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of Australia

The National Voice of Policing

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## **Paid Parental Leave Amendment (Flexibility Measures) Bill 2020**

Thank you for the opportunity to make a submission to the *Paid Parental Leave Amendment (Flexibility Measures) Bill 2020*. The Police Federation of Australia (PFA) is the national body representing the professional and industrial interests of Australia's more than 63,000 police officers, of which approximately one third are women, across all jurisdictions.

The PFA supports the general thrust of the proposed Bill, however, we ask that the Committee consider the following issues.

The PFA has been a long-term strong supporter of the Paid Parental Leave Act 2010, recognising that the Paid Parental Leave Scheme (PPL) is one of a range of measures that we recognise as being essential in supporting parents and encouraging greater female workforce participation in policing.

Since 2013, the PFA has made a number of submissions to various Inquiries about like issues. They include –

- Gender Segregation in the workplace and its impact on women's economic equality (February 2017)
- Fairer Paid Parental Leave Bill 2016 (December 2016)

- Economic Security of Women in Retirement (October 2015)
- Fairer Paid Parental Leave Amendment Bill 2015 (August 2015)
- Childcare and Early Learning Draft Report (September 2014)
- Public Inquiry into Childcare and Early Childhood Learning (January 2014)
- Supporting Working Parents: Pregnancy and Return to Work National Review (January 2014)
- Paid Parental Leave Review (June 2013)

In many of those submissions we identified a number of key factors that had a significant impact, specifically related to policing, including –

- The challenges accessing flexible working arrangements. Police services do not have the same degree of workplace flexibility found across many other industries;
- Inadequate access to flexible and affordable childcare;
- The high risk and unpredictable nature of police work;
- Nonstandard patterns of police work;
- In many police families, both parents are members of the police. This again reduces the flexibility available within families to juggle carer responsibilities, careers and financial pressures; and
- Workplace discrimination.

For example, the 2015 Review conducted by the Victorian Equal Opportunity and Human Rights Commission, commissioned by the Victoria Police found:

*“The Review amassed considerable evidence of women’s experience of direct and indirect discrimination in Victoria Police in relation to starting families and accessing flexible working arrangements”<sup>1</sup>.*

The South Australia Police (SAPOL) commissioned the Equal Opportunity Commission (EOC) of South Australia to undertake a similar Independent Review into Sex Discrimination, Sexual Harassment and Predatory Behaviour in South Australia Police. This 2016 Report clearly identifies similar issues.

*“Women felt particularly discriminated against when they were pregnant and on their subsequent return to work. Many felt they had to choose between being a parent and a rewarding career, often having to give up rank, pay and previously-held specialized roles in order to have their requests for part-time work accommodated on their return from maternity leave”<sup>2</sup>*

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<sup>1</sup> Victoria Equal Opportunity & Human Rights Commission. *Independent Review into sex discrimination and sexual harassment, including predatory behaviour in Victoria Police. Phase One Report 2015* P 197

<sup>2</sup> South Australian Equal Opportunity Commission. *Independent Review into sex discrimination and sexual harassment, including predatory behaviour in South Australia Police.* P6

For women in the Australian Federal Police their story was no different from the above. As evidenced in the 2016 Report by Elizabeth Broderick, *Cultural Change: Gender Diversity and Inclusion in the Australian Federal Police*.

*“For women in the AFP in particular, the need to combine work with family disproportionately impacts on their ability to progress through their career and access leadership opportunities. Unlike men, many women in the AFP believe they face a dual choice between a career and family”<sup>3</sup>*

### **Comments specifically related to the Paid Parental Leave (Flexibility Measures) Bill 2020:**

As previously indicated, the PFA supports the general thrust of the Bill, specifically as it relates to expanding the flexible access for up to two years. The PFA and its state, territory and federal branches all agree, that the choice of employment options for working parents is often constrained, especially in policing, so improved policies that help employees to integrate work and care, and share caring responsibilities is welcomed. We note that the Bill will complement a soft return to work from parental leave provisions. In particular, we note, Victorian Police and Protective Service Officers, following recent agreements, will be able to choose the days that they work and when they work for up to six weeks upon return from parental leave.

