

Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022

ACCI Submission

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Introduction

1. For decades, ACCI has advocated for measures which increase workforce participation in the Australian economy. The ACCI network is comprised of over 160 business associations, representing more than 300,000 businesses of all sizes, across all industries and all parts of the country. The success of these businesses, and the more than 4 million workers they employ, depends on the strength of Australia's labour market.
2. Recent economic challenges, such as labour and skills shortages, have reinforced the importance of better promoting labour force participation, including through government policy. With historically low unemployment levels, Australian businesses and communities cannot afford to have more employees leave the workforce.
3. Additionally, following the social changes which occurred during the management of the COVID-19 pandemic, there is increasingly demand for flexibility in the future of work from both employees and employers. This is reflected in growing demands for flexibility such as working-from-home and enabling employees to undertake informal caring responsibilities more easily.
4. ACCI therefore welcomes the introduction of the Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022 (**Bill**) into the Federal Parliament. The Bill seeks to address these policy objectives by improving access to paid parental leave and enhancing flexibility in its application. ACCI thanks the Senate for the opportunity to express the views of our network to the Community Affairs Legislation Committee on these important reforms.
5. This submission addresses each of the changes outlined in the explanatory memorandum on pages 2-9 consecutively.
6. Overall, ACCI supports the changes proposed in the Bill. The Bill will boost women's workforce participation, benefitting businesses by ensuring that fewer productive employees end up leaving workplaces permanently and more women remain in the labour market. The Bill will also both enhance flexibility in paid parental leave and improve gender equity outcomes.
7. ACCI remains committed to working with the Commonwealth, the Federal Parliament, employee associations and other industry bodies, to ensure the effective implementation of the important changes in this Bill and to consider other measures to support labour force participation.

Extending Parental Leave Pay

8. The Bill seeks to abolish the 2-week entitlement to dad and partner pay (**DAPP**) by consolidating it into the entitlement for a total of 18 weeks of paid parental leave. This will mean that claimants will be entitled to a total of 100 days or 20 working weeks of PPL.
9. ACCI supports these changes.
10. Consolidating the leave payments into a single entitlement appropriately simplifies the system. The existence of two distinct payments added unnecessary complexity. Early on, it may have advantageously emphasised that payments were not only available to one parent when the scheme was first being introduced, encouraging the sharing of parenting responsibilities; however, this is now no longer necessary given the more than 10-year period for which it has existed.
11. Additionally, removing the gendered nature of the scheme exhibited in the DAPP entitlement is likely to incentivise greater utilisation of the entitlement by male workers, thereby having a positive impact on women's workforce participation. This may also have beneficial flow-on effects for broader gender equity goals, such as reducing pay disparities.
12. It will be important to support the abolition of this payment with the publication of explanatory material that clarifies that although fathers will no longer be entitled to the DAPP, other changes in the legislation (such as removing the gendered nature of claims) means that they are now entitled to greater access to paid parental leave generally. Any misconception that fathers' entitlement to paid parental leave has now been reduced would risk outcomes that are antithetical to the policy objectives of the Bill.

Reserved 'Use It or Lose It' Period

13. Although the DAPP entitlement is being abolished, partnered claimants will only be able to use a maximum of 90 of the 100 available days of paid parental leave (**PPL**). The other 10 days must be used by the other partner, otherwise they will be "lost" and made unavailable (excluding exceptional circumstances). On the other hand, single parents are entitled to the full 100 days of PPL.
14. ACCI does not oppose these changes. They largely reflect the current operation of scheme, insofar as the DAPP entitlement is only available to a second claimant, and the policy basis of encouraging greater sharing of parenting responsibilities is commendable.

Gender-Neutral Claiming

15. Currently, the scheme requires the primary claimant of PPL to be the child's mother or adoptive parent, unless exceptional circumstances are satisfied.¹ This means that, unless there are special circumstances or the mother is incapable of caring for the child, a father is prevented from being the primary claimant for PPL.²
16. The Bill proposes to rectify this by making the scheme gender-neutral. It does so by seeking to make extensive amendments to the legislation and replacing notions such as "primary claimant", "secondary claimant" and "tertiary claimant" with "PPL claimant" and "special PPL claimant".
17. ACCI strongly supports these changes. Enabling fathers to undertake a greater share of parenting responsibilities will improve women's workforce participation by reducing the degree to which women leave their employment for long durations. It should also lead to positive outcomes for gender equity by reducing pay disparities.
18. In addition, these changes relieve the scheme of some confusion currently created by existing terminology. The existing language seems to imply that primary claimants and tertiary claimants must be distinct people, which is not the case.

Permission Process

19. The Bill proposes changes to the rules around the granting and revoking of permission from initial claimants for those who are not birth parents or adoptive parents to make claims for PPL. ACCI does not oppose these changes.

Flexible PPL Days Only

20. The Bill seeks to convert all available PPL days into flexible PPL days. This means that, rather than claimants being entitled to 60 PPL days in a single continuous block in addition to 30 PPL days which can be used separately (such as 2 days each working week), all the PPL days to which claimants are entitled can be used together or separately at their discretion.
21. This is a positive reform. ACCI supports these changes. Improving flexibility in the PPL scheme should provide numerous benefits to both employers and employees.

