

EXPOSURE DRAFT AND PAID PARENTAL LEAVE BILL 2010 [PROVISIONS]

The inquiry

1.1 On 18 March 2010, the Senate referred the following matter to the Community Affairs Legislation Committee:

That on the release by the government of any exposure draft of legislation relating to the implementation of its announced paid parental leave scheme, the document or documents stand referred to the Community Affairs Legislation Committee for inquiry and report by 3 June 2010.

1.2 On Tuesday, 4 May 2010 the Commonwealth Government released the exposure draft of its Paid Parental Leave Bill 2010 (the bill) and the accompanying explanatory memorandum.

1.3 Upon release of the exposure draft on 4 May 2010, the committee called for submissions by 11 May 2010.

1.4 On 12 May 2010, the Paid Parental Leave Bill 2010 was introduced into Parliament.

1.5 On 13 May 2010, the Selection of Bills Committee referred the provisions of the Paid Parental Leave Bill 2010 to the committee for inquiry and report.

1.6 This report examines both the exposure draft and the provisions of the Paid Parental Leave Bill 2010. All submissions and evidence provided at hearings have been considered in relation to both the exposure draft and the bill.

1.7 The committee received 122 submissions, listed at Appendix 1.

1.8 The committee held two public hearings in Canberra on 14 and 19 May 2010. The witnesses are listed at Appendix 2.

1.9 The committee notes the short period of time between release of the exposure draft and lodgement of submissions. The committee appreciates the effort required to meet this timeframe, and thanks those organisations and individuals that made contributions to the committee's inquiry.

1.10 The committee would also like to thank the Department of Families, Housing, Community Services and Indigenous Affairs and the Department of Education, Employment and Workplace Relations for their assistance and prompt response to questions on notice arising from the public hearing on 19 May 2010.

1.11 Whilst the time for this inquiry was short, the committee acknowledges that consultation on a paid parental leave scheme more broadly has been lengthy,

including the extensive consultation undertaken by the Productivity Commission during 2008.

Background

1.12 The introduction of a paid parental leave (PPL) scheme in Australia was considered by the Senate Employment, Workplace Relations and Education Legislation Committee in 2002 and more recently, at the government's request, by the Productivity Commission.

Employment, Workplace Relations and Education Legislation Committee report

1.13 In May 2002, the Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 was introduced by Senator Stott Despoja as a Private Senator's Bill.¹ The bill was referred to the Employment, Workplace Relations and Education Legislation Committee for inquiry and report on the recommendation of the Selection of Bills Committee.²

1.14 The Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 sought to provide mothers in the workforce with up to 14 weeks of paid maternity leave funded by the Commonwealth around the time of the birth of a child. The 2002 bill did not seek to provide paid maternity leave to employees of a Commonwealth, State or Territory government³ but instead required State and Federal governments 'to meet the paid maternity needs of their employees to a standard at least equivalent to that which applies to the non-government sector'.⁴ Senator Stott Despoja explained the reasons for this discrepancy:

My concern with including public sector employees in the proposed scheme is that this would effectively shift the burden of providing paid maternity leave to State Government employees from State Governments to the Commonwealth, and that laggard states – most notably Western Australia and South Australia – will then avoid any responsibility for the issue.⁵

1.15 Eligibility for paid maternity leave under the 2002 bill required the employee to have worked a qualifying period of 12 months continuous service.⁶ Entitlement to

1 Senate Employment, Workplace Relations and Education Legislation Committee, *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Report*, September 2002, p. 1.

2 Senate Employment, Workplace Relations and Education Legislation Committee, *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Report*, September 2002, p. 1.

3 *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002*, subclause 4(b).

4 Senate Employment, Workplace Relations and Education Legislation Committee, *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Report*, September 2002, p. 37.

5 Senate Employment, Workplace Relations and Education Legislation Committee, *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Report*, September 2002, p. 37.

6 Senate Employment, Workplace Relations and Education Legislation Committee, *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Report*, September 2002, p. 13.

the maternity payment could also be transferred to an eligible spouse in exceptional circumstances.⁷

1.16 Under the 2002 bill, the maternity payment was set at the lesser of the federal minimum wage or 100 per cent of the employee's average weekly earnings over the 12 months preceding the commencement of parental leave.⁸ The 2002 bill required the employer to be advanced payments out of public money with the maternity payment then to be made by the employer to the employee.⁹

1.17 In its report, the Senate Employment, Workplace Relations and Education Legislation Committee raised concerns regarding the need to legislate for paid maternity leave noting:

...that if there is a business case in favour of paid maternity leave, and an enterprise bargaining system available to negotiate and deliver work and family related conditions, it is clearly in the interests of both business and employees to pursue their mutual interests.¹⁰

1.18 The committee also took issue with what it believed was an 'unnecessarily complex payment process'¹¹ and a "one size fits all" policy.¹²

1.19 The committee concluded:

The committee notes...that the Government has begun a process of considering work and family policy in Australia. The committee majority considers it would be premature to consider legislation until these processes have been completed.

The committee majority further notes that the bill proposes a system which would mandate an inflexible paid maternity leave scheme at a time when the Government's workplace relations policies are clearly delivering family-friendly flexible provisions to increasing numbers of parents.¹³

7 *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002*, clause 5.

8 *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002*, clause 11.

9 *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002*, subclause 170KD(4) & clause 13.

10 Senate Employment, Workplace Relations and Education Legislation Committee, *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Report*, September 2002, p. 7.

11 Senate Employment, Workplace Relations and Education Legislation Committee, *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Report*, September 2002, pp 8-9.

12 Senate Employment, Workplace Relations and Education Legislation Committee, *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Report*, September 2002, pp 8-9.

13 Senate Employment, Workplace Relations and Education Legislation Committee, *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Report*, September 2002, p. 10.

1.20 The committee recommended that the Senate not support the Workplace Relations Amendment (Paid Maternity Leave) Bill 2002.¹⁴

Productivity Commission report

1.21 On 28 February 2009, the Productivity Commission presented its government-requested report into PPL titled *Paid Parental Leave: Support for Parents with Newborn Children*.

1.22 In its report, the Commission recommended that government introduce a PPL scheme on the basis that such a scheme would:

- improve the wellbeing of families, and particularly child and maternal health;
- encourage women of reproductive age to maintain their lifetime attachment to the workforce; and
- express community norms 'that having a child and taking time out for family reasons is part of the usual course of work and life for many people in the paid workforce, including fathers'.¹⁵

1.23 The Commission considered PPL of 18 weeks funded by government to be appropriate and necessary, with leave to be taken within one year of the birth of a child and as a continuous block. The Commission also recommended that an additional two weeks paid leave be available to fathers as paternity leave at the birth of a child.¹⁶

1.24 Under the Commission's scheme, PPL would be paid at the current adult minimum weekly wage (at present \$543.78) irrespective of a parent's pre-birth income but subject to a work test.¹⁷ Parents taking statutory PPL would be ineligible for the baby bonus (except for multiple births).¹⁸

1.25 The Commission recommended that the payment of superannuation to parents on PPL be considered at a review to be undertaken three years after the program's inception.¹⁹ The Commission suggested that if it was decided that superannuation

14 Senate Employment, Workplace Relations and Education Legislation Committee, *Workplace Relations Amendment (Paid Maternity Leave) Bill 2002 Report*, September 2002, p. 10.

15 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. XVIII.

16 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. XXVI.

17 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. XXVI.

18 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. XXVI.

19 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. XXVI.

contributions be made, that these apply to the lower of the employee's actual salary or the adult minimum wage and be limited to the mandated nine per cent rate (but with employees and employers entitled to negotiate higher rates).²⁰

1.26 The Commission recommended that the PPL scheme be 'fully taxpayer-financed, but with changes to the baby bonus and family tax benefit B'.²¹ Under this financing arrangement, the government would pre-pay statutory PPL entitlements by instalment to employers who would then make payments to their employees.²²

1.27 To be eligible for PPL under the Commission's scheme, an employee would need to:

- be a primary carer (typically parent) of the child; and
- have been continuously employed (with one or more employers) for at least 10 of the 13 months prior to expected birth, and completed paid work of at least 330 hours in the 10 months.

1.28 The self-employed, contractors and casual workers would also be covered by the scheme, subject to the eligibility criteria above.²³ In certain circumstances, a mother would be able to transfer PPL entitlements to the father or other eligible partner.²⁴

1.29 Paid paternity leave would be available to eligible fathers (or same sex partners) even where the mother was not eligible for PPL.²⁵

1.30 Parents ineligible for statutory PPL via the scheme may instead be entitled to the baby bonus and other financial support through social welfare.²⁶

1.31 The Productivity Commission anticipated that 84 per cent of employed mothers of newborn babies would be eligible for PPL under its scheme.²⁷ The

20 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. XXVI.

21 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. XXVI.

22 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. XXVI.

23 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. XXVI.

24 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. XXVI.

25 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. XXVI.

26 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. XXVI.

Commission estimated that the proposed scheme 'would cost taxpayers around a net \$310 million annually' and that this would represent 'about a 1.2 per cent increase in existing outlays by government on family assistance measures'.²⁸

1.32 The payment of superannuation to parents on PPL was estimated by the Commission to cost business around \$60 million, with a total net cost to the economy as a whole of approximately \$380 million.²⁹

Overview of the bill

1.33 On 4 May 2010, the Commonwealth Government released the exposure draft of the Paid Parental Leave Bill 2010 (the bill).

1.34 On 12 May 2010, the bill was introduced into Parliament.

Summary

1.35 The bill seeks to introduce a PPL scheme enabling parents who are primary carers of a child born or adopted after 1 January 2011 to take up to 18 weeks parental leave, paid at the national minimum wage (currently \$543.78 per week).³⁰

1.36 The scheme will be funded by government and is intended to 'complement parents' entitlements to unpaid leave such as unpaid parental leave under the National Employment Standards'.³¹

1.37 To be eligible for PPL, the primary carer must have been engaged in work for a total period of at least 10 months of the 13 months prior to the expected birth or adoption of the child and have undertaken at least 330 hours of paid work during that 10 month period.³²

1.38 Primary carers with a taxable income greater than \$150 000 will be ineligible for parental leave pay under the scheme.³³

27 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. XXIX.

28 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. XXXV.

29 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. XXXV.

