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Senate Community Affairs Legislation Committee

Inquiry into the  
**PAID PARENTAL LEAVE AMENDMENT (FLEXIBILITY MEASURES) BILL 2020**

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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 (Flexibility Measures) Bill 2020**

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.

Paid Parental Leave (PPL) affects women and men in different ways; it is not gender neutral. This submission responds to the terms of reference through a gender lens.

NFAW is a strong supporter of PPL, and was part of the coalition that promoted the policy prior to the Productivity Commission Report<sup>1</sup> (Productivity Commission, 2009) that led to the introduction of PPL. In that report the Productivity Commission identified the following commonly agreed objectives (at p XIV):

- generate child and maternal health and welfare benefits by increasing the time parents take away from work. The Commission estimates that the average absence will increase by ten weeks. Many more families would have an increased capacity to provide exclusive parental care for children for six to nine months
- promote some important, publicly supported social goals, and in particular, that having a child and taking time out for family reasons is viewed by the community as part of the usual course of work and life for parents in the paid workforce
- counter some of the incentives against working posed by the tax and welfare system - potentially contributing around six months of net additional employment for the average woman over her lifetime
- increase retention rates for business, with reduced training and recruitment costs.

## **Recommendations**

**Recommendation 1: On balance, and subject to the following recommendations, NFAW recommends that the specific measures recommended in the Bill should be supported.**

**Recommendation 2: NFAW considers that, ten years after the introduction of the original PPL scheme, and five years after its first evaluation, there remains unfinished business with Australia's approach to paid parental leave and the following steps should be taken to address this.**

**Recommendation 2a. We recommend that the Australian Government formally ratifies the ILO Maternity Protection Convention, 2000 (No. 183).**

**Recommendation 2b: We recommend that the Government consider increasing the rate of pay under the PPLA to wage replacement or the average weekly ordinary time earnings, whichever is the lesser.**

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<sup>1</sup> Productivity Commission 2009, Paid Parental Leave: Support for Parents with Newborn Children, Report no. 47, Canberra.

**Recommendation 2c: We recommend that the Government amend the FWA to ensure that employers are required to provide paid lactation breaks of at least 1 hour per day and to provide appropriate facilities for women to express and store breast milk.**

**Recommendation 2d: We recommend that the Government include Superannuation Guarantee payments, as the scheme was initially envisaged.**

**Recommendation 2e: 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.**

**Recommendation 2f: We recommend that the Government increase the term of the scheme to a total of 22 weeks, with ten weeks available as the flexible PPL term.**

**Recommendation 3: We recommend that the messaging around the amendments in the Bill be based on shared care for the 18 weeks of funded leave, rather than on flexibility, and that the administrative systems to recognise a secondary carer should be reviewed.**

**Recommendation 4: We recommend that the Government commit to reform of the scheme to advance more equitable sharing of parental responsibilities between women and men.**

## Discussion

### Amendments introduced in the Bill

This Bill has been presented to amend the PPL Scheme to support women's economic independence by allowing primary carers to access parental leave pay more flexibly, particularly birth mothers and adoptive parents who are self-employed or small business owners. NFAW supports this intention of the Bill.

The Bill was signalled in the Women's Economic Statement presented in November 2018, and in the 2019-20 Federal Budget. NFAW welcomes the opportunity to comment on the draft provisions.

**Recommendation 1: On balance, and subject to the following recommendations, NFAW recommends that specific measures recommended in the Bill should be supported.**

One of the agreed objectives of the original PPL scheme, identified by the Productivity Commission, is to allow parents to provide exclusive care to children for the first six to nine months of life, although the recommendation was for 18 weeks paid leave. The recommendation for the leave to be continuous was based on health and well-being considerations for the parent, particularly the birth parent, and the child.

The requirement to take leave in a single block has the disadvantage that if a parent needs to return to work, whether for financial reasons or due to the needs of their career or business, they forfeit the balance of their leave. The additional flexibility available under the Bill will assist parents who choose to maintain a career while allowing them to spend time bonding with their child. The Bill states that it will particularly support parents who are self employed, however it also provides support to employed parents who meet the required work and income tests who work in fields where taking a career break of 18 weeks may result in reduced opportunities. For example, a parent who is expected to maintain relationships with a client may find that being absent for 18 weeks results in the client turning elsewhere. Currently the parent's options are limited and they may return to work, foregoing PPL entitlements, to ensure that their career remains on track.

