

Paid Parental Leave Amendment Bill 2023

ACTU Submission to the Senate Community Affairs Legislation
Committee on the Paid Parental Leave Amendment (More
Support for Working Families) Bill 2023

ACTU Submission, 15 December 2023
ACTU D. No 50/2023

Contents

Introduction	1
About the ACTU	1
Background	1
Summary of ACTU Recommendations.....	2
Recommendation 1 – Role of employer in administering PPL	4
Context for this Recommendation	4
Impact on employment relationship	6
Impact on employers	8
Consequences of changing the employer role.....	9
Recommendation 2 – Inclusive and consistent language.....	12
Recommendation 3 – Further reforms to PPL Scheme	13
Current PPL Scheme.....	13
Need for further reform	13
The objectives of Paid Parental Leave.....	15
Proposed reforms	16
Recommendation 4 – Strengthen rights and protections for working parents and carers	17
Conclusion.....	20

Introduction

About the ACTU

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. It has played the leading role in advocating for, and winning the improvement of working conditions, including on almost every Commonwealth legislative measure concerning employment conditions and trade union regulation. The ACTU has also appeared regularly before the Fair Work Commission and its statutory predecessors, in numerous high-profile test cases, as well as annual national minimum and award wage reviews.

The ACTU is Australia's sole peak body of trade unions, consisting of affiliated unions and State and regional trades and labour councils. There are currently 43 ACTU affiliates who together have over 1.7 million members who work across all industries and occupations in the public and private sector.

Background

The ACTU welcomes the opportunity to make a submission on the *Paid Parental Leave Amendment (More Support for Working Families) Bill 2023 (the Bill)* to the Senate Community Affairs Legislation Committee. The Bill implements the second stage of changes promised by the Federal Government to the Commonwealth Paid Parental Scheme (PPL) in the October 2022-23 Budget, which will extend the PPL scheme to 26 weeks by 2026 (increasing by two weeks per year).

The ACTU fully supports the Bill, which implements important reforms to the *Paid Parental Leave Act 2010 (Cth) (the Act)* to improve and extend PPL, including:

- Extending the PPL scheme by 2 weeks each year from 1 July 2024 to reach 26 weeks from 1 July 2026;
- Extending the reserved period for partnered claimants by one week each year from 1 July 2025 to reach 4 weeks from 1 July 2026, with single parents able to access the full entitlement;
- Increasing the number of days that can be taken concurrently by multiple claimants in relation to the child to 4 weeks by 1 July 2025;
- Extending the exception to the work test that currently applies to birth parents to fathers and partners who are prevented from performing paid work, and therefore meeting the work test, because their child is born prematurely; and
- Amending Part 2-3 of the Act to clarify the eligibility criteria for claimants in exceptional circumstances, including claimants who are gaining parents in a surrogacy arrangement.

The Bill delivers significant reforms to PPL that have been advocated for by unions and others for many years. Importantly, the Bill does not change the role of the employer in administering PPL payments. The role of the employer in administering PPL payments is crucial to the maintenance of the employment relationship and has flow on effects to the retention of employees on parental leave, female workforce participation and discrimination against women and working parents. The ACTU strongly opposes any changes to the employer role.

There is a lot more to be done to improve and expand Australia's PPL scheme. Extending the scheme to 52 weeks by 2030, increasing the rate of pay from its low level of the National Minimum Wage, providing incentives for shared parenting, and paying super on top are all changes that are necessary to increase women's workforce participation, facilitate more equal sharing of caring responsibilities between men and women, and close the gender pay gap. Furthermore, given how prevalent discrimination is against pregnant workers and workers with caring responsibilities, more needs to be done to strengthen workplace rights and entitlements.

The ACTU makes the following recommendations that will strengthen both the Bill and Australia's PPL scheme and broader parental leave framework.

Summary of ACTU Recommendations

Recommendation 1 – The employer role in the PPL Scheme should remain as currently provided for in the Act.

Recommendation 2 – the Bill, the EM and the Act are amended as follows:

- a) all occurrences of the words 'birth mother' in the Bill are replaced with the words 'birth parent';
- b) the EM is amended to replace all occurrences of the words 'birth mother' with 'birth parent'; and
- c) all occurrences of the words 'birth mother' in the Paid Parental Leave Act are replaced with 'birth parent.'

Recommendation 3: In order to increase women's workforce participation, facilitate more equal sharing of caring responsibilities between men and women, and close the gender pay and retirement income gaps, the following further reforms should be made to the PPL scheme:

- Lift the entitlement to 26 weeks from commencement of the Bill;
- Phase it up to 52 weeks by 2030, eventually providing 52 weeks to every worker;

- Pay it at the greater of a replacement wage or the full time national minimum wage, with a possible phase up to a living wage first;
- Provide incentives for shared parenting such as bonus leave and expanded use it or lose it components;
- Pay superannuation on parental leave; and
- Remove or shorten the work test period (the requirement that a person has worked for 10 of the 13 months prior to the birth or adoption of a child).

