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Senate Community Affairs Legislation Committee

Inquiry into the Paid Parental Leave Amendment (Improvements for Families and
Gender Equality) Bill 2022
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Authorisation

This submission has been authorised by the NFAW Board

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Inquiry into the Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022

This submission is being made by the National Foundation for Australian Women (NFAW).

NFAW is dedicated to promoting and protecting the interests of Australian women, including intellectual, cultural, political, social, economic, legal, industrial and domestic spheres, and ensuring that the aims and ideals of the women's movement and its collective wisdom are handed on to new generations of women. NFAW is a feminist organisation, independent of party politics and working in partnership with other women's organisations.

Recommendations

The Government's commitments to extend PPL to 26 weeks should be included in the Bill.

As the overall length of PPL periods increase to 2026, fathers and partners should be actively encouraged to access the PPL provisions, through effective and targeted campaigns, and in particular by increasing the 'use it or lose it' period.

The Bill should provide that, as the PPL scheme extends to 26 weeks by 2026, concurrent leave should be restricted to two weeks, while the reserved period should extend to six weeks for each parent.

The Government should increase the rate of pay either to wage replacement or the average weekly ordinary time earnings, whichever is the lesser.

The Bill should be amended to include Superannuation Guarantee payments on parental leave payments, as the scheme was initially envisaged.

The Superannuation Guarantee (Administration) Act 1992 should be amended to include Paid Parental Leave as ordinary time earnings.

As part of the consequential amendments in the Bill, the NES should be amended to provide that a person who has been employed for 10 out of the preceding 13 months has the right to return to work at the same or an equivalent position as the position they held before going on leave.

The Australian Government should formally ratify the ILO Maternity Protection Convention, 2000 (No. 183).

The Bill should include a provision requiring a review of the legislation to assess progress towards the objects of the Act, in particular the gender equality objects, after three years of operation of the Bill.

Discussion

Introduction

NFAW is a strong supporter of Paid Parental Leave (PPL), recognising it as one of the essential building blocks of a workplace relations, tax and transfer system that should operate consistently to

promote gender equality and encourage more equal sharing of paid and unpaid work within Australian families.

Gender equality is a key object of the *Paid Parental Leave Act 2010*, and of the Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022 (the Bill), which provide that the scheme is intended to, amongst other objects:

- signal that taking time out of the paid workforce to care for a child is part of the usual course of life and work for both parents; and
- promote equality between men and women and balance between work and family life.¹

NFAW welcomes the Bill as another step forward in the painstakingly slow progress towards a good practice paid parental leave scheme for this nation. This process began in earnest over two decades ago with the launch, in 2002, of the Australian Human Rights Commission's proposal, *A Time to Value*.² The first scheme began in 2011 with the passage of the 2010 legislation, following the Productivity Commission's 2009 Inquiry Report, *Paid Parental Leave: Support for Parents with Newborn Children*.³ Successive governments have reviewed and amended the legislation several times, with this Bill representing the next stage.

The Bill takes Australia one further step towards good international practice, and reflects many of the recommendations made by NFAW and other women's and parenting organisations. The amendments do not complete the job, however, and care will need to be taken in the implementation of the provisions to ensure the objects are advanced.

The Bill makes several amendments to the legislation.

- **Removing Dad and Partner Pay:** The Bill removes Dad and Partners Pay (DaPP), making PPL accessible for 20 weeks for each birth, with only a reservation of two weeks for each parent. Single parents will now be able to claim the full 20 weeks.
- **A gender neutral claiming approach:** The Bill introduces gender-neutral claiming to allow either parent to claim PPL, and families will be able to decide who will claim first and how they will share the entitlement.
- **Leave in single-day blocks and limits on concurrent leave:** The Bill introduces a new capacity for leave to be taken in blocks of one day at a time. Parents will be able to take two weeks of Parental Leave Pay at the same time. This does not significantly change the current situation as currently Dad and Partner pay is able to be taken concurrently with parental leave pay.
- **Family, as well as individual, income limits:** The Bill introduces a new family income limit of \$350,000 adjusted taxable income in addition to the existing individual income limit.⁴
- **Provide direct eligibility to fathers and partners:** Fathers and partners' eligibility will not depend on the mother or birth parent's technical eligibility.

¹ s 3A(1B)(a) and (b) *Paid Parental Leave Act 2010* (Cth) and s 3A(2) (a) and (b) Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022.

