

# **Paid Parental Leave Scheme Review**

## **ACTU Submission**



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## 1. Introduction

Work and family balance is a long-standing priority for the ACTU and its affiliated unions who represent 1.8 million working people and their families.

The ACTU campaigned for Paid Parental Leave (PPL) for over 30 years and welcomed the implementation of the PPL legislation by the Labor government in 2010. The PPL scheme was long overdue. At the time, Australia was one of only two OECD countries who did not provide PPL. The Australian labour market had failed to equitably deliver paid parental leave, with two thirds of parents receiving no paid leave from work to have and care for a baby.

The ACTU supported the introduction of the PPL scheme because it:

- Provided financial support to families;
- Promoted child and maternal health and well-being;
- Recognised fathers increased desire to contribute to family and caring roles;
- Assisted mothers to maintain labour market attachment;
- Promoted equity for women through the right to paid leave from employment for child birth;
- Assisted employers to attract and retain skilled and experienced employees; and
- Enhanced the national economy and labour market through increased female participation in the workforce.

The PPL legislation was a product of significant consultation, research and analysis and had broad support from unions, employers and the community. The scheme was built on a model of shared contribution from tax payers and employers (although the cost to employers was minimal as they were only required to pass the Government payment on to eligible employees). The design of the scheme as a government subsidised minimum workplace entitlement administered and built on through the employment relationship provided an important connection to workplace attachment. The provision of choice for families as to how to structure care and work allowed fathers to play an increased role in family and caring responsibilities. The ACTU believes these key policy aspects of the PPL Scheme should continue.

The terms of reference of this Review, set out in s.307A of the PPL Act, provide for an assessment of the operation of the PPL scheme to date. In addition the evaluation of the scheme includes an assessment of the extent that it is likely to meet its longer term objectives. Section 3A sets out that the objects of the Paid Parental Leave scheme are to:

(1B)

(a) *signal that taking time out of the paid workforce to care for a child is part of the usual course of life and work for both parents; and*

(b) *promote equality between men and women and balance between work and family life.*

(1) *The object of parental leave pay is to provide financial support to primary carers (mainly birth mothers) of newborn and newly adopted children, in order to:*

(a) *allow those carers to take time off work to care for the child after the child's birth or adoption; and*

(b) *enhance the health and development of birth mothers and children; and*

(c) *encourage women to continue to participate in the workforce.*

## 2. ACTU Paid Parental Leave Policy

The ACTU supported the PPL Scheme as an important first step towards achieving a comprehensive workplace right for employees to paid leave to have and care for newborn babies. ACTU Congress policy is to continue to work towards improvements to the PPL scheme.

A number of ACTU proposals have been adopted since the passing of the legislation (such as secondary carer's leave through the Dad and Partner Pay scheme) and some are the subject of proposed legislation (such as the extension of concurrent PPL and strengthened rights to request flexible work arrangements contained in the Fair Work Amendment Bill 2013).

However, some key ACTU proposals in the original consultation process for the PPL legislation remain outstanding and it is appropriate that these proposals to be reconsidered in this Review. The key ACTU Congress policy proposals we continue to advocate for in this submission are:

1. Extension of the period of Government PPL scheme to 26 weeks;
2. A legislated obligation on employers to 'top up' the gap between the government National Minimum Wage (NMW) payment and the employees' actual earnings.

3. A legislated obligation on employers to provide contributions to employees' superannuation for periods of PPL;
4. Legislated accrual of entitlements such as annual leave, sick leave and long-service leave for periods of PPL;
5. Inclusion in the Fair Work Act 2009 (FWA) of paid anti-natal leave and paid breastfeeding breaks and appropriate breastfeeding facilities in workplaces;
6. Alignment of the FWA eligibility criteria for unpaid parental leave with the eligibility criteria for PPL to ensure employees are entitled to unpaid leave for the period of paid leave;
7. Amendment of the PPL Act 2010 to ensure employers may not reduce existing workplace entitlements as a consequence of the introduction of the PPL scheme; and
8. Recognition of PPL as but one part of a suite of family friendly workplace policies, including strengthening return to work provisions (including the right to return to work part -time for employees returning from parental leave) and workplace flexibilities necessary to support working families.

In addition, in reviewing the operation of the PPL legislation to date, the ACTU advocates for:

1. Amendments to the PPL Act to ensure the eligibility criteria does not discriminate against certain groups of employees;
2. Improvement of the administration and service delivery of the PPL payment; and
3. Protection for employees applying for or taking parental leave from discrimination.

