

Ai GROUP SUBMISSION

***Paid Parental Leave
Amendment (More Support
for Working Families)***

Bill 2023

**The Senate Community Affairs
Legislation Committee**

17 November 2023

Ai
GROUP

About Australian Industry Group

The Australian Industry Group (Ai Group) is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing, engineering, construction, automotive, food, transport, information technology, telecommunications, call centres, labour hire, printing, defence, mining equipment and supplies, airlines, health, community services and other industries. The businesses which we represent employ more than one million people. Ai Group members operate small, medium and large businesses across a range of industries. Ai Group is closely affiliated with many other employer groups and directly manages a number of those organisations.

Introduction

Ai Group welcomes the opportunity to lodge a submission regarding the *Paid Parental Leave Amendment (More Support for Working Families) Bill 2023 (the Bill)* currently before the Senate Community Affairs Legislation Committee.

The Bill follows the commencement of the *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Act 2022 (2022 PPL Amendments)* on 26 March 2023. The 2022 PPL Amendments was the first ‘tranche’ of reforms to the Federal Government’s paid parental leave scheme that were announced by the Federal Government on 15 October 2022.

The Bill would amend the *Paid Parental Leave Act 2010 (Cth) (PPL Act)* to implement the balance of the Federal Government’s announced reforms to its paid parental leave scheme. These changes were also announced as part of the October 2022-2023 Budget.

Specifically, the Bill will:

- extend the Paid Parental Leave scheme by 2 weeks each year from 1 July 2024 to reach 26 weeks from 1 July 2026;
- increase the reserved period for certain claimants who are partnered by one week each year from 1 July 2025 to reach 4 weeks from 1 July 2026;
- increase the number of days that can be taken concurrently by multiple claimants to 4 weeks from 1 July 2025; and
- clarify the eligibility criteria for claimants in exceptional circumstances, including claimants who are gaining parents in a surrogacy arrangement.

Ai Group’s position on Paid Parental Leave Schemes

The Bill presents worthwhile and important changes to the Government’s paid parental leave scheme under the PPL Act as it relates to Australian families and broader equality.

With the inclusion of a 3 -year review as a term of the Bill, Ai Group supports the Bill’s passage through Parliament.

Ai Group lodged an earlier submission with the Senate Committee in relation to the 2022 PPL Amendments that can be accessed [here](#). That submission expressed support for the 2022 PPL Amendments but raised concern about the nature of any associated amendments to the *Fair Work Act 2009 (Cth) (FW Act)* to ensure that the benefits of the 2022 PPL Amendments and any other subsequent amendments would be manageable for employers and replacement employees under the FW Act’s unpaid parental leave provisions.

Those associated amendments were subsequently contained in the now *Fair Work (Protecting Worker Entitlements) Amendment Act 2023 (Protecting Work Entitlement Amendments)* that amended the FW Act's unpaid parental leave provisions to accommodate changes to the Government's Paid Parental Leave scheme.

Ai Group prepared a detailed submission in response to the Protecting Worker Entitlements Amendments that can be accessed [here](#). In that submission we supported the majority of changes to the FW Act's unpaid parental leave provisions but expressed concern about the inadequate notice periods to be provided to employers for the purpose of workforce planning and back-filling roles while eligible employees were absent on varying periods on unpaid flexible parental leave (**flexible UPL**).

These concerns remain when the Bill before this Committee seeks to extend the quantum of flexible parental leave from 100 days to 130 days by 1 July 2026.

The solution to addressing the impact on employers and other employees is not to change the Bill, but through discrete, targeted amendments to the FW Act as set out in Ai Group's submission. These include:

1. FW Act's section 74(4B) must be repealed.

Section 74(4B) identifies a very short 4-week notice period or less, to be provided to employers by employees wishing to take flexible UPL. Flexible UPL may vary in duration, ranging from employees taking a continuous block of 100 days of leave, to employees taking reoccurring single day absences of one day per week over 100 weeks. It is no longer appropriate for section 74(4B) to continue as a notice threshold originally designed for 30 flexible UPL days to what will be 130 flexible UPL days by 1 January 2026. The 4-week notice period does not provide employers with sufficient information or time to manage more frequent or ad hoc absences over a 2-year period.

2. Section 74(3C) of the FW Act must be amended such that it reads:

If any of the leave covered by the notice is to be taken under section 72A, the notice must specify the total number of days (**flexible days**) and the intended start and end days of all flexible unpaid parental leave that the employee intends to take in relation to the child.
(amendment underlined)

Section 74(3C) of the FW Act requires that an employee advise their employer of the total number of days the employee intends to take as flexible UPL. Section 74(3C) does not require an employee to advise their employer of the intended start and end dates of the flexible UPL, but only the total number of days. It is essential that section 74(3C) require employees intending to take flexible UPL to provide written notice of their intended dates, not just the number of days.

