



Submission on the *Paid Parental Leave Amendment*
(Improvements for Families and Gender Equality)
Bill 2022

January 2023 (2)

Thank you for the opportunity to provide a submission on the *Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022* (the Bill). In this submission we address how the proposed amendments impact and correlate with issues our clients experience regularly, the benefits of the Bill to our clients, and the possible implications that do not appear to be considered in the current drafting, including recommendations in response.

NT WORKING WOMEN'S CENTRE

The NT Working Women's Centre (NTWWC) is a community based, not-for-profit organisation that provides free and confidential advice and support services on work-related matters to women and gender diverse people in the NT. Services commenced in 1994, and we operate across the NT from two offices in Darwin and Alice Springs.

The NTWWC works primarily with women who are not represented by a union, lawyer or other advocate. Women who contact our Centre are often economically disadvantaged and work in precarious areas of employment. On average we provide about 3000 contacts per year. At NTWWC, we assist women and gender diverse people; clients who often face particular vulnerabilities. The NTWWC targets its services at NT workers who may fall into a number of categories of workplace vulnerabilities, for instance those who are Aboriginal and Torres Strait Islander (17.6% of our clients), culturally and linguistically diverse (CALD) (34.5% of our clients), trans women, workers who reside in regional and remote areas (47.7%) and those who live with a disability (22.5% of our clients). The service also provides community education and training on domestic and family violence as a workplace issue, workplace bullying, sexual harassment and general industrial entitlements.

We conduct research and project work on a range of issues that women experience in relation to work. These have included access to childcare, family friendly practices, the needs of Aboriginal and Torres Strait Islander working women, pregnancy and parental status discrimination, work/life balance, pay equity and the impact of domestic violence on women workers and their workplaces. In conjunction with the National Alliance of Working Women's Centres, we provide expert advice to government on legal and policy reform. We have referred to case studies throughout this report as examples of our experience dealing with the issues discussed. To protect the anonymity of our clients, details are changed and/or omitted however the integrity of the story remains.

BENEFITS OF THE BILL

We believe the proposed amendments in the Bill will assist women, men and families significantly in finding a balance between employment and family obligations. It is evident in the literature, and from our 2frontline experience assisting women every day, that women's earning capacity and financial security is significantly impacted by societal pressures to be the family caregiver and homemaker.¹ It is commonly seen and evidenced in the studies, that women often accept jobs with inferior terms and conditions, and report a pressure to "trade-off" their careers to care for their children and family.² As such, it is reassuring to see that Government is putting structures in place to change the societal, systemic and economic issues women and families face in relation to work-life commitments and economic security.

¹ Chang, J, Connell, J, Burgess, J and Travaglione, A, "Gender Wage Gaps in Australian workplaces: are policy responses working?" (27 August 2014) *Curtin Business School, Curtin University, Perth Australia*.

² Ibid

The introduction of the family income threshold (s110 of the Bill), greater flexibility and shared entitlement between parents for parental leave are very positive amendments that should see a significant improvement in work-life commitments and balance for families. **Case Study 1** provides a clear indication of how women and families can be treated in their employment and the stigma associated with working parents requiring and requesting more flexibility around their family's needs. It further displays how women are treated when they prioritize their education and career over their childcare responsibilities; rather than support women whose partners will be the primary carers, businesses are seen to label them as bad mothers. With more and more women upskilling and establishing careers, the assumption and pressure for them to trade-off career aspirations to support and care for their families should not be perpetuated. We strongly believe parents, specifically women, should not have to "trade-off" their family's needs for work and economic security. The provision of structures, such as that which this Bill establishes, is a welcomed development in this area.

Case Study 1

When Jeanette requested parental leave her employer was not supportive as her partner was going to be the primary carer. They asked her invasive and insensitive questions about how she was going to cope and whether she was going to breastfeed her baby. Jeanette was labelled a "trouble maker" for asking about flexibility whilst she was completing her internship. She was issued an apology from her employer after a complaint was filed.

