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A case study of regulatory confusion: Paid parental leave and public servants

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Abstract

Australian policy on paid parental leave (PPL) has been highly controversial in recent years. While a universal PPL scheme become operative in 2011 under the Australian Labor Party, alternative policies continued to be proposed by the leader of the Liberal Party. These ranged from an expanded, comparatively generous PPL scheme, to one which would maintain the status quo, to a scheme with lesser provisions than are currently available. This article examines the PPL policy which would have provided the most generous entitlements to employees, and considers how public servants may have fared had it been introduced. The proposal would have meant that public servants would no longer have been able to access PPL provisions in their industrial instruments, but would only have been entitled to the legislated provisions. This article assesses whether public servants may have gained or lost under such a change, and then considers the broader issue of the most appropriate avenues to regulate public sector employment conditions. While a rare opportunity for enhanced PPL has been lost, this may be the best outcome in ensuring that unions can continue to bargain collectively for this important provision and ongoing improvements to it.

JEL Codes: J51, J58, J81

Keywords

Collective bargaining, equality bargaining, gender equality, paid maternity leave, paid parental leave, public sector employment, working conditions

Introduction

The provision of paid parental leave (PPL), flexible working arrangements and affordable, accessible child care are essential to enable employees to reconcile work and care responsibilities, and also to progress gender equality in the workplace. They are

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important indicators of economic and social development within a country. Australia has lagged behind other Organisation for Economic Co-operation and Development (OECD) countries in providing PPL: until 2011, Australia and North America were the only two OECD countries which did not provide such entitlements.

PPL is provided through various forms of regulation in Australia and internationally, including tax-payer funded social security systems, employee and employer contributions into a government-administered fund, employee contributions to a health insurance fund and collective bargaining (Moss, 2014). Some countries provide PPL predominantly through statute, with collective bargaining playing a limited role (such as in France, Poland and Portugal). In others, PPL provisions in collective agreements supplement statutory entitlements (such as in Australia, Austria, Canada, Finland, Germany, Ireland, Italy, the Netherlands, Sweden and the United Kingdom). In a third group, collective bargaining is central to providing PPL (such as in Denmark; EurWork, 2004; Moss, 2014).

Community discussion around the provision of PPL in Australia has been extensive since the lead-up to the introduction of a universal PPL scheme in 2011. Even after this scheme was introduced by the Australian Labor Party (ALP), discussion around the issue barely faltered. This was because the leader of the Liberal National Party (LNP, then the Opposition party), the Hon. Tony Abbott, MP, committed to expanding Australia's PPL scheme.

In 2013, the LNP was elected to govern, and Abbott released details of what the media described as his 'signature' PPL policy. This more generous policy proposal heightened community and political interest in PPL in Australia. In 2014–2015, however, it was subsequently refined, abandoned and finally replaced by a PPL policy which may even reduce existing employee entitlements. As explained in this article, these policy iterations would have seen PPL provisions for public servants move from being available through both legislation and collective bargaining, solely to being regulated by national legislation, to a possible future scenario of being solely regulated through collective bargaining.

These policy changes raise important issues around the nature of public sector regulation and the role of the state in setting employment conditions for public servants. Placing this question in a broader framework leads to the main research questions addressed by this study. What is the most appropriate form of regulation of public servants' employment conditions, specifically PPL – collective bargaining or legislation? What are the implications for public sector unions of changing the way conditions are regulated, by moving away from the reliance on collective bargaining in order to gain improvements?

Dilemmas raised for public servants and their unions by the Abbott proposal stemmed from tensions emanating from the potentially conflicting roles of the Australian government – as employer, policy generator and financial controller. The Australian government is the employer of public servants, and it is also the policy generator, in that it establishes the rules and procedures which regulate collective bargaining, both for public servants specifically and for the Australian private sector workforce. Moreover, the government's expenditure on its workforce is a matter of public finance with budgetary implications (O'Brien and O'Donnell, 1999: 446). The article considers how these tensions have played out in the case of PPL policies.

To explore these questions, four sets of arrangements are compared: the current universal PPL scheme which was introduced by government legislation in 2011; the above-minima provisions that public sector employees had already achieved through enterprise bargaining; Abbott's proposed scheme; and the likely impact of this scheme, specifically on public servants, had it been introduced. The Abbott government's significantly revised 2015 PPL policy is outlined, and its regulatory implications are discussed. In contrast with these legislative approaches, the article details how Australian unions have engaged in collective bargaining to secure improved PPL provisions. The analysis is framed by a literature review examining the role of unions in bargaining to secure improved family provisions. The purpose is to reach a conclusion about the regulatory approach likely to ensure the most reliable and beneficial PPL provisions, with a focus on public sector workers.

