

IN THE MATTER OF THE COMMUNITY AFFAIRS LEGISLATION COMMITTEE

IN THE INQUIRY INTO THE PAID PARENTAL LEAVE AMENDMENT (FLEXIBILITY MEASURES) BILL 2020

SUBMISSION

ON BEHALF OF THE

WOMEN BARRISTERS ASSOCIATION (VICTORIAN BAR)

1. This submission is made on behalf of the Women Barristers Association (**WBA**) of the Victorian Bar, to the ‘Inquiry into the Paid Parental Leave Amendment (Flexibility Measures) Bill 2020 (**Bill**)’.
2. Amongst other things, the WBA aims to:
 - a. Promote awareness, discussion and resolution of issues which particularly affect women;
 - b. Identify, highlight and eradicate discrimination against women in law and in the legal system; and
 - c. Advance equality for women across the legal profession generally.
3. The WBA considers that these aims align with the expressed intention of the Women’s Economic Security Package (**WESP**) that the proposed Bill is intended to support, most importantly, increasing women’s workforce participation.
4. The WBA makes this submission because many of its members are affected by the manner in which the Paid Parental Leave Scheme (**PPL Scheme**) operates in Australia, a matter which is governed by the *Paid Parental Leave Act 2020 (Act)* that the Bill proposes to amend.
5. We note that the Bill is intended to assist ‘birth mothers ... who are self-employed’¹ and ‘women who may be running their own business’² which precisely describes female barristers who take parental leave.
6. The WBA appreciates that the Bill is intended to, amongst other things, provide more flexibility to birth mothers who are self-employed, in terms of the possible timing of the last six weeks of PPL. This intention is supported. However, the WBA considers the Bill does not go far enough.

¹ Explanatory Memorandum at page 1.

² Explanatory Memorandum at page 2 of Schedule 1.

7. The Committee will no doubt be aware that, because barristers are self-employed, they are not entitled to and do not receive any 'employer contributions' in the event of taking parental leave.
8. This means that if a barrister takes parental leave, it either represents:
 - a. A period of no income, if the barrister earned an adjusted taxable income in excess of the 'cap' of \$150,000 in the financial year prior to the taking of parental leave; or
 - b. A period in which the barrister will receive the mandated PPL of 18 weeks of minimum wage, if the barrister was earning less than \$150,000 in the financial year prior to the taking of parental leave, no matter how long the leave period is for.
9. In either scenario, the barrister takes a significant financial 'hit' in the event of taking parental leave.
10. In addition, not only is the barrister's income stream significantly affected by taking parental leave, but the barrister will continue to have business expenses throughout the parental leave period – such as chambers rent, annual professional subscriptions, and other business expenses, which also make taking parental leave challenging. Such costs are not typically incurred by regular employees of businesses.
11. The WBA is therefore concerned that, in contrast to other professions and other members of the labour force, the current PPL Scheme does not provide female barristers who take parental leave with adequate material assistance, nor does it provide a great deal of societal support for them or their child during this period.
12. In addition and in particular, the WBA is concerned about the impact of these circumstances on the ability of the Bar to attract and retain female barristers (noting the WBA considers it fundamental to the administration of justice and the advancement of our society and equality that women are not unduly disadvantaged in pursuing a career at the Bar). The WBA is concerned that the above circumstances may give rise to personal decisions to either delay coming to the Bar, or avoid coming to it completely, because of the disadvantageous situation in which a barrister would find themselves upon having a child. Or alternatively, that decisions would be made to delay or avoid having a child, where that would otherwise be a person's desire.
13. A further structural disadvantage inbuilt into the current PPL scheme stems from the fact that barristers are often the primary income earner in their families. In the event that a female barrister opts to take the principal parental leave and the female

barrister earned in excess of the income cap (\$150,000) in the previous year, her family will revert to only the lower income of her male partner. This is to be contrasted with the position of a male barrister, whose family will be comparatively better off by the retention of the predominant income earner, who is not taking parental leave. Put simply, the sole focus of the income test on the birth mother's individual income means that the families of female barristers are in a comparatively worse position than the families of male barristers due to parental leave circumstances.