NTWWC were able to give Jeanette information about how her employer should have handled not only her request for secondary carer parental leave but her complaint as well. Because of her limited choice of employers, she chose not to make an external complaint.

POTENTIAL IMPLICATIONS TO CONSIDER

We have reviewed the Bill and considered these against our client's needs and the current gaps in the system. As a result, there are a number of implications that we believe Parliament needs to consider and cater for within the Bill.

1. Migrants

It appears that the Bill does not go so far as to amend the *Australian Residency Test* as described at s45 of the *Paid Parental Leave Act 2010* (Cth). The *Australian Residency Test* requires that the claimant be a resident of Australia or a special category visa holder. A special category visa holder consists of New Zealand Citizens that obtain a visa to work or study in Australia,³ or a New Zealand citizen or passport holder for whom a class of visa other than a special category visa would be inappropriate.⁴ This suggests that the Bill is only available to those claimants who satisfy this threshold, and narrowing the availability of paid parental leave through Services Australia will significantly impact a significant portion of Australia's society.

The current drafting of the Bill does not address or provide parental leave entitlements for migrants on working visas who contribute significantly to the Australian economy and workforce. The Report of Migrant Workers released in 2017 established that "the number of temporary visa holders with work rights

³ *Migration Act 1958* (Cth), s 32.

⁴ *Migration Regulation 1994* (Cth), r 5.15A.

(excluding New Zealand citizens on subclass 444 Special Category Visas) in Australia has been increasing steadily for years, from 570,607 as at 30 June 2008 to 878,912 as at June 2018.⁵ Further, in the financial year of 2020-21 the total income tax levied on Australian individuals was \$237,178 million, comparatively the total income tax levied on foreign individuals was \$351,784 million. This disparity is not an anomaly amongst the data, it is consistent as far back as the 2011-12 financial year.⁶ As such, approximately 878,912 migrant individuals significantly contribute to Australia's economy and pay income tax within Australia, however are not eligible for paid parental leave under the Bill. This compiled with the known reality that migrants are often vulnerable to, and are one of the largest demographics in Australia that are victims of wage theft. This results in significant financial insecurity for this demographic.⁷

The Wage Theft in Australian Report finalised in 2016 evidenced that from the 4,322 responses received, 30% said they earned \$12 per hour or less, 46% indicated they earned \$15 per hour or less, and 44% indicated that they were paid in cash and half rarely received a payslip.⁸ There is great economic concern and burden on families who have children in Australia, children who are born in Australia, but their parents do not meet the threshold of the current *Australian Residency Test* to be eligible for paid leave entitlements. There is a significant disparity in the rights of migrant workers despite their considerable contribution to the community and economy. This needs to be addressed, specifically in the context of paid parental leave.

The Bill indicates that if one parent does not meet the *Australian Residency Test* but the other does, then that parent who meets the threshold may apply and be eligible for paid parental leave under the Bill. The result of this structure is that mothers who are on a visa, and have just had a child, would have to choose between economic security by returning to work immediately after birth or being able to nurse and bond with their newborn child. It is unclear how the Bill proposes to support families in providing for the best interests of the child in this context. The best interests, and emotional and developmental needs of the children are important. consideration when establishing the structures that this Bill proposes. Supporting families is the first step in meeting the needs of the children. As such, we believe that if a child is considered an Australian citizen by birth, the parents, regardless of their nationality or visa status, should be entitled to paid parental leave.

2. Family disputes, and Domestic and Family Violence

The Bill proposes that for a claimant to claim specific days that are in excess to the two weeks each parent is entitled to, that permission must be granted by the other parent for the claimant to receive payment for the days claimed.

⁵ Department of Employment and Workplace Relations, "Report of the Migrant Workers' Taskforce" (7 March 2019) *Attorney-General's Department*

⁶ Government Finance Statistics, Annual, 2020-21 financial year | Australian Bureau of Statistics (abs.gov.au)

⁷ Eugene Schofield-Georgeson, "Organisational Co-Enforcement in Australia: Trade Unions, Community Legal Centres and the Fair Work Ombudsman" (2022) 35 AJLL 52 via V Narro and J Fine, 'Labor Unions/Worker Centre Relationships, Joint Efforts', in J Fine et al (Eds), *No One Size Fits All: Worker Organization, Policy and Movement in a New Economic Age*, Labor and Employment Research Association, Illinois, 2018, p 67 at pp 67-90.