### 3. Recommendations

#### Extension of the Government PPL Scheme

##### Recommendation 1

Extend the period of the current Government PPL scheme to 26 weeks (at the National Minimum Wage).

#### Employer contributions

##### Recommendation 2

Legislate an obligation on employers to 'top up' the gap between the **National Minimum Wage** government payment and the employees' actual earnings (capped at average earning rate of \$72,400). Employers may voluntarily top up employee wages above \$72,400 per annum.

##### Recommendation 3

Legislate an obligation on employers to make superannuation guarantee contributions on the PPL period.

##### Recommendation 4

Legislate for the accrual of entitlements such as sick leave, annual leave, and long-service leave on periods of PPL as in other leave arrangements.

#### Eligibility

##### Recommendation 5

Amend the *Paid Parental Leave Act 2010* to ensure periods of paid or unpaid parental leave are counted as continuous employment for the purposes of the Work Test.

##### Recommendation 6

Amend the *Fair Work Act 2009* to provide unpaid parental leave to employees with less than 12 months service, who are eligible for PPL, for the period of their receipt of the government paid parental leave pay.

### Recommendation 7

The grace period of 8 weeks in the work test for eligibility for PPL pay should be extended to 12 weeks. In addition, or in the alternative, the eligibility criteria should be amended to acknowledge the workforce attachment of employees working regularly and systematically in industries where breaks in service are integral to the employment conditions of the sector in which they are employed.

### Recommendation 8

Equitable financial assistance should be available to families not eligible to receive PPL pay.

### Recommendation 9

The work test criterion which applies for the receipt of PPL pay should ensure maximum numbers of employees are able to receive the payment.

### Recommendation 10

The *Fair Work Act 2009* and the *Paid Parental Leave Act 2010* be amended, so that the legal carers of children with permanent care orders are eligible for both unpaid parental leave and paid parental leave pay, with similar criteria to that which applies to adoptive parents.

## Measures to support parents at work

### Recommendation 11

Amend the FWA to include paid anti-natal leave; paid breastfeeding breaks and appropriate breastfeeding facilities in workplaces.

### Recommendation 12

Amend s65 of the *Fair Work Act 2009* to include an obligation on employers to make reasonable efforts to accommodate employees' requests for flexible work arrangements in order to meet family and caring responsibilities.

### Recommendation 13

Amend the *Fair Work Act 2009* so that ss.65 (employee requests for flexible work arrangements) and 76 (employee requests for further periods of unpaid parental leave) are no longer excluded as matters about which the Fair Work Commission may arbitrate.

#### **Recommendation 14**

Amend the *Fair Work Act 2009* to provide employees with the right to return from parental leave on a part time basis to their job, or an equivalent job in status and pay, until the child reaches school age, which employers must accommodate where reasonable.

#### **Recommendation 15**

Amend the *Fair Work Act 2009* to require employers to:

- Genuinely consider any views about the impact of proposed changes to rosters; and
- Make reasonable efforts to accommodate the needs of employees when implementing proposed roster changes.

### **Administration and Implementation**

#### **Recommendation 16**

Centrelink should review its processes so that:

- On-line and hard copy application forms are simplified;
- Hard copy application forms are accepted at all Centrelink offices;
- There are sufficient resources to ensure applications are processed promptly; and
- There are sufficient resources to ensure clients have access to advice and assistance without delays.

### **Interaction of PPL Scheme with enterprise agreements and workplace policies**

#### **Recommendation 17**

Amend the PPL Act to expressly prohibit employers from removing or reducing existing PPL or DaPP entitlements as a consequence of the introduction of the PPL and/or DaPP schemes.

### **Prevention of Discrimination**

#### **Recommendation 18**

The ACTU has called for the federal government to initiate a National Inquiry into the experiences of pregnant employees and the experiences of parents returning to work after parental leave, and appropriately address any issues which arise.



### Recommendation 19

Amend the PPL Act to ensure employees who, but for the discriminatory actions of their employer, would have met the work test, are eligible for PPL.

