

The Productivity Commission 2008

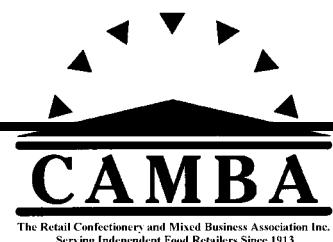
Inquiry into Paid Parental Leave: Support for Parents with Newborn Children

**CONSULTATION SUBMISSION
BY
THE RETAIL CONFECTIONERY AND
MIXED BUSINESS ASSOCIATION INC.
(CAMBA)**

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TERMS USED

SIR	Small Independent Retailers – The retailers represented by CAMBA, mainly Milk Bars, Convenience Stores, General Stores, Mixed Businesses, Sandwich Bars, Cafes, Take Aways, etc. Generally with no more than 15 employees and family owned and run. They are genuine small businesses often with no staff and very often home based businesses.
SME	Small to Medium Enterprises – A general term used often to describe all small and medium business enterprises. The exact criterion used depends on the organisation using the term and is often used by medium enterprises so they can classify themselves in the same light as small businesses. Businesses with as many as 150 employees often place themselves in this category if it suits them.
PPL	Paid Parental Leave – The term used as part of the draft document encompassing Paid Maternity Leave and Paid Paternity Leave. Due to the limited number of Males employed by our members and for the simplicity of this submission PPL predominantly but not exclusively refers to the Maternity Leave component of Paid Parental Leave.
PC	Productivity Commission – This is the Australian Government independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. It is this body which commissioned The Productivity Commission 2008, <i>Paid Parental Leave: Support for Parents with Newborn Children</i> . Draft Inquiry Report to which this submission is addressed.

WHO IS CAMBA?

CAMBA is a non profit member association operating since 1913. We are based in Victoria servicing small independent food retailers such as Milk Bars, Convenience Stores, Mixed Businesses, General Stores, Cafes, Sandwich Shops, Take Aways, Coffee Lounges and small Restaurants. We currently have approximately 1000 members and our members are genuinely independent and are by most part family owned and operated businesses.

We provide advice and support in all aspects of operating a successful business including wage and employment advice and assist in the compliance with designated awards. We produce a bi monthly trade magazine which offers up to date information and advice on the issues affecting our members. We have a select group of stores that make up a buying group which, together with select supportive suppliers, we work on improving trade standards and assisting these members to operate profitably.

CAMBA is a Registered Employer Organisation and a member of affiliated associations such as the Coalition Of Small Business Organisations (COBA), National Independent Retailers Association (NIRA) and the Council of Small Business Organisations of Australia (COSBOA). We work closely with relevant Government Departments and from time to time are asked for input into proposed changes to Government policy. We have and continue to work closely with the Department of Innovation, Industry and Regional Development and are in regular contact with the Office of the Victorian Small Business Commissioner.

INTRODUCTION

It is pertinent to note that like all others who have discussed the issue of Paid Parental Leave (PPL), CAMBA is not against the concept in essence. It is an emotional issue and none would want to diminish the value of motherhood and the importance of the bonding made in the first months of a child's life. It is essentially an emotionally driven concept with few people or organisations prepared to publicly argue against the proposal. Any person with a Mother, Spouse or children will relate the challenges faced by the family during the first few months of a child's life and nothing on earth is more important than making this time as stress free as possible. I simply argue that this needs to be balanced with the economic and other issues PPL will create when all factors are not taken into consideration.

WHAT IS A SMALL BUSINESS?

There has been a lot printed in the press about the burden PPL will put on small businesses compared to large organisations. Most of these comments have been made by Associations and employer groups representing SME's and in most part are valid arguments when referring to the lower end of the scale. I am not so sure they are quite as valid when referring to an organisation with 100 or more employees and the Productivity Commission (PC) should consider this differentiation when it hands down its findings from this Inquiry. I see that all too often Medium enterprises like to place themselves in the "Small Business" category so as to gain an advantage over large enterprises.

