

**SENATE COMMUNITY
AFFAIRS LEGISLATION
COMMITTEE**

**Inquiry into the Exposure Draft
of the Paid Parental Leave
Scheme Bill 2010**

ACCI SUBMISSION

May 2010

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1. INTRODUCTION

1. ACCI welcomes the opportunity to provide this written submission into the Committee's inquiry of the Government's Paid Parental Leave (PPL) Scheme, as contained in the exposure draft Paid Parental Leave Bill 2010 (the Bill) and extraneous materials.
2. This submission is made without prejudice to ACCI or ACCI members' further consideration of these matters. ACCI members may provide submissions to this inquiry, and this submission is without prejudice to those specific submissions.

1.1 EMPLOYERS' BROAD SUPPORT FOR PPL

3. ACCI provided two detailed written submissions to the Productivity Commission (PC) Inquiry into PPL. The PC's final report formed part of the basis for the Government's PPL Scheme. We continue to rely on those submissions, which are relevant to the Committee's inquiry.¹
4. ACCI and its members continue to strongly support a Government funded and administered PPL scheme. This would also supplement existing PPL schemes that are currently providing paid parental leave benefits to workers.
5. ACCI reiterates comments made by the PC in relation to the popular view that Australia was the only developed nation along side the United States that did not offer a statutory "paid parental leave scheme", stating:

Australia's near unique status is largely a semantic distinction. The non-hypothecated baby bonus, a \$5000 instalment payment commencing at birth of a child provides the equivalent of 14 weeks parental leave at \$357 (untaxed) per week or around two-thirds of the minimum wage. The baby bonus is buttressed by other family payments, so that overall, family subsidies in Australia are relatively generous by OECD standards. (emphasis added)²

6. ACCI also supports other policy measures and programs that provide assistance in the areas of maternal health, welfare and childhood care. ACCI

¹ ACCI's primary submission can be found here: http://www.acci.asn.au/text_files/submissions/2008/%282008-06%29%20PC%20Parental%20Leave%20Inq%20-%20ACCI%20Subn%20-%20Draft%2011.pdf

ACCI reply written submission can be found here:

http://www.acci.asn.au/text_files/submissions/2008/%282008-11%29%20PC%20Parental%20Leave%20Inq%20-%20ACCI%20REPLY%20Subn%20-%20Final.pdf

² At p.xvi, Productivity Commission Inquiry Report: Paid Parental Leave: Support for Parents with Newborn Children, No. 47, 28 February 2009 (final report).

reiterates that a statutory PPL scheme is only one part of the policy equation in this area, and that the Government should also consider other equally important measures, such as the provisions of adequate child care facilities. ACCI has publicly indicated this recently.

ACCI Media Release (23 April)

ACCESS TO CHILDCARE CRITICAL TO WORK AND FAMILY BALANCE

Statement by Mr Peter Anderson, Chief Executive

Plans to introduce paid parental leave in Australia from next year will not increase women's participation in the workforce unless a strong supply of affordable and accessible child care near places of work is available to employees in Australia's cities and region, says Australia's largest and most representative business organisation, the Australian Chamber of Commerce and Industry.

Responding to yesterday's announcement by the federal Minister for Early Childhood Education and Childcare Kate Ellis that the Government has decided to proceed with only 38 of the 260 additional childcare centres earlier proposed, ACCI's Chief Executive Peter Anderson said:

"Industry surveys, analysis by successive federal Sex Discrimination Commissioners and anecdotal evidence from workplaces all point to the existence of affordable and accessible childcare near the place of work as the single most significant driver of participation in the workforce by mothers with young families."

"While an affordable and targeted paid parental leave scheme will also assist, it is childcare access and affordability that make the most difference."

"Employers are concerned that yesterday's decision by the government, based on a single report and a quarterly snapshot that looks at the market as a whole but not in its local components, is premature and may transfer too much heavy lifting onto the paid parental leave scheme when it comes to increasing workforce participation and returns to work by mothers."

"The Government has put substantial additional resources into childcare, and the new market information is the start of a helpful data set. These positive steps risk being compromised if the child care market is not seeking out new facilities or entrants."

"Fewer childcare facilities also run the risk of reducing competition, which can keep prices to employees higher than they should be."

"Unless the childcare system works smoothly, excessive burdens are placed on the workplace relations system to address work and family issues. Employers and employees alike will look to the government and the child care industry to support the positive steps many employers and their staff are already making."

"Yesterday's decision does not help in that regard."

7. The following summarises ACCI's previously articulated position on the design of a PPL scheme, which attempted to align the twin goals of maximum impact for child bearing employees and their spouses, and impose minimal administrative or cost burdens on employers:

EXECUTIVE SUMMARY / KEY RECOMMENDATIONS

Recommendation 1 – A Government Funded Scheme

ACCI agrees with the broad approach of framing a paid parental leave model for future government consideration based on (a) a government funded scheme, (b) zero-rated at the level of the minimum wage, and (c) implemented by recasting the existing Baby Bonus scheme.

Recommendation 2 – Government Fund and Pay “Wage” Payments

The Commission should however recommend in its final report that employers not become the paymasters of any paid parental leave scheme.

Such a function would add to employer's overall costs in both administration, as well as on-costs such as increased liability for payroll tax, workers compensation premiums, accrual of leave, increases notice periods and severance/redundancy payments (See Sections 4 and 6) .

There is no evidence that any derived benefit to employees outweighs the significant imposts on business in administering the scheme on behalf of the Commonwealth. The Commonwealth should fund, pay and administer any scheme, as we understand is the case in New Zealand. Section 8 specifically proposes a reconsideration of the New Zealand approach.

If this is not accepted, employers should be compensated for being the paymaster (for effectively advancing the government money for a government expenditure) in a similar manner to smaller employers in the UK. If a government paid model is not accepted (i.e. New Zealand), Section 9 outlines the alternative of the UK approach to remitting monies to employers after their initial payment to employees on paid parental leave.