Recommendation 4: Strengthen the rights and protections for pregnant workers and working parents and carers through further legislative reform, including:

- Ensuring workers can access parental leave entitlements, and they are not discriminated against when accessing them or when seeking to return to work, including:
 - Protection for employees taking parental leave through strict liability and/or increased penalties for terminations or adverse action during or shortly after parental leave;
 - A positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family responsibilities;
 - Adopt a reverse onus of proof model in state and federal anti-discrimination legislation consistent with the Fair Work Act;
 - Ensure consistent application of anti-discrimination laws at the state and federal level, including the Fair Work Act;
 - Ensure that the complaints process in anti-discrimination cases is more accessible, less costly and provides better remedies sufficient to act as a deterrent against discrimination;
 - Enable workers and unions to make complaints and bring claims regarding non-compliance with the new positive duty in s47C of the Sex Discrimination Act; and
 - Provide for independent enforcement of compliance notices in the courts by trade unions and workers where the Australian Human Rights Commission does not do so within a period of time.
- Recognition of periods of unpaid parental leave as active service to ensure the accrual of all entitlements including personal leave, long service leave, annual salary increments, superannuation and payment of public holidays during periods of paid and unpaid parental leave;
- Paid lactation breaks and appropriate lactation facilities;
- Access to paid bereavement leave for parents who have lost a child through miscarriage;

- Access to a new entitlement to Grandparental Leave which would provide for an eligible employee to access 52 weeks unpaid leave for each grandchild during the period up until the child's 5th birthday; and
- Ratification of ILO Maternity Protection Convention (C183) and compliance with the guidance in accompanying Recommendation 191.

Recommendation 1 – Role of employer in administering PPL

Context for this Recommendation

Crucially, the Bill does not contemplate any change to the employer role in administering PPL payments. We note that the Report from the Inquiry into the Potential impacts of the Commonwealth Paid Parental Leave Scheme on small businesses and their employees (**Inquiry**) recommended amending the *Paid Parental Leave Act 2010* (Cth) (**the Act**) to require the government to pay Parental Leave Pay instalments directly to employees of small businesses except where the small business opts to make the payments itself. This recommendation should not be adopted, as it would have an adverse impact on employees and the employment relationship, retention of employees on parental leave, female workforce participation and likely increase discrimination against women and working parents. We note the dissenting report of Government and Greens Senators which opposed this recommendation and concur with its findings and analysis.

Nothing in the Report justifies the recommendation of a carve out for small business. The testimony and evidence were very varied, and the anecdotal evidence of a handful of employers was at odds with a comprehensive evaluation done of the PPL scheme undertaken between 2010-2014 which found that most employers (81%) found the transition to providing PPL less onerous, costly and problematic than they had anticipated. There have also not been any major concerns raised by employers during the life of the scheme since 2011. There are already carve outs in the existing scheme that reduce the burden on employers, and the evidence does not support the conclusion that further carve outs are necessary. While employer groups have opposed the mandatory paymaster function, the evidence is that the vast majority of employers do not object to administering PPL payments.

The ACTU is deeply concerned at some of the assumptions that drove the Inquiry. One of the terms of reference of the Inquiry related to whether the current Commonwealth PPL arrangements act as an incentive or disincentive to employment and boosting female workforce

participation in small businesses.¹ Evidence given by the Motor Trades Association of Australia to the Inquiry was that employers needing to administer PPL payments is a disincentive to hiring women.² These claims are all too familiar, as they have been consistently used by some employers to oppose the many changes introduced over the last several decades to provide for greater gender equality. There is no room for these arguments in 2023, which are based in gender discrimination and bias, and which have also been thoroughly debunked.

As demonstrated in the family and domestic violence leave review in 2021,³ the rates of female workforce participation have steadily increased since 1978, following 16 key arbitral and legislative changes providing for greater gender equality (including leave and equal pay). The Fair Work Commission (FWC) found no evidence to support the claim that granting paid family and domestic violence leave (FDV leave) may act as a disincentive for the employment of women and noted that refusing to employ prospective female employees because they might exercise an entitlement to paid FDV leave would contravene the general protections provisions of the FW Act. On the contrary, the Full Bench of the FWC observed that the various changes to the award and legislative context have not had any adverse impact on the female workforce participation rate – indeed it was “arguable that these changes have supported the consistent rise in the female participation rate.”⁴ The FWC prepared Chart 9 (see Annexure A), which shows the rate of female workforce participation increasing following various arbitral and legislative changes relating to gender equality.

There is no evidentiary basis for the argument that measures that increase gender equality act as a disincentive to hiring women, and the fact that employer involvement in the PPL scheme is still being perceived in that way demonstrates how far we have to go. Rather, the evidence from the FWC and the experience of our affiliates suggest that the provision of industrial entitlements that support gender equality and the maintenance of a direct connection between an employer and employees on parental leave act to boost female workforce participation.⁵

¹ [Terms of Reference](#), Inquiry into the potential impacts of the Commonwealth Paid Parental Leave Scheme on small businesses and their employees

² [Report of the Senate Education and Employment References Committee on the potential impacts of the Commonwealth Paid Parental Leave \(PPL\) scheme on small businesses and their employees](#) at 2.9 (page 15).

³ 4 yearly review of modern awards – Family and domestic violence leave review 2021 (AM2021/55) – Summary of Decision [2022] FWCFB 2001

⁴ *Ibid* at [51]-[54].

