



PRODUCTIVITY COMMISSION

Paid Maternity, Paternity and Parental Leave Inquiry

ACCI SECOND SUBMISSION

November 2008



LEADING AUSTRALIAN BUSINESS

ACCI – LEADING AUSTRALIAN BUSINESS

ACCI has been the peak council of Australian business associations for 105 years and traces its heritage back to Australia's first chamber of commerce in 1826.

Our motto is "Leading Australian Business."

We are also the ongoing amalgamation of the nation's leading federal business organisations - Australian Chamber of Commerce, the Associated Chamber of Manufactures of Australia, the Australian Council of Employers Federations and the Confederation of Australian Industry.

Membership of ACCI is made up of the State and Territory Chambers of Commerce and Industry together with the major national industry associations.

Through our membership, ACCI represents over 350,000 businesses nationwide, including over 280,000 enterprises employing less than 20 people, over 55,000 enterprises employing between 20-100 people and the top 100 companies.

Our employer network employs over 4 million people which makes ACCI the largest and most representative business organisation in Australia.

Our Activities

ACCI takes a leading role in representing the views of Australian business to Government.

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

Our specific activities include:

- Representation and advocacy to Governments, parliaments, tribunals and policy makers both domestically and internationally.

- Business representation on a range of statutory and business boards, committees and other fora.
- Representing business in national and international fora including the Australian Fair Pay Commission, Australian Industrial Relations Commission, Australian Safety and Compensation Council, International Labour Organisation, International Organisation of Employers, International Chamber of Commerce, the Business and Industry Advisory Committee to the Organisation for Economic Co-operation and Development, the Confederation of Asia-Pacific Chambers of Commerce and Industry and the Confederation of Asia-Pacific Employers.
- Research and policy development on issues concerning Australian business.
- The publication of leading business surveys and other information products.
- Providing forums for collective discussion amongst businesses on matters of law and policy affecting commerce and industry.

Publications

A range of publications are available from ACCI, with details of our activities and policies including:

- The *ACCI Policy Review*; a analysis of major policy issues affecting the Australian economy and business.
- Issue papers commenting on business' views of contemporary policy issues.
- *Policies of the Australian Chamber of Commerce and Industry* – the annual bound compendium of ACCI's policy platforms.
- The *Westpac-ACCI Survey of Industrial Trends* - the longest, continuous running private sector survey in Australia. A leading barometer of economic activity and the most important survey of manufacturing industry in Australia.

- The *ACCI Survey of Investor Confidence* – which gives an analysis of the direction of investment by business in Australia.
- The *Commonwealth-ACCI Business Expectations Survey* - which aggregates individual surveys by ACCI member organisations and covers firms of all sizes in all States and Territories.
- The *ACCI Small Business Survey* – which is a survey of small business derived from the *Business Expectations Survey* data.
- Workplace relations reports and discussion papers, including the ACCI *Modern Workplace: Modern Future 2002-2010 Policy Blueprint* and *Functioning Federalism and the Case for a National Workplace Relations System*.
- Occupational health and safety guides and updates, including the *National OHS Strategy* and the *Modern Workplace: Safer Workplace Policy Blueprint*.
- Trade reports and discussion papers including the *Riding the Chinese Dragon: Opportunities and Challenges for Australia and the World Position Paper*.
- Education and training reports and discussion papers.
- The ACCI *Annual Report* providing a summary of major activities and achievements for the previous year.
- The ACCI Taxation Reform Blueprint: *A Strategy for the Australian Taxation System 2004–2014*.
- The ACCI Manufacturing Sector Position Paper: *The Future of Australia's Manufacturing Sector: A Blueprint for Success*.

Most of this information, as well as ACCI media releases, parliamentary submissions and reports, is available on our website – www.acci.asn.au.

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This submission made on behalf of the 36 employer organisations which form the ACCI network. A number of these organisations are also participating in this process in their own right.

It is ACCI's second submission to this inquiry, and responds to the Productivity Commission's Draft Inquiry Report of September 2008, on options for a Paid Parental Leave Scheme.

It should be read in conjunction with ACCI's initial submission, and expands on its themes in light of the Commission's initial analysis and draft recommendations.

EXECUTIVE SUMMARY / KEY RECOMMENDATIONS

Recommendation 1 – A Government Funded Scheme

ACCI agrees with the broad approach of framing a paid parental leave model for future government consideration based on (a) a government funded scheme, (b) zero-rated at the level of the minimum wage, and (c) implemented by recasting the existing Baby Bonus scheme.

Recommendation 2 – Government Fund and Pay “Wage” Payments

The Commission should however recommend in its final report that employers not become the paymasters of any paid parental leave scheme.

Such a function would add to employer’s overall costs in both administration, as well as on-costs such as increased liability for payroll tax, workers compensation premiums, accrual of leave, increases notice periods and severance/redundancy payments (See Sections 4 and 6) .

There is no evidence that any derived benefit to employees outweighs the significant imposts on business in administering the scheme on behalf of the Commonwealth. The Commonwealth should fund, pay and administer any scheme, as we understand is the case in New Zealand. Section 8 specifically proposes a reconsideration of the New Zealand approach.

If this is not accepted, employers should be compensated for being the paymaster (for effectively advancing the government money for a government expenditure) in a similar manner to smaller employers in the UK. If a government paid model is not accepted (i.e. New Zealand), Section 9 outlines the alternative of the UK approach to remitting monies to employers after their initial payment to employees on paid parental leave.

Recommendation 3 – No On-Costs for Employers

A key parameter for any scheme must be ensuring that employers not become subject to additional on-costs as a function of their participation in any scheme covering their employees going on parental leave. This is a particular concern if, contrary to our recommendations, employers are to be the paymasters of ultimately government funded payments.

Sections 4 and 6 identify in particular flow on consequences for payroll tax and workers compensation premiums. If a scheme is to rely on employers as payers in the first instance, its implementation should be explicitly conditional upon a commitment by State and Territory Governments to amend workers compensation and payroll tax arrangements to protect employers from additional liabilities.

Recommendation 4 – Government Fund and Pay Superannuation

Employers do not accept the proposal in the September 2008 Draft Report that they should assume responsibility for the payment of superannuation under any paid parental leave scheme (presently 9% × 18 weeks × the minimum wage).

Such a direct additional cost impost would be at odds with the clear commitment of the Government in the lead up to this inquiry that there not be cost increases to employers:

A Rudd Government will not “... support a system that imposes additional financial burdens or administrative complexity on small businesses or in any way acts as a discouragement to the employment of women”.¹

“We know some big businesses are providing it; we want the Productivity Commission to look at what’s out there and to make recommendations to us about a national system. But we are obviously really conscious about not putting additional burdens on small business.”²

“I certainly would be very happy to be part of a government that provided paid maternity leave ... but that also recognised how businesses operate and doesn't act as a discouragement to businesses to employing young women of child-bearing age.”³

ACCI advances two alternatives for consideration in place of the September 2008 draft proposal that employers both pay and fund superannuation payments (PC Recommendations 2.2 and 2.1).

Firstly: The Commission’s draft recommendation should be revised to recommend government assume funding responsibility for both the wages and superannuation components of a paid parental leave scheme. On the Commission’s own broad figuring this would represent additional costs to government of perhaps \$75 to \$80 million in the context of a \$600 to \$700 million scheme.

¹ Joint Media Release, Ministers Gillard, Macklin and Plibersek, 13 July 2007

² Deputy Prime Minister, Today Programme, 31 January 2008

³ Pregnant pause over paid maternity leave, The Age, Sarah Smiles, October 25, 2007

Secondly: If the Commission feels tightly constrained to deliver an overall net impact figure of \$600 to \$700 million, redesign the scheme to fund both wages and superannuation rather than solely wages. This could be achieved by adjusting the initially canvassed 18 weeks paid parental leave to 16 or 16.4 weeks. A scheme at this level would still be well in excess of international comparators.

Recommendation 5 – No Top Up Claims

The Commission should recommend that employers not be subject to top-up payments, in addition to the paid parental leave scheme, through the federal/State industrial relations system.

Other Recommendations

ACCI advanced various other scheme design recommendations in our initial submission to this inquiry, many of which remain relevant in the context of the scheme proposed in the September 2008 Draft Inquiry Report.

1. INTRODUCTION

1. ACCI provided an initial written submission to the Productivity Commission's (the Commission) issues paper in June 2008.⁴ This reply submission specifically engages with the Productivity Commission's draft report of 29 September 2008, and should be read in conjunction with ACCI's earlier submission.
2. ACCI continues to support the Productivity Commission examining options for the introduction of a paid parental leave (PPL) scheme in Australia. Australian employers have sought to clearly identify approaches and systems which could and could not viably form the basis of a sustainable and beneficial approach to a revised system of parenting payments. ACCI was pleased that many of ACCI's proposals and perspectives were adopted in part or full in the draft report.
3. A viable paid parental leave scheme will be delivered viably, effectively, sustainably, without undue impacts on employers, employees, parents, or the wider community. This remains the essence of ACCI's criteria for any proposed parental leave scheme, and the basis for employer support for any scheme going forward.
4. There are a number of recommendations in the draft report that ACCI considers sensible and appropriate, and which appear to balance the needs and requirements of business and employees. **There does appear scope to recast the existing Baby Bonus scheme into a system of Government funded paid parental leave.**
5. However, there are aspects of the Productivity Commission's draft recommendations and model which do not meet the criteria or expectations outlined in our earlier submission.
6. **Employers consider there are various settings in the draft Commission model which could be improved upon and which would deliver a superior and more sustainable parental leave scheme and a superior model for government consideration. This is the basis for this further submission.**

⁴ Marked in Appendix A2 as submission No. 135.

EMPLOYERS' EXPECTATIONS

7. Australia's employers have previously identified key parameters for any paid parental leave scheme.⁵ ACCI is now able to evaluate the Productivity Commission's draft report and recommendations against these benchmarks.

8. Government Funded:

ACCI Benchmark: Consistent with it being an overall responsibility of the Australian community, paid parental leave should be funded fully and solely by government.