Regulating for PPL in Australia

The starting point is to provide an overview of the origins of the current Australian legislated PPL provisions, the successive PPL policies that led up to them, and further changes proposed in mid-2015. This section then outlines how the industrial relations system regulates PPL in the public sector. Conditions such as PPL may be bargained collectively at government agency level through an enterprise agreement approved by the industrial relations umpire, the Fair Work Commission. Such bargained provisions, in turn, provide agreed improvements on the terms and conditions set out in the relevant industrial award covering a whole industry or occupation. Traditionally, in Australia, legislation has provided a minimum safety net of conditions on which industry awards and workplace agreements build improvements. The original Abbott plan, however, proposed legislative changes that, for some better-paid workers – including many in the public sector – would have been more generous than those established through the industrial relations system. So the task is to evaluate the various legislative and industrial relations approaches to providing access to PPL.

Policies on legislated PPL

A Labor government was elected in Australia in 2007. During its first term in 2009, a national inquiry commenced into the need for a universal PPL scheme. At this time, there was a great deal of variation across the Australian workforce in the available level of PPL provisions: approximately half of all female employees did not have access to any paid maternity leave (PML; Productivity Commission, 2009: 1.5). Others employees, including public servants, could access relatively high levels of PPL.

Subsequent to the inquiry, the government introduced the *Paid Parental Leave Act (2010)*, which commenced operation in 2011. The legislation provides the primary caregiver (usually the mother) with 18 weeks' parental leave pay, paid at the level of the national minimum wage (not as leave paid at the worker's usual pay rate). Eligible employees are able to access up to 12 months unpaid parental leave through the *Fair Work Act 2009*, and they then access payments through the PPL Act. The PPL scheme does not require employers to continue to pay superannuation contributions to

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employees while they are on leave. From January 2013, it has also provided 2 weeks' 'dad and partner' pay, paid at the national minimum wage (Department of Human Services, 2013). The scheme is funded through general government revenue.

This PPL scheme was introduced to enable employees to access the 18 week government payment, and complement it by their employer's paid leave scheme or other leave provisions. Employees may therefore be able to take up to 26 weeks' leave (Productivity Commission, 2009: xxi), the amount recommended by the World Health Organisation as being most beneficial to mothers and babies.

The Abbott LNP Coalition government, elected in September 2013, proposed a PPL scheme that appeared to increase both duration and payment: it would have provided eligible mothers with 26 weeks' PML, and it was to be paid by the government at replacement wages (Abbott, 2014). The payment would have been capped at AUD75,000, although this was subsequently lowered to AUD50,000 (Abbott, 2014). Fathers would have received 2 weeks' paternity pay at their current wage or the national minimum wage, whichever was higher. The 2 weeks would have been deducted from the 26 weeks provided to the mother (*The Coalition*, 2013: 5). Employers would have continued to make superannuation contributions into the parent's fund while they accessed the parental leave pay (*The Coalition*, 2013: 4–5). Private sector employees and their unions would still have been able to negotiate for PPL provisions to be included or increased in their collective enterprise agreements and thus access was provided to both the employer-provided scheme and the government-funded scheme.

These arrangements would have cost significantly more than the existing universal scheme, and the additional funding required was to have been generated in part through an annual 1.5% levy on approximately 3000 companies with a taxable annual income of AUD5 million or more (*The Coalition*, 2013: 6–7). Part of the cost was also to be met through redirecting state and territory government funds paid to their employees on parental leave (Mather, 2014). Significantly, public servants would no longer be able to access both PPL provided by their employing agency and the pay provided through the government-funded scheme: the relevant minister now described such access as 'double dipping' (Balogh, 2014). Instead, public servants would only be able to access the national legislated scheme.

Some Coalition party ministers, together with the business community, were opposed to the scheme, mainly because of the increased tax on business. The Labor Party, Coalition backbenchers, state premiers, business groups and unions all voiced concerns – if not outright opposition – to the scheme (Crowe and Martine, 2013; Kovac, 2013; Macklin, 2014). Some parts of the electorate viewed it as an unnecessary budgetary expense: at a time when the government was announcing severe cut-backs to social security programmes owing to an alleged financial crisis.