We refer to our members as Small Independent Retailers (SIR) very few if any have over 15 employees and most would have less than 5 employees or none at all. The term SME is often used to describe our members but Medium enterprises with up to 100 employees are not faced with exactly the same issues our members face and I feel they should not be put into the same category. To do so is to diminish and nullify the vast difference between our members and large organisations.

This submission will try to highlight the vast difference between a SIR and medium to large businesses and how the current proposals for PPL is likely to impact on them. I will also raise some issues and ask questions I believe have not been dealt with in the proposal document and would need to be addressed when the PC hands down its findings in February 2009.

CHARACTERISTICS OF A SMALL INDEPENDENT RETAILER

- ***Gender Mix*** – Females make up a disproportionately high percentage of staff employed in SIR's. Very few males are employed and a high percentage of the females employed are within the child bearing ages of 15 to 40 years old.
- ***Hours of Work*** – Most of those employed are done so on a part time or casual basis. They would tend to earn well below the minimum weekly wage set of \$543.78.
- ***Self Employed*** – The owners and operators of SIR's work extremely long hours. As much as 15 hours a day are spent in some stores running their business. These people are essentially self employed but do not usually draw a wage and do not always pay into a super fund for themselves.
- ***Work and Family Life Mix*** – SIR's already employ a large proportion of young people starting out in the workforce including students and the otherwise unemployed. Another high proportion of staff are mothers with young families who have left full time work to start a

family and feel the need for supplementary income or a break from home duties when children commence school.

- ***Career and Income Focus*** – The motivation generally for someone working in a SIR is income. Money would be the number one reason and the other underlying reason is human contact and a feeling of contributing to the family income. Career would not be the motivation for people employed in a SIR.
- ***Number of Staff*** – Very few SIR's employ more than 5 staff. We estimate less than 5 to 10 percent of our members would have more than 5 staff on the books at one time and little if any more than 15 staff (less than 1 percent).
- ***Pay Periods*** - Wages are usually paid weekly in cash calculated sometimes by an accounting software package or by the employer themselves who are usually running the business. Alternatively they may pay somebody to do the bookwork and organise wages so they can focus on the day to day running of their business.
- ***Management Skills Set*** – The operators of a SIR do not have a plethora of different people in their employ who can be and are experts in their roles. They need to be experts at everything they do. Any new compliance issue creates a minefield of issues until fully understood and managed.
- ***Superannuation*** – The employees of a SIR are usually not the main income earner in a family unit. The superannuation earned is usually minimal, if any at all, and not an important aspect of the employment conditions.
- ***PAYG Threshold*** - SIR's do not pay weekly or fortnightly PAYG withholding tax as they are usually below the \$25,000 threshold. Those that are tend to pay monthly to reduce administrative costs.
- ***Cash Flow*** – This is a critical aspect of all SIR's. They tend to run their businesses on a knives edge with any impact on cash flow, even a small impact, can send the business into a rapid downwards spiral.
- ***Unique Benefits*** – Generally, employees in SIR's enjoy certain extra benefits not available to the employees of large organisations. These can be in work environment, benefits and flexibility in hours or conditions. They tend to be treated more as a friend or family member and certain "concessions" and "special arrangements" are worked out between employee and employer that could never fall within the guidelines of an award or government policy. These "special arrangements" are usually for the benefit of both parties based on the individual circumstances. Although most government departments may not be aware of the full extent of these "special arrangements" I assure the PC that they are extremely prevalent and in fact very few SIR's if any at all are one hundred percent compliant. Although we are quick to warn our members of the dangers of these "special arrangements" the argument is consistently given that if they didn't they could not remain profitable and/or could not get staff to work for them. As these arrangements tend to be a win-win arrangement the laws of economics and demand and supply provides a fine balance for both employer and employee where neither party has an unfair negotiating advantage over the other.