30 Explanatory Memorandum, pp 1-2.

31 Explanatory Memorandum, p. 1.

32 Explanatory Memorandum, p. 2.

33 Explanatory Memorandum, p. 2.

1.39 Parental leave payments will be made, in most cases, by the employer. Parental leave pay funding will be provided to employers by government (from consolidated revenue) before an employer is required to pay an employee.³⁴

1.40 Primary carers participating in the scheme will not receive the baby bonus (except in multiple birth cases) or Family Tax Benefit Part B while they are receiving parental leave pay.³⁵

Main provisions of the bill

Eligibility

1.41 Clause 31 of the bill outlines eligibility to receive parental leave pay. A person is eligible if they are the primary carer of the child; satisfy the work test, the income test and the Australian residency test; they have not returned to work; and neither the person, their partner nor former partner are / were entitled to receive the baby bonus for the child.³⁶

1.42 The bill defines a primary carer of a child as:

A person is the primary carer of a child...if:

- (b) The child is in the person's care in that period; and
- (c) The person meets the child's physical needs more than anyone else in that period.³⁷

1.43 The work test requires a person to have worked a qualifying period of 295 consecutive days (approximately 10 months) within the 'work test period' of 392 days (approximately 13 months) directly prior to the day the child is born.³⁸ The person must also have worked at least 330 hours of 'qualifying work' within the qualifying period.³⁹

1.44 The income test is satisfied where a person's adjusted taxable income in the full financial year ended before either the day the person makes the claim or the birth of the child (whichever is earlier) is less than the PPL income limit.⁴⁰ The PPL income limit is \$150 000 from 1 October 2010 to 30 June 2012 (inclusive).⁴¹ From

34 Explanatory Memorandum, p. 3.

35 Explanatory Memorandum, p. 1.

36 Paid Parental Leave Bill 2010, clause 31.

37 Paid Parental Leave Bill 2010, clause 47.

38 Paid Parental Leave Bill 2010, clauses 32 & 33.

39 Paid Parental Leave Bill 2010, clauses 32 & 34.

40 Paid Parental Leave Bill 2010, clauses 37-40 & Explanatory Memorandum, p. 2.

41 Paid Parental Leave Bill 2010, clause 41.

1 July 2012, the PPL income limit will be indexed annually to the All Groups Consumer Price Index (CPI).⁴²

1.45 A person must also meet the Australian residency test as outlined in clauses 45 and 46.⁴³

Length of paid parental leave

1.46 Clause 11 of the bill specifies that the maximum PPL period is 125 days (18 weeks).⁴⁴

Claims for parental leave pay

1.47 There are three types of claims which can be made for parental leave pay:

- A primary claim made by the child's birth mother; an adoptive parent of the child; or a person that satisfies prescribed exceptional circumstances;
- A secondary claim made by the partner of a primary claimant; a parent of the child who is not the primary claimant; the partner of a parent who is not the primary claimant; or a person that satisfies prescribed exceptional circumstances where a secondary claim can be made; and
- A tertiary claim made by a person who satisfies the circumstances prescribed as being exceptional (for the purposes of a tertiary claim).⁴⁵

Payment of parental leave pay

1.48 Clauses 63 and 64 require parental leave pay to be paid in instalments by the person's employer on the day on which the person would usually be paid for their work.⁴⁶ This arrangement will be phased-in over the first six months of the scheme: during the first six months, employers may choose to provide parental leave pay to their employees or these payments can be made directly to employees by the government's Family Assistance Office.⁴⁷

1.49 Clause 65 stipulates that:

- (1) The amount of an instalment is the total of the daily national minimum wage amounts for each week day...
- (2) The daily national minimum wage amount for a day is 7.6 times the amount of the national minimum wage (when expressed as a monetary

42 Paid Parental Leave Bill 2010, clause 42.

43 Paid Parental Leave Bill 2010, clauses 45 & 46.

44 Paid Parental Leave Bill 2010, clause 11.

45 Paid Parental Leave Bill 2010, clauses 53 & 54.

46 Paid Parental Leave Bill 2010, clauses 63 & 64.

47 Explanatory Memorandum, p. 3.

amount per hour) set by a national minimum wage order that is in operation on that day...⁴⁸

1.50 Parental leave payments will be taxable, like salary and wages.⁴⁹

1.51 Clause 75 describes payment of PPL funding amounts from government to a person's employer.⁵⁰ Payment of funding amounts is to be made in advance of the payroll cut-off so that employers can pay the instalments in accordance with their usual pay cycles.⁵¹

1.52 PPL funding amounts paid to an employer are not public money and are protected against sale, assignment, charge, execution, bankruptcy or otherwise until paid to the employer.⁵² Once paid to the employer, the PPL funding amounts are legally and beneficially the property of the employer to do with as they wish.⁵³ However, employers have a separate obligation to pay an equivalent amount as instalments of parental leave pay.⁵⁴

Paid work whilst on paid parental leave

1.53 Clause 50 allows a person to return to paid work for a 'keeping in touch day' whilst on statutory PPL.⁵⁵ A keeping in touch day is so deemed if:

- (d) the purpose of performing the work is to enable the person to keep in touch with his or her employment or engagement in order to facilitate a return to that employment or engagement after the end of the leave period; and
- (e) both the person and the [employer] consents to the person performing work for the [employer] on that day; and
- (f) the day is not within 14 days after the day the child was born.⁵⁶

1.54 A maximum of 10 keeping in touch days are permissible under the bill.⁵⁷

48 Paid Parental Leave Bill 2010, clause 65.

49 Explanatory Memorandum, p. 2.

50 Paid Parental Leave Bill 2010, clause 75.

51 Explanatory Memorandum, p. 37.

52 Explanatory Memorandum, p. 38.

53 Explanatory Memorandum, p. 38.

54 Explanatory Memorandum, p. 38.

55 Paid Parental Leave Bill 2010, clause 50.

56 Paid Parental Leave Bill 2010, clause 50.

57 Paid Parental Leave Bill 2010, clause 49.

Dispute resolution

1.55 Clause 143 enables matters to be referred to the Fair Work Ombudsman for investigation. Matters that can be referred are those where an employer has not complied with an obligation under clause 70 (which deals with unauthorised deductions from instalments paid to employees) or Part 3-2 (which deals with payment of instalments by an employer to an employee), and where the employer and employee are unable to resolve the dispute themselves.⁵⁸

Civil penalties and debts recoverable

1.56 Civil penalty orders applicable to contravention of the bill are detailed in Division 3 of Part 4-2.⁵⁹ Civil penalty provisions are listed in clause 146.⁶⁰ Compliance notices and infringement notices are provided for in Divisions 4 and 5, respectively.⁶¹

1.57 Debts recoverable under the bill and the process for recovery of debts owed to the Commonwealth Government, an employer or an employee are provided in Part 4-3 of the bill.⁶²

Review of decisions

1.58 The circumstances in which a decision made under the bill can be internally reviewed by the department administering the bill are outlined in clauses 203 through 212 inclusive.⁶³ These circumstances include (but are not limited to) own-initiative review by the department; review following application; application for review of claimant decision and application for review of employer determination decision.⁶⁴

1.59 The circumstances in which decisions may be reviewed by the Social Security Appeals Tribunal (SSAT) are provided in Part 5-2.⁶⁵ The procedures for reviews conducted by the SSAT are outlined in Part 5-3.⁶⁶

1.60 Clause 261 provides that persons affected by a decision of the SSAT under the bill may apply to have that decision reviewed by the Administrative Appeals Tribunal (AAT).⁶⁷

58 Paid Parental Leave Bill 2010, clause 143.

59 Paid Parental Leave Bill 2010, Part 4-2.

60 Paid Parental Leave Bill 2010, clause 146.

61 Paid Parental Leave Bill 2010, Part 4-2.

62 Paid Parental Leave Bill 2010, Part 4-3.

63 Paid Parental Leave Bill 2010, clauses 203-212.

64 Paid Parental Leave Bill 2010, clauses 203-212.

65 Paid Parental Leave Bill 2010, Part 5-2.

66 Paid Parental Leave Bill 2010, Part 5-3.

Application in particular circumstances

1.61 Part 6-1 of the bill explains the application of the bill in particular circumstances, such as:

- An adopted child;
- Exceptional circumstances; and
- When a child is stillborn or dies.⁶⁸

1.62 In the event that a claim is made for parental leave pay and 'before or after the claim is made, the child is stillborn or dies', clause 277 provides that the bill still 'applies as if a reference to the claimant becoming or being the child's primary carer were a reference to the claimant having become or been the child's primary carer had the child not been stillborn or died'.⁶⁹

Appropriation

1.63 Clause 307 stipulates that payments made under the bill are to be made out of the Consolidated Revenue Fund.⁷⁰

Paternity leave

1.64 The bill in its current form does not provide for a specified period of paid paternity leave for fathers (or same sex partners).

1.65 However, the Regulation Impact Statement (RIS) states:

Based on the analysis of the impacts of the options on families, the broader community, Government and business and the costs of the options for business and government, the Government's preferred PPL option could be either:

- The PC's proposed PPL scheme, or
- The PC's proposed PPL scheme with the paternity leave component deferred.

The final Government decision on its preferred option should depend on its consideration of the weight to be placed on:

- The fact that the PC's proposed scheme has already been the subject of an open consultative process and the design of the final model has sought to balance the competing interests of parties and tensions between the scheme's objectives. The PC's proposed PPL scheme is assessed as being best able to meet the identified objectives, in particular the objective of promoting gender equity and work/family balance through more active involvement of fathers

67 Paid Parental Leave Bill 2010, clause 261.

68 Paid Parental Leave Bill 2010, clauses 275-277.

69 Paid Parental Leave Bill 2010, clause 277.

70 Paid Parental Leave Bill 2010, clause 307.

and other partners in child rearing and in achieving better child development outcomes.

- Concerns about the current Budget situation, requiring short term fiscal stimulus and efforts to ensure the Budget returns to surplus over the economic cycle. Deferral of the paternity leave component would provide significant savings with only a moderate adverse impact on the achievement of the scheme's objectives.⁷¹

Superannuation

1.66 The bill does not require payment of superannuation to persons on PPL.

1.67 On this matter, the RIS states the government's intention to examine the issue of superannuation at a review of the scheme two years after its inception:

The Government will conduct a comprehensive review of the program at the end of its first two years. The Review will require the collection of relevant baseline data, ongoing monitoring of relevant publicly available and administrative data and post implementation surveys. The scope of the review would include...the viability of implementing mandated superannuation contributions by employers at that time...⁷²

Interaction of parental leave pay with existing employer-provided schemes

1.68 Statutory parental leave pay can be received before, after or at the same time as existing entitlements such as employer-provided maternity leave.⁷³ The Minister for Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) has stated the government's intention that government-funded PPL be additional to existing employer-funded schemes:

JENNY MACKLIN: We certainly have consulted with business about the importance of the Government's Paid Parental Leave scheme being added to existing maternity leave schemes. We want to make sure that parents get additional support to that which employers already offer. Many employers have already come out and said that's exactly what they will be doing, making sure that parents can take both the employers funded Paid Parental Leave and then the Government funded Paid Parental Leave as well. I certainly hope we'll see many employers recognise the value of Paid Parental Leave to their business. It will mean that we'll have continuing contact between business and their employees. Paid Parental Leave is good for business and good for families.

JOURNALIST: So if say KPMG offer its workers ten weeks paid maternity leave at the moment you'd expect them to be offering twenty-eight?

