for flexible unpaid parental leave; and*
- *the lack of certainty over employee notice period requirements.*<sup>6</sup>

28. In the context of the current Inquiry, MTAA submits that the effect of these changes will be further compounded by the changes made to the Commonwealth PPL scheme. The result will be the imposition of significant additional administrative burden on businesses - through firstly, the unavoidable increase in uncertainty as to whether the Employer Declaration threshold is met in practice; and secondly, a significant expansion to the coverage of the scheme.

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<sup>6</sup> Op. cit., paragraph 6.



### Increased uncertainty as to whether the Employer Declaration threshold is met

29. MTAA submits that the unavoidable effect of the legislative changes will be to reduce, if not entirely remove, certainty with respect to the taking of both the unpaid parental leave and the Commonwealth's PLP entitlement. That is, in addition to the PLP entitlement becoming completely flexible, the following proposed changes to the unpaid parental leave NES entitlement factors will result in employers having increasingly little visibility or certainty as to how an employee will take their unpaid parental leave entitlement:

- ***unpaid parental leave will change from an entitlement that is primarily taken in a single continuous period<sup>7</sup>, to an entitlement increasingly taken as unpaid flexible parental leave (UFPL) - with 100 days<sup>8</sup> UFPL able to be taken on effectively on an ad hoc basis, regardless of the number of days per week an employee ordinarily works<sup>9</sup>.***
- ***an employee's notification requirement to their employer will change from an (initial) requirement to provide at least 10 weeks' notice (unless not practicable) of intended start and finish times of the single period of unpaid parental leave<sup>10</sup>, to a requirement to only notify the total number of days intended to be taken as UFPL<sup>11</sup> (i.e. not when or how these UFPL days are intended to be taken).***
- ***an employee's notification requirement to their employer will change from a (subsequent) requirement to provide at least 4 weeks' notice (unless not practicable) confirming start and finish dates<sup>12</sup>, to a requirement to only confirm each UFPL day per occasion<sup>13</sup> (i.e. an employee can notify the employer on a rolling 4-week basis, or provide no advance notice at all if deemed 'not practicable' to do so).***

30. This lack of certainty is further illustrated by effective changes to an employee's ability to unilaterally change confirmed leave under the NES. Currently, once an employee confirms their parental leave period, the employee can reduce the continuous leave period only with the agreement of their employer<sup>14</sup>; and increase the continuous leave period on at least 4 weeks written notice to the employer<sup>15</sup>, with any further increase to the continuous leave period by agreement of their employer<sup>16</sup>. Under the proposed amendments, as there is no need to provide certainty to their employer by confirming the intended finish dates of periods of UFPL, an employee can (as per the example provided by the Department of Social Services) "... decide to move to taking every second Friday off, which they are entitled to do under flexibility provisions..."<sup>17</sup>. This means that the current checks and balances regarding extending and/or reducing periods of unpaid parental leave can be effectively circumvented.

<sup>7</sup> Fair Work Act 2009, section 71(2).

<sup>8</sup> Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023, proposed section 72A. Note: The quantum is intended to increase to 130 days by 1 July 2026.

<sup>9</sup> Note: per sub-section 72A(2) and the proposed sub-section 72A(2B), this equates to an entitlement of 20 weeks for a full-time employee working 5 days per week, and nominal entitlements of 100 weeks and 50 weeks respectively, for part-time or casual employees working 1 or 2 days per week.

<sup>10</sup> Op.cit., sub-sections 71(2) and 74(2).

<sup>11</sup> Ibid., proposed sub-section 74(3C).

<sup>12</sup> Op.cit., sub-section 74(4).

<sup>13</sup> Op. cit., proposed sub-section 74(4B).

<sup>14</sup> Op. cit., sub-section 77.

<sup>15</sup> Ibid., sub-section 75(3).

<sup>16</sup> Ibid., sub-section 75(5).

<sup>17</sup> Senate Community Affairs Legislation Committee Inquiry Report on the Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022, February 2023, sub-section 2.54.

### Expansion of PPL entitlement eligibility

31. Under current arrangements, employers are not responsible for paying 'Dad and Partner Pay' to eligible fathers, partners of the birth parent and adoptive parents of a child. This payment is administered by Services Australia. Under the PPL Amendment Act changes, 'Dad and Partner Pay' will be abolished – with these employees now entitled to up to 90 days PPL from 1 July 2026, increasing to up to 120 days by 1 July 2026.
32. Accordingly, the move to improve access to the Commonwealth PPL scheme will expand employee eligibility and increase the number of small businesses in traditionally male dominated industries, including automotive, that will be subject to a requirement from Services Australia to administer payments. In particular, an employer of a 'Dad' or 'Partner' will for the first time be required to administer the payment (rather than Services Australia) if that employee stipulates that they intend to take at least 40 days in a block, unless or until, the Employer Declaration is revoked.
33. The impact of these changes will most likely be felt most in traditionally male dominated blue-collar industries with a high percentage of small businesses. However, if the amendments work as intended, over time the number of employees nominating an intention to take at least 40 days in a block (and thus currently triggering an obligation on the employer to administer the PPL payment) may ultimately double – with both parents seeking to utilise parental leave payments in this manner.

### CONCLUSION

34. MTAA submits that the evidence gathered from its membership survey strongly supports a need for small businesses to be exempt from the requirement to administer the Commonwealth PPL scheme on behalf of Services Australia. It is clear that small business operators in the automotive industry already struggle with arrangements under the current system.
35. The cumulative impact of the PPL Amendment Act and PWE Bill, has the potential to have an existential impact on many small businesses. Requiring such employers to register and commence to act as the administrative intermediary on behalf of Services Australia (and subsequently dealing with revocation, related communication delays, payment issues, etc) – all whilst they attempt to deal with the impact of the employee's 'flexible' absences – is likely to prove a bridge too far for many.
36. Accordingly, MTAA strongly recommends that serious consideration be given to Services Australia taking over the payment responsibility entirely. If not, as an alternative, MTAA would support the adoption of the 'opt-in' model for small business. MTAA submits that for the purposes of such an 'opt-in' model, a small business should be defined in a manner consistent with the delineation used in the 'reasonably comparable' test in section 249(3AB) of the *Fair Work Amendment (Secure Jobs, Better Pay) Act 2022* - being an employer who employs less than 50 employees.