⁵ For example, see case study at pages 6-7 of the ACTU submission to the Senate Education and Employment References Committee on the potential impacts of the Commonwealth Paid Parental Leave Scheme on small businesses and their employees in our submission to the Inquiry – available at [Submissions – Parliament of Australia \(aph.gov.au\)](#)

Gender equality should not be optional. Just as small businesses are expected to comply with their tax obligations, so should they be expected to comply with measures fundamental to achieving gender equality.

Impact on employment relationship

Since its introduction, the PPL scheme has enabled parents to maintain their connection with their employer, including through the administering of PPL payments by the employer. This keeps them on the payroll system and provides an employer with multiple opportunities to maintain contact and connection with employees on parental leave. This ongoing connection is instrumental in the maintenance of the employment relationship and is of significant benefit to both employees and employers.⁶ For employers who do not offer any paid leave of their own (which would include most small businesses), it's the only formal mechanism by which an employer can maintain a consistent connection with the employee. The evaluation of the PPL Scheme conducted between 2010-2014 demonstrated that PPL encouraged women to return to the same job with the same employer, suggesting a strengthened link with the employer while on leave and increasing attaching to jobs because paid leave was provided to them through their employers.⁷

The employer role in administering the payment was also a key part of the design of the scheme by the Productivity Commission. In its 2009 Report, it recommended that employers should make the statutory payments directly to employees. It noted that the employer role was used in a number of comparable overseas schemes and found the involvement of employers in paid parental leave schemes was crucial, and should involve not only top ups but also scheme administration. It further outlined that:

- arrangements for paying leave should support the underlying objectives of the policy;
- given the desire to link paid parental leave to work, the employer should pay the statutory leave payment on the government's behalf;
- structuring payments in this way would strengthen the link between employer and employee, increase retention rates for businesses, and lead to higher lifetime employment by women;
- The intention was to signal that paid parental leave should be perceived as a normal feature of employment arrangements rather than as welfare;

⁶ Women's Economic Equality Taskforce, [Letter to Senator the Hon. Katy Gallagher regarding Paid Parental Leave Advice, 9 June 2023 \[PDF 369\]](#)

⁷ Submission to the Committee of the Department of Social Services, Department of Employment and Workplace Relations, Services Australia, May 2023, page 9.

- The more parental leave arrangements mimic those that exist as part of routine employment contracts, the more they will be seen by employers and employees as standard employment arrangements;
- This approach should help stimulate changes of attitude towards parents in the paid workforce;
- The administrative burden on businesses delivering parental leave need to be weighed against the retention benefits the proposed scheme would deliver to employers not currently offering paid parental leave voluntarily.⁸

For employees, having the payment come from their employer maintains their connection to their specific workplace and role, and is consistent with employer obligations under the NES. This is beneficial as it is more likely to keep work in the forefront of an employee's mind, and result in employees accessing keeping in touch (KIT) days and returning to their job after a period of parental leave.

The maintenance of employment relationships is particularly important for small businesses given their close and direct relationships with employees, as demonstrated during the pandemic with the JobKeeper scheme, which was widely praised as successfully keeping employees connected with their employers. That scheme also involved the administration of JobKeeper payments by employers, who did not complain in that instance of the burden of making those payments, but focused instead on the clear benefits of maintaining the employment relationship.

The experience of our affiliates is that an ongoing connection to a specific workplace during parental leave is key to maintaining the employment relationship. The ongoing connection and provision of parental leave provides many benefits for employees and employers alike – including increased retention, attracting new talent, business productivity, positive organisational culture, increased diversity and innovation, and increased employee loyalty and job satisfaction.

Employers having a role in the administration of payments helps to normalise the taking of parental leave in workplaces and can help contribute to a culture where all employees feel they are able to access the entitlement. This in turn makes it more likely that more employees will access the entitlement, reduce the stigma associated with the taking of parental leave, and create more gender-equal workplaces. It is therefore a crucial way in which employers can support employees on parental leave. These benefits are particularly strong for the most

⁸ Productivity Commission (2009) Paid Parental Leave: Support for Parents with Newborn Children, at page 89, 273 and 333 - [Paid Parental Leave: Support for Parents with Newborn Children - Inquiry report \(pc.gov.au\)](https://www.pc.gov.au/inquiry/2009/paid-parental-leave-support-for-parents-with-newborn-children)

vulnerable – low paid women, women in insecure work, and those not eligible for employer funded paid leave.

Impact on employers

Since the introduction of the PPL Scheme in 2011, most parents accessing the PPL payment have been reliant on their employer administering the payments through the employer's payroll system. This is something that employers, including small business, have been doing for over ten years, and the recent expansion of the PPL scheme does not impose any additional obligations on employers.

Following the introduction of the PPL Scheme the then Department of Social Services undertook a four phase review process as part of an evaluation of the PPL Scheme. The data from the evaluation indicated that most employers (81%) found the transition to providing PPL less onerous, costly and problematic than they had anticipated.⁹ The evaluation also found that:

- The majority (around three quarters or more) of employers surveyed responded positively to questions around the ease of registration and ease of making payments. In the scheme's first year of operation, the PPL evaluation found 79 per cent of employers found organising PLP easy. Overall, 74% of employers found the PPL scheme was easy to implement.
- Two thirds of employers indicated there were no additional costs to them of implementing the PPL scheme and payments.