71 Regulation Impact Statement, p. 26.

72 Regulation Impact Statement, p. 27.

73 Explanatory Memorandum, p. 1.

JENNY MACKLIN: No, I expect each of the companies to continue the schemes that they have already negotiated with their employees and on top of that, that their employees will now be able to take eighteen weeks funded by the Government.⁷⁴

Financial impact

1.69 Implementation of the PPL scheme was estimated in the explanatory memorandum to the exposure draft to have a net cost to government of \$730 million over four years from 2009-10 to 2012-13.⁷⁵

1.70 The Paid Parental Leave Bill 2010, introduced into Parliament on 12 May 2010, estimated the financial impact of the PPL scheme to be \$1.042 billion over five years.⁷⁶

Issues regarding the bill

1.71 The committee received numerous submissions both in support of and in opposition to the PPL scheme outlined in the exposure draft of the Paid Parental Leave Bill 2010.

1.72 Issues regarding the bill raised during the course of the inquiry are outlined below.

Objectives of the bill

1.73 In the second reading speech, the Minister for FaHCSIA identified the goals of the bill as 'giving parents more time at home with their new baby, helping them maintain their connection with their job and helping employers retain valuable and skilled staff'.⁷⁷

1.74 However, the bill currently does not include a description of its objectives.

1.75 The National Foundation for Australian Women (NFAW) noted the absence of stated objectives in the bill:

Given that the point of having a parental leave scheme is not only to enhance productivity through female workforce attachment but also to provide benefits to women and children, we are sad to see that there is not any specific statement of objectives of the bill itself which could clarify that it is of benefit on a number of accounts. Indeed, that also makes it harder to analyse whether the program actually meets its objectives once it is

74 The Hon Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), *Paid Parental Leave Doorstop (Sydney)*, 30 April 2010.

75 Explanatory Memorandum (exposure draft), *Outline*.

76 Explanatory Memorandum, *Outline*.

77 The Hon Jenny Macklin, Minister for FaHCSIA, *Second reading speech*, 12 May 2010, p. 14.

operating. What is spoken of but not in legislation does not always get undertaken – ministers' second reading speeches, as valuable as they are, do not have any legal standing in terms of statement of objectives.⁷⁸

1.76 Evidence given at the public hearings suggested a lack of clarity and confusion about the goals of the bill, particularly whether the bill was intended to provide a social welfare entitlement to support parents at the birth of a child or a workplace entitlement to employees to encourage workforce attachment and participation.

1.77 Some witnesses, such as the Australian Chamber of Commerce and Industry (ACCI)⁷⁹ and FamilyVoice Australia⁸⁰ believed that the parental leave pay was a social welfare payment whilst others, such as Ms Elizabeth Broderick, Sex Discrimination Commissioner, felt strongly that PPL was a workforce entitlement.⁸¹ The Endeavour Forum viewed the parental leave payment as social welfare that should be paid to all mothers of newborn children but did state that 'When you look at this as an employment act, it is obviously a perfectly valid act in that way'.⁸²

1.78 The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) acknowledged that 'The objectives of the scheme are not outlined in the bill'.⁸³ In response to questions on notice, however, the department reiterated the main objectives of the scheme:

The Paid Parental Leave scheme aims to achieve three main objectives:

1. Enhance child and maternal health and development;
2. Facilitate women's workforce participation by offsetting the disincentives to paid work generated by social welfare and taxation arrangements;
3. Promote gender equity and work/family balance.⁸⁴

1.79 It appears to the committee that the absence of objectives of the bill has contributed to confusion as to whether the parental leave payment provided in the bill

78 Mrs Marie Coleman, Chair, Social Policy Committee, NFAW, *Proof Committee Hansard*, 19 May 2010, p. 2.

79 Mr David Gregory, Director, Workplace Policy, ACCI, *Proof Committee Hansard*, 14 May 2010, p. 14.

80 Dr Colin Jory, Nominated Representative, FamilyVoice Australia, *Proof Committee Hansard*, 14 May 2010, p. 38.

81 Ms Elizabeth Broderick, Sex Discrimination Commissioner, *Proof Committee Hansard*, 14 May 2010, p. 18.

82 Mrs Carolyn Mongan, Member, Endeavour Forum, *Proof Committee Hansard*, 14 May 2010, p. 43.

83 Mr Mark Warburton, Branch Manager, Paid Parental Leave Branch, FaHCSIA, *Proof Committee Hansard*, 19 May 2010, p. 54.

84 FaHCSIA, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

is a social welfare payment or a workforce entitlement. The committee believes that the inclusion of clear objectives in the bill would assist to clarify the intended goals of the legislation and address this confusion.

Recommendation 1

1.80 The committee recommends the inclusion in the bill of a clear statement of the objectives of the bill.

Parents in unpaid work

1.81 A number of submitters, including numerous individuals and organisations such as the Endeavour Forum Inc., FamilyVoice Australia, the Kids First Parent Association of Australia and the Australian Family Association claimed that the Paid Parental Leave Bill 2010 discriminated against mothers in unpaid work.⁸⁵

1.82 Submitters suggested to the committee that parents receiving parental leave pay would receive approximately \$10 293 from the government whilst parents receiving the baby bonus would receive only \$7342 and that the discrepancy unfairly disadvantaged stay-at-home mothers.⁸⁶

1.83 The Australian Christian Lobby (ACL) agreed with this position and stated:

...the policy is discriminatory against women who work exclusively in the home. It would leave such women approximately \$2000 worse off compared to working women who are eligible for the scheme (after tax). ACL believes that all women should be paid an equal amount regardless of their parenting choices, and that home-based mothers should not receive inequitable support from the Government because they choose to provide care for their own children.

As drafted, the 'work test' and 'income test' exclude from the Paid Parental Leave scheme women who have not worked in the relevant period, such as full-time carers of older children. A simple and identical payment for all mothers would eliminate this inequality of Government support and be easier to manage, thus reducing the cost of administration.⁸⁷

1.84 The Endeavour Forum Inc. recommended the removal of the work and income tests, and an equal payment to all parents of newborn children, on the basis of the bill's perceived discrimination against parents in unpaid work⁸⁸ whilst the Kids First Parent Association of Australia and Australian Family Association believed that the paid work eligibility requirements should be removed because they gave 'effect to

85 See for example Endeavour Forum Inc., *Submission 19*; FamilyVoice Australia, *Submission 43* & Kids First Parent Association of Australia & the Australian Family Association, *Submission 57*.

86 See for example FamilyVoice Australia, *Submission 43*, p. 1.

87 ACL, *Submission 47*, pp 1-2.

88 Endeavour Forum Inc., *Submission 19*, p. 1.

the government's policy objective of deliberately under-funding the childcare costs of families with (unwaged) family work mothers, to induce/pressure those mothers into the paid workforce'.⁸⁹

1.85 In response to these claims, FaHCSIA advised that the introduction of the proposed PPL scheme:

...does not reduce current assistance to mothers who are not in paid work and does not disadvantage stay at home mothers. Currently, non-working mothers tend to obtain more assistance than working mothers, even where both look after their newborn child full-time for the first six months after birth'.⁹⁰

1.86 FaHCSIA explained that:

In 2009-10, a mother who has not worked prior to the birth of a baby will receive the \$5,185 tax free Baby Bonus and up to \$3,829 in tax free FTB-B in a full financial year. This is a total of \$9,014 in Government support that is free of tax.

A mother receiving the taxable PPL will obtain the equivalent of the Baby Bonus and an average net additional gain of \$2,000. If the mother has income over \$23,817 she will not receive any FTB-B.⁹¹

1.87 FaHCSIA also provided the following examples:⁹²

89 Kids First Parent Association of Australia & the Australian Family Association, *Submission 57*, p. 6.

90 FaHCSIA, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

91 FaHCSIA, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

92 FaHCSIA, *Answers to questions on notice*, 19 May 2010 (received 31 May 2010).

Family income \$100,000 second child, born 1 January

At-home mother	Working mother
Father earns \$100,000 Mother has no income <ul style="list-style-type: none"> • ineligible for PPL • does not work in financial year of birth of child 	Father earns \$70,000 Mother earns \$30,000 <ul style="list-style-type: none"> • worked full-time until the birth of her second child; eligible for PPL • usual income of \$60,000 results in \$30,000 earned in financial year of child's birth
<u>Total assistance =</u> Baby Bonus: \$5,185 Family Tax Benefit Part A: \$1,879 Family Tax Benefit Part B: \$3,829 Total assistance: \$10,893	<u>Total assistance (net of tax on PPL) =</u> PPL: \$9,788; Tax paid on PPL: \$2,725 Family Tax Benefit Part A: \$265 Family Tax Benefit Part B: \$0 Total (net) assistance: \$7,328

Family income \$80,000 second child, born 1 January

At-home mother	Working mother
Father earns \$80,000 Mother has no income <ul style="list-style-type: none"> • ineligible for PPL • does not work in financial year of birth of child 	Father earns \$60,000 Mother earns \$20,000 <ul style="list-style-type: none"> • worked full-time until the birth of her second child; eligible for PPL • usual income of \$40,000 results in \$20,000 earned in financial year of child's birth
<u>Total assistance =</u> Baby Bonus: \$5,185 Family Tax Benefit Part A: \$7,205 Family Tax Benefit Part B: \$3,829 Total assistance: \$16,219	<u>Total assistance (net of tax on PPL) =</u> PPL: \$9,788; Tax paid on PPL: \$1,694 Family Tax Benefit Part A: \$7,205 Family Tax Benefit Part B: \$0 Total (net) assistance: \$15,299

Family income \$67,500 first child

At-home mother	Working mother
Father earns \$67,500 Mother has no income <ul style="list-style-type: none"> • ineligible for PPL • does not work in financial year of birth of child 	Father earns \$45,000 Mother earns \$22,500 <ul style="list-style-type: none"> • worked full-time until the birth of her second child; eligible for PPL • usual income of \$45,000 results in \$22,500 earned in financial year of child's birth
<u>Total assistance =</u> Baby Bonus: \$5,185 Family Tax Benefit Part A: \$1,009 Family Tax Benefit Part B: \$1,914 Total assistance: \$8,108	<u>Total assistance (net of tax on PPL) =</u> PPL: \$9,788; Tax paid on PPL: \$1,707 Family Tax Benefit Part A: \$1,009 Family Tax Benefit Part B: \$0 Total (net) assistance: \$9,090
Note: Under current arrangements, this family would receive assistance of only \$6,457.	

1.88 The department continued:

The new scheme is about achieving better outcomes for mothers in the paid workforce. It does not skew assistance to working mothers at the expense of non-working mothers...Paid Parental Leave will help mothers who are in the workforce stay at home with their newborn infants longer before returning to work.⁹³

1.89 The committee recognises that the bill encourages parents currently in the paid workforce to spend time at home with their newborn infant while maintaining a connection to the workforce.