Whilst we indicate our broad support for the Bill, we would like to see the 30-day flexible PPL being provided, in addition to the current 18 week entitlement in order for women to recover from childbirth and return to work. Police and Protective Service Officers do not have relatively safe desk jobs but rather, are exposed to assault and injury routinely while at work. Time to recover from childbirth is imperative for women in our profession for this reason.

We note the following key issues with the Bill and propose the following solutions that might address them:

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<sup>3</sup> Elizabeth Broderick. *Cultural Change: Gender Diversity and Inclusion in the Australian Federal Police*. Report 2016. P8

### **Employers should administer payment for the flexible PPL days**

The requirement that claims specify which days will be flexible PPL days may not work in practice, particularly for shift-workers.<sup>4</sup> For example, after parental leave, police officers and protective services officers must complete their operational and safety tactics training in order to be operational. Members may swap their rest days/part-time days to do the training since available timeslots are hard to come by and members are eager to get back to work. Members may also take additional shifts when they can because they are grateful for any flexibility they have been given.<sup>5</sup> It is also a common feature of police work that shifts and duties are unpredictable, and subject to variation. It is unfortunately common for part-time arrangements to be negotiated right up to member's return to work date, so they are unable to apply for flexible PPL days in a timely manner as the Bill envisages (see further below). It appears that a claim can be amended before a payability determination is made, however it is unclear how much time this will be in practice and it seems to be an administrative burden that would prevent the uptake of flexible PPL days in practice. While a claim can be backdated up to 42 days where a claim has not been made, it would be better if it was automatic given the stress of trying to balance shift work and a new family.

Although the Bill seeks to minimise the administrative burden on employers by requiring the Secretary to administer the flexible PPL days, in our view it makes sense for employers of shift workers to administer the payment for a smoother process.

### **Remove the 90-day cap eligibility requirement for PLP on a flexible PPL day**

The Bill makes a person ineligible to claim flexible PPL days where they exceed 90 days of PLP including dad and partner pay (DAPP). Since DAPP is 'use it or lose it' by design, this is a barrier for men to become primary caregivers of a child and pigeonholes women into that role to use the full entitlement of the PPL. The largest barrier to women's full workforce

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<sup>4</sup> Parental Leave Amendment (Flexible Measures Bill 2020 (Cth) item 116.

<sup>5</sup> For research on the experience of requesting flexible working arrangements, see Rae Cooper and Marian Baird, 'Bringing the "right to request" flexible working arrangements to life: From policies to practices,' (2015) 37(5) *Employee Relations* 568.

participation is the rate of participation of men in unpaid domestic work at home. Australian women perform on average 311 minutes of unpaid work each day as opposed to men's 171.6 minutes.<sup>6</sup> For women to be more equally represented in the workplace, our work-family policies need to address inequalities at home. Swedish research has shown that for each month that a father stayed on leave, the mother's earnings increased by 6.7 percent and men are more likely to be involved in care afterwards.<sup>7</sup> Consequently, removing this cap would promote fatherhood and gender equality because paid parental leave becomes gender nonspecific.

### **Broaden the eligibility for PPL to permanent carers/foster parents**

We support extending the flexible PPL to secondary and tertiary claimants of the birth and adoption of a child. However, we propose that PLP should also extend to carers of a newborn through care orders. The current eligibility requirements for tertiary claims provide a threshold for care of the child at 26 weeks and excludes a person or their partner from the PPL scheme if they have been entrusted with the care of a child from a decision by a state or territory child protection agency. Similarly, eligible parents must use the PPL period in the first 12 months following the birth or adoption.

Recently a member of the Victoria Branch of the Police Federation of Australia unexpectedly received custody of her newborn niece through the Department of Health and Human Services. She was first given an interim accommodation order which was then extended to 12 months. At short notice this member had to take carer's leave and annual leave to take care of the baby. This is not the first example of this within our membership. When the entitlement to PPL attaches to a newborn or adoption, it is incongruous with the intention of the Act to exclude care of newborns through care orders from eligibility for PLP.

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<sup>6</sup> OECD, *Time spent in paid and unpaid work, by sex*, 2014 accessed at <<https://stats.oecd.org/index.aspx?queryid=54757>>.

<sup>7</sup> Lisa Haas and Tine Rostgaard, 'Fathers' right to paid parental leave in Nordic countries: consequences for the gendered division of leave', (2011) 14 *Community, Work and Family* 177.