The Bill will also enable parents to share leave more effectively, particularly where parents are using different forms of leave to extend the time at home with a baby.

However, we are concerned that the reduction in the compulsory leave component to 12 weeks could have the effect of lowering the expectation that new parents will spend six to nine months exclusively caring for their new child.

For this reason, although NFAW welcomes the increased flexibility intended by the amendments, there remains unfinished business, ten years after the introduction of the PPL scheme and five years after its initial evaluation, and the Government should commit to addressing these outstanding issues.

The balance of this submission identifies areas that should be addressed.

## Unfinished business

Since the introduction of PPL there has been some cultural change to recognise the need for working parents to spend time out for family reasons. WGEA data shows that 72% of employers required to report to WGEA now offer flexible work arrangements to parents, and 49.4% of those employers now offer PPL for mothers, with a slightly lower level of 43.8% offering paid secondary carer's leave<sup>2</sup>. However, this represents around 40% of employees as small and medium sized employers are not represented in WGEA data. Most employees in the hospitality and retail sectors, which are female dominated, do not have such entitlements. The Government PPL Scheme is essential to provide financial support to these women in the months after becoming parents.

However, the scheme as introduced in 2009 incorporated a number of compromises. The review of the scheme in 2014 identified many areas where the scheme has improved outcomes as intended, but other areas where further thought and reform are necessary. Ten years after the introduction of PPL and five years after the review of the original scheme, these compromises need to be further examined.

**Recommendation 2: NFAW considers that, ten years after the introduction of the original PPL scheme, and five years after its first evaluation, there remains unfinished business with Australia's approach to paid parental leave and the following steps should be taken to address this.**

## ILO requirements

NFAW notes that Australia is not a signatory to the ILO Maternity Protection Convention, 2000 (No. 183) ('ILO C183'). We recommend that Australia sign onto that Convention.

**Recommendation 2a: We recommend that the Australian Government formally ratifies the ILO Maternity Protection Convention, 2000 (No. 183).**

Regardless of the formal legal status, ILO C183 provides a useful international benchmark of minimum standards for maternity leave and NFAW has compared its requirements against the legal protections established in Australia. These are primarily found in the *Paid Parental Leave Act 2010* (PPLA), the *Fair Work Act 2009* (FWA) and the National Employment Standards (NES) established by that act and the *Sex Discrimination Act 1984* (SDA).

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<sup>2</sup> WGEA Data Scorecard 2018-19, <https://www.wgea.gov.au/data/wgea-research/australias-gender-equality-scorecard> accessed 27/02/2020

	ILO C183	Australia
Parental Leave	The convention provides for a minimum of 14 weeks paid leave, of which 6 weeks should be compulsory	The FWA provides for a person with 12 months continuous service to be entitled to 12 months unpaid parental leave. The PPLA provides that a person who has worked for 10 of the previous 13 months is eligible for parental leave pay for a continuous period of 18 weeks, subject to personal income being less than \$150,000. If this Bill is passed it provides for 12 weeks continuous leave with a further 30 days flexible leave.
Rate of pay while on leave	Parental leave should be paid at the rate of 2/3 of previous pay or comparable amount	The PPLA provides for wage replacement to the level of the minimum wage, without reference to previous pay levels.
Right to safe work	The employer must ensure that during pregnancy and while breastfeeding women are not required to perform work that is not safe for them or their child.	Under the NES a woman has the right to request to be transferred to an appropriate safe job at the same pay rate as their substantive position. Where such a job is not available, an employee entitled to parental leave under the FWA is entitled to paid leave.
Non-Discrimination	Employers may not dismiss a woman on the grounds of pregnancy or parental status.	The SDA provides protection against discrimination on the grounds of pregnancy, breastfeeding or family responsibilities.
Right to Return to Work	It should be unlawful for an employer to terminate employment while a parent is on parental leave, and they should be entitled to return to the same job at the same rate of pay.	Under the FWA, an employee is entitled to return to work at the same job, or if that job no longer exists an equivalent job. Where the duties are filled by another person the employer must advise the replacement that the position is to cover a period of parental leave.
Breastfeeding/Lactation Breaks	A breastfeeding mother should be entitled to a reduction in hours or breaks without a reduction in pay.	There are no legislative provisions to require provision for lactation breaks or facilities. Discrimination on the basis of breastfeeding is prohibited under the SDA.