There is little data available to support concerns that providing PPL payments through employers is unduly burdensome. At the same time, there are significant benefits to the employment relationship of the payment coming from employers rather than coming from Services Australia. Given the majority of people who access PPL are women, the fact that administering the PPL payment may be predominately seen as onerous and burdensome by some employers and parts of the business community only serves to underscore the pervasive nature of gender inequality in the Australian workforce, and how much work there is still to do to ensure workplaces are equal and respectful. Participation in the administration of the scheme is a reasonable and small contribution for employers gaining the benefits of the funding of the scheme. There is also no rational basis for altering the employer role given that the costs to business are negligible.

⁹ Institute for Social Science Research, the University of Queensland (April 2013) Paid Parental Leave Evaluation - Phase 3 Report, at pages 42,43 and Table 2.24.

Consequences of changing the employer role

The ACTU and its affiliates are concerned that if there was any change that no longer required small business employers to administer PPL payments, this would have several serious negative consequences.

Firstly, it would sever the important ongoing employment connection, through the taking away of the mechanism by which the relationship is maintained. It would shift parental leave away from being an industrial entitlement and towards being a government provided welfare entitlement, which would not do anything to maintain the employee's connection to a specific workplace or employer. It would also undermine the legal framework of the NES that provides particular industrial entitlements to employees, emphasises the ongoing nature of the employment relationship, and places certain obligations on an employer to maintain that relationship - including KIT days and the return to work guarantee.

These concerns are evidenced by employer group submissions made to the Productivity Commission in 2009, which indicated that those employer groups did not consider that employees on unpaid parental leave were in an "active employment relationship" with the employer, that the scheme would "not form part of the contract of employment or part of the employment relationship and as such significantly different to other leave entitlements", and therefore employers should not be involved in making payments.¹⁰ This demonstrates the concerns that the ACTU and our affiliates have that if the employer has no role to play in administering payments, the employment relationship and connection will be substantially weakened or severed, and will fundamentally change the way employers perceive employees on parental leave, and their obligations towards them.

These concerns have also been raised previously. Academics giving evidence to Senate Inquiries on various Bills¹¹ argued that the employer role in administering payments created a stronger link between employer and employee, by creating a two-way commitment - for the employee to return to work, and for the employer to facilitate the transition back to work. They argued that removing the employer role would weaken the relationship between the employer and the employee, and the results of the evaluation suggested that employees with those stronger links created through PPL payments were more likely to have returned to work after one year than

¹⁰ For example, see the Productivity Commission Report at page 332.

¹¹ See [Report of the Senate Community Affairs Legislation Committee on the Social Services Legislation Amendment \(Omnibus Savings and Child Care Reform\) Bill 2017](#), 21 March 2017; and [Report of the Senate Community Affairs Legislation Committee on the Fairer Paid Parental Leave Bill 2016](#), 15 February 2017.

mothers without access to PPL (and who therefore had weaker links with their employers). They also raised concerns that if payments were made by the government, it would resemble a welfare payment rather than a work entitlement, meaning women would be less likely to return to work at the end of their leave.¹²

Secondly, the severing of that ongoing connection would have real impacts on the employment relationship. Our affiliates are concerned it would lead to a rise in employers not complying with their obligations towards employees on parental leave – as they are not front of mind for an employer, or can even be forgotten about whilst on parental leave. It makes it more likely that an employer may not consult them about any changes to their role, and may take steps to replace them, abolish their role, or otherwise make changes that will adversely impact that employee. This is more likely to be the case in small businesses which may not have dedicated human resources staff or experience. A Human Rights Commission study found that discrimination against mothers is already pervasive, with one in two reporting discrimination in the workplace at some point during pregnancy, parental leave, or return to work. 1 in 5 lost their job. Another common experience was a lack of communication with employees on parental leave. The severing of the connection would also have impacts on the employee side – with employees less likely to have work in the forefront of their mind, less likely to access KIT days, and less likely to return to their job after parental leave.

Thirdly, an opt in model for small business could introduce unnecessary complexity to the administration of PPL. For example, if an employer were to grow in size so that they were no longer a small business during an employee's parental leave, they would need to transition between different payment systems, creating administrative complexity, confusion and burden. If in order to avoid this situation, the scheme assessed business size at the time the leave application is made, there would still be complexity arising in situations where businesses had grown in between parental leave applications, and therefore would have some staff members having their payments administered by Services Australia, and some staff members having their payments administered by the employer. This would also be unnecessarily complex and administratively confusing.

Fourthly, our affiliates report that it is harder for workers to access support when they are paid by Services Australia rather than by the employer. It is far more difficult to contact Services Australia to rectify the problem, and takes a lot more time and navigation of a complex system than simply being able to raise it with their employer. If there was an opt in model for small business, this

¹² See Submission of Professors Guyonne Kalb and Abigail Payne on the Fairer Paid Parental Leave Bill 2016, Submission 95, available at [Submissions – Parliament of Australia \(aph.gov.au\)](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Natural_Resources/Submissions_-_Parliament_of_Australia)

would place further demands on an already overstretched Services Australia, which would be to the detriment of workers accessing parental leave.