## 4. Extension of the PPL Scheme

### 4.1 Implementation of legislation to extend the period of the government PPL scheme to 26 weeks

The PPL Act requires the Review to consider the amount of time parents are taking to care for newborn or newly adopted children.<sup>1</sup>

The benefits of paid parental leave to maternal and child health are well documented.<sup>2</sup> The research suggests that there may be adverse effects on children's health and well-being when mothers return to (especially full time) work within 3 months of the birth. The SDA estimates that one quarter of their members return to work from parental leave within two months of the birth of their baby for financial reasons.<sup>3</sup>

An analysis of employer workplace gender equality reports for 2011-12 indicates that 51.7% of reporting employers provide, in addition to the government PPL payment, paid parental leave at an average duration of 9.7 weeks.<sup>4</sup> The combined total paid parental leave of the government PPL payment and the employer payment amounts to an average of 27.7 weeks paid leave.<sup>5</sup>

Therefore, a significant number of employees are already receiving in excess of 26 weeks paid parental leave. It is expected, in line with evidence tendered in the Productivity Commission's paid parental leave inquiry, that higher income earning, professional and public sector employees are more likely to be the beneficiaries of employer provided paid parental leave. As an issue of equity, the government paid parental leave scheme should be extended to ensure all parents are eligible for 26 weeks paid parental leave at the minimum wage rate.

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<sup>1</sup> Paid Parental Leave Act 2010, Section 307A (a)

<sup>2</sup> See the ACTU Submission to the Productivity Commission Inquiry in to Paid maternity, Paternity and Parental Leave May 2008.

<sup>3</sup> SDA Submission to the Paid Parental Leave Review 2013, Appendix A

<sup>4</sup> Workplace Gender Equality Agency Report, 2011-12

<sup>5</sup> Empirical data would be required from the Workplace Agreement Database to quantify the exact number of workplace agreements which provide PPL. Further research would be needed to quantify the number of workplace policies which provided PPL.

## 5. Eligibility

### 5.1 Alignment of the FWA eligibility criteria for unpaid parental leave with the eligibility criteria for PPL

The Review must consider the availability of PPL and the operation of the work test.<sup>6</sup>

To be eligible for PPL, the PPL legislation requires employees to have been in paid work continuously for at least 10 of the 13 months prior to the expected date of birth or adoption of a child and undertaken at least an average of 1 day of paid work in that 10 month period. To be eligible for unpaid parental leave, the Fair Work Act requires employees to have worked continuously for the same employer for at least 12 months.

Around 23.9% or 2.2 million workers do not have secure employment. One fifth work in casual employment.<sup>7</sup> The majority of these employees are women, many working in multiple casual or insecure jobs in order to balance work and caring responsibilities. The definition of continuous service in the PPL legislation was based on the findings of the productivity Commission's Inquiry which reflected the fact that many women demonstrate attachment to the workforce despite not being employed continuously with one employer.

Consequently, a small but significant number of parents are eligible for PPL but not eligible for unpaid parental leave. These employees will receive 18 weeks paid leave but do not have a right to return to their job. This undermines the PPL legislation's objective to facilitate labour market retention of parents. The NES eligibility criteria for unpaid parental leave should be amended to ensure that those who are entitled to PPL are also entitled to unpaid leave for that period to ensure they have a job to return to.

### 5.2 Alignment of the FWA definition of continuous service for unpaid parental leave with the definition for PPL

The PPL definition of continuous service does not include periods of paid or unpaid parental leave. The ACTU welcomes the recent 2013 Budget announcement that paid parental leave shall count as service for the purposes of eligibility for PPL. However, given that PPL is usually taken immediately following the birth of a child, this measure will be insufficient to ensure most

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<sup>6</sup> Paid Parental Leave Act 2010, Section 307A (b)

<sup>7</sup> ACTU, 'Creating Secure Jobs and a Better Society', Report to National Community Summit, March 2013, p.3

parents will have worked for 10 months of the 13 months prior to the birth or adoption of a subsequent child. In contrast, the FWA provides that periods of paid or unpaid parental leave do not constitute a break in service. The PPL legislation should be amended to ensure that both paid and unpaid parental leave count as service for the purposes of eligibility for PPL.

### 5.3 Ensuring employees who are engaged by employers on a regular and systematic basis are not excluded from being eligible for PPL

The PPL eligibility criteria provides for a 'grace period' of up to 8 weeks break in service. However, seasonal workers and employees in sectors that have regular long-term breaks, such as schools and universities are unable to meet the work test criteria despite clearly demonstrating long term and regular employment.

The eligibility criterion needs to be amended to either provide for longer periods of breaks in service or acknowledge circumstances where breaks in service are integral to employment conditions in the sector and are not an indicator of a lack of attachment to the workforce.