Recommendation 3 – No On-Costs for Employers

A key parameter for any scheme must be ensuring that employers not become subject to additional on-costs as a function of their participation in any scheme covering their employees going on parental leave. This is a particular concern if, contrary to our recommendations, employers are to be the paymasters of ultimately government funded payments.

Sections 4 and 6 identify in particular flow on consequences for payroll tax and workers compensation premiums. If a scheme is to rely on employers as payers in the first instance, its implementation should be explicitly conditional upon a commitment by State and Territory Governments to

amend workers compensation and payroll tax arrangements to protect employers from additional liabilities.

Recommendation 4 – Government Fund and Pay Superannuation

Employers do not accept the proposal in the September 2008 Draft Report that they should assume responsibility for the payment of superannuation under any paid parental leave scheme (presently 9% × 18 weeks × the minimum wage).

Such a direct additional cost impost would be at odds with the clear commitment of the Government in the lead up to this inquiry that there not be cost increases to employers:

A Rudd Government will not "... support a system that imposes additional financial burdens or administrative complexity on small businesses or in any way acts as a discouragement to the employment of women".³

"We know some big businesses are providing it; we want the Productivity Commission to look at what's out there and to make recommendations to us about a national system. But we are obviously really conscious about not putting additional burdens on small business."⁴

"I certainly would be very happy to be part of a government that provided paid maternity leave ... but that also recognised how businesses operate and doesn't act as a discouragement to businesses to employing young women of child-bearing age."⁵

ACCI advances two alternatives for consideration in place of the September 2008 draft proposal that employers both pay and fund superannuation payments (PC Recommendations 2.2 and 2.1).

Firstly: The Commission's draft recommendation should be revised to recommend government assume funding responsibility for both the wages and superannuation components of a paid parental leave scheme. On the Commission's own broad figuring this would represent additional costs to government of perhaps \$75 to \$80 million in the context of a \$600 to \$700 million scheme.

Secondly: If the Commission feels tightly constrained to deliver an overall net impact figure of \$600 to \$700 million, redesign the scheme to fund both wages and superannuation rather than solely wages. This could be achieved by adjusting the initially canvassed 18 weeks paid parental leave to 16 or 16.4 weeks. A scheme at this level would still be well in excess of international comparators.

³ Joint Media Release, Ministers Gillard, Macklin and Plibersek, 13 July 2007

⁴ Deputy Prime Minister, Today Programme, 31 January 2008.

⁵ Pregnant pause over paid maternity leave, The Age, Sarah Smiles, October 25, 2007.

Recommendation 5 – No Top Up Claims

The Commission should recommend that employers not be subject to top-up payments, in addition to the paid parental leave scheme, through the federal/State industrial relations system.

8. It is against the backdrop of the above broad policy positions that ACCI has considered the Government's PPL Scheme, which was announced in the 2009 Budget, and detailed in the exposure draft materials.

1.2 CONSULTATION PROCESS

9. ACCI is a member of the National Workplace Relations Consultative Committee (NWRCC), and was consulted by numerous Government agency officials during 2009/2010, as part of its membership on the NWRCC. ACCI welcomed these consultations.
10. However, despite a number of consultations with ACCI and other representatives, ACCI is concerned that the Government has not taken on board the genuine concerns of business, particularly small to medium sized firms, with respect to the paymaster function that would be required under its PPL Scheme.
11. Whilst this submission will address a number of issues that appear to have been considered and implemented in the Bill, unfortunately, it appears that the only major concession to business on the specific issue of the paymaster function, following the consultation process, appears to be the delayed start for 6 months.
12. Feedback from ACCI members that were involved in parallel Government consultations, indicate that there was no proper engagement or consideration of the difficulty that the proposed paymaster function proposal would have on small to medium sized firms.

2. EXPOSURE DRAFT MATERIALS

13. As the Committee would appreciate, ACCI and its members have only had a limited opportunity to consider the detail of the exposure draft Bill and associated materials. We are concerned that this important piece of legislation is being unduly fast-tracked through the Senate Committee inquiry process and will be implemented without employers' legitimate concerns addressed.
14. The Government's PPL Scheme appears measured, publicly funded, and consistent with what is affordable and necessary for an economy-wide scheme of this nature. Coupled with the significant levels of maternity and paternity leave provided by Australian employers and the additional social support through the family tax system and baby bonus it compares more than well with international standards.
15. However, ACCI reiterates that there was a fundamental commitment announced by the then Shadow Ministers Gillard, Macklin and Plibersek on 13 July 2007, that a Rudd Government would *"examine further reforms to support parents with new born children"*, but would not *"... support a system that imposes additional financial burdens or administrative complexity on small businesses or in any way acts as a discouragement to the employment of women"*.⁶
16. If the requirement for firms to pass public monies through their payroll remains, with the threat of large civil penalties, this will be viewed by the employer community as directly contrary to Government commitments.
17. This was the key parameter against which business would ultimately assess any recommended scheme arising from the PC inquiry. ACCI also asserted that *"[i]t is the key parameter upon which business will input government in its response to the ultimate recommendations of this [PC] inquiry"*.
18. Whilst the PC's September 2008 draft recommendations would have mandated additional payments upon business, such as superannuation, workers compensation and additional leave, these issues appear to have been addressed by the Government. ACCI welcomes these changes.
19. However, a number of issues remain a concern to business:

⁶ <www.alp.org.au>

2.1.1 - Paymaster function

20. The first is the requirement for employers to be the paymaster of the scheme, and the inherent administrative red-tape and additional costs that will be imposed on firms, particularly to small and medium sized firms. Whilst not a comprehensive list of concerns that presently exist, the following issues illustrate why the paymaster function should not be a feature of the PPL Scheme:
- a. Substantial civil penalty and criminal offences can be imposed on employers and individuals, if they fail to abide by the detailed and complicated requirements under the Bill. This also includes on-the-spot fines, in the form of infringement notices. Other provisions appear to deal with debt recovery and also expose employers to offences and litigation.
 - b. Costs will be incurred for training staff on the PPL Scheme, updating pay-roll software and maintaining records. Most firms will also need to obtain professional advice on how to implement the PPL Scheme and understand the detailed rules and procedures associated with processing payments.
 - c. If the employer disputes the agency's decision, for example, that it is required to be the paymaster, the employer will be required to expend time and costs to appeal the Secretary's determination internally or externally to the SSAT (or the AAT). Meanwhile the employee sits in a state of limbo until the issue is resolved.
 - d. There are complicated eligibility rules and procedures for both employers and employees to follow. These would not be necessary if the Government made payments directly to employees. For example, where the employee applies for less than 8 week leave, or is not an Australian based employee, the employer does not have an ABN, or the employee has not worked for 12 months, the Government will make direct payments. There are also a number of other unresolved issues: Firstly, what happens when an employee commences unpaid parental leave, and then applies for PPL. Does the employer become the paymaster? Secondly, there doesn't appear to be any deadline for applications to be made to the Government agency. Thirdly, who assumes responsibility for payments if a business is sold? The existing employer, the new (incoming) employer, or the Government agency?

- e. Unfortunately, it is foreseeable that the PPL Scheme will not be administered without fault. This is acknowledged by the Government in its guide for parents below.⁷ That will put pressure on both the employer and employee, particularly where (a) the agency has not forwarded the payments in advance to the employer, with the employee not knowing who to contact for advice, or (b) the employer appealing a decision of the agency (e.g., where it opposes being the paymaster, or that the employee is eligible for PPL). To insert a third party, such as the Government agency and workplace inspectorate, into the employment relationship, will create undue unnecessary workplace disputation and friction between employers and employees.

15. Resolving a problem with your employer

If you believe your employer is not paying you the correct amount, your employer is paying you late or you do not have access to a record of your Parental Leave pay, you should take the following steps.

* You should talk to your employer first to see if you can resolve the issue. It may be that there has been a simple error which can be quickly fixed.

* If you cannot resolve the problem with your employer, you can contact the Family Assistance Office.

The Family Assistance Office will look into the case and, if necessary, try to resolve any disagreement between you and the employer.

If the Family Assistance Office is unable to resolve the matter, they will refer it to the Fair Work Ombudsman for investigation.

The Fair Work Ombudsman will investigate complaints and can enforce an employer's obligations under the Paid Parental Leave scheme. The Fair Work Ombudsman may impose penalties for breaches of these obligations.

While the Fair Work Ombudsman is investigating the matter, the Family Assistance Office may directly provide you with Parental Leave pay for any period that is not covered by funds it has provided to your employer.

The Family Assistance Office may also give you Parental Leave pay that it knows an employer owes you after it has received a report on the matter from the Fair Work Ombudsman. This will only occur if the Fair Work Ombudsman has determined that an employer has withheld Parental Leave pay which is owed to you.

⁷ Paid Parental Leave – Information for Parents

<http://www.familyassist.gov.au/Publications/ppl_parents/Pages/default.aspx>

2.1.2 - Employment On-Costs

21. The Government has indicated that employers would not be required to pay additional workers compensation premiums or leave as a result of PPL monies passed through employers' payrolls.
22. The main document produced by the Government apparently prepared for employers, HR, accounting, and payroll specialists, titled, the "*Employer Business Requirement Statement*", states that:⁸

Paid Parental Leave will not attract accrual of additional leave entitlements

An employee may receive Parental Leave pay before, after or at the same time as employer-provided paid leave such as annual leave and maternity leave, and employer-provided unpaid leave.

Leave entitlements will not accrue in respect of Paid Parental Leave, nor will Paid Parental Leave count as service for the accrual and calculation of other entitlements such as redundancy. However, if an employee receives Parental Leave pay at the same time as a type of leave that ordinarily results in the accrual of leave entitlements or counts as service for the accrual of other entitlements, these existing accrual arrangements will not be affected.

...

Payroll tax

The Australian Government is working with state and territory governments to ensure that Paid Parental Leave is not subject to payroll tax. Amounts of Parental Leave pay are likely to need to be identifiable from other amounts that attract a payroll tax liability.

Workers compensation premiums

Paid Parental Leave will not give rise to additional workers compensation premium liabilities. Amounts of Parental Leave pay will need to be identifiable from amounts that attract a workers compensation premium.

23. The Bill does not exempt employers from having to pay additional payroll tax. It is unclear why clause 98 (which deals with workers compensation premiums) cannot deal with pay roll tax.
24. ACCI encourages the Government to work with State/Territory Government to exclude pay roll tax and any other on-costs. However, if employers are ultimately exposed to additional on-costs, this must be compensated. This is

⁸ <http://www.familyassist.gov.au/Publications/ppl_brs/Pages/default.aspx>

another reason why the paymaster feature adds to the level of complexity inherent in the PPL system.

2.1.3 - Draft Rules / Regulations are Absent

25. The “PPL rules” and regulations which are not contained in this exposure draft materials, but which are referred to in the Bill, appear to deal with a range of important details. Some of these are of particular importance if employers are to remain the paymaster.
26. For example, the “*Employer Business Requirement Statement*”⁹ which the Government released with the exposure draft Bill, outlines how the scheme will operate from the point of view of affected employers. Most of this information and detail appears to be absent in the Bill.
27. Whilst the exposure draft may be the architecture for the Scheme, the bricks and mortar, which hold it together, appear to be contained in material that employers and the Committee have not nor will not see prior to this legislation being introduced into Parliament.