As noted in the table above, in most areas Australia does meet the minimum criteria of ILO C183. However, the following anomalies remain.

**Rate of Payment:** We note that ILO C183 establishes the payment rate as 2/3 of the usual payment earned by the parent. In Australia the rate of payment established under the PPLA 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. 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. Increasing the rate of PPL payable to the lesser of wage replacement or average weekly ordinary time earnings would ensure that the ILO requirement of 2/3 wage replacement would be met for most women. It is also important that there is regular monitoring and reporting against this benchmark.

**Recommendation 2b: We recommend that the Government consider increasing the rate of pay under the PPLA to wage replacement or the average weekly ordinary time earnings, whichever is the lesser.**

**Lactation Breaks:** There is no provision in the Australian legislative framework to ensure that lactating mothers are entitled to leave or appropriate facilities to allow either breastfeeding or, where the child is not on the premises, expressing breast milk.

The World Health Organization recommends that, where practical, children should be exclusively breastfed until they are six months old. This recommendation was a factor in the design of the current scheme to provide that paid parental leave be continuous, although the 18 week period is still short of the WHO recommendation of six months' exclusive breastfeeding.

This becomes particularly relevant where the compulsory leave period is reduced to 12 weeks. A mother returning to work after the 12 week period requires additional support to maintain breastfeeding, even if leaving the child in the care of a secondary carer.

**Recommendation 2c: We recommend that the Government amend the FWA to ensure that employers are required to provide paid lactation breaks of at least 1 hour per day and to provide appropriate facilities for women to express and store breast milk.**

**Superannuation:** The Productivity Commission proposal for paid parental leave recommended that PPL be subject to the superannuation guarantee levy, currently at 9.5%. This was not incorporated in the PPL legislation as 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<sup>3</sup> (Austen & Mavisakalyan, 2018). 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, 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 2d: We recommend that the Government include Superannuation Guarantee payments, as the scheme was initially envisaged.**

**Consistency between the PPLA and the FWA:** There remains a mismatch in eligibility for unpaid leave under the National Employment Standard (NES) and eligibility for paid leave under the PLPA. 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 2e: 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.**

### **Increasing periods of leave to care for new babies**

Beyond minimum standards established by ILO C183, five years after the evaluation report of the scheme, and 10 years after its initial introduction, it is timely to assess where Australia is falling short of good practice amongst comparable OECD nations, the effects of this shortfall on outcomes for women, men, and families in Australia, and the impact on workforce participation rates. It would be useful to assess the opportunity costs of these shortfalls in Australia's scheme.

It is important that the PPL scheme in Australia continue to build community acceptance for an extended period in total of leave for parents to care for new babies until the recommended six months.

While Australia meets the ILO C183 minimum requirements for 14 weeks paid parental leave for eligible parents, and the OECD average for paid maternity leave is just over 18 weeks, the EU average is just over 22 weeks. Although Australia's scheme is intended to be topped up by employers, the period of leave paid in Australia still falls short of OECD good practice.<sup>4</sup>

<sup>3</sup> 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.

<sup>4</sup> OECD Family Database [http://www.oecd.org/els/soc/PF2\\_1\\_Parental\\_leave\\_systems.pdf](http://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf).



While we recognise the benefits of flexibility that the Bill introduces, we recommend a further increase to the total length of PPL available.

The Bill as currently drafted, without increasing the total paid leave available, and by reducing the initial PPL period to 12 weeks, might signal to parents and the community, including employers, that 12 weeks' leave is sufficient for the birth parent to recover from childbirth and the baby to have full time parental care.

Ideally, these amendments should be introduced in the context of an increase to the flexible PPL period up to a total of at least 22 weeks.