THE ISSUES.

Although the issues and impact of the proposal for PPL have been well reported and I am sure will be raised by many submissions I feel I need to raise them briefly on behalf of our members.

- When a SIR employing 4 part time staff has one person who is entitled to PPL the business owner has to find a 25% increase in wages to cover this employee. It is highly unlikely that a business with 100 staff would ever have 25 people claiming PPL at the one time. It also means Superannuation costs also increase by 25% during this period and this can not be recovered.
- To believe as was stated in the draft report that this is a “small share of the total package of costs” is naive to say the least. It is noted in the draft report that the cost of PPL to the industry would be \$74M. This equates to 14% of the total cost of the scheme. This extra cost may be absorbed within a large organisation but the PC must understand the magnified effect this has on a SIR. A person with a \$40,000 income is much more devastated by a \$1000 bill than someone with a \$400,000 income.
- The Draft Report states “A significant number of small businesses would not face any costs from parental leave in any given year”. This statement fails to consider that the likelihood is very high due to the gender, age and type of staff employed and the resulting effects from the reduced cash flow, increasing costs and administrative demands would have a magnified effect. It is usually a factor that cannot and would not be budgeted or planned for.
- In most cases a larger organisation with one or two staff on PPL could easily absorb that workload amongst the remaining staff with minimal disruption to the operation of the business. Essentially meaning they may benefit from reduced costs over all during this period. They could manage to make do for 18 weeks to see if the staff member is prepared to return to work. A SIR with 4 staff could not function with a 25% decrease in staff even for just 18 weeks. This involves immediate search and training of a replacement staff member just to survive what potentially could only be 18 weeks.
- Currently a staff member falling pregnant will advise in writing whether they intend to return to work and a good staff member will be welcomed back (whether they qualify or not) when they are ready to return and a position is available. However, the ties are usually severed when they leave to have their baby and both parties move on. The introduction of PPL with not allow the ties to be severed and allow the SIR to move on and employ with confidence a new staff member. In fact it will force the ties to remain. How difficult would it be for a SIR to employ staff if all they could guarantee is 18 weeks work as they could not absorb the extra staff if the one on PPL decides to return to work.
- Keeping in mind that employees in a SIR are NOT generally career minded. The position they hold is for income and the likelihood of finding similar roles with another SIR is very high. PPL will not help them with a career life balance as the nature of their employment is usually so they can balance their work and family life. The hours generally fit within the children’s school hours and spouse’s career.
- The roles taken by employees in a SIR tend to be “dispensable” and easily replaced in a similar organisation. The idea that PPL will assist in retention rates for females wishing to return to the workforce is flawed. The likely result of PPL will be that SIR will not employ staff for longer than 10 hours a week so that they would not qualify for PPL. This is already the case where several of our members will not work staff for longer than 7.5 hours per week so that they fit below the superannuation threshold of \$450 per month. The introduction of PPL will give a further incentive to limit the hours of work to all employees. This has a detrimental effect on stability, job security and makes it difficult to keep good staff.
- The pay period with most SIR is usually weekly and paid in cash not direct debited into an account as is the case with larger organisations. This means that pay packs will need to be made up and the employee will need to make special trips to the employer to collect their weekly pay. The employer will need to continue to make up these pays and store them in a safe

place till the employee was able to collect them. Most SIR do not have secure safes to store these if not collected regularly.

- Losing a good staff member as they leave to have a baby is devastating enough to a SIR. The proposed PPL model will only compound this effect and essentially kick them while they are already hurting.
- A casual employee working 10 hours per week would earn under \$250 per week. The SIR would be required to provide \$543.78 per week in PPL to this employee and they could only claim this generally monthly as a PAYG credit. This alone would have a compounding effect on the SIR and their cash flow.
- In a large organisation the administrative requirements of PPL would be borne by administrative staff, training would be done by line managers and the extra workload falls on the remaining staff – not the owner. With a SIR these tasks fall solely on the owner at the very same time they are searching for new staff, training new staff and absorbing the extra workload.