2.1 PAYMASTER FUNCTION - COSTS

28. The Government’s Regulatory Impact Statement (RIS), which is appended to the draft explanatory memorandum, outlines some anticipated cost impacts on business, if they are to administer the Government’s PPL Scheme.
29. Page 12 of the RIS states what these costs may be as follows:

The Commission has not attempted to quantify compliance costs either at a firm level or economy-wide. However, it has noted that these costs are likely to vary depending on business size. The additional administrative and compliance costs on businesses associated with a PPL scheme include:

- Education and professional advice costs such as the need for businesses to read information booklets and/or outsource and pay for advice;
- Purchasing costs such as those relating to the purchase of new accounting and payroll software or upgrading existing software to enable businesses to act as paymasters for a PPL scheme;
- Administration and record keeping costs such as the requirement for businesses to verify employee eligibility, the costs of providing the payroll function and related audit costs; and

⁹ http://www.familyassist.gov.au/Publications/ppl_brs/Pages/default.aspx

- Business costs of temporary replacement staff during the period employees extend their leave as a result of receiving PPL payments.

The impacts on businesses associated with new parents taking leave, such as the hiring and training of replacement staff, the potential for reduced productivity and the costs of administration of unpaid parental leave, are not new costs for business. Costs may increase, however, if the average length of time that mothers take away from work increases as expected.

30. The Government estimates that small business (less than 20 employees) will incur a total cost of \$59.1 million, whereas larger business will incur costs of \$137.7 million, giving a total cost of \$196.7 million in the first year of the PPL scheme. Subsequent years are estimated to be a total cost of \$107 million. These costs, which are based on the PCs final report, appear to underestimate the impact on a business, particularly on smaller firms, and therefore should be considered cautiously by the Committee.
31. The method of calculation and estimation of costs for small and larger employers is not a simple equation of dividing the costs by the number of firms affected.
32. For example, on page 16, the RIS assumes only 6% of small business and 25% of larger firms would pay an average of \$300 for professional advice. Furthermore, only 6% of small businesses would purchase software updates at a cost of \$100 each. This would significantly underestimate both the cost of the advice and software updates, but also the number of businesses affected.
33. The RIS also does not appear to appreciate that a business will have to expend similar costs, regardless of whether 1 employee, 10 employees, or 100 employees, were to apply under the PPL Scheme. ACCI is particularly concerned about the cost impact on small to medium sized firms, that may not have sophisticated HR resources available.
34. Therefore, it is more likely that the impact on an individual firm that is required to act as the paymaster for 1 employee per year is likely to be more than the RIS would suggest.

2.2 ACCI'S PREFERRED PPL SCHEME

35. Within the time available to the ACCI employer-network, and consistent with ACCI's views on the most appropriate policy framework for implementing a PPL Scheme, the focus of ACCI's concerns relate to one major area; that is the requirement for employers to pass on PPL payments to eligible employees.

36. The size of the primary Bill (being 237 pages, plus additional amendments to other legislation), illustrates the complexity that the Government will introduce for the sole aim of requiring employers to act as the paymasters of the scheme for most employees. It is also apparent that there will also need to be consequential amendment legislation, at both the federal and State/Territory level. This does not include the PPL Rules and Regulations, policies that will be necessary to implement the PPL Scheme. Therefore the PPL Scheme legislative package is likely to be substantial.
37. The Committee is urged to compare this proposed complexity to Part 7A of New Zealand's *Parental Leave and Employment Protection Act 1987*, which spans only 26 pages.¹⁰ The key reason for this difference in legislative prescription and detail is that the New Zealand PPL Scheme is not only Government funded, but is also administered by the Inland Revenue Department.
38. In submissions to the PC inquiry, ACCI considered that the NZ PPL Scheme was the most appropriate scheme to adopt in Australia, should the PC recommend a paid parental leave scheme.

2.3 THE NZ MODEL – AT A GLANCE

39. The New Zealand PPL model (the NZ Scheme) was introduced in 2002 appears, prima facie, to most proximate to a model which could be considered for Australia. Generally speaking, the NZ Scheme is:
- a. 100% funded and administered by the Government (Inland Revenue);
 - b. Eligible for birth mother or adoptive parent after working for same employer for a qualifying period;
 - c. Paid at the rate of the employee's ordinary weekly pay or average weekly earnings (whichever is greater), up to a maximum payment (currently \$429.79 per week before tax) and subject to taxation. This represents approximately 84% of NZ's minimum wage (currently \$510.00 per week for 40 hours);¹¹ (ACCI supports the proposed approach to determine the payment level).

¹⁰ Part 7A was inserted by the *Parental Leave And Employment Protection (Paid Parental Leave) Amendment Act 2002*. See < <http://www.legislation.govt.nz/act/public/1987/0129/latest/whole.html#d1m120104> >

¹¹ The actual payment level is indexed to average ordinary time weekly employee earnings, not to its national minimum wage.

- d. Superannuation contributions are not mandatory for employers;
- e. Paid up to 14 weeks (this was increased from 12 weeks in 2004) from the start of the employee's leave and ends upon the employee returning to work, resigns or comes to the end of their fixed term contract. The payments also end if the employee is dismissed, made redundant, the pregnancy ends other than by the delivery of a child, the employee no longer cares for the child, or upon the death of the employee or child;
40. To illustrate the added complexity of the Government's proposed PPL Scheme, ACCI has compared the steps required under the NZ Scheme to the steps under the proposed PPL Scheme as outlined in *Appendix A* of the "Employer Business Requirement Statement" (Attachment ACCI-1).
41. Attachment ACCI-2 is a copy of the single form that an employee is required to complete, with the employers only role in the process to verify details and co-sign.¹²
42. The NZ Scheme sits within a broader framework of maternity policy programmes and laws, such as unpaid parental leave, and special maternity leave, similar to Australia.
43. According to the latest NZ Government review of the scheme, conducted in 2005/6, approximately 20,000 employees per year access their NZ Scheme.¹³ The NZ Minister for Labour, Hon Ruth Dyson, noted in the introduction the following:
- To test the effectiveness of our parental leave legislation, the Department of Labour conducted an evaluation of the parental leave scheme in 2005/06. The purpose of the evaluation was to find out more about the decision-making and experiences of working parents before, during and after parental leave. The evaluation also examined the experiences of parents ineligible for parental leave, as well as those of fathers and employers. Overall, it found that the scheme enjoys considerable support from mothers, fathers, and employers alike. It also identified areas where parental leave could be improved to better meet the needs of parents and employers.
44. The report indicates that there was widespread support from both employees and employers of the NZ Scheme and there appeared to be no issue with the fact that the employers were not the paymaster. In fact, this appeared to be

¹² The form can also be accessed here:

<<http://www.ird.govt.nz/resources/4/e/4e7272004bbe589cbca7fcbc87554a30/ir880.pdf>>

¹³ <http://www.dol.govt.nz/PDFs/research-parental-leave-evaluation2005-06.pdf>

irrelevant to the views of employees. Therefore, the NZ Government has not seen it necessary or desirable to alter the way it administers its scheme.