Stillbirth or death of a child

1.90 The PPL Bill 2010 allows the primary carer of a child that is stillborn or dies shortly after birth to be eligible for PPL.⁹⁴

93 FaHCSIA, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

94 Paid Parental Leave Bill 2010, clause 277.

1.91 A number of submitters⁹⁵ were concerned that this would mean women who have a late term termination would be eligible for PPL:

The Bill gives Paid Parental Leave for stillborn babies. In many cases aborted babies reaching 20 weeks gestation or 400g in weight, who are born dead or alive (to die subsequently) are recognised and recorded in Birth Registries as "stillborns". To avoid any doubt, amend the Bill to ensure Paid Parental Leave funding does not go to babies who are stillborn or die after birth as a result of elective terminations.⁹⁶

1.92 In response to these concerns, FaHCSIA advised that:

A mother who meets the eligibility criteria for Paid Parental Leave or Baby Bonus will be entitled to the full payment if her child is stillborn.

The definition of a stillborn child that is proposed for Paid Parental Leave is the same as has applied to the Baby Bonus since its introduction.

As part of the claims process in cases of stillbirth, a doctor or midwife is required to expressly certify that a stillborn child has been delivered.⁹⁷

1.93 The committee notes that the standard eligibility criteria for those whose child is stillborn are the same for both PPL and the baby bonus.

Communication and consultation

Information and education strategy

1.94 The need for an appropriate information and education campaign to inform both employees and employers of their rights and obligations under the scheme was raised during the inquiry.

1.95 The Community and Public Sector Union (CPSU) indicated it had already commenced an education process for its members⁹⁸ whilst the Australian Industry Group (AiG) noted the importance of education for employers who would be subject to serious penalties for breaches under the bill:

We believe that it will be necessary to educate employers, large and small, about the requirements of this scheme. There are important aspects, of course, that employers need to be aware of—the procedural issues and the objectives of the scheme—but there are also very substantial penalties for not complying with the provisions of this scheme. From the point of view of making sure that the objectives of the scheme are met and that

95 See for example FamilyVoice Australia, *Submission 43*, pp 6-7 & Kids First Parent Association of Australia & Australian Family Association, *Submission 57*, p. 10.

96 Endeavour Forum Ltd., *Submission 19*, p. 2.

97 FaHCSIA, *Additional information*, 2 June 2010.

98 Dr Kristin van Barneveld, Deputy Secretary, CPSU, *Proof Committee Hansard*, 14 May 2010, p. 67.

employees have access to the scheme through their workplace and so on, we think that an education program would be very important.⁹⁹

1.96 The committee was provided with copies of the booklets *Paid Parental Leave: Information for Parents* and *Paid Parental Leave: Information for employers and consultation outcomes* produced by FaHCSIA. The booklets intend to provide potentially-eligible parents and employers with information on the government's proposed PPL scheme, whilst acknowledging that the legislation is yet to be passed into law and therefore, the information is indicative only.¹⁰⁰

1.97 With respect to its communication strategy for the PPL scheme, the department advised that:

...we are engaged in a number of different communications activities at the moment, relatively small-scale information activities only prior to the passage of the bill and a broader, larger communications campaign that will occur following the passage of the bill, assuming that that happens. The communication activities before the legislation is passed are twofold. The prime purpose of the brochure is that there are women out there now who can be pregnant and will have a child on the other side of 1 January. Unlike some other arrangements we have in place, the decisions that they are making now can affect their eligibility, so it was thought reasonable that those parents should have information on what is intended so that, if they wish to ensure that they will be eligible when they have their children, they are able to do that to the maximum extent that they can achieve. Obviously the legislation can be changed by the parliament, but the view was that it was important to get that information out there.

The booklets are also to try to assist, so that there is an informed debate on the legislation. Not everybody particularly finds legislation easy to read. Indeed, often you cannot get a good view on how the scheme is going to operate in practice. A large part of what was trying to be achieved with the booklets was to give people a real feel for how the scheme would operate and what was envisaged.¹⁰¹

And:

Following on from the passage of legislation it is intended that we would run a campaign proper. As you would be aware, we have been allocated a sum of money for 2009-10 as well as a sum of money totalling \$10.2 million for next year, 2010-11, to run a communication campaign. The

99 Mr Stephen Smith, Director, National Workplace Relations, AiG, *Proof Committee Hansard*, 14 May 2010, pp 26-27.

100 Australian Government, *Paid Parental Leave: Information for Parents*, May 2010 & Australian Government, *Paid Parental Leave: Information for employers and consultation outcomes*, May 2010.

101 Mr Mark Warburton, Branch Manager, Paid Parental Leave Branch, FaHCSIA, *Proof Committee Hansard*, 19 May 2010, p. 44.

intention would be that that campaign follows on from the passage of legislation.¹⁰²

1.98 FaHCSIA further provided specific advice about its communication and education campaign for employees and employers following the bill's implementation:

The post-legislation communication campaign will include stakeholder and intermediary engagement and editorial placement, advertising, information products (one for employers and one for employees), editorial in publication produced by other Australian Government departments and agencies. These activities will be supported with information available on the Family Assistance Office and Centrelink websites, call centre support for parents and employers and Centrelink information products.

Parents will be advised of their rights and obligations when the Family Assistance Office determines their claim for parental leave pay, including the requirement to notify if they cease to be eligible for the payment. If the claim is rejected, the claimant will be advised of their right to appeal.

The Family Assistance Office will notify an employer in writing if they are required to provide parental leave pay to an employee. This advice will include information about the employer's rights and obligations under the scheme, including their right to appeal...¹⁰³

1.99 The committee believes that government should have in place appropriate measures to ensure that both employees and employers are informed of their rights and obligations under the bill, and that both employees and employers have access to ongoing information and advice from government regarding the bill's operation.

1.100 In the view of the committee, it is vital that employees and employers are aware of their rights and responsibilities under the *Fair Work Act 2009* and other legislation, as it relates to PPL. It is important that government communication materials advise employees and employers that entitlements under the *Fair Work Act 2009* are different from those under the PPL scheme and therefore there is a need for employers and employees to consider both.

Consultation on rules and regulations

1.101 The Office of the Child Safety Commissioner (Victoria) welcomed the bill but drew particular attention to the issue of kinship carers and their eligibility to receive PPL under the bill.¹⁰⁴

102 Mr Andrew Lander, Branch Manager, Communication and Media Branch, FaHCSIA, *Proof Committee Hansard*, 19 May 2010, p. 44.

103 FaHCSIA, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

104 Ms Virginia Dods, Senior Project Officer, Promotion and Policy Unit, Office of the Child Safety Commissioner (Victoria), *Proof Committee Hansard*, 14 May 2010, p. 12.

1.102 The Office of the Child Safety Commissioner (Victoria) was pleased that the bill allowed primary carers other than the parents of a child to apply for PPL in exceptional circumstances but:

We do, however, retain an interest in how the rules will actually define exceptional circumstances. Our understanding from having looked at the bill is that the criteria for who might be allowed to claim under exceptional circumstances will be defined in the rules to be made at a later point in time. So we would like to be assured that in the drafting of the rules relevant stakeholders would be consulted and that the interests of these families, and particularly the best interests of the children in them, will be a guiding principle in developing those rules.¹⁰⁵

1.103 Australian Business Industrial¹⁰⁶ and the ACCI were concerned that business had not yet had an opportunity to see rules and regulations under the bill, particularly given these:

...appear to deal with a range of important details...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.¹⁰⁷

1.104 The committee recognises the need for sufficient flexibility in the bill with respect to eligible primary carers of a child under exceptional circumstances. The committee also acknowledges the need for employers required to implement the bill to be aware and have an understanding of rules and regulations associated with the bill's operation.

1.105 FaHCSIA provided advice to the committee that government was establishing an implementation group 'to help finalise the details of the Paid Parental Leave scheme' and that 'Input from the Group will contribute to the development of final details of the scheme, which could include the Paid Parental Leave Rules'.¹⁰⁸

1.106 The organisations that have been invited to join the implementation group are:

- The Australian Chamber of Commerce and Industry;
- The Business Council of Australia;
- The Australian Industry Group;
- The Australian Mines and Metals Association;
- The Council of Small Business Organisations of Australia;

105 Ms Megan Scannell, Senior Project Officer, Promotion and Policy Unit, Office of the Child Safety Commissioner (Victoria), *Proof Committee Hansard*, 14 May 2010, pp 12-13.

106 Australian Business Industrial, *Submission 82*, p. 3.

107 ACCI, *Submission 65*, p. 10.

108 FaHCSIA, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

-
- The National Foundation for Australian Women;
 - The Australian Council of Trade Unions;
 - Unions NSW;
 - The Shop, Distributive and Allied Employees' Association;
 - UnitingCare;
 - The Federal Sex Discrimination Commissioner;
 - Woolworths; and
 - The National Australia Bank.¹⁰⁹

1.107 In the view of the committee, rules and regulations associated with the bill should be developed in consultation with relevant stakeholders, including but not limited to those organisations that have been invited to join the implementation group.

Recommendation 2

1.108 The committee recommends that the development of rules and regulations under the bill include consultation with relevant stakeholders, including those organisations that have been invited to join the implementation group.

Review of the paid parental leave scheme

1.109 The committee received many submissions that presented strong support for the proposed review of the PPL scheme. Issues that were most commonly raised with respect to the review were the need to include consideration of the introduction of superannuation and paid paternity leave.¹¹⁰

1.110 Submissions emphasised the importance of evaluation and review of the PPL scheme to ensure that the objectives of the scheme were being achieved and to inform timely expansion of the scheme in coming years. For example, the committee heard that:

The Commission would like to see that these reviews are undertaken not only to measure progress and evaluate the impact of the scheme against its objectives, but that they are undertaken with a view to implementing a more substantial package of paid leave measures over time. Where the scheme is to be extended, this would include a review of the funding model.¹¹¹

And:

109 FaHCSIA, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

110 See for example NFAW, *Submission 14*, p. 6; ACCI, *Submission 65*, p. 25 & ACTU, *Submission 80*, p. 3.

111 AHRC, *Submission 86*, p. 4.

BPW Australia supports the introduction of the national paid parental scheme to all employees as proposed by the Government, on the understanding that it is a foundation program that will be reviewed and expanded over time.¹¹²

1.111 It was recommended to the committee that the review should also focus on identifying any adverse consequences of the PPL scheme, particularly any changes to existing employer-provided PPL schemes and any 'adverse effects on employers that could result in discriminatory work practices against female employees'.¹¹³ The NFAW raised particular concern regarding transient casual workers in shearing teams and proposed that the take-up of PPL entitlements and access to childcare in rural areas also be monitored.¹¹⁴

1.112 Overall, the committee heard substantial evidence about the need to ensure that the review is comprehensive, and would go beyond consideration of the introduction of compulsory employer-funded superannuation and the introduction of a paid paternity leave component.¹¹⁵

1.113 FaHCSIA indicated that the intention is for the review to be comprehensive, and whilst including consideration of superannuation and paid paternity leave, will not be confined to these issues alone.¹¹⁶

1.114 In order to promote the timely and appropriate expansion of the scheme, the committee heard strong evidence that a review should take place within two to three years of the scheme's commencement. The Sex Discrimination Commissioner further proposed that the timing and the content of the review should be included in the legislation, and that the review be conducted by an independent body:

Our view is that any review should be conducted as soon as is practicable after the second anniversary of the commencement of the legislation. Such an independent review would provide scope for progressively realising a world-class scheme of leave that would eventually provide for up to one year of parental leave.