² Australian Human Rights Commission *A Time to Value* AHRC 2002 Sydney: <https://humanrights.gov.au/our-work/sex-discrimination/publications/time-value-proposal-national-paid-maternity-leave-scheme>.

³ Productivity Commission 2009, *Paid Parental Leave: Support for Parents with Newborn Children*, Report no. 47, Canberra <https://www.pc.gov.au/inquiries/completed/parental-support/report/parental-support.pdf>.

⁴ See also: Services Australia "*Budget October 2022-23: Boosting Parental Leave to Enhance Economic Security, Support and Flexibility for Australia's Families*" Media release 25 October 2022 <https://www.servicesaustralia.gov.au/sites/default/files/2022-10/budget-2022-23-october-10.pdf>.

While not reflected in the Bill, the Government has announced that, starting from 1 July 2024, Parental Leave Pay will increase by 2 weeks each year until 1 July 2026 when it will reach 26 weeks.⁵ The current 18-week arrangements were intended to be a start in building a stronger scheme, so NFAW welcomes this progressive increase to 26 weeks. This provision has long been outstanding in the Australian scheme. While it remains well below the OECD average,⁶ it is clearly a strong advance.

While a very welcome commitment, NFAW would have preferred to have seen this commitment legislated in the current Bill, with a forward schedule of changes including an increase in the proportion reserved to each parent.

Recommendation: The Government's commitments to extend PPL to 26 weeks should be included in the Bill.

This is important context for considering the Bill, and NFAW will consider the provisions of the Bill in the light of this proposal.

20 weeks PPL

One of the key issues for the Australian PPL scheme is that it has had limited utility in supporting new parents to better share care for newborns and children. Most new fathers have not accessed DaPP and Australia has rated poorly in providing 'use it or lose it' provisions to encourage men to participate in the care of their children. For example, as the Regulation Impact Statement notes, "[i]n 2020-21, only 89,784 fathers and partners received DaPP (this accounts for only around 30% of births each year, and around 35% of all PPL claimants)".⁷

It is, therefore, positive that this Bill seeks to remove barriers to men taking paid parental leave by rolling all the parental leave days into a single allocation, with two weeks reserved for each parent on a 'use it or lose it' basis.

NFAW notes the Bill is intended to "... make the payment more accessible, more flexible and gender-neutral."⁸ More important than being gender neutral, however, is the importance of making sure the PPL scheme is gender **sensitive**. This would require it to take account of the gender dynamics operating commonly in Australian households, and provide 'nudges' or incentives to families to share paid and unpaid work more equally.

The ABS released its long awaited Time Use Survey in October 2022, updating earlier surveys, the most recent in 2006. Disappointingly, little progress has been made towards more equal sharing of paid and unpaid work in Australian families:

"On average, females spent 4 hours and 31 minutes a day doing unpaid work activities. Males spent over an hour less on these activities, averaging 3 hours and 12 minutes a day.

⁵ Services Australia "*Budget October 2022-23: Boosting Parental Leave to Enhance Economic Security, Support and Flexibility for Australia's Families*" Media release 25 October 2022.

<https://www.servicesaustralia.gov.au/sites/default/files/2022-10/budget-2022-23-october-10.pdf>.

⁶ OECD Family Database, *oe.cd/fdb* Chart PF2.1.D. Reserved and shareable paid family leave entitlements

https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf.

⁷ Regulation Impact Statement: Boosting Parental Leave to Enhance Economic Security, Support and Flexibility for Australian Families 2022, p 9.

⁸ Explanatory Memorandum, p 2.

Less than half of males (42 per cent) spent time on housework, compared to 70 per cent of females. Mothers spent an average of 3 hours and 34 minutes participating in child care activities a day, while fathers spent 2 hours and 19 minutes.⁹

As the Grattan Institute notes, “[t]he gender split in unpaid and paid work is particularly prominent in Australia”¹⁰ and points out that “[t]his is one of the biggest labour divisions in the developed world, and surveys suggest it isn’t working well for either men or women”.¹¹

It is clear that more needs to be done to encourage families to better share unpaid work. Paid parental leave should encourage men to be capable and confident primary carers of their children. NFAW therefore recommends that, as the overall length of PPL periods increase to 2026, fathers and partners are actively encouraged to access the PPL provisions, through effective and targeted campaigns, and in particular by increasing the ‘use it or lose it’ period.