2.4 THE PAYMASTER FUNCTION

45. ACCI does not accept the proposition that Australian employers should be forced to make PPL payments to employees without compensation for the additional administrative burden and costs associated for doing so, or where direct government payments would be more practical and effective (the preferred approach).

2.1.4 - What is the Policy Rationale?

46. ACCI does not believe that the PC (and the Government) has established a clear policy rationale for creating the paymaster function within the PPL Scheme, or has persuaded the business community that doing so will have any added impact or benefit to employers, employees or the community. We say this after carefully considering the primary policy goals that were identified by the Government and the PC in recommending a PPL Scheme in Australia.
47. The PC in its final report observed that the objectives that appear most likely to support a case for paid parental leave are:¹⁴
- a. Enhancing maternal and child health and development;
 - b. Facilitating workforce participation by offsetting the disincentives to paid work generated by social welfare and taxation arrangements;
 - c. Promoting gender equity and work/family balance.
48. ACCI has attempted to extract the policy rationale for involving employers as the paymaster. The following appear to be the main arguments by the PC:
- Business generally should benefit from the scheme through higher employee retention rates.¹⁵
 - Given the desire to link paid parental leave to work, where an employee has reasonable tenure with an employer, the employer would act as an agent for government and pay the statutory leave payment on its behalf. This is the arrangement used in the United Kingdom. ... Structuring payments in this

¹⁴ Page 1.1, final report.

¹⁵ Page xxxvi, final report.

way would strengthen the link between the employer and employee, which should increase retention rates for the business (and lead to higher lifetime employment of women).¹⁶

- While the Commission has recommended a tax-payer funded scheme payable at a flat rate, it sees benefits in incorporating design features (such as using employers as the paymaster) to mimic the features of other leave entitlements that have long formed part of employment contracts ... The intention is to signal that paid parental leave should be perceived as a normal feature of employment arrangements, notwithstanding that it would be taxpayer funded and therefore perceived by some as welfare. The Commission considers its approach should also help stimulate changes of attitudes towards parents in the paid workforce who attempt to balance paid employment and family life.¹⁷
- The Commission noted in the draft report that to the extent this feature [delivery of payments] is viewed as important, it is likely to be an even stronger “framing device” if the tax-payer funded payment were actually made by employers. That delivery option (which is also the approach used in countries like Singapore, the Philippines, and the United Kingdom) was favoured by a number of participants to this inquiry on the grounds that it would also: signal the payment as a normal work related entitlement, encourage greater employee loyalty; improve workforce and workplace attachment.¹⁸

49. With respect to the PC recommendation of a “keeping in touch” (KIT) provision, the PC observed that: *“A KIT provision would be likely to improve employee retention for businesses, decrease any productivity loss associated with a parent’s absence from work and enhance the career prospects of the relevant parent”*.¹⁹
50. The PC rejected compensation to employers for any costs arising from acting as the agent of the Government, apparently for two main reasons:²⁰
- a. Firstly, that *“agency roles have often been assigned to firms and even individuals to act on the Government’s behalf (collection of income tax being a prominent example) without any recompense for the costs involved ... While the payment of compensation in the case of paid parental leave would not be that expensive ..., it would open the door for similar claims across a whole raft of agency arrangements – and that would be prohibitively expensive”*.

¹⁶ Page 2.19, final report.

¹⁷ Pages 6.14 – 6.15, final report.

¹⁸ Page 8.29, final report.

¹⁹ Page 2.51, final report.

²⁰ Page 8.31, final report.

- b. Secondly, *“the administrative burdens on firms delivering taxpayer-funded parental leave need to be weighed against the retention benefits that the proposed scheme will deliver to many, if not most, employers not currently offering paid parental leave voluntarily”*.

2.1.5 - No Evidence to Support Policy Rationale for Paymaster Function

51. Given that the PC and Government both recognised that this is a community benefit and should be funded by the community as a whole through consolidated revenue, it does not then make sense to force employers to make payments when a more effective Government payment infrastructure is already established through other agencies.
52. It appears that the primary motivation for employers to facilitate payments is some apprehension that employees must “feel” they are receiving paid leave from their employers. The theory would then be along the lines of “its not really paid parental leave unless the employee receives a regular pay packet from their employer”.
53. Access to a payment and to funds is surely the key concern, above any consideration of who pays. The characterisation of any scheme must be a less important consideration than the benefits it provides and its effectiveness for all parties (including avoiding clearly avoidable negative consequences for employers). The perceived psychological benefits gained by this “framing device” should be weighed against employers’ interests. This should not be the way to frame policy, particularly when the burden falls disproportionately on smaller firms, with little evidence of any added benefit to employees.
54. The question must be asked: Do the employees in NZ who receive PPL payments directly from the Government feel that the payment is anything other than paid parental leave? Given the operation of the scheme for a considerable time now, there does not appear to be any problem both from the NZ Government, community, employers, employees or interest groups, as to the delivery model of that scheme. It is curious as to why the Government chose a most complex PPL Scheme when having the opportunity to implement a more straightforward and tested model from across the Tasman.
55. ACCI cannot identify any other area of public policy whereby the employer acts as an agent of the Government to pass on monies to a third person. In

our view, taxation collection for the Commonwealth is not an analogous situation. This is actually a reverse of what the paymaster function is. Furthermore, compulsory superannuation contributions are monies which are passed on to a superannuation trust for the benefit of the employee. It is not public monies for the benefit of an employee. The Government's superannuation co-contribution (see below) also does not involve employer making the payment to the employee. Yet, this is precisely what the PPL Scheme would entail.