### 5.4 Employees caring for children via permanent care orders should be eligible for PPL

Employees caring for children with permanent care orders perform a valuable social service. The care they provide is similar to adoption and whilst adoptive parents are eligible for PPL, parents caring for children with permanent care orders are not. In many circumstances these carers are required by law to discontinue paid employment for the first year of providing care for the child. The PPL legislation should be amended to ensure these carers are also eligible for PPL.

### 5.5 Financial assistance for employees who are ineligible for PPL

The ACTU supports the right for families to be able to choose the caring and working arrangements that best suit them. We support equitable provision of financial support for families irrespective of their choice of caring and working arrangements. Data collected by the department of FaHCSIA indicates approximately half of parents received PPL and half received the baby bonus. The ACTU supports the government's budget announcement to provide financial assistance for families with newborn children via the family tax benefit scheme rather

than the baby bonus payment. However, we advocate that equity of assistance should be maintained. In particular, if, as a result of changes to the payment system, some families who are ineligible for PPL suffer a decrease in the level of financial support, it is critical that the eligibility criteria for PPL be as broad as possible to encompass the wide range of modern employment arrangements.

## 6. Employer Contribution

### 6.1 Employer 'top-up' of the government's 18 week minimum wage contribution to full income replacement wages.

The Objects of the PPL scheme include to '*signal that taking time out of the paid workforce to care for a child is part of the usual course of life and work for both parents*' and '*to encourage women to continue to participate in the workforce*'.<sup>8</sup>

The ACTU has consistently advocated that PPL should have parity with all other leave entitlements which are paid at full wage replacement level. This should be achieved via a combination of government provided subsidy (at the minimum wage) and employer provided 'top up' pay to bridge the gap between the minimum wage and the employee's actual earnings.

Increasingly families are relying on two incomes to survive.<sup>9</sup> Whilst the data indicates that higher earning parents are more likely to benefit from employer provided leave and top up of PPL payments to full income, the financial pressure associated with forgone maternal income is greatest on low income families and sole parent families.<sup>10</sup>

Under the current scheme, employers are not required to provide any PPL payments. They are simply required to pass the government minimum wage payment on to employees. This is a minimal contribution compared to the tax payer contribution to the scheme. Parents contribute a significant proportion of their income to raising children- the conservatively estimated cost of having children is around 20% of the family income. The proportion of income spent on raising children is higher for low-income and sole parent families<sup>11</sup>

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<sup>8</sup> Paid Parental Leave Act 2010, Section 3A

<sup>9</sup> ABS 4102.0 Social Trends data

<sup>10</sup> Cost of living increases of non-discretionary items such as food, petrol, housing, health and childcare which have outstripped rises in minimum wages.

<sup>11</sup> Australian Institute of Family Studies, 'The Costs of Children', February 2000, p.75

Paid parental leave saves business significant outlay on staff replacement costs, assisting employers to retain skilled and experienced employees with critical corporate knowledge. For employers, the estimated cost of replacing staff ranges from 25% to 200% of the annual salary.<sup>12</sup>

An analysis of average women's earnings for 2012 indicates topping up to full income replacement is affordable. Around one third of employed women earned less than the minimum wage (\$30,628 in May 2012 or \$589 per week; half of all employed women earned less than \$41,600 (or \$800 per week) and just under 85% earn less than the average wage (\$72,400 or \$1392 per week).

The table below indicates the average earnings of women and the estimated 'top-up' employers would need to provide to bridge the gap between the minimum wage and the actual earnings<sup>13</sup>:

Income Bracket	Cumulative % Women	'Top-Up' to Full Wage (per week)
\$0 - \$30,628	33%	Nil
\$30,628- \$41,600	50%	\$0 - \$211
\$41,600- \$61,500	75%	\$211 - \$594
\$61,500 - \$72,400	84%	\$594 - \$803
\$72,400 - \$100,000	95%	\$803 - \$1,334
More than \$100,000	100%	\$ 1,334 +

So, for half of all employed women, employers would be required to provide less than \$3,800 and for three quarters of women, employers would be required to pay less than \$10,700 to ensure their 18 week PPL payments were at the employee's actual wage rate.

It is important to note that only 2% of employees will take parental leave in any year, and that most high earning employees already receive PPL 'top up' through their enterprise agreements or employment contracts. Given the estimated cost savings of retaining skilled staff (25% to 200% of their annual salary), this is a reasonable contribution to expect from employers.