QUESTIONS ON QUALIFYING CONDITIONS

1. To qualify for PPL someone needs to have a minimum of 10 hours per week continuous work for 12 months with one or more employers.

One would assume that if an employee was working with a SIR for a short amount of time and does not qualify with that employer that the Government would pay the PPL through the Australian Taxation Office (ATO) or other department. However, would the Superannuation component still fall on the SIR to pay? Is this fair? Why does a superannuation component need to be paid?

What if the current employer only worked that employee for less than 10 hours per week? Would they still be required to pay the Superannuation component even if the average for the year is over 10 hours per week with the two employers?

What if the employee worked two or more jobs at the same time? Who would be responsible for paying the PPL and superannuation component? Would it be the employer where a tax free threshold is claimed? What if in that role they did not qualify and wanted to claim through the other employer? What if they didn't qualify with either employer? Would the Government then take responsibility for paying PPL and who would pay the superannuation component?

If an employee worked in two or more jobs and claimed PPL from one would they still be able to continue working the other job at the same time? If not, what are the penalties for doing so and how would this be policed? How many hours could they work without penalty?

Many women leave work well before the due date of their child, in many cases months before, and often for health reasons. Will this affect their qualification for PPL? If they only barely qualify under the conditions specified, this would eliminate their chances of qualifying based on the criteria above. Will there be a danger of expectant mothers continuing to work even when unsafe to do so in order to qualify for PPL?

Will there be a risk of asking for increased hours in the months just prior giving birth in order to qualify for the PPL?

If an expectant mother ceases work well before the due date of her child when will PPL commence? After the birth of the child or after she finishes work? What if the mother reduces her hours as a result of her pregnancy? Will the employer need to pay based on most recent hours or the hours prior to reducing her hours or an average of the last 12 months?

What if an employee makes it completely clear they have no intention of returning to work? Are they still entitled to PPL?

What if an employee wishes to take part time payments over a longer period instead of the complete \$543.78 per week over 18 weeks? This will be likely, if available, in order to spread payments over two tax years. This will also add an enormous increase in the administrative demands on the SIR.

If a SIR employs only one person for the minimum number of hours each week and the monthly PAYG withholding tax is very small, will they still be required to pay PPL even though it may take several months to recover the PPL paid to the employee. Will the Government then take responsibility to pay the PPL? What limits will be set and at what level?

2. The superannuation component will be capped at 9% of the pre leave wages or minimum wage whichever is lower.

If a staff member is casual and has varied hours of work, what pre leave wages will the superannuation be paid on? Who determines what this should be and using what formula? What if there is disagreement?

What if there is a pay rise during the PPL period? Will employees be entitled to the increase?

What conflict resolution process will be in place and what extra workload is this likely to place on the SIR?

3. The scheme would cover all employees who fit the criteria including self employed and contractors.

There are many SIR who live in premises connected to the business they run. This has allowed what is essentially a self employed person to run the business while caring for their children. Quite often this means the person is operating the business for as long as 100 hours each week. Will these people be entitled to PPL? How will genuine claims be identified and how will the government be able to prove that a self employed person should be entitled or not?

Self Employed generally do not draw a wage from the business nor do they usually pay superannuation for themselves. They also do not claim PAYG as they have no staff. Will the Government then be responsible for paying the PPL and who will pay the superannuation component if any? What if they have no current superannuation fund organised?

If a self employed person did pay into a superannuation fund for themselves and was able to claim PPL, who would then pay the 9% into the superannuation fund? Would they be obliged to pay it themselves? Would they be forced to limit the contributions to 9% or could they pay more? Would they still have to pay at all?

Will this mean they will not be allowed to work in the business while they are receiving PPL from the Government? What will the penalty be if they do? How will anyone prove that they did or didn't?

