



**Australian
Human Rights
Commission**

Sex Discrimination Commissioner
Kate Jenkins

12 March 2020

Committee Secretary
Senate Standing Committee on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

By email: community.affairs.sen@aph.gov.au

Dear Committee Secretary

***Re: Consultation on Paid Parental Leave Amendment (Flexibility Measures)
Bill 2020***

Thank you for the opportunity to provide written input regarding amendments to the *Paid Parental Leave Act 2010* (Cth) (PPL Act).

I commend the Australian Government's efforts to make Australia's parental leave scheme more flexible and to better support working parents and families.

Support for working parents is crucially important to a number of social and economic outcomes including gender equality, economic security for women and increased workforce participation for women.

The Australian Human Rights Commission (the Commission) is of the view that any law or scheme to regulate paid parental leave should be approached within a human rights framework.

The Commission has made several prior submissions in relation to the paid parental leave scheme in Australia, including a detailed proposal for a national scheme of paid leave for parents in its first of two submissions to the Productivity Commission in 2008. At the time the PPL Act came into effect in 2010, the Commission broadly endorsed the legislation as a sound step forward, with a view to further improvements over time.

I consider the proposed amendments to be a further step forward in bringing the scheme of paid leave in Australia in line with international best practice, by increasing flexibility, broadening eligibility and encouraging greater economic independence for women.

I welcome the introduction of key aspects of the Women's Economic Security Package as announced in the 2018—19 Mid-Year Economic and Fiscal Outlook.

I endorse the proposal to introduce greater flexibility to support working families, by dividing the 18-week payment into two blocks: a non-flexible, 12 week period, to be

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used within the first 12 months following the birth or adoption of the child; and a flexible, transferable period of 6 weeks leave which can be taken any time before the child turns two years old.

These changes demonstrate a more contemporaneous understanding of how modern parenting and work interact. The changes as proposed should assist new parents to maximise time with their young children. Most importantly, these changes will support self-employed women and small-business owners, who may not be able to afford to leave their businesses for 18 consecutive weeks.

For these reasons, I welcome the amendments to the legislation. As mentioned in previous submissions on this issue, however, I offer this endorsement with a view to further improvement of the scheme over time and outline some areas where the scheme could be enhanced below.

Proposed legislative changes

The proposed changes to the PPL Act meet key national public policy objectives as outlined in the Women's Economic Security Package, aimed at improving women's economic security, facilitating greater workforce participation and advancing gender equality.

Women's economic security

Paid parental leave has a positive impact on the financial position of women and families. On average, women are paid less than men such that Australia's gender pay gap is currently at 14.1%.¹ This gender pay gap affects most women in the workforce to some degree over the course of their working lives.

Research by KPMG has shown that 21% of the national gender pay gap is attributable to the years out of the workforce for child-rearing and unpaid caring responsibilities at home.²

The decision to work part-time and/or change roles after having children often has a negative impact on women's financial situation and future career opportunities. Economists have reported that raising children accounts for a 17% loss in lifetime wages for women. After having children, women may choose to move into 'family-friendly' occupations and/or return to work part-time following parental leave due to

¹ Workplace Gender Equality Agency, *Australia's gender pay gap statistics* (20 February 2020). At <https://wgea.gov.au/data/fact-sheets/australias-gender-pay-gap-statistics> (viewed 2 March 2020).

² KPMG (2016), *She is price(d)less, the economics of the gender pay gap*. At <https://home.kpmg.com/content/dam/kpmg/au/pdf/2016/gender-pay-gap-economics-full-report.pdf> (viewed 1 March 2020).

the lack of flexible workforce structures.³ The Australian Bureau of Statistics (ABS) estimates that 82% of mothers returning to work after childbirth work in part-time roles.⁴

Women aged 65 years and older are also at higher risk of living in poverty than their male counterparts, since superannuation balances for women at retirement are 47% less than men, on average.⁵ This further contributes to women's financial insecurity.

I am pleased to see the proposed amendments create more flexibility for women by allowing them to transfer a period of their paid parental leave to their partners. A more gender-balanced uptake of paid parental leave positively impacts on the financial security of women, relieving income pressure during the first months with a new child and supporting women's return to the workforce.

