

Inquiry into the potential impacts of the PPL Scheme on small businesses and their employees

ACTU Submission to the Senate Education and Employment
References Committee on the Inquiry into the potential
impacts of the Commonwealth Paid Parental Leave Scheme
on small businesses and their employees

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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 are engaged across a broad spectrum of industries and occupations in the public and private sector.

Australia's Paid Parental Leave Scheme

There has been a national Paid Parental Leave scheme (**PPL scheme**) for people who meet residency, work/activity and income criteria since January 2011. In 2022 the federal government introduced the *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022 (the Bill)*. The Bill amends the *Paid Parental Leave Act 2010* by expanding the number of weeks of paid parental leave available to eligible parents and increasing the flexibility for sharing the entitlement between parents. This was an important part of the gender equality reforms that have been implemented by the current federal government.

In its submission regarding the Bill, the ACTU welcomed these changes as being crucial and significant reforms to the PPL scheme, and also acknowledged that there is more to be done to improve Australia's PPL scheme - including 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 superannuation on top of PPL.¹

The Australian scheme, by international standards, provides little in comparison to most OECD nations. Even once the Government's PPL reforms are fully implemented and the scheme is expanded to 26 weeks from 1 July 2026, Australia will still rank in the bottom third of parental

¹ See ACTU Submission to the Senate Community Affairs Legislation Committee on the Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022.

leave entitlements offered internationally.² In fact, the changes, which 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.³

The Services Australia website states that the PPL scheme complements other employer provided parental leave entitlements, recognises that taking time off to care for a child is part of the usual course of life for parents, and promotes equality between men and women and balance between work and family life.

Importantly, it also articulates the benefits that the PPL scheme provides for employers – including by helping to retain valuable and skilled staff by encouraging them to stay connected with their workplace when they become parents; enhancing a family friendly workplace without the employer being required to fund Parental Leave Pay; and increasing long-term workforce participation for new parents.⁴

Parental Leave Entitlements in the NES

Given the nature of this Inquiry, it is important to note how the PPL scheme currently operates, and the parental leave entitlements contained in the National Employment Standards (NES) pursuant to the *Fair Work Act 2009* (Cth) (**FW Act**). The NES apply as a minimum standard to all national system employees. These entitlements include 12 months unpaid parental leave, the right to request a further 12 months of unpaid parental leave, paid keeping in touch days and an entitlement for an employee to return to their job on return from parental leave.

Keeping in touch days (**KIT days**) allow parents to access up to 10 days of paid work to help them with the transition back to the workplace whilst on unpaid parental leave. The intent and purpose of KIT days is not to undertake regular work or duties, but facilitate professional development, training or planning related to the work and assist with reintegration back into the workforce. Employees accessing KIT days are paid at their regular rate of pay and the service is to be recognised by the employer for leave accrual purposes.

² Marian Baird and Elizabeth Hill (2022) Next Steps for Paid Parental Leave in Australia

³ https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf

⁴ [About the Paid Parental Leave scheme - Paid Parental Leave scheme for employers - Services Australia](#)

KIT days are designed to pay parents for activities they have historically undertaken unpaid, recognising the benefit to the employee and the employer. They also place a strong emphasis on the importance and value of “keeping in touch” whilst on leave and are an important element of the maintenance of the relationship between employers and employees during periods of parental leave.

The parental leave entitlements available under the NES provide important protections for workers. Employers have an obligation to provide unpaid parental leave, a right to return, and KIT days as agreed. The return to work guarantee and KIT days are designed to ensure the maintenance of the employment relationship and that the employee can successfully return to their role after a period of parental leave. The ability for employees to receive PPL through their employers is also an important mechanism to maintain the employment relationship during periods of parental leave.

Benefits of Parental Leave

The provision of parental leave and PPL payments, and the role of employers in providing these entitlements to their employees, provides many benefits to the economy, employers and employees.

Benefits for the employer include:

- increased diversification of workforce composition by increasing the number of employees (particularly women) who return to work after parental leave
- opportunities for employees to ‘step up’ while their co-workers are on parental leave
- retention of working parents whose depth of experience can bring new and relevant ‘soft’ skills to the workplace such as time management and enhanced organisational skills
- maintenance of institutional memory, industry knowledge, networks and contacts due to improved retention rates
- increased employee loyalty, job satisfaction and productivity
- reduction in the likelihood of stigma and discrimination experienced by parents at work due to the balancing of work and care.⁵

⁵ Workplace Gender Equality Agency (February 2022) Developing a Leading Practice Parental Leave Policy – A Guide for employers, [WGEA-Leading-Practice-Parental-Leave-Policy-Guide.pdf](#) at page 3.