ACCI welcomes the draft recommendation that paid parental leave should be paid via consolidated revenue and born by the community as a whole.

9. No Mandatory Employer Payments:

ACCI Benchmark: Schemes based on mandatory or non-consensual employer payments will not be effective, will have negative consequences, and will risk Australia's capacity to deliver genuine policy change in this area.

Whilst ACCI again welcomes the general recommendation that employers not become subject to mandatory payments, business cannot accept that superannuation payments for those on parental leave should become the financial responsibility of employers.

This may have potential negative consequences and will impose an unnecessary additional cost on employers that could more appropriately and viably be borne by the Commonwealth. As outlined below this is ultimately unnecessary and there is a clear option to avoid imposing such costs, which would be directly contrary to the government's stated parameters for any PPL scheme.

⁵ See p.2 of ACCI June 2008 submission.

10. Employers Not Assume the Role of Paymaster:

ACCI Benchmark: *Government making payments to users of paid parental leave. Employer pay obligations should be reactivated only when an employee recommences her or his position.*

ACCI does not accept the recommendation that employers and business should be the paymasters of an essentially tax-payer funded scheme. This goes against the government's stated principle that employers should not be exposed to unnecessary or additional financial or administrative burdens in implementing a PPL scheme. This proposal could also expose employers to additional employment on-costs such as: payroll tax, workers compensation premiums, and increase accrual of leave for employees (despite assurances in the report).

11. Zero Rated to the Minimum Wage:

ACCI Benchmark: *Payments under any paid leave scheme should be zero rated / consistently applied at a single level, and this should be at the level of the minimum wage (unless government determines that it has the capacity to fund some higher level of entitlement).*

ACCI welcomes the recommendation that any payments should be linked to the statutory federal minimum wage, which appears fiscally sensible and to have minimal impact upon the labour market.

12. Number of Weeks:

ACCI Benchmark: *The number of weeks of payment is a matter for detailed scheme construction during the next stage of this process. However, 14 weeks appears the upper limit for any scheme (within a government funded framework as set out in (a)).*

ACCI considers that the recommendation for 18 weeks (plus 2 weeks paternity) paid parental leave to be towards or beyond the higher end of international practice, but broadly sustainable if other elements of the scheme are correctly designed. However any 18 week scheme is contingent upon the government assuming responsibility for funding and paying superannuation.

ACCI alternatively recommends that the Productivity Commission reconsider this proposal and recommend an adjusted quantum of payments which sees the community also fund a superannuation payment to persons on maternity leave in full.

(This is expanded on in this submission) but this would see the scheme deliver perhaps 16 weeks “wages” payment and a superannuation payment equivalent to 9%, both funded by the government, with the same overall cost to government as the proposed 18 week scheme.

13. A fundamental consideration in the current economic climate must be scheme options which are able to operate sustainably across the economic cycle.
14. To provide government with a range of implementation options, given the economic climate, the Commission may need to identify options for progressive, phased or partial implementation, particularly of an 18 week scheme.
15. The increasingly challenging economy certainly underscores the importance of not imposing additional labour costs on employers; a point taken up in detail in the following sections. Crucial to this are employers’ two primary concerns with the model in the Commission’s draft report:
 - a. The proposal that employers assume the role of pay masters/pay agents, and the additional costs inherent therein.
 - b. The proposal that employers be directly responsible for superannuation payments during periods of paid parental leave.
16. In the following sections, ACCI not only examines these concerns in detail, but also proposes realistic alternatives which will enable employers to be more supportive of a paid parental leave model being considered by government.

2. THE DRAFT REPORT

POSITIVE FINDINGS AND CONCLUSIONS

Australia's International Standing

17. It is welcome that the Commission has recognised Australia as a world leader in providing financial and government services to mothers, children and families. When considered in totality, Australia ranks in the top 6 of countries in terms of Government spending as a proportion of GDP on parenting.

18. The draft report states (at p.xvii):

Many participants in this inquiry have observed that, along with the United States, Australia is conspicuous among developed countries in not offering a statutory paid parental scheme. **Australia's near unique status is largely a semantic distinction.** The non-hypothecated baby bonus, a \$5000 instalment payment commencing at the birth of a child provides the equivalent of 14 weeks parental leave at \$357 (untaxed) per week or around two thirds of the minimum wage. The baby bonus is buttressed by other family payments, so that overall, family subsidies in Australia are comparatively generous by OECD standards (figure 2). These subsidies are diverse in nature, recognising the needs of different families. Income support measures particularly benefit those families where a parent leaves paid work to care for their baby, while child care subsidies are focused on parents in paid employment. (emphasis added).

19. As ACCI articulated previously, we have a world leading scheme for maternity leave, a very strong protection of the right to a return to work after a period of maternity leave, and we have substantial income transfers from the social security system to mothers and families. This is the core context for this inquiry, and for further policy consideration of any scheme recommendations.

20. At issue in this review is whether there should be some recasting of existing income transfers by government to become a form of additional paid maternity benefit. ACCI continues to not generally oppose such a course if the design and implementation of such a scheme accords with the fundamental parameters and expectations of employers, and in particular does not seek to transfer community policy responsibilities onto employers.

Commission's Model

21. The Commission's model appears consistent with many of ACCI's recommendations on how a PPL scheme could viably be framed, the essential elements being:
 - a. Primary benefits 100% taxpayer funded at the level of the federal minimum wage (or proportionately lower for part-timers etc).
 - b. Eligibility primarily for employees entitled to unpaid leave under federal industrial laws.
 - c. Non-eligible be parents entitled to an equivalent level of payment through the general family benefit taxpayer stream (and no-double dipping between payment streams).
22. This is welcome and provides a sound basis for a scheme to be recommended to government in the Commission's final report. The Commission should be congratulated for its effort in a short time period to balance competing views, goals and interests.
23. However, there needs to be a critical re-examination of a limited number of the reports findings, conclusions and recommendations before employers can support any model proceeding for detailed government consideration. As outlined in this submission, employers seek a limited number of key changes to the approach in the draft report for any final recommendations to government.

THE REPORT'S LIMITATIONS

Limited Policy Considerations

24. In ACCI's June submission, ACCI indicated that the development of any parental leave models should include consideration of a range of issues, including (and not limited) to:⁶
 - a. Government transfers and income support policies.
 - b. Taxation arrangements and the level of taxation.

⁶ Page 7 of ACCI submission.

- c. The provision of accessible, flexible and supportive childcare arrangements which meet demands from parents and maximise the capacities of Australian parents to combine working and family life.
 - d. The provision of essential family support services (e.g. maternal health centres, access to schools and hospitals).
 - e. Lifestyle preferences (often changing).
 - f. Housing policy, including the affordability of housing, and public infrastructure.
 - g. Employment and training policy.
25. ACCI maintains that policy consideration needs to be wide-ranging and holistic, as PPL can only ever be part of a wider suite of approaches to supporting and encouraging parenting. The Commission draft report only canvasses one PPL model and could give further supporting weight and attention to other policy areas which could equally address some of the Commission's goals / terms of reference. This is certainly a theme to be taken up with government longer term.

Scheme Design and Goals

26. At p.xxvii of the report, the Commission indicates that the *"scheme intends to achieve certain outcomes – better maternal and child welfare; improved incentives to work given the existing tax and transfer system; and achievement of social policy objectives, especially in relation to work/life issues, that many Australians see as desirable"*.
27. Any scheme also must balance such objectives against other policy considerations, such as administrative complexity and the impact of any additional costs to employers. Any scheme must also be sustainable across budgetary and economic circumstances.
28. It is important that the Commission does not ultimately advance recommendations that are contrary to achieving those goals, to the outcomes sought in the terms of reference, or the clear commitments of government on the parameters of any scheme it would and would not be able to introduce.

29. Employers consider that making employers pay superannuation and imposing the paymaster function upon them (as canvassed in draft form) does nothing to better maternal and child welfare etc, and may have a detrimental effect on the capacity of some employers to support parenting (surely the rationale for any policy initiative in this area). The outcomes sought can be achieved better by the Government wholly funding and administering any scheme on behalf of employers and the community.
30. We understand this is the model in New Zealand, and as we outline further in Section 8, we specifically request the Commission reconsider the operation and administration of the New Zealand model as an option to refine the draft recommended approach, and render it more supportable.
- a. No one would seriously argue that the New Zealand scheme is somehow not a form of PPL because the government both funds the scheme and is the paymaster.
 - b. It is difficult to escape the conclusion that any insistence on employers being the paymasters as a requirement for a PPL scheme would see the pursuit of precisely the form of “semantic distinction” elsewhere rejected in the report, elevated over the best possible scheme design and operation.

18 (plus 2) Weeks Paid Leave

31. The draft report places much emphasis on academic research concerning maternal health and welfare, with the recommended scheme apparently being designed around such studies. However, the Commission acknowledges that there is no “exact science about choosing the precise duration (of 18 weeks)” and further stating (at p.xxi):

The Commission’s own statistical analysis, supported by a significant body of international evidence, suggests that such a scheme would significantly increase mothers’ current time away from work around the birth of the baby. Our estimate is that, on average, eligible employed mothers would increase their absence from work by about an additional 5–9 weeks or up to 50 per cent of the proposed length of statutory paid leave.

...

Consequently, more women will be able to have longer, beneficial interactions in the early phases of their babies’ lives and to breastfeed for longer.