...

I would actually like to see something in the act which talks about the review.

There are some other acts which do that—they have provisions for a review after a period of time.¹¹⁷

112 BPW Australia, *Submission 68*, p. 1.

113 BPW Australia, *Submission 68*, p. 2

114 NFAW, *Attachment 1*, p. 7.

115 Women and Work Research Group, *Submission 95*, p. 4.

116 Mr Mark Warburton, Branch Manager, Paid Parental Leave Branch, FaHCSIA, *Proof Committee Hansard*, 19 May 2010, pp 56-57.

1.115 In response to questions on notice, FaHCSIA reiterated the government's commitment to review the scheme and informed the committee that:

A comprehensive review of the scheme will be undertaken, starting two years after the scheme commences. The review will consider the emerging findings of the PPL evaluation, in addition to the introduction of a paternity leave component and compulsory employer-funded superannuation contributions.

The PPL evaluation is to determine how effective the scheme is in achieving its objectives. Its scope includes investigation of:

- the impact of the scheme on employers;
- the impact of the scheme on working mothers;
- how effectively the scheme is administered;
- whether there is any change in the availability of employer-funded paid parental leave; and
- whether the scheme is likely to have a long-term impact on material [sic] and infant health, women's workforce participation and gender equity and work / life balance.

Both the evaluation and the review are to be completed by the end of 2014.¹¹⁸

1.116 The committee welcomes the government's commitment to a comprehensive review of the paid parental scheme, starting two years after the scheme commences and to be completed by the end of 2014.

Recommendation 3

1.117 The committee recommends that the Paid Parental Leave Bill 2010 be amended to include a comprehensive review of the paid parental leave scheme to start two years after the scheme commences.

Payroll function

Parental leave payments by employer

1.118 Numerous witnesses, particularly industry and business associations, raised concern about the requirement for employers to act as 'paymasters' for government when making parental leave payments to an employee.¹¹⁹ The views of the ACCI were representative of these concerns:

117 Ms Elizabeth Broderick, Sex Discrimination Commissioner, *Proof Committee Hansard*, 14 May 2010, pp 14 & 17.

118 FaHCSIA, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

119 See for example Liberal Women's Council (WA), *Submission 26*, p. 2; Childcare Alliance Australia (CAA), *Submission 38*, p. 5; Mr Russell Zimmerman, Executive Director, ARA, *Proof Committee Hansard*, 14 May 2010, p. 32 & Ms Toni Riley, National Councillor, PGA, *Proof Committee Hansard*, 19 May 2010, p. 29.

Business is concerned that the requirement for employers to be the agent of the government by acting as the paymaster is an unnecessary and burdensome requirement for employers, particularly small to medium sized firms. The paymaster function will add to the red-tape burden on SMEs which do not have sophisticated HR or payroll capacities.¹²⁰

1.119 Mr Russell Zimmerman of the Australian Retailers Association (ARA) expressed concern regarding changes to payroll systems for small businesses.¹²¹ Mr Zimmerman noted that different small businesses use different payroll systems, including systems where 'It would all be hand done'¹²² and businesses employing an accountant to manage their payroll, and that the administrative challenges facing each business in implementing the PPL scheme would differ.¹²³

1.120 The Pharmacy Guild of Australia (PGA) was similarly concerned about changes to employers' payroll systems and suggested that government had under-estimated the cost to employers of upgrading payroll software to enable payment of the government-funded parental leave pay:

We did look at the figures in the government's business impact statement. I think the figure quoted in there was \$100 for an upgrade for a small business in terms of their payroll. One member who I spoke to who is currently looking at this because they are about to upgrade their payroll systems for changes in workplace relations laws is on MYOB and he said, 'You don't get an upgrade for less than \$360 and in most cases by the time the guy has got to come out and play around with it it is \$600 or \$700.' Of course, when they are further out there are also travel costs associated with that. It is not insignificant in terms of what a small business is going to have to do if they are required to take on the paymaster function. There is no provision anywhere to compensate small business for that if that is indeed the way that this legislation proceeds.¹²⁴

1.121 The committee was advised by FaHCSIA that payroll software developers had been identified as a key stakeholder and:

The Department has been engaging with payroll software developers, through the Australian Taxation Office Software Developers Consultative

120 Mr Daniel Mammone, Manager, Workplace Relations and Legal Affairs, ACCI, *Proof Committee Hansard*, 14 May 2010, p. 19.

121 Mr Russell Zimmerman, Executive Director, ARA, *Proof Committee Hansard*, 14 May 2010, pp 34-36.

122 Mr Russell Zimmerman, Executive Director, ARA, *Proof Committee Hansard*, 14 May 2010, p. 35.

123 Mr Russell Zimmerman, Executive Director, ARA, *Proof Committee Hansard*, 14 May 2010, pp 34-36.

124 Mrs Marion Whalan, Divisional Manager, Workplace Relations and Small Business, PGA, *Proof Committee Hansard*, 19 May 2010, p. 31.

Group, since July 2009. This engagement will continue until the employer role in the scheme is fully phased in'.¹²⁵

1.122 Notably, the AiG was supportive of the employer undertaking the payroll function on behalf of government:

We have a different position from some of the other employer associations on some of these issues, of course. We have not opposed what has been described as the paymaster function. We recognise the intended objective of that and we are supportive of that, but we have raised some issues about the detail. If it turns out, in the review in a few years time, that that has been a major problem then of course we will say, 'These are the problems; they need to be addressed,' but we do not envisage a lot of problems. For example, a small business might have an employee go off on maternity leave only once every three or four years. It is not like they are going to have five people off at any one point in time. For a bigger business it will be a very common circumstance, but they are the ones who are more likely to set up the electronic systems with the relevant department and so on. So we are hopeful that this will work well, and if it does not we will be pressing the government to address any problems it caused.¹²⁶

1.123 In its final report, the Productivity Commission recommended that employers make the parental leave payment to employees on behalf of the government.¹²⁷ The Productivity Commission explained the reason for so doing:

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.¹²⁸

1.124 In her second reading speech, the Minister confirmed the purpose of employers acting as payers:

Employers are integral to the rollout of Australia's first national Paid Parental Leave scheme. Most women will receive government funded parental leave pay from their employers.

By receiving parental leave pay through their usual pay cycle just as other workplace entitlements are paid, women will remain connected to their workplaces and be more likely to return to work.¹²⁹

125 FaHCSIA, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

126 Mr Stephen Smith, Director, National Workplace Relations, AiG, *Proof Committee Hansard*, 14 May 2010, p. 29.

127 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. 2.21.

128 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. 2.19.

129 The Hon Jenny Macklin, Minister for FaHCSIA, *Second reading speech*, 12 May 2010, p. 13.

1.125 The committee recognises the reason for and importance of employers providing the payroll function to encourage ongoing attachment to their workplace by employees on PPL. Such an arrangement, whilst posing some administrative challenges for employers, is in keeping with the PPL scheme as a workforce entitlement and emphasises the goals of promoting ongoing workforce attachment and participation by parents, and particularly mothers, whilst on leave at the time of the birth of a child.

1.126 The committee also notes the range of measures to help businesses announced in the 2010 Federal Budget, including a reduction of the company tax rate to 28 per cent, an instant write-off for assets costing less than \$5000 and a depreciation pool for other assets.¹³⁰ These measures will assist businesses to absorb the costs associated with the implementation of the PPL scheme.

Payroll tax

1.127 Several submitters argued that parental leave payments made by employers should be exempt from payroll tax given the time, financial and administrative burden this would place on employers.¹³¹

1.128 The Chamber of Commerce and Industry Queensland believed that:

It would be unfair and inequitable for employers to be expected to pay payroll tax on payments that are essentially payments to their employees from the Federal Government. This would particularly be the case given that these payments are for employees to spend time away from their occupations to undertake activities that have limited or no contribution to the services they perform for their employers.¹³²

1.129 The committee was informed by FaHCSIA that the Federal Government 'is currently working with the states and territories to ensure Parental Leave pay is exempt from payroll tax'.¹³³

Eligibility

1.130 The committee received evidence regarding the continuous service and permissible break requirements of the PPL scheme, particularly in relation to the eligibility of seasonal, sessional, contract and casual employees for PPL.

1.131 Unions NSW outlined that seasonal, contract and casual employees included those working in tertiary education, TAFE teachers, and those in broadcasting,

130 The Hon Wayne Swan, Treasurer, *Budget Speech 2010-11*, 11 May 2010, p. 4.

131 Chamber of Commerce and Industry Queensland, *Submission 45*, p. 2; CAA, *Submission 38*, p. 3 & Group of Eight Ltd., *Submission 67*, p. 6.

132 Chamber of Commerce and Industry Queensland, *Submission 45*, p. 2.

133 FaHCSIA, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

agriculture, hospitality and tourism. Whilst many of these workers may demonstrate an ongoing attachment to the workforce they will not satisfy eligibility requirements for PPL due to the length of the possible "off-season" in their industries.¹³⁴

1.132 The committee heard detailed evidence about the difficulties that may be experienced by employees in the tertiary education sector in meeting eligibility requirements. The National Tertiary Education Union (NTEU) outlined for the committee the high incidence of long-term casual employment, and academic staff employed to deliver lectures and tutorials on a semester-by-semester basis in Australian universities who would in many cases be unable to demonstrate ongoing employment, or meet the restrictions of the permissible break of eight weeks. The NTEU suggested that this group of employees would be significantly disadvantaged by the current legislation. The NTEU provided to the committee the following example:

...many universities finish their exam periods for second semester anytime from mid to late November, with first semester commencing the following year anytime from end of February to early March. This results in a break in employment for many long term casual staff. This break in employment for University staff is greater than the 8 weeks permissible break contemplated in the draft Bill. The break is more likely to be at least 12 weeks (and for some universities the break between semesters can be up to 16 weeks).

Therefore, whilst many casual employees in universities will easily exceed the threshold of 330 hours of qualifying work in the qualifying period provided in the draft Bill, the nature of semester-based work in universities means that there will be a substantial break of at least 12 weeks and up to 16 weeks between employment periods.¹³⁵

1.133 The Australian Education Union (AEU) also noted that casual and relief teachers in schools, teachers employed on contract and sessional teachers in TAFE institutions would also often be unable to meet the continuous service requirement because their break may be more than eight weeks even though they would be likely to have reached 330 hours of average employment:

I have some particular examples from some states and territories in the TAFE sector...in Tasmania up until 2009 there were clear examples of casual sessionals employed from late February and finishing in late November, and that would definitely have been over an eight-week break. The second is that the WA TAFE calendar shows that in fact their break would also be above an eight-week break; I think it turns out to be about a 60-day break rather than 56 days...our early career teachers who are often employed on term-to-term contracts or yearly contracts often find that in

134 Unions NSW, *Submission 54*, p. 4. See also Ms S. Dinah Coleman, Member, NFAW, *Proof Committee Hansard*, 19 May 2010, pp 3 & 9; SDA, *Submission 58*, p. 5 & Ms Sharan Burrow, President, ACTU, *Proof Committee Hansard*, 14 May 2010, p. 8.