Meanwhile, federal, state and territory governments were considering how to implement the changed parental leave payments to their employees. It was not clear whether the Australian state and territory governments would continue to fund their employees' existing PPL entitlements and then look to the Commonwealth to pay the difference to bring the total payment up to 26 weeks for each employee. Alternatively the Commonwealth might pay the full 26 weeks, and then invoice the state and territory governments for their component of

the scheme (Commonwealth of Australia, 2014: 10, 18). Negotiations over the funding mechanism commenced among all governments via the Council of Australian Governments (COAG), a representative body consisting of the Prime Minister, and state and territory premiers or chief ministers. No agreement, however, was reached (COAG, 2013).

In December 2014, the Prime Minister announced that the proposed PPL scheme would be reviewed. It would be 'better targeted' and the government would deliver a 'holistic families package' in the May 2015 Budget (Abbott, 2014). In February 2015, the Prime Minister announced that an expanded PPL scheme was 'off the table', as 'what's desirable is not always doable, especially when times are tough and budgets are tight' (2015).

This announcement, however, did not signal an end to the debates around PPL. Just prior to the federal Budget being delivered, (ironically) on Mothers' Day 2015, the Treasurer, the Hon. Joe Hockey, MP, announced that the government would legislate to prevent people accessing both the existing, universal PPL scheme and their employer's scheme. Minister Hockey stated, '(y)ou can't double dip, you can't get both parental leave pay from your employer and from taxpayers' (Channel Nine, 2015). Furthermore, the Treasurer agreed that accessing both schemes was 'basically fraud' (Channel Nine, 2015) and another minister labelled the practice a 'rort' (*Sky News*, 2015).

The 2011 scheme had originally been legislated as a universal government-funded safety net payment, designed to be topped up by a collectively bargained employer contribution. Now, however, employees were restricted either to their employer-provided PPL scheme, or to the government payment if their employer did not provide PPL. If the employer-provided PPL scheme provided a lower level of PPL than the government scheme, employees would be able to access a 'top-up' from the government (Abbott, 2015). The new policy would affect public servants more than private sector employees, as the government estimated that 60% of those who received PPL from their employer were in the public sector (Australian Broadcasting Commission (ABC), 2015).

The new PPL policy, and particularly the ministerial comments about 'double dipping' and 'fraud', triggered an outpouring of protest. The media, unions, the Labor Party, women's groups and business associations all expressed strong opposition (ACTU, 2015; Ireland and Wade, 2015; Taylor, 2015). One leading academic emphasised that employees had a legal right to access both sets of entitlements because the current legislated PPL scheme was designed to complement employer-provided PPL (Baird, cited in Ireland and Wade, 2015). Business groups questioned how any such proposal could be effective, as employers would simply redirect their PPL budgets to fund other employee conditions so that employees could still access the government-funded PPL scheme. Additionally, one Senator questioned how the new scheme could override legally negotiated PPL provisions in collective agreements (ABC, 2015). At the time of writing, the 'Fairer Paid Parental Leave' Bill had been introduced into the Australian parliament and referred to a Senate committee where it was the subject of an inquiry (Parliament of Australia, 2015).

Public sector bargaining for PPL

The current universal legislated entitlement is a government-funded payment at national minimum wage level, not a paid leave scheme. In Australia, employer-funded PPL is more common in the public than in the private sector for two reasons. First, the Australian

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public sector is a female-dominated workforce: in June 2014, women constituted 57% of public sector employees (ABS, 2014a). Second, the public sector workforce is more unionised: in August 2013, 42% of public sector employees were union members, compared with 12% of private sector employees (ABS, 2014b). This relatively high density provides bargaining power: gains in the quantum of PML/PPL in the public sector have been achieved through successive bargaining rounds (Baird, 2003; Baird et al., 2009; Baird and Murray, 2014; Whitehouse, 2001).

The landscape for public sector collective bargaining, however, is changing. The requirement that wage rises be offset by productivity increases (APSC, 2014) seems to imply reduced employment conditions. The Australian Government has suggested reduced personal/carer's leave as one such offset (Thomson, 2015) and has directed agencies not to negotiate PPL provisions, in anticipation of the now-defunct Abbott scheme (APSC, 2014: 7). Nevertheless, the Community and Public Sector union (CPSU) 2014/2015 bargaining claim is for 26 weeks' PML and 6 weeks' paid supporting partner leave (personal communication with union official, 16 January 2015).