32. Employers fully support their employees taking periods away from work which:
- a. Accord with the preferences of the parent, and their priorities for time out of the workforce with a new baby. Employers have no desire to see people take less time off work (within overall statutory limits) than they may wish or need.
 - b. Are suitably established in advance, including times of departing from and returning to work, and any adjusted return to work arrangements.
33. However, as ACCI foreshadowed in our June submission, the Productivity Commission should be cautious when constructing a recommended scheme in its usage of academic literature, or in reliance on a single policy outcome in this area.
34. As ACCI said at pp.42-43 of its submission, whilst the World Health Organisation (WHO) recommends breastfeeding for 6 months, there are a number of women who do not breastfeed their child for this period. Moreover, the link between the quantum and length of PPL and international health recommendations attempts to conflate two different issues into one - one issue concerns the health/wellbeing effects generally on a mother and child (regardless of employment status) and the other is about leave benefits.
35. Whilst employers consider the 18 week recommendation to towards the higher end of most international paid parental leave schemes and beyond what peak parties advocated initially, employers can generally support a period of paid leave within that range if government funded and paid.
36. **Employers have no inherent objection to a scheme which:**
- a. **Provides payments equivalent to 18 weeks, or some adjusted payment period inclusive of government funded superannuation contributions (16 or 16.4 weeks).**
 - b. **Has the effect of extending the average periods employees spend away from the workplace on parental leave within overall statutory parameters.**

37. However, employers will not be able to fully support the 18 week model if it continues to be based on imposing additional cost and administrative burdens on employers.
38. The two issues are quite simply divisible.
 - a. The 18 week proposal (or a relatively minor adjustment to it to allow the government to also fund superannuation payments) could be implemented without employers assuming the role of paymasters.
 - b. The 18 week proposal could see an additional government funded superannuation contribution, or a minor downwards adjustment of the number of weeks to allow the government to pay superannuation without any additional draw on revenues (ie, take the 18 weeks down to 16 or 16.4, and the government also pays the superannuation).

Impact on Business

39. ACCI reiterates what we consider to be a fundamental commitment announced by (then Shadow) Ministers Gillard, Macklin and Plibersk on 13 July 2007, that a Rudd Government would *“examine further reforms to support parents with new born children”, but would not “... support a system that imposes additional financial burdens or administrative complexity on small businesses or in any way acts as a discouragement to the employment of women”*.⁷
40. This is the key parameter against which business will ultimately assess any recommended scheme arising from this Commission inquiry. It is the key parameter upon which business will input government in its repose to the ultimate recommendations of this inquiry.
41. Unfortunately, the September 2008 draft recommendation would mandate additional payments upon business, such as superannuation, payroll tax/workers compensation and leave, as well as costs inherent in employers becoming the paymaster. This appears to directly conflict with the government’s fundamental/core commitment as to how it would implement any PPL scheme.

⁷ www.alp.org.au

42. This is a key reason why the Commission should re-examine those aspects of its draft report we identify in this submission. To date, notwithstanding very positive elements of the scheme canvassed, it does not accord with the key parameters the government has set for any scheme it will consider.

No Top Ups:

43. ACCI welcomes the Commission's analysis in chapter 8 of the report, which did not favour direct employer compulsory top-ups above the taxpayer funded scheme.⁸ This is particularly important if, contrary to the clear position and analysis in our submissions and the government's commitments to date, the ultimate scheme were to impose additional administrative and superannuation costs on employers.
44. The Commission should in its final report make this more explicit in the form of a recommendation which would provide a clear signal that the Government not expose employers in the future to mandatory top-ups above the safety net, either through the industrial relations system or elsewhere.

⁸ Page 8.5 draft report.

3. MAJOR EMPLOYER CONCERNS

Issue 1: Cash-flow

45. Employers will be required under the draft proposals to pay the employee and be reimbursed by the Government at some later stage.
46. The Commission has considered reimbursement via the PAYG taxation system through some type of delayed credit. The major problem with this proposal is the impact upon a business' cash-flow, particularly smaller businesses that operate on low margins. It is also these sectors of the economy where many eligible female employees would access any PPL payments.
47. Whilst the Commission's suggestion on this issue is to exempt those businesses that make PAYG remittals on a less frequent basis than 1 month, this ignores the reality that frequency of remittals can change and that many small businesses pay monthly, and not quarterly.

Underestimating Number of Employer's Making Monthly PAYG Remittals

48. At p.8.26 of the report, the Commission states:

While the PAYG system may be the preferred reimbursement mechanism for larger Australian firms (who are required to remit PAYG withholdings on a more frequent basis), it is unlikely to suit those smaller employers who remit quarterly. Where a business does not make at least monthly withholding payments, the Commission considers those firms should be exempt from this administrative arrangement and that the Australian Government would make direct payments to the employee.

49. Based upon ACCI's estimates, this would appear to paint a picture that most "small businesses" pay quarterly, and would not need to make PPL payments directly to employees.
50. The current threshold is as follows:

Quarterly	If they are withholding up to \$25 000 per annum.
Monthly	If they are withholding more than \$25 000 but less than \$1 million per annum.

**Weekly/
fortnightly
electronic
lodgement**

If they are withholding more than \$1 million per annum.

51. Based on an average retail business with less than 20 employees (the ABS definition of a “small business”), the employer would be making monthly remittals if they had only **6.5 employees** on their books.⁹
52. Therefore, based upon the current threshold tests for frequency of remitting PAYG withholding tax to the ATO, a traditional “small business” would pay monthly and not quarterly and would need to fund the PPL payments before being reimbursed (credited) in the next month.
53. The employer is effectively being asked to pay multiple times for the one role for some period and to advance the government money for a government expenditure. Thus an employer may be paying for some period the total of:
 - a. The prescribed PPL payment to the PPL employee.
 - b. 9% superannuation on the PPL payment.
 - c. On costs and accruals on the PPL payment if made by the employer (see Section 6).
 - d. Wages for the replacement employee (including often some wage premium needed to attract someone into a non-ongoing job).
 - e. 9% superannuation for the replacement employee (which again may be higher than the ordinary payment for the PPL employee).
 - f. On-costs and accruals for the replacement employee.

⁹ Based upon a Retail worker Grade 2 under the Shop, Distributive and Allied Employees Association – Victorian Shops Interim Award 2000 [AP796250 – Fed] and earning the minimum rate of \$16.78 per hour. According to the ATO’s calculator, approximately \$79 would be withheld per employee. For 6.5 employees, approximately \$26,702 would be remitted to the ATO as PAYG withholding payments.

54. In such a context, it is difficult to conclude that all employers have the capacity to advance money to government for some period to facilitate the introduction of an essentially government funded PPL scheme.
55. This concern is exacerbated when regard is had to an adverse economic operating environment, including a scarcity of capital, more cautious lending, and clients seeking to extend or go over required payment terms. There are at the time of writing cash flow concerns for many Australian businesses which amplify arguments against making employers the pay-masters of any PPL scheme.

Issue 2: De-Facto “wages”:

56. Requiring the employer to fund any payments in the first instance may well trigger all obligations associated with the payment of “wages”. ACCI is concerned that the PPL payments proposed will be treated as wages because they are (a) payments from employers and (b) taxed like income with tax remitted to the ATO.
57. Employers who are required to pay employees an amount of money are effectively paying wages which attract additional obligations, such as:
 - a. Payroll taxes;
 - b. Paid and unpaid leave, including personal, annual and Long Service Leave;
 - c. Workers compensation premiums; and
 - d. Other payments, such as notice periods and severance/redundancy payments.
58. This is expanded on Section 6.

Issue 3: Eligibility

59. The model proposes that employers undertake an analysis of an employee’s current status and determine whether they could be “eligible for unpaid parental leave under the National Employment Standards.” (at xxix).

60. It is unclear when an employee would be “eligible” for leave, as there are number of pre-conditions that are required to be satisfied by the employee before they are *entitled* to unpaid leave.

Examples:

- a. What happens if an employee has not satisfied all the pre-conditions for unpaid leave under the National Employment Standards, such as giving the employer the requisite notice?¹⁰ Would this still require the employer to pay (a) the FMW payments and (b) superannuation despite the employee not being entitled, but technically eligible because they have worked for 12 months in the preceding period of time?
- b. What about where the employee is not entitled to NES leave, but the employer decides to grant them leave (such as someone working less than 12 months)? Does this now require the employer to pay the FMW based PPL payments and superannuation?
- c. If the employer pays an ineligible employee superannuation erroneously, are they entitled to get a refund from the Commonwealth?

Issue 4: Interaction with Existing Industrial Parental Leave Scheme

61. A potential problem for the recommended model, by requiring employers to be the paymaster, is that that proposed PPL scheme has the potential to work inconsistently with current industrial laws governing unpaid parental leave.
62. Whilst the Commission has assumed there is only one form of statutory unpaid parental leave, there are in fact, multiple laws dealing with parental leave, as follows:
- a. Former Federal Awards (now known as pre-reform federal awards) and State awards (now notional agreements preserving state awards or ‘NAPSAs’) may deal with parental leave and

¹⁰ Recommendation 2.1 – 2.4 essentially states that that an employer is required to be the paymaster and make superannuation payments if the employee is (a) entitled to the NES, (b) satisfies the hours test, and (c) was paid superannuation before going on leave.

these will continue until modern awards come into operation (said to occur on 1 January 2010);

- b. The current *Workplace Relations Act 1996*, covers all employees in Australia by virtue of the external affairs power, however, it does not override State/Territory laws that may co-exist with this scheme. The Government's proposed National Employment Standards (NES) is yet to be legislated, but is anticipated to operate from 1 January 2010. This is what the Commission appears to base the model scheme on, and whilst this is not necessarily an incorrect approach, employers may be exposed to unintended consequences because of the direct link to the NES laws (which is also subject to Parliamentary approval).
 - c. Federal certified agreements, individual statutory agreements (former AWAs and current ITEAs) may also deal with parental leave.
 - d. Common law contracts and policies in the workplace may deal with parental leave and may operate where they are more favourable than statutory minima.
63. To summarise the current federal *unpaid* parental leave laws that currently apply, employees are only entitled to 12 months unpaid leave if they satisfy a number of requirements in the legislation. This also applies to paternity and adoption leave. The return to work obligations that an employer must comply with, following unpaid parental leave, only apply if those pre-conditions are met in the first place.¹¹
64. Given the diversity in arrangements for parental leave in industrial instruments, for the sake of administrative ease and simplicity, ACCI continues to advocate a wholly Government administered and paid scheme. That way, employers are not forced to:
- a. Renegotiate existing arrangements which may be inconsistent with the model.