135 NTEU, *Submission 63*, p. 5.

their second year or third year of employment having to move to another school they may not actually secure another contract until well into the first term. So there are examples of early career teachers who particularly are in the younger category and particularly would be potentially in that maternal time of their life.¹³⁶

1.134 It was recommended to the committee that, in order to better enable sessional, seasonal and casual employees to meet the eligibility requirements of the PPL scheme, the eight week permissible break be extended to at least 12 to 16 weeks.¹³⁷ Alternatively, the Australian Council of Trade Unions (ACTU) recommended an alternative work test period be implemented that captures the long-term workforce connection over a longer period of time for workers in industries where it is difficult to meet the continuous employment and permissible break requirements of the legislation.¹³⁸

1.135 Further, the Shop, Distributive and Allied Employees' Association (SDA) noted that some women are required to take extended periods of sick and / or special maternity leave during the first six months of pregnancy due to unexpected pregnancy related illness and conditions.¹³⁹ The SDA therefore recommended that in such situations, provided they are legitimate and medical certificates can be provided, eligibility for PPL should not be affected.¹⁴⁰

1.136 In response to questions on notice, FaHCSIA informed the committee that:

The work test has been designed to make it easier for seasonal, contract and casual employees to qualify for the scheme as they can have a break of up to eight weeks between consecutive working days and be regarded as having worked continuously.

A person only has to work for one hour on a day for it to count as a working day.¹⁴¹

1.137 The committee acknowledges the concerns raised regarding eligibility for workers with an intermittent but ongoing commitment to and pattern of work. The committee believes that the bill should ensure that these employees be entitled to the PPL payment. The committee also recognises that women who suffer from

136 Ms Catherine Davis, Federal Women's Officer, AEU, *Proof Committee Hansard*, 19 May 2010, p. 21.

137 Ms Therese Bryant, National Women's Officer, SDA, *Proof Committee Hansard*, 14 May 2010, p. 61 & ACTU, *Submission 80*, p. 5.

138 ACTU, *Submission 80*, p. 5.

139 SDA, *Submission 58*, pp 5-6.

140 Ms Therese Bryant, National Women's Officer, Shop, Distributive and Allied Employees' Association, *Proof Committee Hansard*, 14 May 2010, p. 61.

141 Department of Families, Housing, Community Services and Indigenous Affairs, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010)

unexpected difficulties during pregnancy which may affect their ability to meet the requirements of the work test but who otherwise show genuine ongoing engagement with the workforce should not be disadvantaged.

Recommendation 4

1.138 The committee recommends that the government examine the eligibility requirements for paid parental leave in the bill to ensure that seasonal, sessional, contract and casual workers with a demonstrated ongoing attachment to the workforce, and women who experience unexpected difficulties during pregnancy which may affect their ability to meet the eligibility requirements of the bill are able to access paid parental leave.

Leave accrual and superannuation

1.139 The bill currently does not provide for an employee receiving the PPL payment to accrue other paid leave entitlements, such as sick and recreational leave, or superannuation.

1.140 The committee received a great number of submissions which noted that the PPL payment will not provide the same benefit to employees as other forms of paid leave. For example, employees will not accrue leave during the period of the payment, or be paid superannuation on the payment.¹⁴²

1.141 A number of submitters stated that if the PPL scheme was intended to be a workplace entitlement rather than social welfare, the scheme should operate like other workplace entitlements and enable those on PPL to accrue leave and receive superannuation.¹⁴³

1.142 The SDA raised concerns about the implications of the PPL period not being formally identified as paid leave, and difficulties that may arise for women seeking to re-qualify for PPL in the situation of the close spacing of the birth of subsequent children.¹⁴⁴

1.143 The ACCI noted that an employee may receive government-funded parental leave pay before, after or at the same time as employer-provided paid leave, such as annual leave and maternity leave, or unpaid leave. The ACCI went on to describe a situation where leave entitlements would not accrue in relation to government-funded PPL but would accrue if an employee was receiving parental leave pay whilst on

142 See for example SDA, Submission 58, p. 4; Ms Belinda Tkalcevic, ACTU, *Proof Committee Hansard*, 14 May 2010, p. 2; Law Institute of Victoria (LIV), *Submission 76*, p. 1.

143 See for example AHRC, *Submission 86*, p. 2; LIV, *Submission 76*, p. 1; Dr Kristin van Barneveld, Deputy Secretary, CPSU, *Proof Committee Hansard*, 14 May 2010, p. 59 & Ms Terri MacDonald, Policy and Research Officer, NTEU, *Proof Committee Hansard*, 19 May 2010, p. 28.

144 SDA, *Submission 58*, p. 4.

another type of employer-funded leave that ordinarily results in the accrual of leave entitlements or counts as service for the accrual of other entitlements.¹⁴⁵

1.144 The ACTU and CPSU were concerned that leave entitlements would not accrue and that superannuation would not be paid to employees on PPL.¹⁴⁶ The ACTU discussed the importance of parents on parental leave being able to accrue other workplace entitlements, particularly sick, personal and recreation leave, and noted that accrual of this type of leave is significant given the ongoing caring role of a mother who has returned to work who will likely need to take sick leave due to the illness of her children and of the mother herself.¹⁴⁷

1.145 FaHCSIA informed the committee that:

The Productivity Commission 'noted that the accrual of additional paid leave entitlements would result in an additional financial impost on employers.

The Government's Paid Parental Leave Scheme is designed to complement existing workplace entitlements...It does not provide an entitlement to leave, and does not result in the accrual of additional leave entitlements for employees.

The underlying leave that is used while employees are in receipt of Parental Leave pay will dictate whether or not additional leave is accrued.¹⁴⁸

1.146 Submissions from groups representing the business and retail community voiced strong support for the design of the scheme in respect to the exclusion of other work entitlements and superannuation. Submitters suggested that the provision of employee entitlements, particularly compulsory employer-funded superannuation, to people on PPL would impose significant costs on business.¹⁴⁹ It was further noted by submitters that adverse financial impacts for business had been a long-term consideration in the PPL debate, and concern continued to exist regarding any additional costs associated with employing women.¹⁵⁰

145 ACCI, *Submission 65*, p. 9.

146 Ms Belinda Tkalcevic, Industrial Officer, ACTU, *Proof Committee Hansard*, 14 May 2010, p. 2 & Dr Kristin van Barneveld, Deputy Secretary, CPSU, *Proof Committee Hansard*, 14 May 2010, p. 59.

147 Ms Belinda Tkalcevic, Industrial Officer, ACTU, *Proof Committee Hansard*, 14 May 2010, p. 2.

148 FaHCSIA, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

149 AiG, *Submission 66*, p. 10; ARA, *Submission 64*, p. 6 & Mrs Marion Whalan, Divisional Manager, Workplace Relations and Small Business, PGA, *Proof Committee Hansard*, 19 May 2010, pp 30-31.

150 Mr Stephen Smith, Director, National Workplace Relations, AiG, *Proof Committee Hansard*, 14 May 2010, p. 27; Mr David Gregory, Director, Workplace Policy, ACCI, *Proof Committee Hansard*, 14 May 2010, p. 22 & ARA, *Submission 64*, p. 6.

1.147 The ACCI suggested that if superannuation was to be provided to employees on PPL, that this should be paid by government:

...in terms of the way in which this scheme is being structured, it is not a scheme that is based upon payments from the employer. In that context, we do not believe that it is appropriate to impose a superannuation obligation upon the employer.¹⁵¹

1.148 Other organisations similarly argued that superannuation contributions should be funded by government, given government would be funding the PPL scheme.¹⁵²

1.149 While it was noted that the payment of superannuation contributions would be considered when the scheme is reviewed, numerous witnesses suggested that this issue be dealt with sooner.¹⁵³ In particular, witnesses expressed concern about the superannuation "gap" that already exists between Australian men and women due to women's absence from the workforce during child-rearing years:

This research also shows that at retirement a typical woman will have 35 per cent less in her superannuation account than a typical man. There are three main factors that impact on the retirement incomes of women. Women have a greater life expectancy than men and, as a result, will need to live off their superannuation for longer; women are paid less than men; and women are more likely to spend time out of the workforce raising children, meaning that they are not contributing to superannuation during this time. Research shows that a typical woman who spends five years out of the workforce from the age of 27 will save \$95,000, or 26 per cent, less than a woman who does not.¹⁵⁴

1.150 The Australian Human Rights Commission (AHRC) directed the committee to a 2006 assessment of retirement savings compiled by Association of Superannuation Funds of Australia which calculated the average superannuation account balance for women to be \$35 520, compared to \$69 050 for men.¹⁵⁵

1.151 The Sex Discrimination Commissioner articulated concerns regarding the superannuation gap and the exclusion of superannuation payments from the PPL scheme:

The significant disparity between women's and men's retirement savings and the high proportion of women with alarmingly low superannuation

151 Mr David Gregory, Director, Workplace Policy, ACCI, *Proof Committee Hansard*, 14 May 2010, p. 22

152 Mrs Marion Whalan, Divisional Manager, Workplace Relations and Small Business, PGA, *Proof Committee Hansard*, 19 May 2010, p. 30; Mr James Bond, Senior Policy Manger, IFSA, *Proof Committee Hansard*, 19 May 2010, p. 19 & Unions NSW, *Submission 54*, pp 2-3.

153 LIV, *Submission 76*, p. 1; Unions NSW, *Submission 54*, pp 2-3; NTEU, *Submission 63*, p. 7; AHRC, *Submission 86*, p. 2 & Women and Work Research Group, *Submission 95*, p. 4.

154 Mr James Bond, Senior Policy Manger, IFSA, *Proof Committee Hansard*, 19 May 2010, p. 17.

155 AHRC, *Submission 86*, p. 2.

balances I think is one of the gravest aspects of gender inequality in Australia. So, whilst the commission does not have a firm view on the appropriate funding model for the inclusion of superannuation, we firmly believe that superannuation entitlements are an essential and fundamental component of addressing gender inequality and therefore should be included in the first stage of any new paid parental leave scheme.

...