ATO - Receiving the super co-contribution²¹

If you are entitled to a super co-contribution, it will be paid to your fund after all of the following have occurred for a financial year:

We will calculate the co-contribution amount payable to you and deposit it into your super account. If your co-contribution entitlement is greater than \$0 and less than \$20, we will pay the minimum amount of \$20.

We make most payments between November and January each year. We receive all the information we need from most super funds by 31 October, following the end of the financial year. However, if you have a self-managed super fund, you report this information in your fund's annual return and may not need to lodge it with us until the following year.

The super co-contribution is tax-free. However, the earnings on the super co-contribution will be taxed like any other earnings within the super fund or RSA.

Choosing where the super co-contribution is deposited

Generally, we pay your super co-contribution amount directly to the super fund or RSA provider to which you made your personal super contribution, unless they tell us they cannot accept co-contribution payments.

56. The provisions of employment entitlements (either through contract or required by law) is also not analogous. These are payments that are required by law (whether common law or statute) to be paid to an employee. They are not monies from the Government. They are monies and entitlements from the employer to the employee or for the employee's benefit (ie. superannuation fund). Indeed, the Government has already signalled that this is a tax-payer funded scheme administered by an agency that provides other social welfare benefits to recipients. Once again, there appears to be enormous complexity and detail in the scheme to deliver this "framing device".

²¹ <<http://www.ato.gov.au/individuals/content.asp?doc=/content/42616.htm&page=8&H8> >

57. More importantly, there is also no cogent evidence that the paymaster function will “encourage greater employee loyalty; improve workforce and workplace attachment” or “strengthen the link between the employer and employee, which should increase retention rates for the business (and lead to higher lifetime employment of women)”. These are assumptions without any firm evidentiary foundation. The evidence from the operation of the NZ Scheme provides a powerful counter point to those perceived benefits in requiring the employer to be the paymaster. Furthermore, the proposed “keeping in touch provisions” which allows an employee and employer to agree to return during the parental leave period, up to 10 days, is a benefit that will assist with achieving those goals. In any event, it would appear that the more cogent factors for those benefits appear to be the level and duration of payments, not who actually pays it into the employee’s bank account, as well as support for employees when they return to work, including the availability of child care facilities.
58. It is safe to assume that most, if not all, employees would not place any emphasis on a line item in their bank account which stated that the payer was the Government OR the employer. It is hard to think why having the employer’s name appear in the credit details of the employee’s bank account would encourage loyalty, workplace attachment or any other apparent benefit!
59. Business is also concerned that this may signal the beginning of the employer acting as an agent for the Government in the future for other payments.
60. In short, this is an untested and unnecessary model to impose on business, particularly small to medium sized firms. In effect, the imposition of the paymaster system will see businesses together with the claimant in a three way merry-go-round with the Government agency assessing eligibility, exchanging information and waiting for correctly calculated monies to be deposited. Whilst the PC appeared to be wedded to the UK system, in the United Kingdom the Government provides 104.5% of the payment to employers as compensation for administering the system on behalf of the State. The UK social benefits system is also very different to the system in Australia and New Zealand.
61. Former Inquiries: The Committee should be aware that the Australian Human Rights Commission (then known as HREOC) in 2002 finalised a report on a recommended PPL Scheme for Australia, titled “A Time to Value –

Proposal for a National Paid Maternity Leave Scheme". HREOC recommended a PPL Scheme that was tax-payer funded and administered and which would have provided 14 weeks at the minimum wage to eligible employees.

62. Importantly, employers were not required to be the paymaster, but could opt-into the system. The relevant recommendations are provided below:²²

Chapter 18 Payment mechanism

Recommendation 8:

That paid maternity leave be paid as a fortnightly payment during the period of leave, administered by the federal Government and available through dual payment mechanisms.

Specifically, an individual may elect to receive payment as either:

- a fortnightly direct payment from Government to the individual; or
- a payment from the employer to the individual with the employer reimbursed by Government (subject to the employer agreeing to offer this option).

Chapter 19 Role of employers

Recommendation 9:

That employers be encouraged to continue existing provisions for paid maternity leave and women, including public servants, should not be excluded from any government funded national scheme on the basis of receiving employer provided paid maternity leave.

Recommendation 10:

That employer top ups to government funded paid maternity leave be provided for and encouraged. Such top ups should be negotiated through standard bargaining mechanisms.

Recommendation 11:

That employers may agree to take on the administration of paid maternity leave payments on behalf of the Government and may be required to play a role in validating entitlement to government funded paid maternity leave entitlements.

63. After considering and then rejecting the UK Scheme, HREOC reasoned that:
- ... given the cost and additional administrative burden that payment through employers may impose on some businesses, HREOC is persuaded that any

²² <http://www.hreoc.gov.au/sex_discrimination/paid_maternity/pml2/recommend.html>

Australian system should not mandate employer payments on behalf of Government. Imposing such a role on unwilling employers may increase employment discrimination against women despite the fact that such discrimination is unlawful. Some employers may also not pass the maternity leave payments on to eligible employees.²³

64. ILO Convention 183: ACCI notes that employers are not required to be the paymaster for paid maternity leave under the ILO Convention 183, Maternity Protection Convention 2000 (Australia has not ratified this convention):

8. In order to protect the situation of women in the labour market, benefits in respect of the leave referred to in Articles 4 and 5 shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. An employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer's specific agreement except where:

(a) such is provided for in national law or practice in a member State prior to the date of adoption of this Convention by the International Labour Conference; or

(b) it is subsequently agreed at the national level by the government and the representative organizations of employers and workers.