¹¹ See Part 7, Division 6 of the *Workplace Relations Act 1996*, particularly s.265 regarding notice requirements. This is not to say that employers are not obliged to consider granting unpaid parental leave under anti-discrimination legislation, rather, it is to simply point out that there are various condition precedents to be satisfied by an employee to enjoy the statutory scheme.

- b. Consider the eligibility requirements to ascertain whether they must both act as paymaster and pay superannuation.
 - c. Pay additional on-costs such as payroll tax, workers compensation and accrued leave.
 - d. Expose employers to unintended consequences that will only be realised once the scheme operates.
65. Sections 4 to 6 expand on key employer concerns.

4. THE PAYMASTER FUNCTION

66. ACCI does not accept the proposition that Australian employers should be forced to make PPL payments to employees without compensation for the additional administrative burden and costs associated for doing so, or where direct government payments would be more practical and effective (the preferred approach).
67. Given that the Commission has recognised that this as a community benefit and should be funded by the community as a whole through consolidated revenue, it does not then make sense to force employers to make payments when a more effective Government payment infrastructure is already established through other agencies.
68. ACCI has critically analysed the Commission's recommendations and sought feedback from the ACCI employer network on practical implementation issues which will impact businesses and which may have been overlooked by the Commission.
69. These are only a handful of the more salient issues which impact upon business as a function of being the paymaster. Given time, other issues could emerge for employers as a consequence of assuming the role of "pay day lenders" to government.
70. It may be that the primary motivation for employers to facilitate payments is some apprehension that employees must "feel" they are receiving paid leave from their employers. The theory would then be along the lines of *"its not really paid parental leave unless the employee receives a regular pay packet from their employer"*.
71. There are a number of responses to this, including the following:
 - a. Access to a payment and to funds is surely the key concern, above any consideration of who pays. The characterisation of any scheme must be a less important consideration than the benefits it provides and its effectiveness for all parties (including avoiding clearly avoidable negative consequences for employers). The perceived psychological benefits gained by this "framing device"¹² (however amorphous) should be weighed against employers' interests.

¹² As described the Commission at p.8.24.

- b. The UK has a PPL scheme and somehow “ticks the box” as a PPL country with a scheme in which employers advance payment. However, so equally does New Zealand which takes the superior approach of reverting pay responsibilities to government. New Zealand’s scheme is no less PPL for its payment by government.
 - c. There is nothing inherent in the character of the payer which advantages one approach over another. An employee who works less than 10 hours a week over a year is not going to feel their payments (from government) are any less real or beneficial than someone that works more than 10 hours a week (and gets PPL, employer based under the initial draft Commission recommendation).
 - d. Elsewhere in the report, the Commission recognises that mere semantic distinctions¹³ are not helpful and should not drive policy. Similarly, employers would be very concerned if they assumed a role as paymasters to somehow assist in characterising a scheme as PPL, or ticking a box.
72. At p.8.24, the Commission seeks to rebut ACCI’s primary argument against the paymaster function, by highlighting employers existing minimum employment obligations. International comparisons on administrative costs, such as in the UK (as outlined at p. 8.25), are not particularly cogent unless they all costs are broken down and compared, such as workers compensation, payroll taxes and other forms of on-costs are factored into. In previous industrial litigation ACCI has highlighted the un-sustainability of assuming UK estimates of labour on-costs equate to those in Australia.
73. Whilst the Commission acknowledges that the UK actually provides “modest compensation (of 4.5 per cent)”¹⁴ to cover related administrative costs, ACCI is concerned that the Commission has not also recommended compensation to employers in Australia. We take this up in Section 9.

¹³ p.xvii
¹⁴ p.8.26

74. Low-Margins: The majority of Australian businesses which have a high proportion of eligible staff operate in low-margin industries (with a some concentration of women in retail, hospitality, and the funded sector). These organisations do not have the ability to readily increase the cost of goods / services to absorb any additional labour costs.
75. Requiring businesses to be the paymaster of up to 18 weeks pay (plus on-costs), would have a serious impact upon the cash-flow of many businesses, but particularly smaller firms in retail and hospitality.
76. Credit Tightening: The world is facing an unprecedented period of economic instability and business is not in a position to practically or readily be able to access liquidity and credit. Where credit is available, the overall costs of business credit may have risen despite cuts in housing interest rates. This is affecting businesses of all sizes and in all industries, not just smaller businesses.
77. As outlined, there will be a period of time where an employer will have to fund existing operations, plus the additional payments to employees whilst they are on paid parental leave. This may represent a major problem to the on-going financial viability of some firms, despite suggestions from the Commission that the firm would be re-credited via the PAYG system within a short period of time. Cash flow is already a problem for Australian business at the time of writing, and a proposal that businesses effectively be forced to loan money to government in such a climate is difficult to sustain.
78. Business Confidence is Low: A paid parental leave scheme should be capable of operating viably across diverse economic conditions / the economic cycle. According to the Government's recent forecast in the *Mid-Year Economic and Fiscal Outlook 2008-09* (MYEFO) Australia is facing a predicted GDP growth of 2 percent in 2008-09. Some are also questioning these forecasts and other G20 economies have revised such budget forecasts downwards.

79. According to the September quarter *Commonwealth Bank – ACCI Business Expectations Survey*,¹⁵ this forecast corresponds to a continued deterioration in business confidence and reported business conditions.

80. The following is an extract from an ACCI media release:

The Expected Economic Performance and General Business Conditions indicators fell to their lowest level since the survey began in 1994.

Growth indicators such as Sales Revenue, Profits, Employment and investment all fell during the quarter. Worryingly, business expects unemployment to increase over the next three months. Despite weaker growth, the indexes for Wage Growth and Non-Wage Labour Costs indicate cost pressures remain a problem for business. On a positive note, Selling Prices continued to moderate and Export Sales are still expanding, albeit only marginally.

Mr Greg Evans, Director of Industry Policy and Economics, Australian Chamber of Commerce and Industry, commented:

Business continued to experience a deterioration of business conditions over the September quarter amid the global economic slowdown. Despite headline inflation hitting a 13 year high of 5 percent over the year to September, ACCI considers inflation will be moderating in coming months as evident in the Survey as well as weaker domestic demand. Given the decline in growth and business confidence, these results should pave the way for a further significant interest rate cut, following the RBA's successive cash rate reductions in September and October.

Mr Robert De Luca, Executive General Manager, Corporate Financial Services Commonwealth Bank, commented:

There is no doubt Australian businesses of all sizes are facing the challenges brought about by tighter operating conditions. It is important to note that although confidence has been muted, declines in actual activity such as hiring and capex have not been so severe. A lower interest rate environment should help to stimulate demand over the coming months and the focus for businesses now will be sound cash flow management.

¹⁵ The survey assessed business conditions and business confidence amongst 1,833 businesses around the country over the July, August and September period. A full copy of the Survey is available on the ACCI website at <http://www.acci.asn.au/SurveyBES.htm>

81. It is important that the paid parental leave scheme is able to operate in both growing and declining economic environments – this essentially can only be achieved with absolute certainty if employers are not exposed to on-costs not linked to productivity or off-set by other costs.
82. ACCI also notes the International Monetary Fund (IMF) November *World Economic Outlook Update* showing a downward revision in global growth forecasts which has occurred amid continued financial sector de-leveraging and declining business and consumer confidence.
83. Growth in advanced economies is now expected to contract by 0.30 percent in 2009, the first annual contraction during the post-war period. The IMF also forecast that Australian economic growth will slow to 1.8 per cent in 2008/09.
84. Declining growth prospects across both advanced and emerging economies will place significant strain on the Australian economy and require any proposed PPL scheme to be as economically sustainable as possible.
85. Forms of Working Relationships: Australia now has a vastly different workforce comprised of casual, part-time, full-time, labour hire, and independent contracting arrangements, rather than the traditional employer-employee relationship.
86. This is an important factor for the Commission to consider, given that one single workplace may engage workers on different arrangements, and the paymaster function would add a level of complexity to the workplace, where none currently exists.

Example

A workplace has a mix of casual employees, independent contractors, casual temporary labour hire staff, and full time employees of different tenure.

According to the Commission's model, the following would occur:

Paymaster

Casual employees who have worked for at least 12 months for employer and on average 10 hours per week over 12 months and employer makes at least monthly payments to ATO.

Full time employees who have worked at least 12 months for employer and employer makes at least monthly payments to ATO.

The employer would potentially also pay on-costs associated with paymaster function such as workers compensation, payroll tax and accrued leave.

Paymaster + Super

Casual employees who have worked for at least 12 months for employer and on average 10 hours per week over 12 months and employer makes at least monthly payments to ATO.

Full time employees who have worked at least 12 months for employer and employer makes at least monthly payments to ATO.

The employer would potentially also pay on-costs associated with paymaster function such as workers compensation, payroll tax and accrued leave.

Government Payments

Casual employees who have not worked for at least 12 months for the employer or who has worked for at least 12 months, but has worked on average less than 10 hours per week over 12 months.

Full time employees who have worked less than 12 months for employer.

Casual labour hire staff who are not employees of labour hire firm or employer.

Independent contractors who are self-employed.

87. Statutory Declarations: ACCI would prefer a system whereby the employee completes the necessary statutory declaration and lodges this with the Commonwealth authority. A secondary position would be that the employer also counter-signs a statutory declaration or lodges a document to confirm that the employee is an eligible employee Attachment B is the current New Zealand application form. Such a process, would remove the complexity, uncertainty and costs associated with requiring employers to be the paymaster.