Finally, employer administered payments encourage employers to top up these payments, whether it be to extend the timeframe or to replace any shortfall in their usual wage or salary. Workers in many sectors regularly bargain for top up payments as well as additional parental leave entitlements. Removing the employer role for small business would undermine the ability for workers to bargain for additional parental leave entitlements and risks reducing the likelihood that employers provide additional entitlements such as top ups. Again, this is contrary to one of the original intentions of the Scheme, in that it would act as a minimum entitlement that employers were encouraged to supplement. PPL must continue to be paid by the employer so that workers maintain their ability to bargain for additional entitlements. Enabling businesses to provide a combined 'package' of government and employer funded PPL paid in accordance with an employee's normal pay cycle is an efficient way of administering payments and ensures that employees remain firmly attached to a particular workplace.

40% of working families rely solely on the PPL scheme to provide financial support whilst caring for a newborn infant or an adopted child.¹³ Overwhelmingly women remain the main carers/parents accessing parental leave, with women accounting for 88% of people accessing parental leave.¹⁴ As women still bear the burden of caring responsibilities, any change to how PPL payments are made will directly and disproportionately impact women. Given the very high prevalence of discrimination experienced by working mothers and parents, any change that may make it more likely for that discrimination to occur should be avoided.

At a time where significant gains for women have been made through an extensive program of legislative reform to better promote and support gender equality, the changes to the PPL scheme can be seen as an opportunity for employers to engage meaningfully with those reforms and to provide safer, more respectful and more gender-equal workplaces. There are significant benefits and opportunities for employers in administering PPL payments, especially for employers who do not provide any employer funded parental leave – like the ability to maintain contact and connection with employees on parental leave. This connection is of significant benefit to both parties and outweighs any burden that may be associated with the administering of PPL payments by employers.

¹³ Workplace Gender Equality Agency (December 2022) Australia's Gender Equality Scorecard; [Parental leave | WGEA](#)

¹⁴ Ibid.

If there are administrative or other impacts to small business that are unduly burdensome, the solution should not negatively impact people accessing parental leave (who are mostly women). Rather than changing who administers the payment and jeopardise the maintenance of the employment relationship, further efforts should be made to assist and support small business to be able to perform this important function, and to provide administrative fixes to systems that may be onerous to interact with (there may be lessons to be learnt in this respect from the JobKeeper scheme, which was widely praised). The ACTU and our affiliates oppose changes to how PPL payments are currently administered, given the benefits to both employees and employers of the employment relationship being maintained. Any changes would also be at odds with the original design of the scheme recommended by the Productivity Commission, and the legislative framework which places emphasis on the maintenance of the employment relationship, including through KIT days and the return to work guarantee.

Recommendation 1: The employer role in the PPL Scheme should remain as currently provided for in the Act.

Recommendation 2 – Inclusive and consistent language

There are numerous sections of the Bill that use the term ‘birth mother’. The Explanatory Memorandum (EM) on the other hand, mostly uses the term ‘birth parent’, although still contains some references to ‘birth mother.’

The term ‘birth parent’ is inclusive of transgender, intersex, and gender diverse parents. The term ‘birth mother’ excludes some people. The entitlement to PPL, and the language used to describe the entitlement, should include all people who give birth. There is also a strong policy rationale for using consistent language to avoid confusion. Using inclusive language would also be consistent with changes to make the unpaid parental leave provisions in the Fair Work Act gender neutral, pursuant to the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023*.

Recommendation 2 – the Bill, the EM and the Act are amended as follows:

- a) all occurrences of the words ‘birth mother’ in the Bill are replaced with the words ‘birth parent’;
- b) the EM is amended to replace all occurrences of the words ‘birth mother’ with ‘birth parent’; and
- c) all occurrences of the words ‘birth mother’ in the Paid Parental Leave Act are replaced with ‘birth parent.’

Recommendation 3 – Further reforms to PPL Scheme

Current PPL Scheme

Prior to the last round of changes to the PPL Scheme, Australia had the second-worst paid parental leave scheme in the developed world, being just 18 weeks paid at the national minimum wage, with no compulsory superannuation paid on top. Australia ranked 40th of 41 comparable EU and OECD countries on paid parental leave provided to mothers – providing the full-time average wage equivalent of only eight weeks paid leave – and 27th on the amount of parental leave provided to fathers, providing the full-time average wage equivalent of 0.8 weeks paid leave.¹⁵ Compounding this inadequacy, the superannuation guarantee is not applicable during either paid or unpaid parental leave. Men account for only 14% of all employer funded primary carer’s leave taken, with the vast majority of paid parental leave undertaken by women.¹⁶

The impact of this is that mothers end up doing the lion’s share of parenting for a newborn, both in terms of the initial leave taken, and then by taking on part-time work to balance care and work responsibilities. While men rarely take more than a couple of weeks to look after a newborn and return to full-time work, women’s careers are often put on hold. It is at this point that the participation and pay gaps between women and men start to widen the most.