¹ Paid Parental Leave Act 2010 s 54.

² Paid Parental Leave Rules 2021 r 26.

22. First, greater flexibility in the PPL scheme will mean that employees are more likely to gradually recommence working sooner. This will likely improve contact between employers and employees, as the duration for which the employee is entirely absent during a work week will likely shorten, strengthening the employment relationship.
23. Second, partial vacancies can often be more easily managed by employers than full vacancies that last for several weeks. For example, employers may be able to offer greater hours to existing or hire new casual or part time employees to fill a vacancy created by an employee who is utilising PPL for 2 or 3 days per week over the course of more than 6 months. Conversely, finding a worker to temporarily fill a full time position for only 3 months can be a challenge, particularly for smaller businesses. The enhanced flexibility is likely to mean that the vacancy created by the employee using PPL will be more straightforwardly managed by the employer.
24. Third, improving flexibility in the labour market generally means that it is more adapted to the diverse needs of workers and their families. ACCI supports flexibility in work, particularly measures that do not impose new or increased administrative burdens on employers, such as these changes.
25. Forcing claimants of PPL to take 12 consecutive weeks off work was an unnecessary feature of the scheme to date. Rectifying this issue will be highly beneficial to claimants and their employers.
26. In addition to removing the requirement to take PPL days in a single continuous block, wider consideration should be given to ways to better enable employers to fill vacancies created by the use of PPL entitlements. Forms of work which are often inappropriately designated as inherently “insecure”, such as labour hire, casual employment, independent contracting, and fixed term contracting, perform a crucial role in allowing businesses to ensure that they are not short-staffed when an employee is on a period or day of PPL. The Government’s decision to include an exception to the limitation on the use of fixed term contracts for filling temporary absences of other employees in the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* was therefore welcome. The Government and Parliament should both be committed to safeguarding from impediment the use of those other forms of work which are all integral to enabling greater flexibility in the workplace relations system.

Changes to Eligibility

27. The Bill introduces a family income test, which will mean that even if individual parents do not satisfy the individual income test (currently approximately \$157,000), if the family collectively falls short of the family income limit of \$350,000 (indexed), they will still be eligible for PPL.
28. This is a positive change and will deliver more equitable outcomes for Australian families. High-income earners of either gender who are the primary income earners in their household should not be prevented from utilising paid parental leave. Keeping these income earners in the workforce has obvious and significant productivity benefits for businesses, and benefits for the wider community.

29. In addition, it removes what is essentially a quasi-welfare trap, in that the individual income test in isolation risks the creation of a perverse incentive to restrain income levels below the eligibility threshold. Although undoubtedly rare, the scheme should not discourage the acceptance of pay increases due to any desire to make a PPL claim in the near future.
30. The Bill expands the definition of “caring”. Currently, claimants are required to be the primary carer of a child on a day to claim PPL. The Bill proposes to allow claimants simply have the child in their care on that day.
31. This change appropriately recognises that caring responsibilities for children are often shared throughout the course of any given day. In the modern and diverse workforce, parents often work on vastly dissimilar schedules, which means a parent may be the sole carer for a child for a portion of the day, although not meeting their needs “more than anyone else” across the period of the entire day, as required by the current legislation.³

Employer Determinations

32. The Bill seeks to make changes to the circumstances in which employers are required to provide employees with PPL. However, these changes do not appear to be substantive, but instead attempting to maintain consistency with the existing scheme, following other changes made by the Bill.
33. When the PPL scheme was first introduced, ACCI raised concerns about the administrative burden imposed on employers by requiring them to often be the provider of payments and imposing record-keeping obligations on them to facilitate government payments. These concerns persist. However, they are not solely specific to the PPL scheme; the workplace relations system in general imposes excessive administrative requirements on employers, which stifles productivity, particularly in small businesses.
34. These changes are purportedly aimed at reducing the administrative burden on employers by providing more certainty about the days for which they are liable to pay their employees parental leave. To the extent that they do so, ACCI supports them. Nevertheless, ACCI encourages the Committee to give significant consideration to any concerns raised about potential further complexity generated by or administrative burdens imposed upon employers as a consequence of the Bill.
35. High-quality practical advisory materials will be needed to successfully implement these amendments and ensure that both employers and employees understand them.

³ Paid Parental Leave Act 2010 s 47(1)(b).

Conclusion

36. ACCI strongly supports the Bill and encourages the Committee to recommend it be passed by the Federal Parliament.
37. These changes should deliver significant benefits to the economy by boosting women's workforce participation, improving flexibility in the use of paid parental leave, enhancing gender equity outcomes, and ensuring businesses continue to have access to a diverse, experienced productive labour force. ACCI looks forward to working with the Commonwealth to examine what further measures can be implemented to continue pursuing these objectives.

About ACCI

The Australian Chamber of Commerce and Industry represents hundreds of thousands of businesses in every state and territory and across all industries. Ranging from small and medium enterprises to the largest companies, our network employs millions of people.

ACCI strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We represent Australian business in international forums.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

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