### **Increase the Parental Leave Pay (PLP)**

The PLP needs urgent review in order for the Bill to achieve its aim to increase women's workforce participation and to provide wider options to families under the PPL scheme.<sup>8</sup> For most families, it is economically sensible for the woman to take the PPL. The gender pay gap has hovered between 13.9% and 19% for two decades, meaning that pay inequity in a partnership would encourage the mother to care for the children at home.<sup>9</sup> Women also perform higher levels of part-time and casual work, making up 71.6 percent of the part-time workforce and 54.7 percent of casual employees.<sup>10</sup> For these women, the national minimum wage is likely to be higher than their pre-birth wage so the choice of who takes the PLP would be a relatively easy one. We should recognise that it is a public good to allow workers to give and receive care<sup>11</sup> and not view it as another government handout. In addition, it is imperative for women's economic equality that superannuation is paid on the PLP to stop the ongoing detriment women experience while providing care.

### **Strengthen the right to request flexible working arrangements provision in the *Fair Work Act 2009 (Cth)***

To ensure the uptake of flexible PPL days, Parliament must strengthen employee access to flexible work arrangements. The *Fair Work Act 2009 (Cth)* (FW Act) provides employees with at least 12 months' continuous service with the right to request flexible working arrangements in a range of circumstances, including where the employee is a parent or is responsible for the care of a child who is school aged or younger.<sup>12</sup> Parents returning from parental leave can also request part-time work. The employer can refuse on reasonable business grounds.<sup>13</sup> The employee's rights however are limited to requesting as the FW Act

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<sup>8</sup> Explanatory Memorandum, Paid Parental Leave Amendment (Flexibility Measures) Bill 2020 (Cth), p 1.

<sup>9</sup> Workplace Gender Equality Agency, *Australia's Gender Pay Gap Statistics*, <<https://www.wgea.gov.au/data/fact-sheets/australias-gender-pay-gap-statistics>>.

<sup>10</sup> KPMG, *She's Price(d)less: The economics of the gender pay gap*. Report prepared for the Diversity Council of Australia and the Workplace Gender Equality Agency, October 2016, p 15.

<sup>11</sup> Paula England, 'Emerging Theories of Care Work' (2005) 31 *Annual Review of Sociology* 381, 381.

<sup>12</sup> *Fair Work Act 2009 (Cth)* s 65.

<sup>13</sup> *Fair Work Act 2009 (Cth)* ss 65(5), (5A).

precludes challenging a refusal.<sup>14</sup> This does little to incentivise employers to create family-friendly workplaces. Unless an employee has a right to challenge the refusal under their workplace agreement, which is a rare entitlement in a workplace agreement, an employee effectively has no opportunity to have the reasonableness of the refusal reviewed.

As an example, a Victorian Police Officer or Protective Services Officer can dispute Victoria Police's reasonable business grounds for refusing a request for part-time work at the Fair Work Commission, under their enterprise bargaining agreement. However, many members returning from parental leave report feeling stressed when negotiating part-time work on parental leave. It is not uncommon for our members to spend a significant proportion of their parental leave negotiating their part-time arrangement. One member was told six weeks' postpartum that her station does not offer part-time work and spent her parental leave trying to find other employment to accommodate her parenting responsibilities. While the Victoria Branch of the Police Federation of Australia successfully helped her negotiate her part-time arrangement, it was only agreed upon with senior management a few days before her return to work date. This scenario is not an uncommon one for our members.

There have been repeated calls for reform to flexible working arrangements provisions to increase access for men and women.<sup>15</sup> This would be buttressed by the provision of arbitration powers to the Fair Work Commission for disputed section 65 flexible workplace applications.

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<sup>14</sup> *Fair Work Act 2009* (Cth) s 44(5).

<sup>15</sup> For example, Parliament of Australia, *Gender segregation in the workplace and its impact on women's economic equality*, Finance and Public Administration References Committee, Senate Committee Report, June 2017; The Work + Family Policy Roundtable, *Work Care & Family Policies – Election Benchmarks 2019* (The Woman + Work Research Group, The University of Sydney, 2019);

The PFA would be happy to provide further information, including appearing before the Committee, if that was desired.

Sincerely yours

Scott Weber  
Chief Executive Officer