It is important that fathers are encouraged to care for their babies as the primary carer, rather than being present while the mother takes primary care of the baby. Experience shows that it is when fathers are ‘home alone’ with their babies that they take greater responsibility in the long term for the care of their children and are more likely to more equally share care and unpaid work of the household. This is discussed further below in the section on concurrent leave.

As the overall length of PPL periods increase to 2026, fathers and partners should be actively encouraged to access the PPL provisions, through effective and targeted campaigns, and in particular by increasing the ‘use it or lose it’ period.

Removing any period reserved for the mother or birth parent provides families with more flexibility to use PPL to suit their circumstances.

Collapsing all parental leave into a single payment may enable non-birth parents to take a more active role, and birth parents may be able to access more generous employer funded paid parental leave. This is particularly likely to suit families where the birth parent is the higher income earner. However, it is important that people who have given birth are able to take adequate time to heal from the trauma of giving birth and, if possible, to establish breastfeeding with their new baby.

In this regard it is important to remember that birth is not a gender neutral process but has a different toll for those who give birth. Reserving only two weeks for the mother or birth parent falls well short of the ILO Convention requirements and of OECD comparator nations. The ILO Maternity Protection Convention, 2000 (No. 183) (‘ILO C183’) provides for 14 weeks of maternity benefit.¹²

⁹ ABS “Females do more unpaid work, males do more paid work” Media Release 7/10/2022
<https://www.abs.gov.au/media-centre/media-releases/females-do-more-unpaid-work-males-do-more-paid-work> .

¹⁰ Wood, D., Emslie, O., and Griffiths, K. (2021). Dad days: how more gender-equal parental leave would improve the lives of Australian families. Grattan Institute, Fig 2.5, p 17 <https://grattan.edu.au/wp-content/uploads/2021/09/Dad-Days-Grattan-Institute-Report.pdf>.

¹¹ Wood, D., Emslie, O., and Griffiths, K. (2021). Dad days: how more gender-equal parental leave would improve the lives of Australian families. Grattan Institute, p 3 <https://grattan.edu.au/wp-content/uploads/2021/09/Dad-Days-Grattan-Institute-Report.pdf>.

¹² https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C183

While Australia has not yet ratified this Convention,¹³ it provides the relevant international benchmark. The OECD separates its analysis into periods of maternity leave, aimed at supporting mothers and birth parents to recover, and caring and general parental leave to support both parents to care for the baby at home. Across the OECD, "...mothers have an individually reserved entitlement of on average 24.6 weeks..."¹⁴

While in practice, in Australia it is almost certain that women and other birth parents will continue to take the bulk of the available parental leave, it is important that the design ensure mothers and birth parents are able to access sufficient time to recover from both and, if possible, to establish breastfeeding.

It will be important to build into the Bill a provision that the implementation and application of these provisions be subject to a review in three years, as the initial Paid Parental Leave Act did in 2010 by requiring a review in three years. This is discussed further below.

A gender neutral claiming approach

The Bill removes the notion of 'primary', 'secondary' and 'tertiary' claimants. It allows each parent to apply for leave, with the leave allocation applying to each birth. This allows families to decide who will claim first and how they will share the entitlement.

NFAW strongly supports this more gender-neutral claim process, and in particular supports the Bill's removal of the hierarchy between primary claimants – mothers and birth parents – and secondary claimants, generally fathers. Not only is this simpler and more efficient, it sends an appropriate signal about the direct importance of the role of fathers and partners in the lives of newborns.

Leave in single-day blocks and limits on concurrent leave

NFAW welcomes the provisions that will enable parents to take PPL in blocks of one day at a time. It reflects recommendations we have made repeatedly over the last decade.

Currently, the requirement to take leave in a single block has the disadvantage that if a parent returns to work, they forfeit the balance of their leave. The additional flexibility available under the Bill will assist parents who continue to participate in the workforce while allowing them to spend time bonding with their child. It will be useful to support women to maintain a useful connection with their workplace. Currently the parent's options are limited to 10 Keeping In Touch days, which are often insufficient to maintain meaningful engagement with clients and ongoing projects, and they may return to work, foregoing PPL entitlements.

This provision will also enable parents to share leave more effectively, and to 'mix and match' leave arrangements, particularly where parents are using different forms of leave to extend the time at home with a baby.

However, together with the provision that only two weeks of the statutory maternity pay are required to be reserved for the birth parent, this provision as currently drafted is potentially problematic for enabling mothers and other birth parents to recover from childbirth. Clearly the Government expects that parents will mix paid parental leave under this legislation with employer-

¹³ In fact, only 43 nations have ratified ILO 183:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300::NO:11300:P11300_INSTRUMENT_ID:312328:NO.