While enterprise agreements build on the legislated minima, for some public servants the minimum is also contained in an industrial award. In NSW and Tasmania, PPL is an award entitlement; in Queensland, public servants access PPL provisions through a government directive as well as through an award. In Victoria, PPL provisions were finalised by the Fair Work Commission in an arbitrated determination. In the Commonwealth, Western Australian, South Australian, Northern Territory and Australian Capital Territory (ACT) jurisdictions, PPL is included in enterprise agreements, although the minima for APS employees is set through the *Maternity Leave (Commonwealth Employees) Act 1973* as well as through the *Australian Public Service Award 1988*, which both contain 12 weeks' PML. In particular, the Maternity Leave Act established a high benchmark for the provision of PML and played a role as pace-setter for other organisations. To clarify the policy issues represented by this shifting mosaic, we turn to the international literature evaluating approaches to regulating the work/life relationship.

Literature review: Union involvement in regulating for family provisions

Three main forms of regulation enable employees to meet work and family responsibilities. These are public policy, which includes statutory PPL, organisational policies and collective bargaining (Berg et al., 2013: 496; Baird and Murray, 2014: 48–49; Dickens, 1999). These three 'pathways' are linked and movement in one can influence the other two. For example, public policy influences bargaining for family provisions. Berg et al. (2013: 496) argue that researchers have not fully explored these linkages and have wrongly treated the regulatory mechanisms as being separate from each other.

Internationally, the main focus of research on work and family provisions has been on the role either of legislation or of organisational human resource (HR) policy and practice. There has been less research examining the impact of collective bargaining on the adoption of work and family policies (Berg et al., 2013: 496; Ravenswood and Markey, 2011: 487). Particularly since the mid-1990s, however, researchers such as Kravaritou (1997), Dickens (1998), Heery (2006a, 2006b) and Briskin (2006) have developed a theory of

'equality bargaining'. This concept places gender at the heart of collective bargaining theory, identifying how bargaining agendas have traditionally excluded equal opportunity items, including family provisions. Heery's (2006b) simple definition of equality bargaining is 'bending the bargaining agenda to serve the needs of women workers' (p. 522).

Heery (2006a) found that government policy promoting family provisions created an 'external opportunity structure' for public sector unions to negotiate family provisions, which then flowed on to the private sector (p. 59). Gregory and Milner identified factors which encouraged or discouraged unions from campaigning and bargaining for work/life balance issues and also identified 'opportunity structures' which enabled unions to negotiate such initiatives. Such opportunity structures arose when several conditions were in place, including when gender equality was promoted by supranational and national bodies and when unions were able to complement equality regulation (Gregory and Milner, 2009: 124–125). Other researchers (Ravenswood and Markey, 2011; Williamson, 2012) have subsequently replicated these findings.

Baird and Murray (2014) found that the strong community and union campaign for a national PPL scheme in Australia resulted in a collectively bargained increase in the quantum of PPL across the public sector (p. 59). Similarly, Williamson (2012) demonstrated that community discussion around the PPL scheme was a determining factor for public sector union negotiation of enhanced PPL provisions. The items most frequently negotiated appeared to mirror developments in public policy and labour law (Heery, 2006a: 52; Kravaritou, 1997: 37).

Dickens (2000) found that unions build on the legal minima, and use the law as a lever in bargaining (p. 34). She considered the emergence of parental leave in bargaining agendas in a number of countries as an example of the influence that supranational and national policies can have on equality bargaining at the enterprise level (2000: 197). Rigby and O'Brien-Smith (2010: 214) also provide case study evidence of unions' use of legislation as a basis for securing improved parental leave provisions. Berg et al. (2013) conclude that statute and bargaining are intertwined, as 'the symbiotic relationship between union bargaining agendas and public policies can drive the public policy debate' (p. 502).

The corollary applies: where there is little legislation for PPL, unions may not be willing to expend 'bargaining capital' to negotiate for it, concentrating instead on more traditional bargaining items (Berg and Piszczek, 2014: 182). Nor do legislation and public policy always promote equality bargaining, for example, where PML is seen as having been widely regulated by statute across the OECD (Swinton, 1995: 728). Government work and family initiatives can substitute for union activity, reducing the priority given to equality bargaining (Ravenswood and Markey, 2011: 499).

This conceptualisation of the interaction of legislation and industrial relations allows a comparative evaluation of the actual and potential gains of the four regulatory approaches identified in the introduction.