Need for further reform

The ACTU commends and welcomes the expansion of the PPL scheme to 26 weeks by 2026. This is a highly significant and overdue reform to modernise and expand the PPL scheme – but more needs to be done to advance gender equality. The delay to the increase to 26 weeks will disproportionately impact low income workers and families, for whom the length of paid leave available largely dictates the amount of time in total that they can take as parental leave to care for children.

Even once the Government’s PPL reforms are fully implemented and the scheme is expanded to 26 weeks from 1 July 2026, Australia’s paid parental leave scheme will remain amongst the least generous schemes internationally, ranking in the bottom third.¹⁷ In fact, the changes, which

¹⁵ Yekaterina Chzhen, Anna Gromada and Gwyther Rees (2019) Are the world’s richest countries family friendly? Policy in the OECD and EU, UNICEF Office of Research, Florence

¹⁶ WGEA Gender Equality Scorecard 2022-2023

¹⁷ Baird, M. & Hill, E. (2022). Next Steps for Paid Parental Leave in Australia. A report commissioned by the Women’s Economic Equality Taskforce, November 2022, The University of Sydney

would lift the payment from about 8 weeks of full-time average wage equivalent up to 10.3 weeks, only lifts Australia from the 2nd worst position in the OECD, up to the 4th worst position based on 2022 figures.¹⁸ The rate of payment of PPL at the National Minimum Wage is likely to impede high take up rates by fathers and partners.¹⁹ Further reforms will be required to bring Australia in-line with international best practice. Future reforms will also need to translate international experience to the Australian social and cultural context, so as to successfully shift gender norms and encourage more equitable sharing of care between women and men. The ACTU calls on the Government to maintain momentum and ambition in expanding the PPL scheme, being a critical lever for driving gender equality in Australia.

There is strong and clear evidence of the significant child and maternal health and welfare benefits of an absence from work for parents of 6-12 months.²⁰ Fathers' involvement in childcare has been linked to improved wellbeing, happiness and commitment to family.²¹ The participation of both parents in the early care of children has beneficial impacts for the long-term sharing of the care of children and household duties. This in turn supports the health and well-being of children and both parents, and improves gender equity in the workplace, home and society.²²

Research from comparable economies shows that best practice PPL systems include a reserved and non-transferable ("use it or lose it) portion of paid parental leave for fathers and partners. The evidence is that when paid at, or close to full wage replacements rates, men increase their uptake of parental leave and unpaid care, which over time changes gender norms around the division of paid and unpaid work.²³ Barriers to increasing the uptake of parental leave by fathers and partners are the rate at which it is paid, organisational stigma, and gender norms.²⁴ The gender pay gap is also a barrier as the loss of family income tends to be less when women take parental leave, as women on average earn less than men.²⁵

¹⁸ https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf

¹⁹ Baird and Hill (2022), above n 17.

²⁰ Australian Government Productivity Commission, Paid Parental Leave: Support for Parents with Newborn Children No. 47, 28 February 2009, p 18

²¹ Norman, H., Elliot, M., and Fagan, C., (2018), "Does Fathers' Involvement in Childcare and Housework Affect Couples' Relationship Stability?" *Social Science Quarterly* 99.5: 1599–1613, as cited in Baird and Hill (2022)

²² Baird and Hill (2022), above n 17.

²³ Patnaik, A. (2019) 'Reserving Time for Daddy: The Consequences of Fathers' Quotas', *The Journal of Labor Economics*, *Journal of Labor Economics*, 37(4): 1009-1330, as cited in Baird and Hill (2022); and *Nordic Labour Journal* (August 2022) 'Dads on equal footing with mums in Denmark's new parental leave law' — *Nordic Labour Journal*

²⁴ Baird and Hill (2022), above n 17.

²⁵ Baird and Hill (2022), above n 17.

The highest rates of utilisation by fathers are in countries with designated periods for men that provide paid parental leave at high income replacement levels as well as incentives for fathers to take leave, for example the Nordic countries and the Canadian Province of Quebec.²⁶

The ILO's Maternity Protection Convention (C183) establishes the right of women to a minimum 14 weeks' maternity leave paid at no less than two-thirds of the person's earnings prior to taking leave, with paid nursing breaks or a reduction of hours of work for breastfeeding which is to be counted as working time and remunerated accordingly. Recommendation 191, the accompanying Recommendation to Convention 183, provides further guidance on the implementation of the Convention, stating that maternity leave should be at least 18 weeks paid at the full replacement wage, and that in addition to paid nursing breaks or time, appropriate nursing facilities should be provided upon return to work. Australia has not ratified this Convention.

The objectives of Paid Parental Leave

Section 3 of the Act sets out the objectives for Paid Parental Leave, which include:

- to allow parents to take time off work to care for children;
- to enhance the health and development of birth parents and children;
- to encourage women to continue to participate in the workforce;
- to promote equality between men and women, and the balance between work and family life; and
- to provide carers with greater flexibility to balance work and family life.