¹⁴ OECD Family Database, [oe.cd/fdb](https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf), p 9 https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf.

funded entitlements and other leave to best suit their own circumstances. However, on its face, the Bill would mean Australia would not meet the requirements of ILO 183, and would not ensure mothers and other birth parents have the opportunity to spend a single block of time with their baby, recovering from birth and establishing breastfeeding, if possible, which is the intention of ILO 183.

A review of the legislation in three years will enable an assessment of whether mothers and birth parents are taking an adequate block of PPL to enable their recovery from birth and bonding with the newborn. It may be important to reinstate some period of leave reserved for mothers and birth parents to provide recovery time.

While removing the DaPP, which could be taken concurrently with PPL, the Bill retains a two week period that can be taken by both parents concurrently. The Bill enables the Rules to provide additional flexibility, for example where “... the mother is unwell following the birth, and the couple prefer that the father also be paid parental leave pay for a higher number of days to allow him to stay home and provide support.”¹⁵

NFAW supports this sensible amendment to provide greater flexibility to support new families to arrange leave as best suits them. It is important that families have some time to adapt to their new status, together.

However, as noted above, the PPL scheme is intended to play a role in encouraging fathers, in particular, to take primary responsibility for care for newborns. As the Bill recognises, it is this ‘home alone’ responsibility that gives men the confidence to more equally share care with their partners and helps create more equal gender norms. The proposed arrangements do not change the current dynamic in which fathers are able to take DaPP concurrently with their partner’s parental leave. NFAW considers that as the PPL scheme extends to 2026, concurrency should continue to be limited to two weeks, while reserved weeks are extended to six weeks for each parent.

Recommendation: The Bill should provide that, as the PPL scheme extends to 26 weeks by 2026, concurrent leave should be restricted to two weeks, while the reserved period should extend to six weeks for each parent.

Family, as well as individual, income limits

Clause 30 of the Bill provides that

[t]o satisfy the income test, the person’s income for a particular income year must not be more than either the individual PPL income limit (which is \$150,000 until 30 June 2021 and then indexed) or the family PPL income limit (which is \$350,000 until 30 June 2024 and then indexed).

This addresses the issue where the birth parent is the higher income earner and the co-parent takes the bulk of the leave. The provision will be of most benefit to families where the woman or birth parent is the higher income earner and regularises income tests for different types of family.¹⁶

¹⁵ Explanatory Memorandum, p 23.

¹⁶ See also Regulation Impact Statement, p 11.

NFAW welcomes the approach in the Bill to regularise income tests for different family arrangements. Although we have some concern at the high family income levels able to access government funded PPL, we understand the technical reasons for this outcome and on balance, NFAW supports this recommendation.

Provide direct eligibility to fathers and partners

The Bill provides that fathers and partners' eligibility will not depend on the mother's or birth parent's technical eligibility around income test, residency requirements or is serving a newly arrived resident's waiting period.

NFAW supports this amendment as it will again reinforce the message that "...taking time out of the paid workforce to care for a child is part of the usual course of life and work for both parents".¹⁷

Outstanding issues

The Bill addresses a number of long-repeated recommendations made by NFAW over the last decade. However, these amendments do not finish the job of delivering Australia a good practice PPL Scheme. A number of recommendations NFAW has made remain outstanding. We would like to see these reflected in the Bill.

Level of payment: First, the level of payment remains at minimum wage level. The OECD calculates that this provides average payment of 43 per cent of the mother's pay, very much on the lowest side of payments compared to other OECD nations, many of which now provide for full replacement wages. This falls below the requirements in ILO 183.

We note that ILO 183 establishes the payment rate as two thirds of the usual wage earned by the parent. In Australia the rate of payment is wage replacement to the level of the minimum wage. Given the pay equity gap in Australia and the fact many women taking PPL are already working part time, for many women, the ILO standard would be met under the current arrangements. However, we are unable to identify current modelling of this benchmark.

It is also useful to consider whether the current minimalist levels of PPL are satisfactory, particularly as we know that many men are unwilling to take leave unless it is paid at full replacement rates. Most men would experience a significant cut in income during a period of PPL. It is worth noting that the Employer Support Payment Scheme, which provides financial assistance to defence reservists, is paid at the average wage, rather than the much lower minimum wage. There is a strong argument to be made that government support for families caring for new babies is equally important as reservist engagement.