3. Section 74(4) of the FW Act should refer to “and 72A” in lieu of section 72, such that it reads:

If the leave is to be taken under section 71 or 72A, then at least 4 weeks before the intended start date specified in the notice given under subsection (1), the employee must:

- (a) confirm the intended start and end dates of the leave; or
- (b) advise the employer of any changes to the intended start and end dates of the leave; unless it is not practicable to do so. (amendment underlined)

4. The FW Act’s statutory note under section 74(4B) (which should be repealed) should be placed under section 74(4), such that it reads:

Note: Whether or not it is practicable for the employee to advise the employer of any changes to the intended start and end dates of the leave will depend on the employee’s personal and family circumstances. For example, it may not be practicable for the employee to advise of any changes to the start and end days of the leave where the employee experiences a health issue, a pregnancy complication or an unexpected change in the employee’s child care arrangements. (amendment underlined)

The effect of these necessary amendments to the FW Act is to ensure that the significant extension of the flexible UPL entitlement, and in the variety of forms it may be taken, does not cause significant and unreasonable levels of hardship and disruption to employers and replacement employees. The amendments ensure that more reasonable and necessary levels of information and timeframes are given to employers who have the ultimate responsibility of managing the employee’s absence on flexible UPL.

Maternal Health

The Bill unashamedly seeks to drive a policy objective of supporting parents to better share care and work responsibilities following a birth or adoption. This is strongly associated with infant health as recognised by OECD research cited in the Explanatory Memorandum showing that “where fathers participate more in childcare and family life, children enjoy higher cognitive and emotional outcomes and physical health.” Ai Group supports these objectives.

While the Bill seeks to balance infant health and development, maternal health, shared care and gender equality, the Bill’s minimum reserved period of 4 weeks afforded to birth parents is an unduly short period of time for birth recovery, predominately experienced by women.

In our earlier submission relating to the 2022 PPL Amendments, Ai Group expressed some concern that birth parents would only be afforded a minimum reserve period of 2 weeks that may influence an early return to the workplace.

We stated:

Ai Group acknowledges that the Bill's removal of the requirement that PPL may only be claimed by an eligible birth mother may limit the scheme's more protective recognition of varied maternal health experiences that may relate to recovery from birth, the establishment of breastfeeding and other post-partum health issues that may be experienced. These experiences are generally unique to birth mothers and can impact infant health.

For instance, breastfeeding, has been identified as beneficial for infant and maternal health¹ with the World Health Organisation (WHO) recommending that babies be exclusively breastfed for the first six months of life.²

While such matters regarding how the overall quantum of PPL is to be allocated between partnered claimants (if at all) is likely to reflect the interests of particular families, these interests may be wider than the health of birth parents and recovery from childbirth. A minimum 4-week period for birth parents is significantly lower than the previous 12 weeks that was dedicated to birth parents as the "primary claimant" under the PPL Act prior to the 2022 PPL Amendments.

We also note the Explanatory Memorandum's analysis of optimal reserve periods and note the EM's consideration of a longer reserve period than concurrent periods as an incentive for partners to engage in a period of solo caring responsibility that is likely to yield more enduring shared care arrangements within families.

While not opposing the Bill's 4- week reserve period, we suggest that an amendment to the Bill be made to require a statutory review of the Bill's provisions 3 years after the Bill's commencement. The Bill's review should address the following matters:

- the adequacy of the PPL Act's impact and support for maternal health as a stand-alone policy objective;
- the adequacy of the PPL Act's support for infant development and bonding with parent(s);
- the impact on the retention of birth parents in the workplace and overall workforce participation; and
- the impact on the proportion of partners and non-birth parents accessing periods of parental leave.

¹ *Pregnancy, Birth and Baby, Breastfeeding your baby*, Department of Health and Aged Care, Australian Government, <https://www.pregnancybirthbaby.org.au/breastfeeding-your-baby>

² *Breastfeeding, Recommendations*, World Health Organisation, https://www.who.int/health-topics/breastfeeding#tab=tab_2

Conclusion

With the addition of a provision in the Bill requiring a statutory review 3 years after the Bill's commencement, Ai Group supports the passage of the Bill.

In providing for a greater quantum of flexible parental leave, the Bill's impact on employers, workplaces and other employees must also be addressed by extending the inadequate notice periods for employers presently contained in the FW Act's unpaid parental leave provision.



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