The \$543.78 paid by the Government for PPL will not make up for the cost of replacing them within the business they run which would equate to at least two times that figure. Are self employed likely to be disadvantaged due to these issues?

What about the children of a self employed person who becomes pregnant? Will they be entitled to claim PPL even though they never received a wage from the business but assisted in the running of it? Who will pay the PPL and what about the superannuation component?

THE LIKELY EFFECTS OF THE PROPOSED PPL MODEL

1. ***Reduced number of hours available to employees*** – In order to avoid the administrative costs, disruption and superannuation costs to their business SIR will likely reduce the hours available to staff to below the 10 hours per week.
2. ***Employment decisions*** – Care will be taken to avoid employing staff who are likely to want to start a family. This will in fact lead to discrimination in employment practices.
3. ***Discrimination*** - Any staff on the IVF program or requiring medical treatment to improve fertility will in some circumstances be immediately discriminated against and the extra time off required for treatment will only make this more difficult a situation.
4. ***Employment security*** – the need to replace staff on PPL for an 18 week period will force employers to only offer limited work tenure with longer probationary periods.
5. ***Length of service*** – The added costs of PPL will encourage SIR to retain staff for less than 12 months or to dismiss staff at the hint of them wanting to start a family.
6. ***Honesty*** – Staff members faced with difficulty in attaining and retaining work will be less than honest about their personal situation in the fear of having hours cut or asked to leave.
7. ***Difficulty in finding staff*** – With limited hours and insecure tenure, good staff will be difficult to retain and potentially good staff will be overlooked.
8. ***Work Life Balance*** – The purpose of the PPL proposal is to encourage women to return to the workforce and assist in the early development of the child while reducing the stresses and financial pressures during this time. This proposal may in fact have the effect of reducing the employability of the very people it is trying to help in positions that are most likely the best option for their work life balance.
9. ***Increased claims to Workplace Ombudsman*** – As mentioned earlier there are a startling number of “special arrangements” currently negotiated between willing employees and SIR. These arrangements although not completely appropriate in the eyes of certain Government Departments suit both parties involved and both parties benefit from the arrangement (although not condoned by our Association). The concern is that currently when an employee leaves to have a baby they have access to the Baby Bonus and all are happy. However should the current PPL proposal go ahead, these staff members will be approximately \$4,000 worse off. Regardless of how the previous arrangement suited both parties this will encourage some people to make claims on employers which other wise would not have been raised. Especially as in many cases they never intended to return to work anyway.

SUGGESTIONS

1. The Government to take full responsibility for paying PPL for any qualifying person employed by an employer with less than 15 staff.
2. Remove the requirement to pay the superannuation component for any business employing less than 15 employees or the government take the responsibility to pay this component.
3. Part time payments spreading the period to more than 18 weeks should not be permissible.

4. Self Employed who lodge a tax return should be able to claim but no limitation put on their involvement in the business while receiving PPL.

Box 3 Impacts on business

The financial impacts on business would be constrained by:

- capping their contributions to superannuation by applying the contribution rate to the employee's actual pre-leave wages or the adult minimum weekly wage — whichever is lower
- limiting the super contribution rate to the statutory 9 per cent, even if the business usually paid more than this
- restricting these contributions to employees who
 - passed the eligibility requirements for statutory paid parental leave (in particular, the 10 hour, continuous employment test) *and*
 - received super entitlements before going on paid parental leave *and*
 - were eligible for unpaid parental leave under the National Employment Standards.

The maximum financial cost in respect of any employee would be about 3 per cent of their usual annual salary cost (reducing for those on higher incomes). A significant number of small businesses would not face any costs from parental leave in any given year.