Benefits to employees include:

- PPL increased employers' retention of mothers when they returned to work
- PPL is associated with an improvement in mothers' perceptions of their career prospects on return to work,
- Improved career progression, job satisfaction and career prospects
- an improvement in mothers' and babies' health and wellbeing and work-life balance, particularly amongst those for whom PPL made the most difference - mothers least likely to have access to employer funded parental leave, and those with least financial security due to precarious employment.⁶

Parental Leave and Discrimination

In 2013 the Australian Human Rights Commission (AHRC) released the *Supporting Working Parents: Pregnancy and Return to Work National Review (Review)*.⁷ 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.⁸ 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.⁹

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:

"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."¹⁰

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

⁶ Department of Social Services (June 2014) Paid Parental Leave Scheme Review report [Paid Parental Leave \(dss.gov.au\)](http://dss.gov.au)

⁷ Australian Human Rights Commission, (2014) Supporting Working Parents: Pregnancy and Return to Work National Review – Community Guide [SWP Community Guide 2014.pdf \(humanrights.gov.au\)](http://swp_community_guide_2014.pdf(humanrights.gov.au))

⁸ Ibid, page 8.

⁹ Ibid, page 9.

¹⁰ Ibid, page 13.

“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.”¹¹

One of the key recommendations and outcomes from the Review was the establishment of Supporting Working Parent’s website that is hosted by the Australian Human Rights Commission.¹² It contains a wealth of information, reference materials and guides for both employers and employees. The information for employers includes guides and links to additional resources, and importantly outlines the key benefits to employers in providing a positive workplace for pregnant or parenting employees. These include:

- improving retention (cost saving)
- attracting new talent
- improving business productivity
- fostering a positive organisational culture
- promoting diversity and innovation and
- improving compliance with legal obligations.¹³

Impact on employees and employment relationship

The ability for employees to receive PPL through their employers has a significant impact on the employment relationship. The processing of the payment by the employer and the need for them to keep the employee on their payroll system provides them with the capacity and multiple opportunities to maintain contact and connection to employees on parental leave. It is an important way by which employers can support employees who are on parental leave.

This ongoing connection provides positive benefits to both parties as outlined above. The ACTU and our affiliates are concerned that without the ongoing connection that remaining on the payroll provides, it is far more likely that an employer may not comply with their obligations towards an employee on parental leave as they are not front of mind for the employer, or can even be forgotten whilst on a period of parental leave. This makes it more likely that an employer may not consult them about any changes to their role, and may take steps to permanently

¹¹ Ibid.

¹² See [Supporting Working Parents | \(humanrights.gov.au\)](https://humanrights.gov.au/supporting-working-parents).

¹³ See [Supporting working parents: a toolkit for employers | Supporting Working Parents \(humanrights.gov.au\)](https://humanrights.gov.au/supporting-working-parents-a-toolkit-for-employers)

replace them, abolish their role, or otherwise make changes that will adversely impact that employee. This is even more likely to be the case in small businesses which may not have dedicated human resources staff or experience.

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 by framing parental leave as an industrial entitlement rather than as a welfare payment. This is beneficial as it is more likely to keep work in the forefront of an employee's mind, and result in employees accessing KIT days and returning to their job after a period of parental leave. For employees who do not access KIT days, the administering of the payment through the employer is the primary way that a direct connection between the employer and employee can be maintained during the period of parental leave.

Employers having a role in the administration of payments also 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 will make 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. This is consistent with the recent changes to the PPL scheme, which are designed to encourage more fathers and partners to access more and longer periods of parental leave, helping to create more gender equality with resulting positive impacts for female workplace participation.

If an opt in or opt out model for small business to administer PPL payments was adopted, this would likely sever the important ongoing employment connection, and shift parental leave away from being framed less as an industrial entitlement and more as a welfare payment provided by government. This is undesirable, as it does 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 certain industrial entitlements to employees, emphasises the ongoing nature of the employment relationship and places certain obligations on an employer to maintain that relationship. This includes KIT days, which require an employee to pay the employee and maintain them on the payroll system, as well as the return to work guarantee.

The experience of our affiliates is that an ongoing connection to a specific workplace during parental leave is key to maintaining the employment relationship. For example, the Australian Education Union achieved an important gender equality measure for its members with changes to recruitment and selection practices for teachers employed by the public sector agency, the Department for Education in South Australia. These changes ensured that teachers who took a

period of parental leave maintained a right of return to their substantive position at the same school they had been employed at prior to taking parental leave. Previously, teachers returning from parental leave were placed at any school with a vacant position. By maintaining the connection to their specific school, employees were able to return to established working relationships with colleagues, students and families, as well as known routines and practices (such as email and IT systems, rostering and timetabling structures, and employer expectations). Further, it meant that during a period of parental leave, employees could continue to participate in the school's professional development program. All of these factors significantly minimise the risk of discrimination, including in relation to promotion. This has been a successful measure that has resulted in more employees maintaining their connection to work during parental leave and returning to work at the end of their parental leave. It also supported principals as workplace leaders to manage their staffing profile and reduced administrative workloads.