From where I sit, as the Sex Discrimination Commissioner, when you look at the human face of this gender gap in retirement savings, there are a lot of older women who are living in poverty, and part of the reason for that is that they have chosen to care. The Paid Parental Leave scheme is about caring. I have not done the modelling, but I think we know that superannuation becomes valuable because of maturation, so the earlier you put your contributions in, the better off you are later on.¹⁵⁶

1.152 Submitters outlined the improvement that could be made to this gap if superannuation contributions were provided over the 18 week PPL period. The ACTU estimated that an additional 18 weeks of superannuation contributions to a balanced portfolio added over \$3000 dollars to the final account balance.¹⁵⁷ The Investment and Financial Services Association (IFSA) further noted that this could equate to a sizeable difference in eventual superannuation balances given the contributions would be compounded over 20-40 years.¹⁵⁸

1.153 On that basis, numerous submitters¹⁵⁹ including IFSA proposed that superannuation be included in the PPL scheme:

...including superannuation in paid parental leave is a simple and direct way to ensure that parents who spend time out of the workforce to raise children continue to contribute to their retirement incomes. Such a move would have a substantial positive impact on women's retirement incomes and improve equity in superannuation. Apart from improving equity, higher superannuation savings for women have a number of positive benefits not just for individual women but also for the economy as a whole. Higher superannuation balances will mean that women have better lifestyles in retirement, more women will be self-sufficient in retirement—which reduces the number of people who will need to draw on the age pension—and Australian savings in general will be higher, which will provide a number of positive benefit for the macro economy.¹⁶⁰

156 Ms Elizabeth Broderick, Sex Discrimination Commissioner, *Proof Committee Hansard*, 14 May 2010, pp 14-16.

157 ACTU, *Submission 80*, p. 3.

158 Mr Martin Codina, Director of Policy, IFSA, *Proof Committee Hansard*, 19 May 2010, p. 19.

159 AHRC, *Submission 86*, p. 2; Australian Local Government Women's Association (ALGWA) NSW, *Submission 69*, pp 5-6; CPSU, *Submission 56*, p. 2; NTEU, *Submission 63*, p. 7 & Unions NSW, *Submission 54*, pp 2-3.

160 Mr James Bond, Senior Policy Manger, IFSA, *Proof Committee Hansard*, 19 May 2010, p. 17.

1.154 FaHCSIA advised the committee that while the provision of superannuation to people on PPL was a recommendation of the Productivity Commission, in its final report the Productivity Commission proposed that this element of the scheme be delayed to 'reduce costs for business during the scheme's establishment and to take account of current economic uncertainties'.¹⁶¹ Further, the government has made a public commitment that the introduction of compulsory employer-funded superannuation contributions will be considered in the review of the scheme.¹⁶²

1.155 The committee acknowledges the significant concern among submitters regarding the non accrual of leave entitlements while receiving the PPL payment and the exclusion of superannuation from the proposed PPL scheme. The committee believes that the review of the PPL scheme is an opportunity for these issues to be reconsidered.

Paid supporting partner leave

1.156 In its final report, the Productivity Commission recommended the inclusion of a two week period of paid paternity or same sex partner leave for use exclusively by an eligible supporting partner at the time of the birth of a child.¹⁶³

1.157 The Paid Parental Leave Bill 2010 does not provide for a period of paid supporting partner leave.

1.158 A variety of submitters noted the absence of paid supporting partner leave from the proposed scheme and recommended its inclusion in the bill.¹⁶⁴ The comments made by the Australian Local Government Women's Association (ALGWA) NSW were typical of those in support of the inclusion of paid supporting partner leave:

ALGWA NSW is disappointed that the pending PPL legislation does not include a paid paternity leave component despite the Productivity Commission's recommendation that two weeks paid paternity leave be included as part of the PPL scheme given its relatively low cost to government and the Productivity Commission's view that the inclusion of a paid paternity leave component would have negligible additional costs on businesses...There is a large body of research that highlights the importance of having the father involved at the early stages of a child's life. Much of this information was referenced in the Productivity Commission's

161 FaHCSIA, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

162 FaHCSIA, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010). See also Mr Mark Warburton, Branch Manager, Paid Parental Leave Branch, FaHCSIA, *Proof Committee Hansard*, 19 May 2010, p. 56.

163 Productivity Commission, *Report 47 Paid Parental Leave: Support for Parents with Newborn Children*, 28 February 2009, p. XXVI.

164 See for example ALGWA NSW, *Submission 69*, p. 5; LIV, *Submission 76*, p. 2; Women and Work Research Group, *Submission 95*, p. 4 & AHRC, *Submission 86*, p. 5.

report – and also in many of the public submissions provided in the development of the PPL scheme. ALGWA NSW urges the Australian Government to revisit this information and accelerate the inclusion of a paid paternity leave component.¹⁶⁵

1.159 The AHRC and others¹⁶⁶ suggested the proposed review of the PPL scheme as an opportunity to revisit the inclusion of paid supporting partner leave:

The Commission reiterates the proposal put forward in its earlier two submissions to the Productivity Commission Inquiry in 2008 that an independent two year review be conducted so that a second stage of paid leave measures can be assessed to ensure that over time the total scheme provides for:

- a minimum of two weeks paid leave for fathers and other supporting parents;
- a full year of paid parental leave that can be shared between parents, to ensure that children receive the care they need at this important early stage;
- the year's paid leave to include a minimum of four weeks paid leave for fathers and supporting parents on a 'use it or lose it' basis, to enable more men to be involved in caring during the first year of their child's life...¹⁶⁷

1.160 FaHCSIA acknowledged that 'government...moved away from the Productivity Commission's recommendations by not funding a paternity leave component' and explained that this was due largely to fiscal reasons but that the government 'was signalling clearly that that also would be looked at in the review'.¹⁶⁸

Interaction with existing employer-provided paid parental leave

1.161 PPL as outlined in the bill will be able to 'be taken in addition to existing employer funded schemes, either at the same time or consecutively'¹⁶⁹ and the Minister has stated the government's intention that the government-funded PPL will be provided in addition to existing employer-provided schemes.¹⁷⁰

165 ALGWA NSW, *Submission 69*, p. 5.

166 Councillor Nicole Campbell, Chair, Paid Parental Leave Subcommittee and Executive Committee Member, ALGWA NSW, *Proof Committee Hansard*, 14 May 2010, p. 6 & Ms Therese Bryant, National Women's Officer, SDA, *Proof Committee Hansard*, 14 May 2010, pp 59-60.

167 AHRC, *Submission 86*, p. 5.

168 Mr Mark Warburton, Branch Manager, Paid Parental Leave Branch, FaHCSIA, *Proof Committee Hansard*, 19 May 2010, p. 55. See also FaHCSIA, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

169 The Hon Jenny Macklin, Minister for FaHCSIA, *Second reading speech*, 12 May 2010, p. 14.

170 The Hon Jenny Macklin, Minister for FaHCSIA, *Paid Parental Leave Doorstop (Sydney)*, 30 April 2010.

1.162 The Business Council of Australia¹⁷¹ and the AiG suggested that this was indeed how employers would integrate existing parental leave schemes with that provided in the bill:

A lot of employers have schemes that provide four, eight, 12 or 14 weeks of paid parental leave at the level of the base wage. The view of the employers that we have spoken to about this seems to be that they will just keep offering that. The employee will have the opportunity to either take that payment at the same time as the employer's payment, which to us would not be particularly logical or, more likely, would have the government payment once the company's payment stopped. We use the example in our submission that someone that has the benefit of eight weeks of paid parental leave could take that and then the government's 18 weeks after that which would give them six months of pay.

...

Employers value their staff. They offer benefits to attract and retain staff, and in our experience it is not happening, or likely to happen, that employers are going to reduce existing benefits, particularly with a scheme that very neatly dovetails with those benefits. It is not necessary for companies to change any of their existing schemes, because this scheme will fit neatly, as we see it, with all of the common models that a company might offer. Of course, there are contractual-type arrangements in place anyway. It may well be that a scheme is locked into an enterprise agreement or a common-law contract of employment, and therefore, of course, companies cannot just readily change those schemes in the rare circumstances that some might want to.¹⁷²

1.163 However, it was suggested to the committee that the bill does not clearly state that the PPL payment is in addition to existing workplace entitlements and that there is a risk that some employers may use the parental leave payment to subsidise their own parental leave schemes:

...there is nothing in the Bill itself that addresses the relationship between a payment made under the new scheme, and a payment made in satisfaction of an existing obligation to provide paid leave.

Suppose for instance that an employer is obliged by an enterprise agreement to provide 8 weeks' paid parental leave at an employee's ordinary rate of pay, and assume too that the employee is eligible for parental leave pay under the government-funded scheme. Can the employer take the government funding for those 8 weeks, pay it to the employee, then simply top it up so that it matches the employee's ordinary pay? The employer might argue that it has discharged its obligation under the enterprise agreement, and that it is no business of the employee's where it gets its funding from.

171 Business Council of Australia, *Submission 20*, pp 2-3.

172 Mr Stephen Smith, Director, National Workplace Relations, AiG, *Proof Committee Hansard*, 14 May 2010, p. 28.

Now such an argument might or might not be legally sustainable. The point is simply that the Bill does not appear to say one way or another whether employers can do this.¹⁷³

1.164 The Department of Education, Employment and Workplace Relations (DEEWR) advised that:

If there were already an employer-funded scheme together with the PPL scheme, there would be a requirement under both to make those payments—to provide the parental leave pay under the PPL scheme and to make the payments under the employer-funded scheme.¹⁷⁴

1.165 In response to questions on notice, DEEWR provided further advice:

Parental Leave pay is in addition to any existing entitlement under an enterprise agreement or contract of employment.

Where an employee has an existing entitlement to paid parental leave under an industrial instrument, it is enforceable in its terms as provided for by the instrument. This includes entitlements to paid leave that are contained in enterprise agreements made under the Fair Work Act 2009, agreements made under old federal or State workplace laws that remain in force and common law contracts.¹⁷⁵

And:

Employers who currently offer paid parental leave differentiate themselves as ‘employers of choice.’ Employers provide paid parental leave because it is good for their business and they benefit in the long-term from increased workforce participation of parents and retention of skilled staff. For this reason, the Productivity Commission in its final inquiry report considered that a withdrawal from existing Paid Parental Leave schemes was unlikely.

Where an employee has an existing entitlement to paid parental leave under an agreement, it is enforceable in its terms as provided for by the agreement. This includes entitlements to paid leave that are contained in enterprise agreements made under the Fair Work Act 2009, enterprise agreements made under old federal or State workplace laws that remain in force, AWAs and ITEAS as well as common law contracts.

An enterprise agreement can only be varied during its period of operation in accordance with the requirements in the Fair Work Act 2009, including that a majority of employees must approve a variation. It is only once an

173 Professor Andrew Stewart, *Submission 92*, p. 2.

174 Ms Collette Shelley, Acting Group Manager, Workplace Relations Policy Group, Department of Education, Employment and Workplace Relations (DEEWR), *Proof Committee Hansard*, 19 May 2010, p. 48.

175 DEEWR, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

enterprise agreement passes its nominal expiry date, the parties are permitted to re-negotiate its terms and make a new agreement.¹⁷⁶

1.166 Professor Andrew Stewart recommended addressing uncertainty around the interaction of employer-funded PPL with the proposed government scheme in the bill, rather than waiting for the matter to be determined via the courts:

...rather than leave the matter uncertain, or wait for it to be raised in litigation, it would be advisable for the legislation to address the issue directly.