These objectives can be in conflict or tension with each other. For example, there can be tensions between maternal and baby health, enhancing female workforce participation, and achieving greater gender equality by encouraging fathers to share in the care of young children. This can necessitate the prioritising of one of these goals over the others, especially within the limits of 26 weeks. Research by Dr Marian Baird and Dr Elizabeth Hill demonstrates that a 26 week scheme does not provide adequate time to achieve the five objectives of the Act, nor does it adequately meet the needs and expectations of parents.²⁷ For example, incentives to increase men's use of paid parental leave are crucial to driving gender equality, however a 26 week PPL scheme does not allow enough time to quarantine a reserved period of leave for solo care by

²⁶ Baird and Hill (2022), above n 17.

²⁷ Baird, M. & Hill, E. (2023). Paid Parental Leave for Future Families: The Voices of Australian Parents. A report commissioned by the Women's Economic Equality Taskforce, April 2023, The University of Sydney, at page 4

fathers/partners.²⁸ Given the international evidence demonstrates that it is fathers' solo use of parental leave that drives change in father care behaviours and delivers greater gender equality between parents in the care for young children and paid work, this needs to be prioritised under a future 52 week scheme.²⁹

Proposed reforms

The ACTU calls on the Government to incrementally expand and improve the PPL scheme, and strengthen the rights of working parents and carers, to align Australia with best practice in other OECD and European nations. As a first step, the 26 week entitlement should be available to workers from the commencement of the Bill, which would make a significant difference to low income workers and families.

By 2030, every employee should have access to 52 weeks paid parental leave at full-wage replacement or the national minimum wage, whichever is greater. An increase to the rate of pay could be done incrementally, by phasing the payment up first to a living wage (60% of the median wage), before increasing it further to a replacement wage.

Superannuation should be paid at the Superannuation Guarantee rate on all periods of paid and unpaid parental leave. Under this proposed system, a single parent could access up to 52 weeks paid leave and a two-parent household could access up to 104 weeks paid leave, which they could share between them. This aligns with the amount of unpaid parental leave parents currently have the right to access under the National Employment Standards.

Parents should have flexibility to take their paid parental leave entitlements as they choose, including double the time at half-pay. The scheme should incentivise parents to share care more equally though providing expanded 'use it or lose it' portions, and additional paid 'bonus' leave if both parents take their portions of leave.

Paid parental leave should be made available to every worker who needs it, including workers on casual, temporary or fixed term contracts; workers on visas; workers on any period of paid or unpaid leave; parents of children on permanent care order; parents who need paid parental leave for pregnancy, childbirth, assisted reproduction or fertility treatment, adoption, bonding, surrogacy, fostering, kinship placements and breastfeeding. There should be no minimum period required to qualify for paid parental leave.

²⁸Baird, M. & Hill, E. (2023), above n 27; Women's Economic Equality Taskforce, [Letter to Senator the Hon. Katy Gallagher regarding Paid Parental Leave Advice, 9 June 2023 \[PDF 369\]](#)

²⁹ Baird and Hill (2023), above n 27 and Baird and Hill (2022), above n 17.

Recommendation 3: In order to increase women’s workforce participation, facilitate more equal sharing of caring responsibilities between men and women, and close the gender pay and retirement income gaps, the following further reforms should be made to the PPL scheme:

- Lift the entitlement to 26 weeks from commencement of the Bill;
- Phase it up to 52 weeks by 2030, eventually providing 52 weeks to every worker;
- Pay it at the greater of a replacement wage or the full time national minimum wage, with a possible phase up to a living wage first;
- Provide incentives for shared parenting such as bonus leave and expanded use it or lose it components;
- Pay superannuation on parental leave; and
- Remove or shorten the work test period (the requirement that a person has worked for 10 of the 13 months prior to the birth or adoption of a child).

Recommendation 4 – Strengthen rights and protections for working parents and carers

Discrimination against women, particularly in relation to pregnancy, parental and caring responsibilities is pervasive and widespread and despite decades of legislation making it illegal, the level of discrimination remains relatively unchanged.

In 2014 the Australian Human Rights Commission (AHRC) released the *Supporting Working Parents: Pregnancy and Return to Work National Review (Review)*.³⁰ It found that discrimination in the workplace against mothers (who account for most parents accessing parental leave) is pervasive, with one in two reporting experiencing discrimination in the workplace at some point during pregnancy, parental leave or return to work.³¹ One in five mothers indicated that they were made redundant, restructured or dismissed, or that their contract was not renewed because of their pregnancy, their request for or taking of parental leave or because of their family responsibilities, breastfeeding or expressing on return to work.³²

The report provided examples of common experiences of employees accessing parental leave. Job loss was a common experience, with a respondent to the survey stating:

³⁰ Australian Human Rights Commission, (2014) *Supporting Working Parents: Pregnancy and Return to Work National Review – Community Guide* [SWP Community Guide 2014.pdf \(humanrights.gov.au\)](https://www.humanrights.gov.au/our-work/working-parents-reports-and-reviews/supporting-working-parents-pregnancy-and-return-to-work-national-review-community-guide)

³¹ Ibid, page 8.

³² Ibid, page 9.

