



Paid Parental Leave Amendment (Flexibility Measures) Bill 2020

Submission by the Australian Council of Trade Unions to the
Community Affairs Legislation Committee

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Introduction

Australia's Paid Parental Leave (PPL) scheme was introduced in 2011 and provides 18 weeks pay to eligible 'primary carers' at the rate of the national minimum wage. Eligible working fathers or partners are entitled to up to two weeks pay. A review of the PPL scheme in 2014 found that 99.4% of parental leave was taken by birth mothers.¹ Under the current PPL scheme, eligible parents may only be paid in a single continuous block of up to 18 weeks, and they must claim within 12 months of the birth or adoption of their child.

The ACTU supports proposed changes to the PPL scheme which will allow a worker to access up to 30 leave days which can be flexibly accessed by either partner up until the child turns two. In theory, the changes should make it easier for parents to reduce their working hours to accommodate caring responsibilities. If effective, these changes may remove disincentives to women's workforce participation and encourage fathers to play a greater role in the care of their children.

However, while the proposed changes are welcome, they do not go nearly far enough in addressing the gaps in protections and rights for working parents and carers in Australia. Our failure to adequately support working parents and carers during their working lives is damaging the health and well-being of families and negatively impacting on the national economy. There is an urgent need for structural reform to improve support for parents and carers over the life cycle.

Summary and Recommendations

Existing regulation is failing to meet the needs of working parents and carers. Unpaid caring work (particularly that associated with the care of children) is substantial and continues to fall disproportionately on women, to the detriment of their connection with the labour force.

Parenting and caring responsibilities have a consistently negative effect on employment and earning patterns. The evidence shows that female unpaid carers have significantly lower rates of workforce participation and are more likely to be working part-time and in casual employment than fathers and male carers.² Men's and women's labour force participation is relatively equal until childbirth, when there is a dramatic divergence in employment. The majority of women work part-time until their children are school aged, whereas men's employment generally remains steady, with very high rates of full-time employment compared to their wives and partners. This

¹ Department of Social Services, *Paid Parental Leave scheme Review Report*, June 2014 at p 28

² Australian Human Rights Commission, *Investing in care: Recognising and valuing those who care*, 2013, p 18

divergence has serious ramifications for women's lifetime earnings, culminating in financial hardship and poverty in retirement.³

There are a number of reforms that are needed to address these issues, including improved access to quality, affordable early education and care, tax reform, and better access to flexible work and improved paid parental leave. The following two workplace reforms are discussed further in this submission:

- *The Fair Work Act should be amended to provide for a guaranteed, enforceable right to flexible working arrangements for parents and carers, with a right to revert to former hours once caring responsibilities have ceased.*
- *Paid parental leave should be increased to a minimum of 26 weeks at full-pay (accessible to either carer in any amount) in the National Employment Standards, with superannuation paid on paid and unpaid periods of parental leave.*

Access to Flexible Work

Under the *Fair Work Act 2009*, workers do not have the right to appeal an unreasonable refusal of a request for flexible working arrangements or a request for an extension to their unpaid parental leave.⁴ This is out of step with community standards of equity and fairness, and will limit the effectiveness of the proposed PPL reforms in practice. In 2018, the Fair Work Commission found that:

- Workplace culture and norms play an important role in the treatment of requests for flexible working arrangements, and individual supervisor attitudes can be powerful barriers to (or enablers of) flexibility.
- A 'significant proportion' of employees (including many men) need family friendly working arrangements but do not request a change, for reasons including that their work environment is openly hostile to flexibility, suggesting that there is a 'significant unmet employee need' for flexible working arrangements.
- A lack of access to working arrangements that meet employees' needs is associated with substantially higher work-life interference.⁵

³ David Hetherington & Warwick Smith, *Not So Super, For Women: Superannuation and Women's Retirement Outcomes*, July 2017, p 6

⁴ See ss. 76(4) and 65(5) and ss 44(2), 146, 186(6), 739(2) and 740(2) of the FW Act.

⁵ [2018] FWCFB 5753 at [36]

A 2014 report by the Australian Human Rights Commission found that discrimination against mothers in the workplace is ‘pervasive’: Thirty six per cent of women who returned to work after parenthood reported discrimination related to family responsibilities when returning to work, with half of those reporting discrimination when requesting flexible working arrangements, and one in ten mothers still on parental leave could not find work, or could not negotiate return to work arrangements.⁶

These matters are highly relevant to the proposed reforms to the PPL scheme, because workers will not be able to use their 30 flexible PPL days in practice unless they can access flexible working arrangements. While many requests for flexible work are granted, the current regulatory framework prevents access to family friendly working arrangements for too many employees. The FW Act should be amended to allow workers to appeal an unreasonable refusal of their request for flexible working arrangements, or a request for an extension to their unpaid parental leave.