Employers would act as the paymaster for government. Using their usual pay cycle, an employer would initially pay the minimum adult wage to an employee on paid parental leave, but only:

- for those employees eligible for unpaid parental leave under the National Employment Standards *and* where there was an efficient and timely way for government to reimburse that employer
 - while there may be other options, the Commission's proposed reimbursement mechanism would be a credit to 'pay as you go' withholding payments to the ATO for those employers making at least monthly payments.

The business would only face additional compliance and cash flow costs when an employee was on paid parental leave — with no change otherwise.

Compliance and cash flow costs would be minimised by using existing administrative systems, quick reimbursement and better leave notice arrangements than under the current National Employment Standards.

Business would benefit from the scheme through higher employee retention rates.

Table 1 A snapshot of the Commission's proposed model

Feature	Description
Duration	18 weeks of paid <i>parental</i> leave. This must be commenced <i>after</i> any period of other continuous leave available at the birth of the child and <i>before</i> 6 months after birth. Leave would only be payable if leave were taken. An additional 2 weeks would be available as <i>paternity</i> leave, and would be reserved for the father (or other eligible partner) on a 'use it or lose it' basis.
How much?	<p>The adult minimum wage (currently \$543.78) for each week of leave, generally paid regardless of pre-birth incomes, and subject to taxation</p> <ul style="list-style-type: none"> • special arrangements for those on lower statutory minimum wages (for example, juniors) • no access to family tax benefit B while on the scheme or to the new maternity allowance (the old baby bonus) <p>For a subset of eligible employees, employer superannuation contributions while on leave, but benefits would only apply to the actual salary of the employee or the adult minimum wage, whichever is lower. Contribution rates limited to the statutory 9 per cent rate.</p>
Who pays?	<p>Cash payments for paid parental and paternity leave would be fully taxpayer-financed, but with changes to the baby bonus and family tax benefit B</p> <p>Employers to fund capped superannuation entitlements to long-term employees (12 months) eligible for these before the statutory paid parental leave period</p> <p>An employer would initially pay their employees' statutory parental leave entitlements, but only (a) for those employees entitled to unpaid parental leave under the National Employment Standards and (b) where there is an efficient and timely way for government to fully reimburse that employer, preferably through a credit to 'pay as you go' withholding payments to the ATO for those employers making at least monthly payments.</p> <ul style="list-style-type: none"> • All other employees would be paid directly by the Australian Government.
Eligibility and requirements for use	<p>Parental leave would be available only for a parent who is a primary carer</p> <p>Average of at least ten hours a week of work (with one or more employers) with continuous employment for the 12 months prior to the date of expected birth</p> <p>The scheme would cover all employees who met the employment test above, including the self-employed (including contractors) and casual workers</p> <p>To get superannuation entitlements, employees must also be eligible for unpaid parental leave under the National Employment Standards <i>and</i> be entitled to these benefits before taking paid parental leave</p> <p>Eligible mothers can transfer paid parental leave rights to fathers and other eligible partners, if they also meet the required employment tests above. Such partners can access paid parental leave if the mother is not eligible, but only in special circumstances (eg. death of the mother)</p> <p>'Paternity' leave would be available to eligible fathers, or, in same sex couples, to the other eligible partner, even if the mother was not eligible for statutory paid parental leave</p> <p>No concurrent use of statutory <i>parental</i> leave by both parents, but paternity leave could overlap with a mother's parental leave</p> <p>Adoptive parents can get access to leave for children of any age</p> <p>Provision for primary carer to adjust leave to 'keep in touch' with the business</p> <p>Parents giving birth to twins or more would get one leave entitlement, but receive the new maternity allowance for the additional children</p>
Complementary policies	<p>More support for breastfeeding and possible strengthening of policies that develop the parenting skills of those with newborn children</p> <p>Regulatory and information measures to assist business cope with disruption burdens</p>
Non-eligible parents?	Families not eligible for paid parental leave would be entitled to the equivalent of the baby bonus (\$5000) through a new maternity allowance and to other financial support through the social transfer system