“I have been made redundant twice – both times it was at different organisations when I was on leave to have a child. I was told there was a restructure both times, however it was only ever my role that was being restructured.”³³

Another common experience was lack of communication with employees on parental leave, with a respondent to the survey stating:

“I’ve been off now for eight months and not one phone call, nothing. I’ve since heard from other staff members that my job has been made redundant, but no one’s told me, no management has told me.”³⁴

The Australian Human Rights Commission has not done a follow up study since 2014, but there is a national study currently being undertaken by Dr Rachael Potter and colleagues at the University of South Australia to better understand the work conditions of pregnant persons, parents on leave, and those who have returned to paid work since the birth or adoption of a child.³⁵

The initial findings of the national study are very concerning – for example:

- 42% of survey respondents were not informed of changes that could impact them whilst on parental leave, and 18% had their role permanently replaced.
- Upon return to work, 36.4% received negative or offensive remarks regarding being seen as a less committed employee.
- 40% received no information about their return to work entitlements.³⁶

Further legislative reform is needed to improve rights and protections of working parents and carers, including:

- Ensuring workers can access parental leave entitlements, and they are not discriminated against when accessing them or when seeking to return to work (it is not uncommon for women to find themselves either unemployed, demoted or the victim of some adverse action during or shortly after a period of parental leave);

³³ Ibid, page 13.

³⁴ Ibid.

³⁵ [National Study on Parents’ Work Conditions: Pregnancy, Leave and Return to Work - Research - University of South Australia \(unisa.edu.au\)](https://unisa.edu.au)

³⁶ Potter et al. (2023). National Study on Parent’s Work Conditions: Pregnancy, Leave and Return to Work Preliminary Results.

- Recognition of periods of unpaid parental leave as active service to ensure the accrual of all entitlements including personal leave, long service leave, annual salary increments, superannuation and payment of public holidays during periods of paid and unpaid parental leave;
- Paid lactation breaks and appropriate lactation facilities (with lactation including breastfeeding, chestfeeding and expressing human milk);
- Access to paid bereavement leave for parents who have lost a child through miscarriage;
- Access to a new entitlement to Grandparental Leave which would provide for an eligible employee to access 52 weeks unpaid leave for each grandchild during the period up until the child's 5th birthday; and
- Ratification of ILO Maternity Protection Convention (C183) and compliance with the guidance in accompanying Recommendation 191.

Recommendation 4: Strengthen the rights and protections for working parents and carers through further legislative reform, including:

- Ensuring workers can access parental leave entitlements, and they are not discriminated against when accessing them or when seeking to return to work including:
 - Protection for employees taking parental leave through strict liability and/or increased penalties for terminations or adverse action during or shortly after parental leave;
 - A positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family responsibilities;
 - Adopt a reverse onus of proof model in state and federal anti-discrimination legislation consistent with the Fair Work Act;
 - Ensure consistent application of anti-discrimination laws at the state and federal level, including the Fair Work Act;
 - Ensure that the complaints process in anti-discrimination cases is more accessible, less costly and provides better remedies sufficient to act as a deterrent against discrimination;
 - Enable workers and unions to make complaints and bring claims regarding non-compliance with the new positive duty in s47C of the Sex Discrimination Act; and
 - Provide for independent enforcement of compliance notices in the courts by trade unions and workers where the Commission does not do so within a period of time.
- Recognition of periods of unpaid parental leave as active service to ensure the accrual of all entitlements including personal leave, long service leave, annual salary increments, superannuation and payment of public holidays during periods of paid and unpaid parental leave;

- Paid lactation breaks and appropriate lactation facilities;
- Access to paid bereavement leave for parents who have lost a child through miscarriage;
- Access to a new entitlement to Grandparental Leave which would provide for an eligible employee to access 52 weeks unpaid leave for each grandchild during the period up until the child's 5th birthday; and
- Ratification of ILO Maternity Protection Convention (C183) and compliance with the guidance in accompanying Recommendation 191.

Conclusion

The ACTU fully supports the Bill, which implements significant reforms to the Act, including increasing PPL to 26 weeks by 2026. The ACTU recommends that the Bill and EM are amended to provide for inclusive and consistent language by referring to 'birth parent' rather than 'birth mother'. The ACTU also recommends that no change is made to the employer role in the administration of payments, which would risk undermining the integrity and design of the PPL Scheme, its success in boosting female workforce participation and increasing retention rates, and the significant progress made on paid parental leave as an accepted workplace entitlement over the last 12 years.

There is more to be done to improve and expand Australia's PPL scheme. The longer the total period of paid leave, the easier it will be to achieve all objectives of the Act such as maternal and baby health, enhancing female workforce participation, and greater gender equality in care, which are in conflict with each other in the current limit of 26 weeks.

The ACTU recommends that the scheme is expanded to 52 weeks by 2030, that the rate of pay is increased, that incentives for shared parenting are provided, that super is paid on top, and that the work test period is removed or shortened. These changes are necessary to increase women's workforce participation, facilitate more equal sharing of caring responsibilities between men and women, and close the gender pay gap. The ACTU also recommends further legislative reform to improve the rights and protections of working parents and carers, and the ratification of C183 and compliance with the guidance in its accompanying Recommendation.

Annexure A

Chart 9: Female workforce participation following various key arbitral and legislative changes relating to leave, gender equality and equal pay



address

ACTU
Level 4 / 365 Queen Street
Melbourne VIC 3000

phone

1300 486 466

web

actu.org.au
australianunions.org.au