The government scheme has provided a minimum entitlement which has made additional leave or top up to full wages a more realistic option for employers to provide their workforce.

<sup>12</sup> ACTU Submission to the Productivity Commission Inquiry in to Paid maternity, Paternity and Parental Leave May 2008, p. 16.

<sup>13</sup> ABS unpublished data from EEHS May 2012 Cat no. 6306 ordinary time earnings. Calculations are based on the most recent earnings data and the applicable minimum wage rate for May 2012.

The ACTU supports the proposal to cap the legislated requirement for employers to 'top up' salaries to no more than the AWE (currently \$72,400 p.a.). Employers could voluntarily top up salaries over \$72,400 should they so choose.

## 6.2 Legislated obligation on employers to provide superannuation guarantee contributions for employees on periods of PPL

Provision of minimum superannuation contributions by employers on periods of paid and unpaid parental leave is an important pay equity measure. Women have significantly less money saved for their retirement – half of all women aged 45 to 59 have \$8,000 or less in their superannuation funds, compared to \$31,000 for men.<sup>14</sup>

Currently, the average superannuation payout for women is a third of the payout for men - \$37,000 compared with \$110, 000.<sup>15</sup>

Poverty in retirement is a major issue for women who have provided unpaid care. In 2009, around two in five women (41%) aged 15-64 years, or an estimated 3 million women, had responsibilities for unpaid care.<sup>16</sup>

The value of child care provided by parents is substantial. The amount of unpaid care for people with disabilities is estimated to be 1.32 billion hours each year, valued at \$40.9 billion per annum in 2010, if unpaid care were to be replaced by paid care providers and provided in the home.<sup>17</sup> Despite this, women providing this valuable contribution to the economy are penalised through poverty in their retirement.

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<sup>14</sup> Simon Kelly, 'Entering Retirement: the Financial Aspects' (Paper presented at the Communicating the Gendered Impact of Economic Policies: The Case of Women's Retirement Incomes, Perth, 12-13 December 2006).

<sup>15</sup> Ross Clare, 'Are retirement savings on track?' (The Association of Superannuation Funds of Australia Limited 2007).

<sup>16</sup> Australian Bureau of Statistics, Survey of Disability, Ageing and Carers, Australia 2009, Basic CURF, Version 3, CD-Rom (2009). Findings based on SPRC's analysis of ABS CURF data.

<sup>17</sup> Access Economics, The economic value of informal care in 2010 (2010), p i. At <http://carersaustralia.com.au/storage/Economic-Value-Informal-Care-Oct-2010.pdf> (viewed 12 September 2012).

Providing minimum superannuation payments on the current 18 week PPL period is affordable for employers. The calculations below are based on the cost to employers of providing the current 9% minimum superannuation guarantee (SG) contributions for employees on 18 weeks parental leave at the *full income rate*:

Income Bracket	Cumulative % Women	Total SG Contribution (18 weeks)
\$0 - \$30,628	33%	\$ 0 - \$954
\$30,628- \$41,600	50%	\$ \$954 - 1,296
\$41,600- \$61,500	75%	\$ 1,296 - 1,909
\$61,500 - \$72,400	84%	\$ 1,909 - \$2,225
\$72,400 - \$100,000	95%	\$ \$2,225 - 3,115
More than \$100,000	100%	\$ 3,115 +

Therefore, for 95% of women, employer would pay less than \$2,225 in total for superannuation contribution on 18 weeks PPL at employee's actual earning rate. Again, it is important to note that only 2% of employees will take parental leave in any year, and that most employees already receive SG contributions on their employer provided PPL through their enterprise agreements or employment contracts. Some employers also make superannuation contributions for their employee's total periods of paid and unpaid parental leave.

## 6.2 Accrual of entitlements such as annual leave, sick leave and long-service leave for periods of PPL

Paid parental leave should have equitable status with all other forms of leave, and employees on PPL should accrue entitlements such as annual leave, sick leave, carer's leave and long-service leave just as they would do on all other forms of paid leave. In particular, parents are arguably in need sick leave, personal carer's leave and annual leave more than other employees.

Given only 2% of employees will take PPL in any year, and the PPL is for a limited period only, provision of accrued leave entitlements is affordable for employers and would assist parents returning to work to better manage illness, caring responsibilities, school holidays and emergencies.