With only 60% of employers (and just over 50% of non-public sector employers) providing employer paid parental leave,¹⁴ 40% of working families rely solely on the PPL scheme to provide financial support whilst caring for a newborn infant or an adopted child. Overwhelmingly women remain the main carers/parents accessing parental leave, with women accounting for 88% of people accessing parental leave.¹⁵ As women still bear the burden of caring responsibilities, taking time out of the workforce on parental leave, and the discrimination and difficulties associated with accessing parental leave entitlements and returning to work, any change to how PPL payments are made will directly and disproportionately impact women.

Given the shockingly 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. Rather, the focus should be on how to strengthen industrial entitlements to reduce discrimination against pregnant employees and working parents and to provide the best conditions for the maintenance of the employment relationship during periods of parental leave.

Experiences of employees accessing PPL

Currently, employees who apply for PPL through Services Australia are able to make their own choice about whether Parental Leave Pay is paid directly to them, or paid to them through the

¹⁴ Workplace Gender Equality Agency (December 2022) Australia's Gender Equality Scorecard; [Parental leave | WGEA](#)

¹⁵ Ibid.

employer. Our affiliates' experience is that most members who are eligible for PPL choose to have it paid from the employer's payroll system. Government data indicates that of parents who received PPL in 2012-2013, 74% chose to have the payment come from through their employer rather than through Services Australia.¹⁶ The 25% of parents who received the payment from Services Australia included those who resigned from employment before the end of the PPL period, self employed parents, and contract and seasonal workers without an ongoing attachment to an employer.

Our affiliates have not reported any issues experienced by members when employers are administering the PPL payment. However, our affiliates have reported issues with members not being paid correctly and/or on time when the payment was administered by Services Australia. Further, the experience of affiliates and their members is that 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 the employer. Given issues of understaffing, under-resourcing and high workloads within Services Australia that have been raised by unions for many years (resulting in long call wait times, delays in claim processing and difficulty accessing specialist services), any change requiring payment to be made by Services Australia rather than the employer would only place further demands on an already overstretched service to the detriment of workers accessing parental 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. Whilst the expansion of the PPL scheme will make alterations and improvements to who is able to access the leave and for how long, there are no significant changes to the obligations of employers in terms of the unpaid parental leave they are required to provide to their employees, and the payment of PPL if the employee elects to have it paid through their employer. 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. There is also information and guidance available to employers, including small businesses, in relation to the payment and management of PPL.¹⁷

¹⁶ Department of Social Services (June 2014) Paid Parental Leave Scheme Review report [Paid Parental Leave \(dss.gov.au\)](http://dss.gov.au), at page 51.

¹⁷ For example there are dedicated resources on supporting businesses in relation to the payment of PPL on the Fair Work Ombudsman website ([Homepage | Small Business Showcase Fair Work Ombudsman](http://www.fairwork.gov.au)), the Australian Human

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.¹⁸ 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, as discussed above, there are significant benefits to employees and 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.

If there was to be an opt in or opt out model adopted for small business, this 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 there are administrative and/or cost impacts to small business of administering the payment 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

Rights Commission website ([Employees returning to work from leave | Supporting Working Parents \(humanrights.gov.au\)](https://www.humanrights.gov.au/employees-returning-to-work-from-leave-supporting-working-parents)), and the Services Australia website ([Employers role in the Paid Parental Leave scheme - Paid Parental Leave scheme for employers - Services Australia](https://www.servicesaustralia.gov.au/employers-role-in-the-paid-parental-leave-scheme)).

¹⁸ 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.

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.

Boosting female workforce participation

One of the terms of reference of this Inquiry relates to whether the current Commonwealth PPL arrangements act as an incentive or disincentive to employment and boosting female workforce participation in small businesses.

The fact that the PPL scheme is potentially perceived as a disincentive to the employment of women is deeply concerning. As demonstrated in the family and domestic violence leave review in 2021,¹⁹ 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.”²⁰ The FWC prepared Chart 9 (replicated below), which shows the rate of female workforce participation increasing following various arbitral and legislative changes relating to gender equality.

There is therefore no evidentiary basis for the argument that measures that increase gender equality will result in employers not employing women. 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.

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

²⁰ Ibid at [51]-[54].

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



Conclusion

Gender inequality in Australian workplaces continues to be persistent and pervasive. The NES in the FW Act contain the minimum standards applicable to employees, including the provision of parental leave and related entitlements such as KIT days and a return to work guarantee. 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 should 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 – such as 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.

Rather than making any changes to payments which may increase the already huge rates of discrimination experienced by people taking parental leave, any burdens associated with administering the PPL payment should be addressed in the form of additional guidance and support.

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 legislative framework which places emphasis on the maintenance of the employment relationship, including through KIT days and the return to work guarantee. The decision of whether payment is made through the employer or through Services Australia should continue to be made by the employee, not the employer.

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