Methodology

In order to assess the likely impacts of the proposed PPL policy on Australian public servants, PPL provisions in enterprise agreements were examined using the Workplace

Agreements Database (WAD). Administered by the federal Department of Employment, this database provides coded details of the contents of all federally registered collective enterprise agreements, including those made with national, state and territory public sector agencies. PPL provisions current or due to expire at 30 June 2014 were analysed.

The study was restricted to core national and state public service agencies, thereby excluding public sector employees such as nurses, teachers, police and university workers, as well as local government employees. This allowed a closer comparison of agreements covering public servants undertaking comparable work. The main focus was on the APS, as negotiations for replacement APS enterprise agreements provided a real-time case study of equality bargaining.

Most jurisdictions had one main instrument regulating PPL, although the Australian Capital Territory (ACT) and Commonwealth jurisdictions had a large number of enterprise agreements covering public servants. Agreements from the largest agencies were chosen for comparison with the Abbott proposals. For example, the collective agreement for the Department of Human Services covered almost 35,000 of a total of 159,000 people employed nation-wide in the Australian Public Service (APS; Australian Public Service Commission, 2013), and the agreement for ACT clerical staff covered almost 8000 of a total 20,000 employees within this mainly Canberra-based jurisdiction (Commissioner for Public Administration, 2013: 66).

The Workplace Agreements Database contained 522 enterprise agreements covering public servants across the jurisdictions. Of these, the exclusions outlined above left a remainder of 281 agreements covering almost 508,000 employees. The PPL data included the quantum of primary carer's leave (i.e. paid maternity leave), supporting partner's leave (usually considered to be 'paternity' leave), adoption leave and associated provisions, such as whether the agreement contained a clause enabling the PPL to be paid flexibly (e.g. half the amount paid over twice as long). These data were examined to determine the proportion of public servants who were entitled to various aspects of PPL, namely, the quanta of paid maternity leave, paid supporting (or paternity) leave and flexible payment of PPL.

In order to assess fully whether public servants would have been better or worse off under the Abbott scheme, it was also necessary to assess the financial remuneration employees may have received under agreements and the proposed legislation. Because the NSW public sector has the highest number of public servants of any jurisdiction, it was used as the basis for estimating the average wage for an 'average' public servant.

The WAD and NSW wages data were augmented by media clippings from 2013 to 2015, Coalition policy documents and public sector workforce data. Two union officials were also informally contacted to clarify associated issues.

Comparison of PPL under current and proposed schemes

I begin by outlining the quantum of PML available to public servants, and then consider whether public servants were likely to have been better or worse off financially under Abbott's proposed scheme. The different PML provisions across the jurisdictions are then examined, highlighting the diversity of provisions which would need to be considered in the development of a national scheme.

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Table 1. Level of paid parental leave in public service jurisdictions.

Jurisdiction	Amount of PML	Amount of paid supporting partner leave
Commonwealth	14–18 weeks depending on agency agreement	2–4 weeks depending on agency agreement
New South Wales	14 weeks	1 week
Victoria	14 weeks	2 weeks
Queensland	14 weeks	1 week
Western Australia	14 weeks	1 week
South Australia	16–18 weeks	1 week
Tasmania	12 weeks	1 day
Northern Territory	14–18 weeks	1 week
Australian Capital Territory	14–18 weeks depending on agency agreement	2–4 weeks depending on agency agreement

Sources: Workplace Agreements Database; Crown Employees (Public Service Conditions of Employment) Award 2009 (NSW); Victorian Public Service Workplace Determination 2012; Qld Government Directive 26/10; Family Leave (Qld Public Sector) Award — State 2004; WA Public Service and Government Officers General Agreement 2011; South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2012; Tasmanian State Service Award; Northern Territory Public Sector 2013–2017 Enterprise Agreement.

Table 2. Comparison of proposed and current parental leave payments.

Quantum of current PML payments	Quantum of proposed PML payments
14 weeks PML at replacement wage as per enterprise agreement – AUD20,892	PML payments as per enterprise agreement no longer available
Government-funded PPL payment of 18 weeks – AUD11,538	Government-provided PPL payment of 26 weeks at replacement wage – AUD38,799
Total PML – AUD32,431 (before tax)	Total – AUD38,799
	Approximately AUD6000 better off

Table 1 shows that the standard of PPL for public servants at June 2014 was 14 weeks, with the exception of Tasmania (12 weeks). Analysis of the WAD data shows that 87% of public servants were entitled to 14 weeks or more PML. Table 1 also shows that the emerging standard for public servants was 18 weeks, with four jurisdictions providing this amount. Similarly, the amount of paid supporting partner (or paternity) leave varied throughout the jurisdictions, from 2 to 4 weeks in the Commonwealth and ACT, to 1 day in Tasmania. Most jurisdictions provided 1 week. The higher PPL amounts were prevalent in those jurisdictions where PPL was provided through collective agreements, rather than through a government determination or award, indicating the importance of enterprise bargaining.