I recommend that the Bill be amended to state that, for the avoidance of any doubt, a payment made under the legislation is not to [be] taken as discharging an obligation of an employer to provide paid leave under any other law, or under an industrial instrument, employment contract or other arrangement.¹⁷⁷

1.167 DEEWR indicated to the committee that the government plans to work with employers to 'consider how existing schemes will interact with the Paid Parental Leave scheme' and that the planned review of the scheme would be used in part to evaluate changes to employer-provided PPL schemes in response to the bill's implementation.¹⁷⁸

1.168 Some witnesses raised concerns that some employers, when re-negotiating their employment agreements, may wish to effectively reduce the amount of paid parental leave they currently offer, using the government scheme as a justification. ALGWA NSW explained that the executive of the Australian Local Government Association had already begun considering possible changes to the PPL scheme it currently offers to employees in response to the proposed scheme:

This was the motion from the executive: 'That the Local Government Association supports an increase in the future award's paid maternity leave provisions to 18 weeks on full pay or 36 weeks on half pay where such increase in the award entitlement does not apply in addition to the benefits provided by the federal government's paid maternity leave scheme.' That means you have got a very large employer in New South Wales that has been involved in implementing a paid maternity leave scheme for some nine and a half years now making it very clear that their agenda is to get out of this. I think that is really disappointing.¹⁷⁹

1.169 The committee is concerned that some employers are examining ways in which they might amend existing employer-provided PPL schemes to incorporate, rather than add, the government's proposed scheme. The committee would be

176 DEEWR, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

177 Professor Andrew Stewart, *Submission 92*, pp 2-3.

178 DEEWR, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

179 Ms Nicole Campbell, Chair, Paid Parental Leave Subcommittee and Executive Committee Member, ALGWA NSW, *Proof Committee Hansard*, 14 May 2010, p. 9

disappointed if employers chose to reduce current PPL entitlements in response to the implementation of the bill.

Interaction with the National Employment Standards and other employment entitlements

1.170 Various witnesses noted discrepancies between the Paid Parental Leave Bill 2010 and the National Employment Standards (NES) as contained in the *Fair Work Act 2009*, particularly with respect to eligibility requirements for PPL and unpaid parental leave.¹⁸⁰

1.171 Under the NES, a parent is entitled to 12 months unpaid parental leave at the birth or adoption of a child where the employee has completed 12 months of continuous service with their employer.¹⁸¹ This differs from the 10 of 13 months required under the Paid Parental Leave Bill 2010.

1.172 In his evidence to the inquiry, Professor Stewart advised the committee that the bill currently entitles an eligible employee to receive parental leave pay but 'does not create a right to paid leave'.¹⁸² Professor Stewart noted that, given the difference in eligibility requirements under the NES and the bill, circumstances could arise where:

...a pregnant employee who has worked regularly enough to be eligible for parental leave pay, but who has not quite completed 12 months' service with her current employer. Under the NES, she cannot insist on being granted leave. If her employer does not voluntarily agree to keep her job open, she faces the prospect of having to quit her job without any guarantee of a return to work.¹⁸³

1.173 The ACTU also raised concerns about circumstances where a parent may not be entitled to return to work following a period of PPL and recommended that the eligibility requirements under the NES be changed to reflect those in the bill:

We note that the National Employment Standards have very different criteria for eligibility that are much more restricted. We would like to see the National Employment Standards eligibility criteria match those of this bill. As an alternative, at the very least, we would like to see those women who are entitled to paid leave because of the more generous eligibility criteria—but not entitled to unpaid leave because they have not been with the same employer for 12 months, which is what is in the National Employment Standards—have a right to return to a job at the end of their

180 See for example Ms Belinda Tkalcevic, Industrial Officer, ACTU, *Proof Committee Hansard*, 14 May 2010, p. 2; Ms Elizabeth Broderick, Sex Discrimination Commissioner, *Proof Committee Hansard*, 14 May 2010, pp 15-16 & Mr Daniel Mammone, Manager, Workplace Relations and Legal Affairs, ACCI, *Proof Committee Hansard*, 14 May 2010, p. 22.

181 *The National Employment Standards*, ss 14(1) & 16(1).

182 Professor Andrew Stewart, *Proof Committee Hansard*, 19 May 2010, p. 15.

183 Professor Andrew Stewart, *Submission 92*, p. 1.

paid leave. There will be a portion of women who will be entitled to 18 weeks paid leave but will not be entitled to the corresponding unpaid leave from their employer. They will have no job to go back to, which is contrary to the objectives of the scheme. In the event that the committee decides that the NES should not be amended, we would at least then say make some provision to ensure that those women who are entitled to paid leave are entitled to a job when they come back from unpaid leave.¹⁸⁴

1.174 Other witnesses made similar proposals: Professor Stewart recommended that 'that gap be closed in some way by the amendment of the *Fair Work Act 2009* so as to provide for a broader entitlement to parental leave' (whilst acknowledging the difficulties of doing so given the need to negotiate with the states)¹⁸⁵ and Dr Kristin van Barneveld of the CPSU suggested that:

...pointers...be included in the Fair Work Act and the bill to ensure that employers and employees do not overlook any entitlements and for employers to be required to provide employees with an information statement about their entitlements.¹⁸⁶

1.175 The committee was informed by DEEWR that consequential amendments would be made to the *Fair Work Act 2009* and that the proposed amendments were the:

- inclusion of a keeping-in-touch provision in the NES; and
- inclusion of a note referring employers to their obligations to provide written notice of parental leave pay under the paid parental leave legislation.¹⁸⁷

1.176 DEEWR also advised that:

The Paid Parental Leave scheme will be implemented under stand-alone legislation having regard to the independent operation of the Fair Work Act 2009 (Fair Work Act) and the administrative arrangements of the scheme.

The development of stand-alone legislation recognises that the Paid Parental Leave scheme does not provide an entitlement to leave and has broader application and differing eligibility criteria to the National Employment Standards for unpaid parental leave.¹⁸⁸

184 Ms Belinda Tkalcovic, Industrial Officer, ACTU, *Proof Committee Hansard*, 14 May 2010, p. 2.

185 Professor Andrew Stewart, *Proof Committee Hansard*, 19 May 2010, p. 13.

186 Dr Kristin van Barneveld, Deputy Secretary, CPSU, *Proof Committee Hansard*, 14 May 2010, p. 59.

187 DEEWR, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

188 DEEWR, *Answers to questions on notice*, 19 May 2010 (received 26 May 2010).

Other issues raised during the inquiry

Childcare funding

1.177 Concern about recognising the value of childcare provided by mothers in the home, and the ongoing nature of childcare was also raised during the course of the inquiry. The Kids First Parent Association of Australia and the Australian Family Association submitted that the PPL scheme was essentially childcare funding:

Whatever else the Bill's parental leave pay may be called, it is childcare funding. It funds short-term parent care for 18 weeks at the minimum wage but discriminates unfairly by denying this funding to families with mothers caring for older children prior to the birth.

While in the short-term PPL funds "parental childcare", in the long-term it encourages outsourced childcare. PPL goes only to paid-work mums to facilitate their return to work, at which point many will begin outsourcing their childcare.

All families reduce income to pay for childcare, whether income is reduced by giving up income to provide parent and family care, or earning it and giving it away to an outside provider, such as a daycare centre. Mothers, whether in family work or paid work, give up income to afford to deliver childcare themselves to bond with their babies.¹⁸⁹

1.178 The committee recognises the ongoing and long term costs of childcare, and notes that funding for all forms of childcare in Australia is an important issue. However, given the proposed scheme's goals of enhancing child and maternal health and development; facilitating women's workforce participation by offsetting the disincentives to paid work generated by social welfare and taxation arrangements; and promoting gender equity and work / family balance, the committee believes that issues regarding the value of childcare provided by parents in the home, and childcare funding more generally, are outside the scope of this inquiry.

Family friendly workplaces

1.179 The committee received evidence that PPL is just one aspect of assisting families to achieve a positive work / life balance. ACCI stated:

ACCI supports other policy measures and programs that provide assistance in the areas of maternal health, welfare and childhood care. ACCI believes that a statutory paid parental leave scheme is but one part of the overall policy equation. The government should consider equally important measures such as the provision of adequate childcare facilities that are affordable and accessible to all working families. In our view this will be

189 Kids First Parent Association of Australia & the Australian Family Association, *Submission 57*, p. 7

the most significant driver of workforce participation from mothers with younger families.¹⁹⁰

1.180 Evidence was also presented to the committee about the importance of breastfeeding, and the need to ensure that workplaces enable mothers to maintain a breastfeeding relationship upon return to work. The Australian Breastfeeding Association (ABA) told the committee:

ABA believes that access to lactation breaks in the workforce is fundamental to maintaining a breastfeeding relationship after a return to work.

And:

Our support for employed breastfeeding mothers includes promotion of breastfeeding-friendly environments, including through schemes such as our Breastfeeding Friendly Workplace Accreditation scheme. Our approach to paid maternity leave is, as I said before, focused on the health and welfare of the mother and child...We also note that health authorities recommend continued breastfeeding beyond six months. While, for most mothers with babies of that age, some level of employment is not incompatible with breastfeeding, there are certainly stresses and pressures on mothers. For some mother-baby duos where the mother is in full-time or close to full-time employment, there may be some difficulties in sustaining breastfeeding even beyond the six months, depending on the particular situation.¹⁹¹

1.181 The committee notes that significant difficulties can arise for women trying to maintain breastfeeding while working and that many workplaces do not currently accommodate breastfeeding mothers. For example, the committee heard the experience of Mrs Sariah Puriri-Giblin:

I had to keep expressing milk because the doctors said breastmilk would help my son grow...I would have to express milk every three hours so that I did not lose my milk when my baby came home. My work does not have the facilities for me to breastfeed. I was expressing milk in a crew room. I felt really uncomfortable because the lock was not working on it and there was a big gaping hole down the bottom. I pretty much had to express milk with my foot holding the door. The majority of our staff are under 18, so I guess they do not see the need for supplying a more comfortable room. The added stress of returning to work caused difficulties with my breastmilk and my milk started to dry up.¹⁹²

190 Mr Daniel Mammone, Manager, Workplace Relations and Legal Affairs, ACCI, *Proof Committee Hansard*, 14 May 2010, p. 19.

191 Dr Julie Smith, Director, Australian Breastfeeding Association, *Proof Committee Hansard*, 19 May 2010, p. 36

192 Mrs Sariah Puriri-Giblin, *Proof Committee Hansard*, 14 May 2010, p. 4

1.182 The ABA also emphasised the need for complementary policies to encourage 'breastfeeding-friendly workplace provisions and employment conditions'.¹⁹³

1.183 The committee agrees with the view that PPL is one aspect of supporting families and encouraging women to maintain workforce participation. The committee supports the continued improvement of other relevant policies that support a positive work / life balance for families including quality childcare, the provision of workplace breastfeeding and flexible leave arrangements.

Recommendation 5

1.184 The committee recommends that the Senate pass the government's bill.

Senator Claire Moore

Chair

193 Dr Julie Smith, Director, Australian Breastfeeding Association, *Proof Committee Hansard*, 19 May 2010 p. 37