65. Finally, it is somewhat ironic that the PC in its final report, when considering the design of the PPL Scheme considered that the Scheme should be *simple*. The passage which is apposite to ACCI's concerns on the Scheme is as follows:

Simplicity

While all programs involve some administrative and compliance costs for governments, firms or individuals, those that are more complex (in terms of, for example, rules covering eligibility, withdrawal rates, top up payments and substantiation requirements) will impose higher compliance and administrative costs than simpler programs. Efficient program design should aim to minimise costs that are unnecessary in meeting the objectives of the program. One way of doing this might be to build on existing administrative systems, rather than to introduce new ones. The design of the parental leave scheme should also be such that employers and employees can readily understand their obligations and entitlements.²⁴

66. The PPL Scheme, with the requirement for employers to be the paymaster, is on any objective basis, directly contrary to the above objective.

²³ Paragraph 18.3.3.

²⁴ Page 1.22, final report.

67. We reiterate key Government commitments that a PPL Scheme would not impose *“additional financial burdens or administrative complexity on small businesses or in any way acts as a discouragement to the employment of women”*.
68. Fortunately, the Government is in a position to modify a minor aspect of its overall Scheme. Given that the Scheme is intended to start from 1 January 2011 (with applications made three months prior), the Government has time to make necessary amendments to its schema before introducing a Bill into the Parliament.
69. Employers do not wish to delay the commencement of PPL Scheme, however, we are concerned that employers are prejudiced by the current model and therefore, suggest constructive amendments to the Scheme.

3. PROPOSED AMENDMENTS

70. ACCI has considered the Bill and explanatory materials, and makes the following recommendations to the PPL Scheme.

3.1 NO PAYMASTER FUNCTION – PRIMARY POSITION

71. The Bill should be amended so that the requirement for the employer to be the paymaster (apart from the Government to its own employees) be removed. This would align the design of the system to the NZ model, which ACCI has long supported as the most appropriate system to implement in Australia.

72. As outlined above, employers consider that imposing the paymaster function upon them will do nothing to further maternal and child welfare or workforce attachment, and may have a detrimental effect on the capacity of some employers to play a further part in supporting parenting (surely the rationale for any future initiative in this area).

73. In effect, the outcomes sought, can be achieved better by the Government wholly administering and funding any scheme on behalf of employers and the community.

74. This is the approach in New Zealand in which the Government acts as both the paymaster and funding entity for what is quite clearly a genuine PPL scheme.

75. No one would seriously argue that the New Zealand scheme is somehow not a form of PPL because the Government both funds the scheme and is the paymaster. It is difficult to escape the conclusion that any insistence on employers being the paymasters as a requirement for a PPL scheme would see the pursuit of precisely the form of semantic distinction elsewhere not accepted in the draft report, elevated over the best possible scheme design and operation.

76. We understand the PC visited New Zealand in its consultation and research process. With the benefit of this information, we specifically request the Government and the Committee to reconsider the operations and administration of the New Zealand model as an option to refine and recast its recommended approach.

77. Specifically, the New Zealand scheme operates very simply in “transferring” responsibility from the employer to the government at the point the employee proceeds on PPL. The forms reproduced at Attachment ACCI-2 to this submission appear a straightforward mechanism to implement an 18 week, minimum wage based scheme, which would address many of the problems identified with the approach in the draft report.

3.2 OPT-IN MECHANISM – SECONDARY POSITION

78. The Government has already indicated that the requirement for employers to provide monies to employees will not commence until 1 July 2011. A delay of approximately 6 months. The *Employer Business Requirement Statement* states:

2.2 Employers may opt to provide Parental Leave pay

Eligible employers may, with the agreement of their employee, opt to pay Parental Leave pay to the employee (see section 2.1). For example, an employer may wish to provide Parental Leave pay to a valued employee who has been their employee for only 10 months prior to the expected date of birth or adoption.

The Family Assistance Office will facilitate ‘opt-in’ arrangements for interested employers and employees from 1 October 2010. Employers will be able to ‘opt-in’ to the scheme via Centrelink Business Online Services on the Centrelink website. Further assistance regarding ‘opt-in’ arrangements will be available via the Centrelink Business Hotline (13 11 58) which will be in operation from 1 July 2010.

The Family Assistance Office will establish whether both parties are agreeable to the employer paying Parental Leave pay to the employee, and make the necessary administrative arrangements where this is the case.

79. Given that the Government will already be providing monies directly to employees, the Bill should continue to allow employers to opt-in to the system, where that suits the business needs and they are able to synergistically deal with the Family Assistance Office.
80. Such an opt-in mechanism may appeal to employers who already provide paid parental leave to their employees, with a top-up of the Government’s PPL to be provided by the paymaster function. However, the decision to do this should not be forced onto a business. ACCI also expects that larger firms that do not provide for paid parental leave, may also take up the opportunity to cycle payments through their payrolls, should they consider it feasible and does not impose unnecessary administrative burdens. Whilst this is different

to the NZ model, it would not be mandatory for employers. It would also be consistent with HREOC's recommended PPL Scheme.

3.3 THIRD ALTERNATIVE POSITION

81. If the first or second recommendations are not accepted, contrary to employers expectations, a third alternative may provide small to medium sized (SME) businesses relief from the red-tape burden, as promised by the Government, by a specific "small-medium sized employer paymaster exemption". To be effective, a threshold should be based on either an annual turnover, or by full-time equivalent employees.²⁵

82. ACCI will address the Committee on the specifics of this recommendation, if required. To reiterate, ACCI's preferred position is that the paymaster function not be imposed on employers, consistent with the two recommendations above.

²⁵ A small-medium sized business exemption for the paymaster function, based on turnover would need to be approximately \$5 -10 million per annum. Some ABS publications define a medium-sized business as employing more than 20 employees but less than 200. See <http://www.census.abs.gov.au/AUSSTATS/abs@.nsf/productsbyCatalogue/97452F3932F44031CA256C5B00027F19?OpenDocument> >

4. OTHER MATTERS

4.1 KEEPING IN TOUCH PROVISION

83. The Government has indicated that “keeping in touch” provisions will enable an employer and employee to agree to return to the workplace during parental leave for up to 10 days. ACCI does not have any in-principle objection to this provision if it is by mutual consent, however, without seeing the detail of the proposal, we cannot make any detailed comments regarding the implications this will have on employers.