Most female public sector employees accessing PML were likely to have been better off financially under Abbott's proposed scheme. This is demonstrated using the example of an average NSW public servant. In 2014, the median salary of a full-time NSW public servant was AUD77,600 (NSW Public Service Commission, 2014: 12), which provides the basis for the calculations in Table 2.

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Table 2 shows that under the proposed scheme, the average public servant may have been about AUD6000 better off. This figure is an estimate, as the quantum of superannuation paid to recipients is not included in the calculations for ease of comparison. Even though employees may have been paid less superannuation under the proposed scheme, female public sector employees were likely to gain financially under the Abbott proposal.

In regard to paid supporting partner leave, the possible outcomes were rather mixed. Most jurisdictions provided less than 2 weeks' leave and so the (mostly male) employees would have benefited financially from Abbott's proposed scheme. Almost 10% of employees, however, were entitled to more than 2 weeks' paid supporting partner leave and the government proposal did not detail how these above-minima entitlements would have been treated.

PPL schemes for state and federal public servants include a unique range of conditions. Table 3 outlines such associated PML provisions. The majority of jurisdictions enabled mothers to double the duration of parental leave by receiving half pay. This provision can also provide employees with tax advantages (Baird, cited in National Foundation of Australian Women (NFAW), n.d.) as employees may be able to split the payment over two financial years. WAD data show that in 2014, 78% of public servants had access to flexible PPL payments.

Some of the jurisdictions were more flexible still, the payment provided as a lump sum in advance or even in two lump sums. Generally, a woman could work for as long as she desired before commencing PML, provided that she had a medical certificate. Most of the jurisdictions also provided a range of leave provisions while a woman was on maternity leave, either enabling her to extend her PML with the use of sick leave or to use annual or long service leave during the period of unpaid parental leave. Victorian public servants were also able to take time off in lieu for public holidays which occurred while they were on PML, after their period of leave.

Table 3 also shows that six jurisdictions provided PML when an employee gave birth while on PML, so that the employee was not required to fulfil an additional qualifying period. In some cases, the employee did not need to return to work to access this subsequent leave. Finally, this table shows that some employees whose pregnancy terminated could access their PML if the termination occurred after 20 weeks of pregnancy, enabling the female employee to physically and emotionally recover.

The majority of female employees were likely to gain financially under Abbott's proposed scheme, although they may have lost flexibilities associated with PPL and additional entitlements, such as taking annual leave during periods of PPL. The government did not indicate how employees who received more than the proposed 2 weeks' supporting partner leave would have been treated and some of these entitlements may have been lost. Alternatively, the government may have needed to legislate for exemptions or create subsidiary legislation to enable employees to retain the additional supporting partner entitlements. Similarly, the government was silent on how the differing PPL provisions across the jurisdictions would have been treated: the most common, or least generous, provisions may have been retained, in a time of fiscal restraint where governments were seeking to reduce public sector terms and conditions.

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Table 3. Paid maternity leave provisions in public service jurisdictions.

Jurisdiction	Method of payment	PML available before birth	Subsequent birth while on PPL/ PML	Annual, sick and long service leave	Special maternity leave
Commonwealth	Full or half pay	6 weeks	Silent	Employee entitled to take annual, sick and LSL while on maternity leave	Required to return to duty upon termination of pregnancy
New South Wales	In advance as a lump sum; fortnightly at half pay; combination of full and half pay	9 weeks before	Full PML within 24 months of commencement of maternity leave	Sick leave not available during PML	Employee can elect to take sick leave instead of PML
Victoria	Full or half pay	Can commence PML 14 weeks before birth; within 6 weeks need medical certificate	Silent	Annual leave or LSL during unpaid leave. Public holidays can be taken as time off in lieu after PML	PML if terminates after 20 weeks
Queensland	Full or half pay. Can be paid in advance in cases of hardship	Commences upon start of 'approved maternity leave period'	Eligible without resuming duty	Period of maternity leave extended by sick leave. Can take annual leave or LSL with parental leave	PML if terminates after 20 weeks
Western Australia	Full or half pay or in advance	6 weeks, may be required to provide medical certificate	Eligible without resuming duty	Can take annual leave or LSL while on unpaid maternity leave	Remains on PML if stillbirth
South Australia	Can be taken in two amounts within first 12 months; also at half pay	Immediately prior to birth	Silent	PML not extended for sick leave	Silent
Tasmania	Silent	6 weeks, may be required to provide medical certificate	Employee entitled to subsequent period of parental leave without resuming duty	Can take annual leave or LSL while on unpaid leave	PML if stillbirth occurs within 20 weeks of date of birth
Northern Territory	Full or half pay	May commence 6 weeks prior with a medical certificate	Employee entitled to subsequent period of parental leave without resuming duty	Sick leave can be taken as special maternity leave prior to commencing maternity leave	14 weeks PML if terminated 20 weeks from date of birth. If 5 years' service, receive 18 weeks.