NFAW reiterates that the Bill should increase the payment rates to Average Weekly Earnings, or the parent's actual earning, whichever is the lesser. Not only would this better reflect good practice internationally and meet the expectations of ILO 183, it would also encourage more men to take PPL.

We also note that some employers provide access to paid leave to new parents on a gender neutral basis, and/or allow top up payments to Parental Pay. This should be encouraged through appropriate incentives to employers providing such top ups.

¹⁷¹⁷ Clause 1 (3A)(2)(a).

Recommendation: The Government should increase the rate of pay under to wage replacement or the average weekly ordinary time earnings, whichever is the lesser.

Superannuation: The Productivity Commission proposal for paid parental leave recommended that PPL be subject to the superannuation guarantee (SG) levy. This was not incorporated in the PPL legislation as initially passed, with the Government of the day making a commitment to review the application of SG when the scheme was reviewed.

The gender superannuation gap reflects the gender pay gap, which is influenced by lower pay rates as well as differences in women's work patterns.¹⁸ Specifically women are more likely than men to take a career break or reduce their working hours to give birth to and care children, and this happens relatively early in their working life. Not only do women lose the value of contributions over this period, but they lose the compound returns on that investment over the period to retirement.

Under the current law, SG is not payable on paid parental leave as it is not classified as ordinary time earnings, although where a person is entitled to paid leave under an enterprise agreement the EA usually also includes SG on the leave payment. However, where a person receives PPL under the government scheme, SG is not paid. This results in a further inequitable outcome between parents relying on the Government scheme and those who receive employer support.

Recommendation: The Bill should be amended to include Superannuation Guarantee payments on Parental Leave Pay as the scheme was initially envisaged.

Recommendation: *The Superannuation Guarantee (Administration) Act 1992* should be amended to include Paid Parental Leave as ordinary time earnings.

Consistency between the PPL Scheme and the Fair Work Act: There remains a mismatch in eligibility for unpaid leave under the National Employment Standard (NES) and eligibility for paid leave under the PL Scheme. Eligibility for unpaid parental leave under the NES requires a minimum 12 months employment; whereas eligibility for the leave payment depends on the primary carer having been employed for 10 out of the preceding 13 months. This means that some women who receive the payment have no right to return to work after their time off.

Recommendation: As part of the consequential amendments in the Bill, the NES should be amended to provide that a person who has been employed for 10 out of the preceding 13 months has the right to return to work at the same or an equivalent position as the position they held before going on leave.

ILO 183

NFAW notes that Australia is not a signatory to the ILO Maternity Protection Convention, 2000 (No. 183) ('ILO 183'). We recommend that Australia sign onto that Convention.

¹⁸ Austen, S., and Mavisakalyan, A., (2018) 'Gender gaps in long-term earnings and retirement wealth: The effects of education and parenthood', *The Journal of Industrial Relations*, vol. 60, no. 4, pp. 492-516.

Recommendation: The Australian Government should formally ratify the ILO Maternity Protection Convention, 2000 (No. 183).

Conclusion

Australia's paid parental leave scheme has always been complicated because it attempts to juggle multiple social policy and economic aims. At times, within a limited scheme, these objects work at cross purposes. NFAW recognises that, within a 20 week scheme, it is difficult to ensure that mothers and other birth parents are able to recover from childbirth and establish, if possible, breastfeeding, that babies are able to receive care from both parents in their infancy, and that fathers are encouraged to care directly for their babies and grow their skills as an engaged parent.

NFAW commends government for focussing, with the introduction of this Bill, on the gender equality objects of the legislation, and for prioritising the ability of men to access paid parental leave. This has long been one of the weaknesses of the scheme. This should not, however, be at the expense of mothers and other birth parents recovering from birth, as is required under ILO 183.

We are also concerned that, even if the gender equality objects of the legislation are prioritised within this Bill, that it will not be successful in that aim while PPL is paid only at minimum wage and without increasing the 'use it or lose it' portion of the leave as the period of leave grows.

To address these concerns, NFAW recommends that the Government commit, in this Bill to undertaking a review of the legislation to assess its progress against the objects of the legislation, and the balance against these outcomes. Clearly, gender equality is a complex endeavour, and it is not something that can be set and forgotten. Legislation such as this Bill require ongoing and effective monitoring and evaluation.

Recommendation: The Bill should include a provision requiring a review of the provisions of the Bill to assess progress towards the objects of the Act, in particular the gender equality objects, after three years of operation.