88. Exposed Legal Liability: Despite the above, ACCI is still concerned that employers would need to verify the eligibility of employees and would expose themselves to criminal punishment if they did not correctly fill out any pro-forma statutory declaration form.¹⁶ In the case of other workers paid by the Government, these persons who are the ultimate recipients are best placed to declare certain information, and to assume the responsibilities for doing so.
89. In a related point. If employers are going to advance payments, there should be a realistic, usable and rapid mechanism to regain them when persons are paid in error – which exceeds the ordinary principles of overpayment of wages. If employers are going to assume the government's role in paying government payments, they require some certainty that they will not bear an un-recoverable burden of payment when errors occur.
90. Compliance Burden: At p.7.7 of the report, the Commission states: *"detailed record keeping requirements to enable program performance monitoring and government auditing (to minimise the risk of fraud) would also impose a burden on employers and the self-employed compared to current parental leave arrangements"*. The Commission is thus not only identifying increased record keeping burdens on employers, but foreshadowing that employers will also need to simultaneously prevent Commonwealth fraud and play an auditing role in the scheme. Obviously, employers do not have the time, skills or resources to take on such a function – which is another reason why employers should not be the paymaster. Commonwealth agencies have a long standing and well developed capacity to properly be the payers of government payments.
91. Payroll Complexity:
- a. Taxation: How would an employer / payroll process the primary payments, including remitting tax to the ATO, then subsequently re-crediting themselves via PAYG in a straight-forward manner?

¹⁶ Page 7.7 Draft Report.

- b. There is no other equivalent payment scheme that operates in this way, and this would represent a major re-structure and administrative change to current payroll systems. Furthermore, will payments have HECS and other payments deducted and will this create further complications? Moreover, can employers claim the tax deductibility of superannuation payments for employees, despite it not being applied to their “actual wage”? If not, this is a direct cost which is unfair on business just because they directly employ persons as opposed to engaging independent contractors. Such concerns seem at odds with the more general commitments of the Government in reducing the red tape and compliance burden upon Australian business, particularly small business.
- c. During a Pay Period: There would be increased complexity for payroll if an employee went on leave during the middle of a pay period, because the payments would have to commence from the time the employee took unpaid leave. This is not an issue with a government paid and funded scheme, and would appear to not be an issue in New Zealand.
- d. Shared Eligible Parents: Page 2.1 states that the 18 weeks could be shared amongst parents. It is uncertain how an employer would know for certain that an employee’s partner is not obtaining payments from another employer or the Government. There is no provision built into the scheme for statutory declarations to be given to the employer, but this is something that should be required in any event.
- e. This also highlights the imperative for the Government to manage the system through direct payment arrangements. Government is well experienced and placed to administer a scheme in which it has responsibility for ensuring it is not defrauded. Asking employers to preclude defrauding of the government would be very difficult proposition and an inappropriate shifting of responsibilities.

- f. Exhaust Existing Leave first: The Commission also proposes that employees should exhaust other leave first before they commence the PPL scheme. This would not be so confusing to unravel if the employer was not the paymaster, as an employer and employee would apply their own leave arrangements and payment for parental leave would be simply a matter for the employee to collect from the Commonwealth. Mingling existing forms of leave arrangements with parental leave payments, complicates the picture because there are various forms and types of parental leave (both paid and unpaid) in the workplace.
- i) A principle for any statutory paid parental leave scheme should be that it not interfere with the legitimate and lawful arrangements that are in place now.
 - ii) Employers who may wish to continue offering paid leave, concurrently with the proposed statutory scheme would not be able to do so, as the employee must exhaust this leave first, thus denying the employee additional Government benefits.
 - iii) Again, the New Zealand approach is clearer and cleaner.
- g. Taken Within 6 Months: Following the above principle of a statutory paid parental leave scheme not interfering in the existing employment framework, there should not be a time limit for the taking of leave, as recommended by the Commission. The effect of such a time period as a pre-condition to accessing payments will create disruption in the ordinary arrangements that take place in the workplace.
- i) There are many different workplace specific policies in this area that will need to be re-examined if such a timeframe is introduced. That is another reason why legal employment arrangements governing leave, should be de-coupled with employer facilitated “paid parental leave” payments.

5. SUPERANNUATION

92. Given that a policy commitment was made on 13 July 2007, that a Rudd Government would not “... support a system that imposes additional financial burdens or administrative complexity on small businesses or in any way acts as a discouragement to the employment of women”, employers strongly oppose the draft recommendation that employers should pay superannuation for employees on PPL.
93. This would impose a direct additional cost of \$879.30 per employee taking PPL (9% of 18 weeks at the minimum wage). This would arise in addition to:
- a. The costs and difficulties inherent in advancing the government a number of weeks pay in an unprecedented tight credit market.
 - b. Double paying wages during this period, in which an employer must expand their payroll to include the PPL employee at the minimum wage level, plus the replacement employee. Again, this would be in the context of a tight economy, difficulties with cash flows and late payments, and in accessing credit.
 - c. Paying the costs of recruiting a temporary replacement employee. These costs are often doubled when replacement employees leave for more attractive and secure ongoing employment during the period of maternity leave replacement.
 - d. Paying a wage premium for a temporary replacement employee, for their non-ongoing employment.
 - e. Reduced productivity during the induction of a new employee (often weeks of comparatively dead time compared to an employee experienced with the work, workplace, clients etc). Again, these costs are often doubled when replacement employees leave for more attractive and secure ongoing employment during the period of maternity leave replacement.
94. There does not appear to be any robust policy rationale in the draft report for requiring employers to pay superannuation on the payments for some employees.

95. At p.xxx of the draft report, the rationale is summarised as: “*providing super obligations would be a quid pro quo for the retention gains that business could expect, and from a practical perspective, payment of such entitlements by the government would entail many complexities*”.
96. This is not an adequate rationale for cost shifting what is a comparatively fractional part of the overall scheme for government, but would be a substantial cost impact for many employers.
97. ACCI responds further to this proposal as follows:
- a. Firstly, there is little or no established evidence that employers paying superannuation would have the positive retention effects claimed. It is difficult to conclude that a payment of less than \$900, which will not be accessible until retirement (when the new baby is attending university, if not themselves parenting (i.e. decades after the period of PPL)), would affect return to work intentions in the medium term, such that such an additional cost obligation should be attached to the employer.
 - b. Secondly, employers can see a variety of reasons for a PPL scheme, however it is not clear that an initial period of payment will positively impact on return to employee work after perhaps 12 or 24 months. Employers don’t easily identify or agree with our so called benefit in the ‘quid pro quo’ equation the Commission postulates.
 - c. Thirdly, why should this be a quid pro quo as postulated. Under the model advanced employers would assume substantial cost and complexity from becoming the pay agent, in addition to the impact and costs of having an employee out of the workplace for an extended period and hiring a replacement (i.e. the existing costs of parental leave). Surely any exchange of benefit would be assessed against these existing costs to employers – rather than piling on another in the area of superannuation for a so called *quid pro quo*.
 - d. Finally, there is little evidence that the Government could not also deliver payments of superannuation as it would with parental leave payments. This could as simple as an employee ticking a box on a pro-forma to direct the Government to pay an

amount into an employee's complying superannuation fund – this is expanded on below. Employers do not accept that government funded superannuation payments would be complex, or alternatively that it would not lie within the government's control to redress any complexity (being the regulator of both any PPL scheme and the SGA!).

98. There is another dimension to this. Employers are shortly to be subject to a new obligation to provide flexible return to work options, including most often changes to rosters, part time work etc. This is likely to more directly affect retention and return to work decisions, and will clearly carry costs and impacts for employers. It may be that the key quid pro quo equation (to the extent that is the right way of looking at this) actually lies somewhere else entirely in regard to retention benefits for employers.
99. Ultimately, retention and a return to the same employer is a complex personal decision for the parent and family concerned – complicated not least of which by a person having a second or subsequent child. Noting all the arguments for PPL, and employers' overall willingness to see a correctly framed scheme introduced, ACCI remains somewhat sceptical about claims regarding retention and return to work benefits, and about them forming decisions for the design of a scheme on an issue such as who should pay for superannuation.

INCONSISTENCIES IN DRAFT REPORT - SUPER

At **xxviii** in **Box 2**, an example is given of Laura, *"a mother working in a part-time job earning \$400 a week. She is entitled to and takes, 18 weeks of paid parental leave at \$543.78 per week (about \$9788 in total). She also receives about \$648¹⁷ in employer contributions to her superannuation fund over that period. Her total package of benefits is around \$10 436 in gross terms for the 18 weeks of leave"*.

However, at **xxxi** in **Box 3 Impacts on business**, it is stated that:

"The financial impacts on business would be constrained by: applying 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."

¹⁷ ACCI calculates this as closer to \$880. $\$543.78 \times 18 \text{ weeks} = \$9,770.04. \times 9\% = 879.30$ super per PPL employee.

ACCI is concerned that in the first example, the payment made to Laura is (a) not pro-rated as it should be given she is a part-timer, and (b) superannuation appears to be paid on the higher amount and not the lower pre-leave wages component as suggested in Box 3.

This needs to be clarified. The calculation basis for any superannuation (if we have understood the overall schema correctly) must be the minimum wage and the number of weeks taken. Above minima earnings would not be relevant, unless specifically agreed and lodged as an additional above SGA/above PPL contribution. The only basis for less than \$880 superannuation would be a part time employee prior to proceeding on leave.

100. The SG legislation requires employers to pay superannuation on ordinary time earnings (OTE). The proposed model would require amendments to the SG legislation because it is proposed that superannuation become payable on something other than OTE as presently defined (ie. on federal minimum wage parental leave payments). This appears to require amendment to the superannuation laws.

ALTERNATIVES

101. There are two clear alternatives to requiring employers to assume responsibility not only for being the paymasters of superannuation, but also for its funding.