4.2 PENALTIES

84. ACCI is concerned that should the paymaster function remain, employers are exposed to large civil penalties and possibly, criminal offences. Employers, who have been forced into this system, may be subject to investigation and prosecution by the Government agency, or the Fair Work Ombudsman. The level of these penalties for some offences that may be caused by an innocent error or administrative problems, rather than with intent, must be proportionate.

4.3 REVIEW OF THE PPL SCHEME / TOP UPS

85. A review in 2013 similar to the one conducted by the NZ Government in 2005/6 is supported by ACCI.
86. ACCI is concerned that interest groups will push for the PPL Scheme to be amended either prior to or during the review in 2013. For example, the ACTU have called for employers to provide top-up payments in the following form:²⁶

Is the campaign for paid parental leave over now?

No. While we are overjoyed to finally have achieved PPL for Australian families, we still need your support to campaign for improvements to the scheme. In 2013 the Government will review the scheme and consider:

- Employer superannuation contributions during paid parental leave; and
- Provision of paid paternity or leave for secondary care givers.

Unions will continue to campaign to improve the Government scheme. Employers should be required to top up the minimum wage component provided by the government to the level of the employee’s ordinary wage rate.

²⁶ <<http://www.actu.org.au/Images/Dynamic/attachments/5984/PPLPoster21.08.09.pdf> >

87. The Bill allows “PPL Rules” and regulations to possibly deal with employer obligations without amendments to the Bill.
88. The Government should categorically rule out that employers will be subject to superannuation guarantee payments or any other on-cost in the future. This should be stated in clear terms within the Bill, possibly in the objectives (which is absent in the exposure draft).
89. If superannuation payments (or any other on-cost) are mandated in the future, this will have adverse implications on the goal of the scheme, and should be funded by the community through consolidated revenue, not by employers.

ABOUT ACCI – LEADING AUSTRALIAN BUSINESS

ACCI has been the peak council of Australian business associations for 105 years and traces its heritage back to Australia's first chamber of commerce in 1826.

Our motto is "Leading Australian Business."

We are also the ongoing amalgamation of the nation's leading federal business organisations - Australian Chamber of Commerce, the Associated Chamber of Manufactures of Australia, the Australian Council of Employers Federations and the Confederation of Australian Industry.

Membership of ACCI is made up of the State and Territory Chambers of Commerce and Industry together with the major national industry associations.

Through our membership, ACCI represents over 350,000 businesses nationwide, including over 280,000 enterprises employing less than 20 people, over 55,000 enterprises employing between 20-100 people and the top 100 companies.

Our employer network employs over 4 million people which makes ACCI the largest and most representative business organisation in Australia.

Our Activities

ACCI takes a leading role in representing the views of Australian business to Government.

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

Our specific activities include:

- Representation and advocacy to Governments, parliaments, tribunals and policy makers both domestically and internationally.

-
- Business representation on a range of statutory and business boards, committees and other fora.
 - Representing business in national and international fora including Fair Work Australia, Australian Industrial Relations Commission, Safe Work Australia, International Labour Organisation, International Organisation of Employers, International Chamber of Commerce, the Business and Industry Advisory Committee to the Organisation for Economic Co-operation and Development, the Confederation of Asia-Pacific Chambers of Commerce and Industry and the Confederation of Asia-Pacific Employers.
 - Research and policy development on issues concerning Australian business.
 - The publication of leading business surveys and other information products.
 - Providing forums for collective discussion amongst businesses on matters of law and policy affecting commerce and industry.

Publications

A range of publications are available from ACCI, with details of our activities and policies including:

- The ACCI Policy Review; a analysis of major policy issues affecting the Australian economy and business.
- Issue papers commenting on business' views of contemporary policy issues.
- Policies of the Australian Chamber of Commerce and Industry – the annual bound compendium of ACCI's policy platforms.
- The Westpac-ACCI Survey of Industrial Trends - the longest, continuous running private sector survey in Australia. A leading barometer of economic activity and the most important survey of manufacturing industry in Australia.
- The ACCI Survey of Investor Confidence – which gives an analysis of the direction of investment by business in Australia.

- The Commonwealth-ACCI Business Expectations Survey - which aggregates individual surveys by ACCI member organisations and covers firms of all sizes in all States and Territories.
- The ACCI Small Business Survey – which is a survey of small business derived from the Business Expectations Survey data.
- Workplace relations reports and discussion papers, including the ACCI Modern Workplace: Modern Future 2002-2010 Policy Blueprint and the Functioning Federalism and the Case for a National Workplace Relations System and The Economic Case for Workplace Relations Reform Position Papers.
- Occupational health and safety guides and updates, including the National OHS Strategy and the Modern Workplace: Safer Workplace Policy Blueprint.
- Trade reports and discussion papers including the Riding the Chinese Dragon: Opportunities and Challenges for Australia and the World Position Paper.
- Education and training reports and discussion papers including ACCI's Skills for a Nation 2007-2017 Blueprint.
- The ACCI Annual Report providing a summary of major activities and achievements for the previous year.
- The ACCI Taxation Reform Blueprint: A Strategy for the Australian Taxation System 2004–2014.
- The ACCI Manufacturing Sector Position Paper: The Future of Australia's Manufacturing Sector: A Blueprint for Success.

Most of this information, as well as ACCI media releases, parliamentary submissions and reports, is available on our website – www.acci.asn.au.

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Website: www.amca.com.au

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Australian Beverages Council Ltd

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6-8 Crewe Place
ROSEBERRY NSW 2018
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Facsimile: 02 9662 2899
Website: www.australianbeverages.org

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KINGSTON ACT 2604
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Website: www.masterbuilders.com.au

Master Plumbers' and Mechanical Services Association Australia

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Website: www.plumber.com.au

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Website: www.nbia.org.au

National Electrical and Communications Association

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National Retail Association Ltd

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