Facilitating workforce participation

Facilitating workforce participation of mothers is important for both economic and equity reasons. Increasing women's workforce participation leads to better living standards for individuals and families, improves the economic bottom line of businesses, and is a significant driver of national economic growth.⁶

Increasing women's lifetime employment is of benefit to women, particularly those at the lower end of the labour market who are least likely to be able to access employer-funded schemes of leave. Providing income replacement after childbirth helps ensure women maintain workforce attachment over the life course, increasing their capacity to contribute to their own superannuation.

Paid leave also benefits the economy more broadly. In 2012, the Grattan Institute found that if there were an extra 6% of women in the workforce, Australia could add up to \$25 billion, or approximately 1%, to its GDP.⁷ The Organisation for Economic

³ Adda, J., Dustmann, C., and Stevens, K. (2010), The career cost of children. Paper presented at the 10th World Congress of the Econometric Society 2010. At: <http://www.eswc2010.com/> (viewed 1 March 2020).

⁴ Australian Bureau of Statistics. (2006), Pregnancy and employment transitions, Australia, 2005 (Cat. No. 4913.0). Canberra: ABS. At <https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4913.0Main+Features1Nov%202005?OpenDocument> (Viewed 2 March 2020)

⁵ Women in Super, *The facts about women and super*, at <https://www.womeninsuper.com.au/content/the-facts-about-women-and-super/gjumzs> [Accessed 28 February 2020].

⁶ Office of Prime Minister and Cabinet, *Women's Workforce Participation- an Economic Priority*, at <https://womensworkforceparticipation.pmc.gov.au/womens-workforce-participation-economic-priority.html>.

⁷ Grattan Institute (2012) *Game-changers: Economic reform priorities for Australia*, at https://grattan.edu.au/wp-content/uploads/2014/04/Game_Changers_Web.pdf (Viewed 28 February 2020).

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Co-operation and Development (OECD) also estimates that closing the gender participation gap by 75% could increase growth in Australian GDP per capita from 2% per annum to 2.4%.⁸

However, in Australia women continue to be marginalised in the workforce relative to men, with lower participation rates particularly amongst mothers. Women constitute a higher proportion of casual workers, and are more likely to work in low-paid and low-skilled jobs, have low representation at senior and decision-making levels and continue to experience workplace discrimination on the basis of sex, pregnancy, potential pregnancy and family responsibilities.

For many small-business owners and self-employed women, 18 weeks is a significant amount of time to be away from their work. By allowing families to split their paid parental leave into two blocks over a two-year period, women who need to return to work earlier can do so, without sacrificing the remainder of their entitled leave. This will help new parents who currently return to work before they have used all of their leave, and will boost workforce participation of women.

Promoting gender equality and work/family balance

As the Commission has previously stated, paid parental leave helps address the disadvantage women experience in the workplace due to childbirth. Providing a level of income replacement for women who are required to forego their income to give birth helps to redress the disadvantage that female workers experience in the workforce relative to other workers.

In recent years there has been an increased focus on the need to engage men in care as an important element of advancing gender equality.

Currently, the use of parental leave by fathers in Australia is very low by global standards. Figures from the ABS show that just one in 20 fathers take 'primary' parental leave, with 95% of all primary carers' leave being taken by mothers.⁹

A 2014 study by the Commission also found that 85% of the fathers and partners surveyed took fewer than four weeks leave.¹⁰ Yet despite the low uptake of parental leave among fathers, our research has found that men *do* want to be involved in the

⁸ OECD (2012) Closing the Gender Gap: Act Now, OECD Publishing, at <http://dx.doi.org/10.1787/9789264179370-en> (Viewed 28 February 2020).

⁹ Australian Bureau of Statistics, Gender Indicators, Australia Sep 2017, at <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4125.0~Sep%202017~Main%20Features~Work%20and%20Family%20Balance~7> [Accessed 23 February 2020].

¹⁰ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review – Report*, 2014, p48.