(Continued)

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Table 3. *(Continued)*

Jurisdiction	Method of payment	PML available before birth	Subsequent birth while on PPL/ PML	Annual, sick and long service leave	Special maternity leave
Australian Capital Territory	Full or half pay. Can be taken in non-continuous periods	6 weeks prior, can remain with a medical certificate	Employee entitled to additional year of unpaid parental leave, employee may be required to become unattached.	Can take LSL and annual leave on full or half pay during unpaid parental leave. Can take sick leave during unpaid leave	May be entitled to PML if stillbirth occurs within 20 weeks of date of birth

Sources: Workplace Agreements Database; Department of Human Services Agreement 2011–2014 (Cth); Crown Employees (Public Service Conditions of Employment) Award 2009 (NSW); Victorian Public Service Workplace Determination 2012; Qld Government Directive 26/10; WA Public Service and Government Officers General Agreement 2011; South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2012; Tasmanian State Service Award; Northern Territory Public Sector 2013–2017 Enterprise Agreement; ACT Public Service Administrative and Related Classifications Enterprise Agreement 2013–2017.

Discussion

A comparison of the CPSU's 2014/2015 bargaining claim with Abbott's proposed scheme reveals that the union's demand for 26 weeks' paid primary caregiver leave would have been met. Employees receiving PML would have received their replacement wage, with superannuation. Public sector unions could have considered this a victory: they could have argued that their campaigning over the years had borne fruit and the government had implemented this key demand.

The union movement, however, did not welcome the proposal. While public sector unions were largely silent, they appeared to support the Australian Council of Trade Unions' (ACTU) position, evidenced by at least one state public sector union reproducing the ACTU's concerns on their website (CPSU, Tasmania, 2013). The ACTU (2013a) viewed the Abbott scheme as a way to undermine collective bargaining and open the door to reduced conditions. It argued that once the new scheme was operative and the PPL entitlements in agreements were void, there would be nothing to prevent business from arguing that they could no longer afford to pay the PPL levy and the government from responding by reducing the PPL entitlements (ACTU, 2013a).

This concern may have been justified. A leading UK academic who has undertaken a gender analysis of public sector employment across the European Union sounds a note of caution when the state is able to unilaterally change the terms and conditions of employment for public servants, warning that this could lead to a downgrading of their conditions to match those of the private sector (Rubery, 2013: 79). While an expanded legislative scheme would have benefited employees, it may also have contained the seeds of reduced employment conditions, fundamentally changing not only the nature of public sector employment, but also the governing regulatory system.

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Union antipathy to the scheme may, however, have emanated from a more basic level: a long-held distrust of a conservative government that had previously eroded working conditions for employees, with particular negative consequences for female employees (Elton et al., 2007). Ged Kearney, ACTU President, articulated the perception that '(t)his is trumped up policy which should be viewed sceptically and in historical context. Mr Abbott didn't want to support parents, especially women, in the past and he won't want to [now]' (2013a). Given the government's subsequent backflip and stated intention to remove PPL entitlements from employees, the union movement's scepticism appears to have been justified.

I have noted the literature indicating that unions use legislation as a lever in equality bargaining to pursue additional entitlements. This was confirmed in Australia, where bargained agreements showed a slight increase in the duration of PPL following the extensive community debate that preceded the introduction of the 2011 PPL scheme (Baird and Murray, 2014: 57). Unions may have used the heightened discussions around PPL to continue to bargain for increased PPL provisions, particularly to offset any anticipated future reductions. Bargaining for PPL therefore becomes even more important when legislation is introduced. Further bargained increases or improvements may be elusive in the public sector, however, as governments implement austerity measures and force public sector unions into defensive positions merely to maintain existing terms and conditions of employment (Bailey and Peetz, 2013: 413).