Increasing the quantum of paid parental leave

The proposed Bill will not change the amount of PPL provided, which means Australia’s paid parental leave scheme will remain one of the world’s least generous. While some workers are able to negotiate employer-funded paid parental leave through collective agreements, this is not a universal entitlement and most workers still only have access to the government’s PPL scheme. It is well established that an appropriate period of absence from work after birth is of the ‘utmost importance’ to the physical and mental health of both parents and their children. It supports the growth and development of the child, facilitates bonding between parent/s and child, and allows the mother to recover. It also positively impacts on the financial security of women, relieving income pressure in the period after birth and supporting women’s return to the workforce. The 2014 review of the PPL scheme found that PPL is associated with an ‘improvement in mothers’ and babies’ health and wellbeing and work-life balance’, particularly for mothers without employer funded parental leave, and those with least financial security due to precarious employment.⁷

The Productivity Commission’s 2009 Inquiry found ‘compelling evidence of child and maternal health and welfare benefits from a period of absence from work for the primary caregiver of

⁶ Australian Human Rights Commission, *Supporting Working Parents: Pregnancy and Return to Work National Review, 2014* at pp 29 and 47.

⁷ See above note 1

around six months'. The Inquiry considered research showing 'a positive relationship between the length of maternity leave and maternal health and wellbeing' and noted that 'maternal recovery can be prolonged and an early return to work may increase the risk of depression and anxiety.' The Productivity Commission found 'compelling evidence' that exclusive parental care for at least 6 months fosters improved developmental outcomes, and 'a reasonable prospect' that a period of up to 12 months could also be beneficial, and that taking into account the evidence, 'the average desirable duration of postnatal absence from work would be around six to nine months.'⁸

Australia's full-rate equivalent weekly parental leave payment is one of the lowest in the OECD.⁹ Australia ranks 40th out of 41 comparable EU and OCED countries on paid parental leave provided to mothers – providing the full-time equivalent of only 8 weeks paid leave. Australia ranks 27th on the amount of parental leave provided to fathers, providing only the full-time equivalent of 0.8 weeks paid leave.¹⁰ This means our system in effect relies on parents to self-fund and/or access employer funded schemes to top up to the optimal amount of time off work at their full-time wage. WGEA statistics show that less than 50% of employers (47.8%) provide primary carer's leave in addition to the Federal Government's paid parental leave scheme, and only 41.8% provide secondary carer's leave (WGEA 2019, Data Explorer). This means that many Australian employees are having to dip into their own pockets to fund the optimal period of parental leave.

Australian parents should be able to access at least 26 weeks of paid parental leave. This should be paid at the level of their actual wage, not the national minimum wage. Providing access to PPL at the rate of the minimum wage reduces earnings for many women (exacerbating the gender pay gap) and discourages fathers and partners from sharing in the care of children.

Superannuation on parental leave

Superannuation is not paid on Australia's PPL scheme, contributing to significantly lower retirement outcomes for women. Women retire with 47% less superannuation than men. One in

⁸ Productivity Commission Inquiry Report, *Paid Parental Leave: Support for Parents with Newborn Children*, No. 47, 28 February 2009 at 4.1, 4.2, 4.14

⁹ Workplace Gender Equality Agency, *Towards gender balanced parental leave: Australian and international trends Insight paper*, pp 6-7

¹⁰ See https://www.unicef-irc.org/publications/pdf/Family-Friendly-Policies-Research_UNICEF_%202019.pdf at Figure 1 on p 6 and Figure 2 on p 9

three women have no superannuation account at all.¹¹ It is essential that superannuation is paid on both paid and unpaid parental leave.

Primary and secondary carers

The distinction between ‘primary’ and ‘secondary’ carers in PPL legislation has helped to entrench cultural norms which see women undertaking unpaid caring roles while men continue uninterrupted in paid work. The distinction should be removed and parental leave entitlements should be fully shareable by both partners as the family sees fit. Supporting families to combine paid work with shared time to care would lessen the gender pay gap in retirement savings for women, be more inclusive of LGBTQI families and give fathers the opportunity to spend more time with their children.

Conclusion

Providing access to adequate paid parental leave entitlements is essential for closing the gender pay gap, increasing women’s workforce participation, and encouraging more equal sharing of parental responsibilities. While the proposed changes are a step in the right direction, additional reforms are urgently required.

¹¹ See for example ISA, *Closing the gender superannuation gap*. Online (accessed on 09/07/2019 at <https://www.industrysuper.com/campaigns/closing-the-gender-superannuation-gap/>); Clare, R. *Better Retirement Outcomes: a snapshot of account balances in Australia* (July 2019) ASFA: Sydney (accessed on 17/01/2020 at <https://www.superannuation.asn.au/policy/reports>)

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