⁸ Department of Employment and Workplace Relations, "Report of the Migrant Workers' Taskforce" (7 March 2019) *Attorney-General's Department*.

Family Disputes

Where parents are at odds, such as circumstances where the relationship has broken down and/or there is a dispute as to the parenting plans and financial/property settlement, the additional pressure to obtain permission may result in further disputes. The Bill does not appear to address that the Paid Parental Leave entitlement of 18 weeks jointly between the parents may constitute a “financial resource” for the purposes of a financial and property settlement between separating parents. It is likely the division of the joint entitlement will be a further issue to be considered at separation when determining a just and equitable division of the property pool and what is in the best interest of the child when determining parenting arrangements.

We propose that in this context, a criterion be developed to help assist parents in negotiations of the division of the parental leave, and should the matter go to Court, the Judiciary in determining the division of the paid parental leave. The criterion need not be binding, but used as a guideline that takes into consideration who the primary care-giver is, the financial means of both parents, the parental leave entitlements each parent has through their employment, and any other relevant consideration, to assess how the joint paid parental leave may be divided in a way that is just and equitable whilst maintaining the best interest of the child/ren at the centre of the determination.

Domestic and Family Violence

A significant number of our clients’ report experiencing or have experience DFV which manifests in family dynamics through financial control and coercive control. **Case studies 2 and 3** are examples of how DFV effects women's ability to experience financial security in the context of pregnancy and the early infancy of their children's lives. Where an individual does not feel that the resources or means are available to them to provide for themselves and their children, it may result in victim-survivors staying with DFV perpetrators despite the risk. We understand that it is vital for women and victim-survivors to have financial autonomy which may be unduly restricted by requiring them to request permission for their paid parental leave entitlement from the perpetrator of DFV.

We believe that a risk assessment process needs to be established to determine if the permission requirement for paid parental leave be suspended in contexts of DFV allegations. Evidence such as medical reports from doctors, psychologists and other support professionals, court documents, and police statements and intervention can be utilised to assist this process. It may also be the case that the Court is called upon to decide, and therefore may exercise its jurisdiction to assess if there is an unacceptable risk. Where it is established on the body of evidence that there is a risk to the child/ren and victim-survivor the requirement to request permission should be suspended. It is crucial to have structures in place to support victim-survivors in this context to ensure the limitations imposed by requiring permission do not further endanger the victim-survivor or children.

Case Study 2

Brittney is currently pregnant and is experiencing Domestic and Family Violence. In order to escape the violence, she must move to another location. If she stayed with her employer for her parental leave entitlements, the risk of violence to her and her other children would increase significantly. She was

extremely fortunate that she had access to the paid parental leave from Services Australia as she is an Australian citizen.

NT Working Women's Centre supported Brittney by connecting her with other services who would be able to provide her with additional financial and other support. It was also recommended that she speak with her employer to see if she could take some unpaid leave and take her parental leave earlier.

Case Study 3

Sam has been experiencing severe sexual harassment at work when she found out she was pregnant. As she was experiencing financial abuse by her husband, she was scared that she would not be able to pay her bills when the baby arrived. She wanted to stay at work until she could use her parental leave.

NT Working Women's Centre explained how to make a complaint about the sexual harassment from her co-workers. We also linked her into services that were able to provide her with financial and other assistance. As she is not an Australian citizen, she is not eligible for paid parental leave paid by Services Australia.

CLOSING STATEMENT

The proposed Bill is a greatly welcomed development in providing support and financial security families. We believe the implications raised in relation to barriers for migrants, and parents in the context of family disputes and DFV need to be considered to promote economic security and the best interests of the children.

Thank you for considering our submission on the proposed changes. Please do not hesitate to contact us should you have any questions.