- a. Firstly, the overall modelling should be recalculated to see the government fund not only the recommended 18 weeks PPL at the minimum wage level, but also an additional 9% superannuation based on 18 weeks x the minimum wage for each eligible employee. Currently this would be (for each eligible employee):

$$\$543.78 \quad \times \quad 18 \text{ weeks} \quad = \quad \$9,770.04$$

$$\times 9\% \quad = \quad 879.30 \text{ super per PPL employee}$$

- b. If the overall impact of the scheme is claimed to be modest in overall budgetary terms, then consideration could be given to what equates to an additional 1.6 weeks pay for each employee, in preference to imposing additional costs on employers contrary to government policy and principles of sound regulation.
- c. It appears from the draft report that this would increase the overall cost of the scheme from \$450 million to \$525 million per year¹⁸. This should be canvassed with government.
- d. Alternatively, it may be considered necessary to advance a model which has the same overall impact on the budget as the proposal in the draft report (i.e. which does not exceed \$450 million). The logical way to achieve this is to make a relatively minor downwards adjustment in the number of weeks PPL, and for government to transfer the equivalent payment into a government funded superannuation contribution.
- e. Based on the preceding, this could be achieved by a scheme which provided 16.4 weeks PPL + 9% superannuation which would be equivalent to \$9,770.04 per employee or \$450 million per year.
- f. It appears a reduction in the duration of PPL equivalent of just 8 working days would create a scheme which removed a fundamental employer objection, delivered a model consistent with government policy, and which would exceed so called international standards and levels of provision (at 16.4 weeks). No one could argue in introducing a 16.4 week PPL scheme that Australia had taken a miserly or internationally deficient approach.
- g. ACCI would suggest that a change of just 8 days in the duration in paid leave would be unlikely to materially affect the maternal and child health considerations identified in the draft report. The benefits would still flow, and employers would not be disadvantaged.

¹⁸ Commission Draft Report, p.xiv

- h. We specifically invite the Commission to consider this proposal for a comparatively minor revision to its initial draft scheme. We look forward to discussing it with the Commission in further consultations.

FLOW ON AND TOP UPS

- 102. Employers have been very concerned throughout this review at the prospect of claims for top up, and that scheme design not encourage top up claims.
- 103. A model in which employers fund superannuation and make contributions on behalf of employees almost begs a claim for full superannuation maintenance during the period of PPL (ie. for the level of contributions to remain at 9% of pre-PPL earnings whilst on PPL).
- 104. This would be rendered a more neutral proposition in a scheme in which the government paid a genuinely safety net level of superannuation payment to employees accessing PPL, as well as the main “wages” component of PPL.

EMPLOYER AS PAYMASTER

- 105. It is unambiguous that employers do not want to assume the role of paymasters under any scheme, for all the reasons set out in this and our preceding submission.
- 106. However, in preference to employers assuming a direct cost, if employers are to be required to pay superannuation in the first instance, they should be reimbursed by the Government as is intended for the substantial PPL payments.
- 107. It would be better for employers to make superannuation contributions in the first instance and be recompensed as envisaged for the “wage” payments, than to assume an outright additional cost for superannuation.

108. This may address the so called “*many complexities*”¹⁹ said to attach to the government paying superannuation, to the extent that they could not be overcome more directly. However, ACCI maintains these complexities should be overcome, and government fund superannuation.
109. Thus, in summary, if the government can’t simply assume the responsibility to pay superannuation directly (which it should), why not just bundle it in with the wages and the government recompense employers for all payments advanced to employees?

¹⁹ Draft Commission Report, p.xxx

6. ADDITIONAL COSTS FOR EMPLOYERS

110. The scheme proposed is not wholly Government funded. Employers would be required to pay superannuation and would appear to also incur a number of other additional costs that were not factored in the Commission's costing estimates or explicitly identified and taken into account in the draft report.
111. The Commission estimates that business would contribute \$106 million to the scheme by direct superannuation payments (in other places identified as \$75 million). This appears to not include the potential employer on-costs of increases to pay roll tax, workers compensation premiums and likely accrual of leave.

Superannuation

112. As outlined in the preceding section, the Commission has recommended employers pay superannuation for employees that satisfy pre-conditions for PPL. The superannuation cost to employers, whilst capped to the FMW is still an additional direct cost to the employer's total wages bill. The Commission has not recommended Government reimburse this component of the paid parental leave payments (which is an alternative we recommend be re-considered).
113. Employers who are required to pay superannuation should be compensated for doing so, just as they are for making the primary payments. If the Commission considers it essential employers pay employees' superannuation, in order to avoid unintended consequences for employers it would be far simpler for this to be administered by the Commonwealth directly (either through direct payment or reimbursement).
114. The Commission has highlighted the case of employers paying above the 9% SG guarantee, and has suggested that in those cases, the employer would have to split the contributions in their accounting systems.²⁰ This highlights just a single instance of how complicated such a process could be for employers. It would be far easier and more equitable if government also assumed superannuation responsibilities.

²⁰ P.8.30

115. Noting of course that any above SGA contribution should probably be exempted outright, and the only “obligation” be for a 9% payment (which even then should be government funded), logically if wages above the minima are not required to be met under any scheme, then the same should apply to any superannuation in excess of the 9% SGA minima.
116. There is no mention of salary sacrifice arrangements which would need to be considered and how that may interact with the Commission’s model. If the Commission’s model did impact on salary sacrifice arrangements for some employees, it is not straightforward to amend certified agreements and individual statutory agreements that deal with this issue.

Accrued Leave

117. We are concerned that employers will be exposed to accrual of a variety of types of leave in the operation of the scheme as proposed, including: annual leave, personal leave, other forms of leave under contracts of employment, certified agreements or statutory individual agreements.
118. This is because the payment by the employer in the first instance will almost always be treated as “wages” by various Commonwealth and State / Territory legislation. If an employer pays wages for a given period of weeks, then these wages (or more properly the period for which they are paid) will accrue various forms of leave.
119. Thus, the additional costs to employers are not solely restricted to superannuation and direct on-costs. There are also flow on leave costs. For example:
- a. 18 weeks additional “paid leave” would accrue 52.6 hours annual leave, or 7 days annual leave. At the level of average weekly earnings for women, this would be an additional cost to employers of \$1,414.00²¹ per PPL employee. Under the existing unpaid standard, annual leave does not accrue when an employee is on parental leave.

²¹ Based on Trend AWOTE for women of \$1,010.00, ABS series, May 2008.

- b. 18 weeks additional “paid leave” would accrue a further 26 hours, or 3.5 days of sick (personal) leave – which again is not presently accrued on unpaid leave, or would see an employee reach her or his anniversary date, and be granted a full additional quota of paid personal leave. This would impose additional costs of at least \$691.05²² – albeit contingent on personal or family illness / need.
 - c. 18 weeks additional “paid leave” would accrue 11 hours of long service leave (based on the NSW standard²³) – which again is not presently accrued on unpaid leave. This would impose additional costs of \$292.40 for eligible employees.
- 120. Employers do not propose that a period of parental leave (paid or unpaid) interrupt continuity of service, nor for example the length of an employee’s employment for the purpose of access to leave. However there is a clear precedent that such extended periods out of the workforce do not themselves accrue paid leave as no service is being rendered. The mere act of making the employer the pay agent for government would overturn this long standing principle and impose the type of flow on costs on employers which:
 - a. Should be taken into account in properly considering the actual costs of the course proposed.
 - b. Should favour an approach in which payment is divorced from wages, and in which government pays employees on PPL. This would remove these flow on cost implications.
- 121. Failing this, there should be an express recommendation that any statutory paid parental leave scheme does not count as service for these entitlements. The Commission should raise with government (federal, state and territory) amending legislation to avoid foreseeable flow on costs to employers.
- 122. It is also worth mentioning a further complication in these costs in the context of PPL. Many employees go on PPL and never intend to return, or change their mind about a return to the employer (perhaps planning a second or further child).

²² Using AWOTE.

²³ 8.6 weeks after 10 years service.

123. Long standing practice in most cases is that the final payment to employees proceeding on unpaid leave is equivalent to a termination payout, maximising incomes the employee and simplifying any subsequent termination at the employee's initiative (and minimising costs to the employer as leave liabilities are extinguished at that point).
124. An additional accrual of annual leave, personal leave and long service leave complicates this – and forces the further calculation of termination payments (or demands for the taking of leave which is complicated where service is not active or current) where this is not presently the case.
125. There is also a further flow on cost if the newly accrued leave is not paid in current dollars, but at some later point (the accounting imperative which has seen Australian business address the reduction of leave liabilities in recent years).

Redundancy/Severance Pay

126. Employers are concerned that the payments will also be counted as service for the purposes of redundancy/severance payments under industrial awards, agreements and contracts of employment.
127. Such payments are generally based on years of service, and paid as multiples of weekly pay. These are significant costs to the employer – costs which would not be accrued if the payments were made by the Commonwealth. A period of 18 weeks paid leave could trigger an employee stepping into an additional year's service (which may trigger at least 2 weeks additional severance pay), which would not presently occur under an unpaid leave standard with no role for the employer as paymaster. At the level of female AWOTE, this may equate to \$2,020.00 additional severance pay.
128. There should be an express recommendation that any statutory paid parental leave scheme does not count as service for these entitlements. Even better, this could be avoided by not making employers the pay agents for PPL at all.

Notice Periods / Pay In Lieu Of Notice

129. Once again, employers are concerned that they will be exposed to greater costs if the payments count as service for the purposes of notice periods in the event of employment terminations. These payments by employers are similarly calculated according to years of service and paid in multiples of weekly pay. Again a period of 18 weeks paid leave would count towards an employee stepping into another annual increment, notwithstanding that (a) this does not presently occur, and (b) no service has been rendered during this period. Again, this could trigger additional weeks pay, and deliver additional costs in the region of \$1010.00 at the AWOTE level.
130. There should be an express recommendation that any statutory paid parental leave scheme does not count as service for these entitlements. Even better, this could be avoided by not making the employers the pay agents for PPL.

Payroll Tax:

131. ACCI is concerned that the Commission has further underestimated the costs of its proposed model, by not factoring in potential increases in payroll tax liability. Whilst the quantum of tax liability will vary depending on which State / Territory the employer operates, there are also complicated inconsistencies in how various payments are treated.
132. For example, in Victoria, the *Payroll Tax Act 2007* (the Act), (and under equivalent New South Wales, Tasmanian and South Australian legislation) s.53 of the Act exempts from payroll tax, wages paid or payable to employees on maternity leave or adoption leave. The exemption:
- Applies to wages paid or payable to female employees taking maternity leave and male and female employees taking adoption leave.
 - Applies to all wages other than fringe benefits.
 - Is limited to a maximum of 14 weeks pay.
 - Applies irrespective of whether the leave is taken before or after the birth or adoption.

e. Must be supported by keeping relevant records.