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lives of their children, with three in four fathers telling the Commission that they would have liked to take additional leave.¹¹

Another study by the Boston College Center for Work and Family found that, regardless of how fathers were classified (as either 'egalitarian, divided, or traditional' in their parenting role), all working fathers expressed a desire to have more time with their children.¹²

It is clear that the majority of parents want the chance to help raise their children and that birth mothers want the freedom to choose when to return to work and how to structure that return to work without being penalised for doing so. A transferable period of paid parental leave provides flexibility and support for couples that wish to share care more equally in this way.

Research from the Australian Institute of Family Studies has found that, while many fathers today may be more involved in childcare, for most families the number of hours fathers spend in employment remains the same before and after having children. While family employment patterns have shifted over recent decades away from that of a breadwinning father and stay-at-home mother, the shift has seen an increase in maternal employment (generally part-time), but little change in fathers' employment patterns.

There are additional benefits to greater equity in caring roles, such as saving on childcare costs and increases in the emotional bonding between fathers and their children.

In Iceland, parents are entitled to 39 weeks of parental leave, of which 13 weeks is paid at 80% of the parent's salary through the social security (social insurance) system. Of that time, 13 weeks are reserved separately for both mothers and fathers; the remaining 13 weeks can be split as the parents see fit. That data shows that these policies have made huge progress towards normalising gender equality in Iceland, with fathers accounting for nearly half (45%) of the total benefit usage. Not surprisingly, Iceland tops the Global Gender Gap Index as the most progressive country in the world for gender parity.

In 2014 a Swiss study showed that if parental leave policies are available to each parent, it enables a more equal division of work between women and men by fostering paternal involvement in the care for a child.¹³ Similarly, a 2015 study found

¹¹ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review – Report*, 2014, p56.

¹² Harrington & Sabatini, *2017 Voices of Diversity and Inclusion*, Boston College, 2017.

¹³ 9 Lanfranchi, L. M., & I. Valarino (2014). Gender equality and parental leave policies in Switzerland: A discursive and feminist perspective. *Critical Social Policy*, 0261018314536132.

that the Norwegian paid parental leave policy (46 weeks of parental leave at 100% of the salary and 10 weeks of leave reserved for the 'co-parent') contributes to a shortening of the women's career interruptions and a more equal division of paid and unpaid work among parents.¹⁴

These studies show that the availability of paid parental leave for each parent fosters a more equal division on unpaid care and improves work-life balance, outcomes that Australia should be striving to match.

Compliance with international standards

Australia has a range of international human rights obligations in this area, as outlined by the Commission in its previous submissions. These human rights include, but are not limited to, the right to work and achieving equality by addressing women's marginalisation in employment.¹⁵

The PPL Act complies with those international obligations by providing government-funded support to enable parents to combine family obligations with work responsibilities.

In its concluding observations on the eighth periodic report of Australia in 2018, the Committee on the Elimination of Discrimination Against Women (CEDAW) welcomed the progress achieved since its last report of 2010 of Australia's adoption of the paid parental leave scheme in 2010 and the 'dad and partner' pay programme, in 2012.

An effective paid parental leave scheme allows Australia to meet its international obligations and relevant international labour standards, and the proposed amendments increase the flexibility and broaden the eligibility criteria of the scheme. These amendments do not limit but serve to enhance Australia's ability to meet its international obligations. Complying with our international human rights obligations and labour standards is an important national objective for a paid leave scheme. In July 2018 the CEDAW Committee recommended additional enhancements to improve Australia's paid parental leave scheme, which is discussed further below.

¹⁴ Norwegian Labour and Welfare Administration NAV (2016), Parental benefit. At <https://www.nav.no/en/Home/Benefits+and+services/Relatert+informasjon/parental-benefit#chapter-2> (viewed 29 February 2020).

¹⁵ International instruments and human rights obligations relevant to this inquiry are discussed at length in Human Rights and Equal Opportunity Commission, *Submission to the Productivity Inquiry into Paid Maternity, Paternity and Parental Leave* (2008), at http://www.humanrights.gov.au/legal/submissions/2008/20080602_productivity.html (Viewed 27 February 2020, paras 38-71.)

Further improvements over time

While I support the amendments of the legislation insofar as they create more flexibility for parents, there is room to improve the scheme further through both legislative and policy reform.