The history of PPL in Australia has shown the effective influence of union and community activism (Baird and Murray, 2014; Berg et al., 2013). The current case study has shown that politics and ideology play an important role – lacking political, community and union support, Abbott's PPL policy was slated to fail. The role of ideology in shaping the interaction between bargaining and legislative policy regulation for family provisions is a new finding in the equality bargaining literature. Researchers have documented the impact of public policy on negotiating for increased provisions in collective agreements, but have given less attention to the political context surrounding the negotiations.

This case study also allows reflection on the nature of public service employment. Incorporating state and federal PPL schemes into Abbott's national scheme would have effectively treated public servants the same as private sector workers, under universal legislation. This would have reduced the competitive advantage that the public sector has been able to provide to attract and retain employees (Baird, cited in NFAW, n.d.). Rolling in state and federal PPL schemes would have seen public sector employees effectively disadvantaged in comparison to private sector employees, who, at least until the most recent 'double-dipping' reversal, could continue to access both their organisation's scheme and the government-funded scheme. This concern was also expressed by the ACTU (2013b).

Legislation and awards have traditionally provided the minimum PPL entitlements for Australian public sector employees. Eliminating bargaining for PPL would have entrenched government fiat in setting this important condition. This would have set a unilateral precedent, reducing the role for unions and placing sole power for setting public service terms and conditions with the government. The latest iteration of PPL policy, where employees could no longer 'double dip', however, would result in public servants only accessing their employer-provided schemes, as these are more generous than the

minimal, government-funded scheme. The focus would therefore be squarely on collective bargaining to achieve PPL gains. These changing regulatory foci in relation to PPL in the public sector highlight a lack of cohesive government policy, with no clear focus on whether the current hybrid scheme is appropriate, or whether such entitlements should be regulated solely through either legislation or bargaining.

This policy confusion highlights the tensions within the various roles of the Australian government in relation to public sector employment. As the government does not have clear objectives for its PPL policy for public servants, its roles as employer, regulator and financier are also muddied. The government has not determined whether it should act as regulator and unilaterally set PPL conditions through legislation, or prioritise its role as employer and negotiate with unions, or focus on its role as financier and seek to curb costs and reduce PPL provisions for public servants. Tensions are also evident as at the time of writing, APS agencies were prohibited from bargaining for PPL provisions. The bargaining policy is misaligned with national workplace relations policy, where bargaining for PPL is the norm, further evincing confusion around the government's role.

At a practical level, a policy reversal to enable bargaining for PPL in the APS may not be realistic, given the government's commitment to curbing the labour costs of its employees. Additionally, at least one agency has confirmed that PPL provisions had not been discussed in the 2014/2015 bargaining round (Commonwealth of Australia, 2015: 103). Given the centralised government oversight of APS bargaining, this position is likely to be replicated more widely across APS negotiations. The government may be progressively closing off regulatory avenues for PPL increases for public servants – unions are unable to bargain for these provisions, and the government has expressed its intention to prevent public servants from accessing statutory provisions (Williamson, 2015).

Finally, this case study of public policy and PPL suggests a future research agenda. There is scope to further consider whether public sector terms and conditions of employment should continue to be more generous than those in the private sector in order to attract and retain employees. This research ties in with the need to investigate whether a bargained extension of legislated minimum standards constitutes a form of 'double dipping' that should be prevented; the policy rationales for any moves to restrict such extensions, and the resulting impact on public sector workers and unions. Issues around the competing roles of government as regulator, employer and funder are also worthy of further investigation.

Conclusion

Female public sector employees – like many other female employees – may have benefited financially from Abbott's proposed PPL scheme, although whether or not they would have been able to access associated entitlements was not clear. While some employees may have gained financially, the proposed policy had wider ramifications for how minima are set for public servants, the role of government, the possible impacts on union bargaining for PPL and the need or desirability for entitlements to be provided through multiple regulatory avenues. This article has highlighted the dangers associated with unilateral government control to determine public sector pay and conditions. It

concludes that the public sector as a whole may be best off with the current situation where unions are able to negotiate for enhanced PPL provisions which complement statutory minima. Given that at the time of writing, it was stated government policy to prevent public sector employees from also accessing legislated PPL entitlements, bargaining may become the only avenue for increases to this important provision. Collective bargaining will remain an important regulatory avenue to secure – and maintain – PPL and other family provisions.

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