14. The scheme is designed so that where the father earns more than \$150,000 and the mother does not, the family can access PPL where the woman is the primary carer, however this does not apply if the gender roles are reversed. Families where the primary breadwinner is female and the primary carer is male are disadvantaged.
15. We further note in relation to the contextual circumstances of barristers (as women running their own business) that:
 - a. Barristers pay a significant rate and amount of tax. Because barristers are not 'companies' they are taxed at an individual marginal income rate, which can be as high as 45 per cent.
 - b. Barristers are responsible for their own superannuation contributions, and do not receive any entitlements for annual leave or sick pay.
 - c. Barristers are personally liable for the ongoing overheads they incur while on leave. Capped and limited subsidies are available in respect of chambers rent and Bar subscriptions at the Victorian Bar by way of the Victorian Bar's Parental Leave Policy.³ Note this is a subsidy on ongoing costs, rather than any kind of positive remuneration. In the experience of the WBA, the Parental Leave Policy of the Victorian Bar is vital to ensuring that barristers who take parental leave, and therefore do not have an income for many months (or years) do not have to 'give up' their chambers, which are often difficult to secure, and are often central to the viability of a barrister's practice. But the Policy is still limited in its effect.
 - d. Barristers obtain work by being briefed in individual matters. Building up a case load upon returning to work after a period of parental leave can require an additional period of time to the leave itself, during which income is not the same as it was prior to taking leave. It also involves an additional degree of effort to return to work and build up a practice after a period of parental leave, at precisely the time when such business development effort is quite challenging to achieve due to the need to learn a new and difficult skill: that of

³ <https://www.vicbar.com.au/sites/default/files/1.7.7%20Parental%20Leave%20Policy.pdf>

managing child care and domestic duties with resuming one's practice. There are also societal perceptions of 'working mothers' to contend with; including the perceptions of clients and solicitors around relative unavailability or unwillingness to work in the same way as a male barrister might, upon return to work, which can make attracting the same type of briefs one was receiving before parental leave more difficult.

16. Lastly, we note that there are obvious inconsistencies in the Australian Government's family assistance measures, which disadvantage women barristers. Notably, eligibility for the Child Care Subsidy (CCS) is based on *family* income (not individual income) and gradually tapers down as income rises (with up to a maximum of \$352,453). This stands in clear contrast to the PPL Scheme, which only considers individual income and has a hard threshold for eligibility at a much lower level of income. Therefore, in addition to the PPL's structural disadvantages described above, the WBA is concerned that the inconsistent design features of the PPL Scheme make it less effective in promoting gender equality in Australian workplaces than the CCS.
17. The WBA therefore suggests that changes should be made to the Act (and the Bill) to achieve a PPL Scheme where:
 - a. The 'minimum wage' is raised in amount;
 - b. The period of time for which birth mothers can access the PPL subsidy is extended in duration;
 - c. The income test is changed from being based on an *individual's* income to being based on *family* income, aligning the PPL Scheme with the CCS and other family assistance measures.
 - d. The income test is changed from being a fixed cut off, to an arrangement whereby support is gradually tapered down as income rises, similar to the approach used in the CCS, with the maximum income for eligibility in the PPL Scheme aligned with that of the CCS (\$352,453);
 - e. Thresholds for the PPL Scheme are adjusted in a way that ensures that there is no disadvantage for primary income-earning female barristers vis-à-vis the current system. For example, for family income of:
 - i. Less than \$299,999: eligibility for 100 per cent of the value of the minimum wage;⁴

⁴ \$299,999 being the maximum amount of family income where a female barrister could earn the maximum eligible individual income under the current PPL Scheme (\$150,000) and still be primary income earner in that family.

- ii. \$299,999 to \$352,453: Between 50 per cent and 20 per cent of the minimum wage, with the percentage falling by 1 per cent for every \$1,748 of family income;
 - iii. Above \$352,453: zero support.
- f. For self-employed persons taking parental leave, there is additional and specific financial support over and above the standard PPL Scheme to account for their unique standing in the workforce.
18. These changes would be beneficial for mothers, their children, their families, and society, and would increase women's more meaningful engagement in the paid workforce by ensuring that all career options are legitimately able to be contemplated and pursued, on an equal footing with men, and to the overall benefit of society.
19. On a related issue, the WBA supports the introduction of government initiatives to encourage fathers to take more parental leave. 'Use it or lose it' type entitlements that require fathers to take a certain amount of leave within a certain time period of a child's birth, would support female barristers faced with returning to work after a period of parental leave, and be to the benefit of children and society overall.
20. The WBA thanks the Committee for the opportunity to make this submission, which it hopes has been of assistance in highlighting some of the specific issues faced by barristers and in particular female barristers who take parental leave. We would be happy to discuss any of these matters further should that be considered to be of assistance.

Emma Pepler
Counsel
Owen Dixon West Chambers
Women Barristers Association Committee Member
On behalf of the Women Barristers' Association