Enhance flexibility by promoting shared responsibility

Policies that are based on the presumption that mothers are the 'primary care-giver' (as opposed to fathers or adoptive parents) reflect breadwinner/homemaker gendered role stereotypes that assume families have one care-giver (usually the mother), supported by a partner with fewer, or no, caregiving responsibilities (usually the father).

This does not reflect the current realities of modern parenting and earning.

Old-fashioned primary caregiver policies risk alienating millennial workers in particular. Millennials, who are estimated to make up 75% of the global workforce by 2025, place a high value on paid parental leave and workplace flexibility. Paid leave is not merely a women's issue for this generation: 78% of millennials are part of a two-career couple, and it is the growing expectation of millennial workers that both partners will work and parent.¹⁶

Globally, most OECD nations are investing in shared paid parental leave. Although the US lacks a national program, there are currently five US states plus Washington DC, that guarantee paid parental leave. Rather than designating one parent as the 'primary' carer and the other as 'secondary', the US laws provide each parent an independent right to paid leave to 'bond' with a new baby. Fathers therefore have equal time as mothers (12 weeks).

In Australia, according to the Australian Institute of Family Studies, the proportion of stay-at-home mothers has fallen from 33% to 27% in the 25 years from 1991 to 2016. During the same period, the proportion of family households in which both parents work rose from 52% to 61%. It's clear that two-income families are now the norm in Australia; we need policies that better reflect, rather than ignore, this reality.

¹⁶ Rau, Hillary and Joan Williams, 'A Winning Parental Leave Policy Can be Surprisingly Simple', *Harvard Business Review*, July 2017 at: <https://hbr.org/2017/07/a-winning-parental-leave-policy-can-be-surprisingly-simple> (Viewed 28 February 2020).

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Research shared at the Next Steps for Paid Parental Leave Roundtable event in Canberra found that the 'primary carer' leave is only transferred to fathers in about 2% of cases.¹⁷

It is time to move away from models that assume children will be cared for on a full-time or part-time basis by a 'primary carer', who is the mother. Modern parents don't define themselves as primary or secondary, and neither should the legislation that supports and regulates their family life.

Instead, our policies should be grounded in absolute equality, the idea that fathers are important parents too. Parents need the freedom to decide who cares for a child in the first year and the flexibility for families to share the maternity leave period as they see fit.

Increase the duration of paid parental leave

Internationally recognised evidence on the benefits to maternal child health and development suggests six months (26 weeks) paid parental leave should be provided, particularly to allow for breastfeeding. The World Health Organization, for example, recommends exclusive breastfeeding for at least four, but ideally up to, six months of age. Returning to work early can be a factor preventing exclusive breastfeeding, and therefore, has potentially negative health impacts for babies.

In its concluding observations on the eighth periodic report of Australia in 2018, the CEDAW Committee specifically recommended that Australia: 'guarantee a minimum of 26 weeks' paid maternity leave, which should be remunerated at the mother's actual revenue level, introduce at least an additional four weeks of paid leave to be taken by the supporting parent, and count the entirety of such periods of leave towards superannuation benefits'.

I call on the federal government to consider amending the PPL Act further to implement this recommendation and to:

- increase flexibility and provide more freedom for parents to decide who and how paid parental leave is taken;
- increase paid parental leave to a mandatory 26 week period and introduce an additional four weeks of paid leave for the supporting parent.

¹⁷ The Australian National University (NHMRC Centre for Research Excellence in the Social Determinants of Health Equity at the Menzies Centre for Health Governance, PHXChange at Research School of Population Health and Gender Institute) and Families Australia, in collaboration with scholars from the Work + Family Policy Roundtable, 'The First 10 Years of Paid Parental Leave – What Have We Learned and Where Are We Heading?', *Public Panel Discussion*, 22 August 2019, ANU Canberra.

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It has been ten years since the Paid Parental Leave Act 2010 was introduced by the Australian Government. Having reached this 10-year anniversary, an update of the scheme is timely, to bring Australia's system of paid parental leave up to date with modern parenting arrangements and workforce needs and to ensure that all parents have the support they need to be productive at work and to bond with their children.

I hope my input will be helpful and please do not hesitate to contact me should you require any further information.

Yours sincerely

Kate Jenkins
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