133. According to the Victorian SRO Revenue Ruling PTA012, the partial exemption only applies to a female employee taking leave:

Definition of maternity leave

(section 53(1)(a) of the Act)

Maternity leave is defined in the Act as leave given to a female employee in connection with her pregnancy or the birth of her child. The female employee may take maternity leave before or after the birth of her child (section 53(2) of the Act). Sick leave, recreation leave, annual leave or any similar leave taken in connection with a pregnancy or the birth of a child is not considered as maternity leave for payroll tax purposes. This exemption does not apply to paternity leave which is granted to a male employee after his spouse (or de facto spouse) has given birth.

134. Therefore, it appears that if the statutory paid parental leave payments made by the employer to the employee are within scope of s.53, it would be treated as follows:
- a. For a female that takes the full 18 weeks, 4 weeks would be subject to payroll tax.
 - b. For a male that takes 2 weeks paid paternity leave, this would be subject to payroll tax.
 - c. For a male employee that is the primary care giver on parental leave, their total payments would be subject to payroll tax.
135. However, in the Northern Territory and Western Australia no such exemption exists, and the full 18 weeks would be subject to payroll tax.
136. In addition, and by way of further example, Queensland's Pay-roll Tax Act 1971 subjects superannuation payments to payroll tax treatment. This would be a further additional cost to employers which could be avoided if the Commonwealth made direct payments to employees.

137. This is a major concern.

- a. It is in the first instance a further clear reason why employers should not assume the role of pay agents / paymasters on behalf of the government. Complication and costs would flow from doing so.
- b. It also shows that the estimate of the impact on employers to date does not sufficiently take into account the actual range of flow on impacts this would have on employers in workplaces.
- c. Failing this, and if this concern is not removed (as it should be) by government rather than employers paying PPL, any scheme in the terms proposed should be conditional upon the states and territories amending their payroll tax schemes / legislation to exempt all employer PPL payments under this scheme – and in addition to this scheme – from payroll tax liability. **If the proposed approach is to proceed, its implementation should be conditional upon the states and territories amending payroll tax legislation to exempt all employer parental leave payments from payroll tax liability.**

Workers Compensation Premiums

138. Similarly, employers will also be subject to increased costs under State/Territory legislation governing workers compensation premiums if they become the payers of what are ultimately government funded payments.
139. For example, under the New South Wales *Workers Compensation Act 1987* the statutory parental leave payments will count as “wages” and therefore the employer will attract an increase in their workers compensation premiums.
140. Thus, the proposal that employers assume the payer responsibilities of government for a government funded scheme, would increase employer on-costs and see employers pay effectively double workers compensation contributions.
- a. The employer would pay one premium on the full wages of the replacement employee (which are often higher than the employee

going on PPL), who is incurring the working risk which gives rise to the “insurance”.

- b. However, the employer would also pay a second, or replicated premium on 18 weeks of the minimum wage payable to the PPL employee. This is on the basis that the 18 weeks would be pay, paid as “wages” by the employer, and occasioning workers compensation premia – notwithstanding that the employee is not working for the employer during this period.
- c. Again, if the proposed approach is to proceed, its implementation should be conditional upon the states and territories amending workers’ compensation legislation to exempt all employer parental leave payments from additional premium liability.

Conclusion

- 141. All of the above additional costs could be avoided if the Commission removed the employer paymaster function from its proposed model, in favour of the more logical, direct and non-impacting model of government funding (the New Zealand approach).
- 142. In the absence of such an approach, clearly, these are additional costs which cannot be overcome unless all State/Territory Governments clearly exempt/quarantine the Commission’s statutory parental leave payments.
- 143. Any progression of any scheme in the terms canvassed in the draft report must be conditional on a commitment by the states and territories to amend payroll tax legislation to exempt all PPL payments by employers from payroll tax and workers compensation liability.
 - a. Such amendments must take effect prior to, concurrently with the commencement of any PPL scheme and must be a precondition to implementation.
 - b. This action could even be taken prior to any PPL scheme as a measure by the states to encourage the spread of agreed PPL arrangements, agreed at the workplace level.

144. The Commission should undertake an audit of all possible on-costs, in addition to the superannuation payments that an employer would be required to pay as a result of the Commission's model, before it makes its final recommendations to the Government.

REPLACEMENT COSTS

NES Unpaid Leave Extensions:

145. There is the possibility that if the Government's proposed NES become law, employees hired to fill another employee's role, whilst they are on "unpaid leave" leave, may accrue sufficient service to then become eligible for NES unpaid parental leave. This is because the NES requires a 12 month service requirement, and an employee on unpaid leave, may hypothetically be on leave for 12 months or more (if an employer grants an extension under the NES).
146. To the employer who then has two employees on leave for the one position, the situation is such that a third person may be required to back fill two employees. Overlaid on top of this, is the paymaster function for the first and second employees and on-costs as outlined above. This may be a low-probability event, but it would be a reality for some businesses in the future. The following example illustrates this.

Example - NES Unpaid Parental Leave Extensions

1. A full-time employee (#1) is eligible for unpaid parental leave under the NES and is paid more than the FMW. She intends to take the full 12 months off. She would theoretically become eligible for the paid statutory scheme, whereby she would also receive superannuation on the FMW.
2. A replacement employee (#2) works for 12 months in the same role on similar terms and conditions.
3. Employee #1 then requests a further 12 months and is granted an extension of 6 months.
4. Employee #2, who continues in the same role for up to 18 months, then becomes eligible for unpaid parental leave after serving 12 months. She then goes on statutory paid parental leave, for 18 weeks and is also paid superannuation with the employer now accruing another set of on-costs.

5. Employee #3 is required to work in the same position until employee #1 returns representing a significant increase in overall costs since employee#1 first took leave.

Existing Costs Associated with “unpaid leave”:

147. It must be recalled that employers already face existing costs when an employee takes unpaid parental leave, as the employer must expend a considerable amount of time and cost associated with recruitment, training and inductions. There is usually a premium paid for temporary staff in these situations.

Administrative Costs:

148. It is difficult to see how the Commission has come up with an estimate of just \$5 per week in administration costs for each employee on paid parental leave. There are significant payroll costs with updating payroll software to calculate the payments, remit tax, calculate on-costs (such as leave, workers compensation etc), and then process credits under the PAYG withholding system.
149. ACCI strongly recommends that the Commission should undertake a more thorough examination of the costs that employers would incur before recommending that employers be the paymaster.
150. Such an analysis and the issues we raise in this section and throughout this submission, should lead to a re-examination of the proposal that employers become the payers for what is (and should be) a totally fundamentally government based scheme.

7. OTHER ISSUES

Paid Leave vs Minimum Employment Standards:

151. ACCI wishes to reiterate and amplify an important point made in the initial submission to the Commission. It is important not to conflate issues of payment with legal minimum employment conditions. As leave is and should be dealt with through the various federal and State workplace relations systems, the issue the Commission should really focus on the level and adequacy of payments during leave (ie. how much per week for how many weeks).
152. There is no inherent reason why any maternity benefits need operate as an employment related rather than community wide entitlement. ACCI doubts that 18 weeks paid by the Government will be any less valued than 18 weeks paid by the employer. We particularly commend the next section on New Zealand to the Commission in this regard.

Increasing Notice Period:

153. ACCI agrees with the Commission's recommendation at p.xxxvii to increase the notice period in the proposed NES from four weeks to six where an employee requests an extension.
154. Whilst ACCI advocated at least 8 weeks notice during the NES public consultations, a further number of weeks will aid employers in setting in place working arrangements.

8. AN ALTERNATIVE – NEW ZEALAND MODEL

155. As outlined above, employers consider that making employers pay superannuation and imposing the paymaster function upon them will do nothing to further maternal and child welfare etc, and may have a detrimental effect on the capacity of some employers to play a further part in supporting parenting (surely the rationale for any future initiative in this area).
156. In effect, the outcomes sought, can be achieved better by the Government wholly administering and funding any scheme on behalf of employers and the community.
157. We understand this is the approach in New Zealand in which the Government acts as both the paymaster and funding entity for what is quite clearly a genuine PPL scheme.
- a. No one would seriously argue that the New Zealand scheme is somehow not a form of PPL because the government both funds the scheme and is the paymaster.
 - b. It is difficult to escape the conclusion that any insistence on employers being the paymasters as a requirement for a PPL scheme would see the pursuit of precisely the form of semantic distinction elsewhere not accepted in the draft report, elevated over the best possible scheme design and operation.
158. We understand the Commission visited New Zealand in its consultation and research process. With the benefit of this information, we specifically request the Commission reconsider the operations and administration of the New Zealand model as an option to refine and recast its recommended approach.
159. Specifically, it appears that the New Zealand scheme operates very simply in “transferring” responsibility from the employer to the government at the point the employee proceeds on PPL. The forms reproduced at Attachment A to this submission appear a straightforward mechanism to implement an 18 week, minimum wage based scheme, which would address many of the problems identified with the approach in the draft report.

9. AN ALTERNATIVE – THE UK MODEL

160. ACCI maintains that employers should not assume the role of paymasters for any scheme and that, as in New Zealand, the government both fund and pay its additional obligations to create a PPL scheme for Australia.
161. If this is not accepted, how could a scheme in which employers advance the government money be made to work (to the extent it can)?
162. On approach which does not obviate the concerns expressed throughout this submission, but is certainly superior to the proposal as presently canvassed, may be further consideration of the UK's Statutory Maternity Pay (SMP) scheme.
163. Under the scheme, smaller employers are able to claim from government more than the amount expended, as follows:
- However, if your total annual National Insurance payments are £45,000 or less you can recover 104.5 per cent.²⁴
164. Putting to one side the rest of the operation of the UK scheme which Australian employers could never support (which is a subsidy the other way around for larger employers'), this appears an acceptance that capital is scarce, it costs money, and it will cost employers money to advance the government funds for any period.
165. Thus, the *quid pro quo* to pick up a phrase from elsewhere in the report, for employers loaning government money would be some interest on its return. However, this should not then be taxed as income to the employer!
166. Employers primary preference remains the New Zealand style approach in which this becomes a government payment obligation at the point the employee embarks on leave (see the preceding Section). However, if contrary to we say are very good reasons set out in this submission, employers are to act as paymasters, consideration should be given to a UK style approach in which there was some additional premium, interest or loading to the employer for assuming such a role.

²⁴ Source: <http://www.businesslink.gov.uk> - Practical advice for business, Maternity leave and pay.

ACQUISITION OF PROPERTY ON UNJUST TERMS?

167. It might be noted that a scheme in which an employer advances the government money (making a government payment in the first instance) is one in which an employer loans the government money, or put another way gives the government the asset of an interest free advance of money.
168. This potentially raises the question of enrichment on unjust terms (s.51(xxxi) of the Constitution), with the government forcing employers to “loan” it an advance of PPL payments, and to do so without interest or consideration.
169. At very least advice should be sought on this before recommending a scheme which may pose constitutional concerns.
170. The UK approach of a premium or loading for employers may take this principle into account at least in part (although the New Zealand approach would remove this concern entirely).

ATTACHMENT A – NZ PPL APPLICATION FORM

[6 pages – Attached as separate PDF document]

[Source: <http://www.ird.govt.nz/resources/file/ebdc920dcc074de/ir880.pdf>]

ACCI MEMBERS

ACT and Region Chamber of Commerce & Industry

12A Thesiger Court
DEAKIN ACT 2600
Telephone: 02 6283 5200
Facsimile: 02 6282 5045
Email: chamber@actchamber.com.au
Website: www.actchamber.com.au

Business SA

Enterprise House
136 Greenhill Road
UNLEY SA 5061
Telephone: 08 8300 0000
Facsimile: 08 8300 0001
Email: enquiries@business-sa.com
Website: www.business-sa.com

Chamber of Commerce & Industry Western Australia (Inc)

PO Box 6209
EAST PERTH WA 6892
Telephone: 08 9365 7555
Facsimile: 08 9365 7550
Email: info@cciwa.com
Website: www.cciwa.com

Chamber of Commerce Northern Territory

Confederation House
1/2 Shepherd Street
DARWIN NT 0800
Telephone: 08 8936 3100
Facsimile: 08 8981 1405
Email: darwin@chambernt.com.au
Website: www.chambernt.com.au

Chamber of Commerce and Industry Queensland

Industry House
375 Wickham Terrace
BRISBANE QLD 4000
Telephone: 07 3842 2244
Facsimile: 07 3832 3195
Email: info@cciq.com.au
Website: www.cciq.com.au

Employers First™

PO Box A233
SYDNEY SOUTH NSW 1235
Telephone: 02 9264 2000
Facsimile: 02 9261 1968
Email: empfirst@employersfirst.org.au
Website: www.employersfirst.org.au

New South Wales Business Chamber

140 Arthur Street
NORTH SYDNEY NSW 2060
Telephone: 132696
Facsimile: 1300 655 277
Website: www.nswbusinesschamber.com.au

Tasmanian Chamber of Commerce and Industry Ltd

GPO Box 793
HOBART TAS 7001
Telephone: 03 6236 3600
Facsimile: 03 6231 1278
Email: admin@tcci.com.au
Website: www.tcci.com.au

Victorian Employers' Chamber of Commerce & Industry

GPO Box 4352QQ
MELBOURNE VIC 3001
Telephone: 03 8662 5333
Facsimile: 03 8662 5367
Email: vecci@vecci.org.au
Website: www.vecci.org.au

ACCORD

Suite 4.02, Level 4, 22-36 Mountain Street
ULTIMO NSW 2007
Telephone: 02 9281 2322
Facsimile: 02 9281 0366
Email: bcapanna@acspa.asn.au
Website: www.acspa.asn.au

Agribusiness Employers' Federation

GPO Box 2883
ADELAIDE SA 5001
Telephone: 08 8212 0585
Facsimile: 08 8212 0311
Email: aef@aef.net.au
Website: www.aef.net.au

Air Conditioning and Mechanical Contractors' Association

30 Cromwell Street
BURWOOD VIC 3125
Telephone: 03 9888 8266
Facsimile: 03 9888 8459
Email: deynon@amca.com.au
Website: www.amca.com.au/vic

Association of Consulting Engineers Australia (The)

Level 6, 50 Clarence Street
SYDNEY NSW 2000
Telephone: 02 9922 4711
Facsimile: 02 9957 2484
Email: acea@acea.com.au
Website: www.acea.com.au

Australian Beverages Council Ltd

Suite 4, Level 1
6-8 Crewe Place
ROSEBERRY NSW 2018
Telephone: 02 9662 2844
Facsimile: 02 9662 2899
Email: info@australianbeverages.org
Website: www.australianbeverages.org

Australian Hotels Association

Level 1, Commerce House
24 Brisbane Avenue
BARTON ACT 2600
Telephone: 02 6273 4007
Facsimile: 02 6273 4011
Email: aha@aha.org.au
Website: www.aha.org.au

Australian International Airlines Operations Group

c/- QANTAS Airways
QANTAS Centre
QCA4, 203 Coward Street
MASCOT NSW 2020
Telephone: 02 9691 3636

Australian Made Campaign Limited

486 Albert Street
EAST MELBOURNE VIC 3002
Telephone: 03 8662 5390
Facsimile: 03 8662 5201
Email: ausmade@australianmade.com.au
Website: www.australianmade.com.au

Australian Mines and Metals Association

Level 10
607 Bourke Street
MELBOURNE VIC 3000
Telephone: 03 9614 4777
Facsimile: 03 9614 3970
Email: vicamma@amma.org.au
Website: www.amma.org.au

Australian Newsagents' Federation

Level 3
33-35 Atchison Street
ST LEONARDS NSW 2065
Telephone: 02 8425 9600
Facsimile: 02 8425 9699
Website: www.anf.net.au

Australian Paint Manufacturers' Federation Inc

Suite 1201, Level 12
275 Alfred Street
NORTH SYDNEY NSW 2060
Telephone: 02 9922 3955
Facsimile: 02 9929 9743
Email: office@apmf.asn.au
Website: www.apmf.asn.au

Australian Retailers' Association

Level 10
136 Exhibition Street
MELBOURNE VIC 3000
Telephone: 1300 368 041
Facsimile: 03 8660 3399
Email: info@vic.ara.com.au
Website: www.ara.com.au

Live Performance Australia

Level 1 - 15-17 Queen Street
MELBOURNE VIC 3000
Telephone: 03 9614 1111
Facsimile: 03 9614 1166
Email: info@liveperformance.com.au
Website: www.liveperformance.com.au

Master Builders Australia Inc.

16 Bentham Street
YARRALUMLA ACT 2600
Telephone: 02 6202 8888
Facsimile: 02 6202 8877
Email: enquiries@masterbuilders.com.au
Website: www.masterbuilders.com.au

Master Plumbers' and Mechanical Services Association Australia (The)

525 King Street
WEST MELBOURNE VIC 3003
Telephone: 03 9329 9622
Facsimile: 03 9329 5060
Email: info@mpmsaa.org.au
Website: www.plumber.com.au

National Baking Industry Association

Bread House, 49 Gregory Terrace
SPRING HILL QLD 4000
Telephone: 1300 557 022
Email: nbia@nbia.org.au
Website: www.nbia.org.au

National Electrical and Communications Association

Level 4
30 Atchison Street
ST LEONARDS NSW 2065
Telephone: 02 9439 8523
Facsimile: 02 9439 8525
Email: necanat@neca.asn.au
Website: www.neca.asn.au

National Fire Industry Association

PO Box 6825
ST KILDA CENTRAL VIC 8008
Telephone: 03 9865 8611
Facsimile: 03 9865 8615
Website: www.nfia.com.au

National Retail Association Ltd

PO Box 91
FORTITUDE VALLEY QLD 4006
Telephone: 07 3251 3000
Facsimile: 07 3251 3030
Email: info@nationalretailassociation.com.au
Website: www.nationalretailassociation.com.au

Oil Industry Industrial Association

c/- Shell Australia
GPO Box 872K
MELBOURNE VIC 3001
Telephone: 03 9666 5444
Facsimile: 03 9666 5008

Pharmacy Guild of Australia

PO Box 7036
CANBERRA BC ACT 2610
Telephone: 02 6270 1888
Facsimile: 02 6270 1800
Email: guild.nat@guild.org.au
Website: www.guild.org.au

Plastics and Chemicals Industries Association Inc

Level 1
651 Victoria Street
ABBOTSFORD VIC 3067
Telephone: 03 9429 0670
Facsimile: 03 9429 0690
Email: info@pacia.org.au
Website: www.pacia.org.au

Printing Industries Association of Australia

25 South Parade
AUBURN NSW 2144
Telephone: 02 8789 7300
Facsimile: 02 8789 7387
Email: info@printnet.com.au
Website: www.printnet.com.au

Restaurant & Catering Australia

Suite 17
401 Pacific Highway
ARTARMON NSW 2604
Telephone: 02 9966 0055
Facsimile: 02 9966 9915
Email: restncat@restaurantcater.asn.au
Website: www.restaurantcater.asn.au

Standards Australia Limited

Level 10
20 Bridge Street
SYDNEY NSW 2000
Telephone: 02 9237 6000
Facsimile: 02 9237 6010
Email: mail@standards.org.au
Website: www.standards.org.au

Victorian Automobile Chamber of Commerce

7th Floor
464 St Kilda Road
MELBOURNE VIC 3000
Telephone: 03 9829 1111
Facsimile: 03 9820 3401
Email: vacc@vacc.asn.au
Website: www.vacc.motor.net.au