In the absence of an immediate increase in the length of the total PPL period, care should be taken with the introduction of the amendments for increased flexibility to communicate that the Government recognises the importance of a total period of six to nine months' leave for parents around the birth of their baby. The recommended review of the scheme should also include consideration of an extension of the term of the PPL scheme to a total of 22 weeks.

**Recommendation 2f: We recommend that the Government increase the term of the scheme to a total of 22 weeks, with ten weeks available as the flexible PPL term.**

### **Improving gender equality and shared care between parents**

While the PPL scheme has delivered on many of its original objectives, it has been least successful in delivering against the gender equality objective, particularly by influencing the gendered division of labour in Australia.

Original efforts to advocate for paid parental leave in Australia originally focussed on paid maternity leave. It emerged from the international obligation in the United Nations Convention on the Elimination of All Forms of Discrimination Against Women to introduce paid maternity leave and was seen as an approach for supporting women to take time out of the workforce following the birth of a child and as a mechanism for supporting women's workforce attachment. Given the original scheme was intended be a minimum standard, from which further developments could emerge, Australia's PPL scheme was not able significantly to influence the division of labour between women and men.

Further thought is particularly required to ensure Australia's PPL scheme is better able to advance gender equality and encourage the more equal division of paid and unpaid labour between women and men in Australian families.

The enhanced ability in the Bill to transfer flexible PPL days to a secondary carer is consistent with changes in community expectations in respect of the role of the secondary carer. The introduction of "Dad and Partner Pay" (DAPP) has recognised the role of partners when a child is born or adopted. However, there is a growing recognition that parenting is a shared role, and employers are increasingly promoting flexible work arrangements for both parents. The ability to share the flexible portion of PPL will facilitate and accelerate such arrangements, strengthening the bond between the

second parent with their child. The experience in Scandinavia demonstrates that this has lasting benefits, including a more equal distribution of unpaid household labour.<sup>5</sup>

The DAPP, introduced after the initial scheme, likewise represents a very minimalist approach, particularly compared to good practice among our OECD peers, particularly in Scandinavia and was not designed significantly to alter gendered parental divisions of labour. In public policy terms, it represents fathers' roles as an afterthought.

We note that the administrative procedures applicable to claiming PPL for the secondary carer remain complex, and this limits the effectiveness of these provisions as a means to encourage greater participation in parenting by the secondary parent.

International experience, however, demonstrates that PPL is able to contribute to more equitable sharing of paid and unpaid labour between mothers and fathers, when it is designed specifically to do so.

Significant further policy thought will be needed to reform the scheme to influence gender norms and behaviours around paid work and unpaid caring. In the light of increasingly rich policy environment among Australia's OECD peers, and 10 years after the first introduction of Australia's scheme, it is important to assess how the scheme could be reviewed to encourage more men to take leave to care for babies and children and to remain engaged in direct care and unpaid labour to support their families as their children grow. This may include:

- introducing 'use it or lose it' elements for fathers and partners;
- empowering fathers and partners to access leave benefits;
- removing the conceptual divisions between primary and secondary carers.

Gender norms around paid work and care are deeply culturally embedded and influenced by historical practices in a particular country. Policy interventions in this space need to be very carefully calibrated to influence behaviour in each context. It would not be appropriate for Australia to copy arrangements in other nations that have seen significant changes to their gender arrangements for paid work and care without adapting these to the Australian context.

It is clear that gendered divisions of labour are particularly sticky in Australia, and it is unlikely that a paid parental leave scheme, on its own, could significantly shift unequal and unfair divisions of labour in the home. A review of the scheme to assess how it might increase the incentive for men to undertake care for their new babies is important, but it should be accompanied by a broader review of accompanying policies and programs to influence more equitable sharing of care between Australian parents.

**Recommendation 3: We recommend that the messaging around the amendments in the Bill be based on shared care for the 18 weeks of funded leave, rather than on flexibility, and that the administrative systems to recognise a secondary carer should be reviewed.**

**Recommendation 4: We recommend that the Government commit to reform of the scheme to advance more equitable sharing of parental responsibilities between women and men.**

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<sup>5</sup> Anders Chronholm, « Fathers' Experience of Shared Parental Leave in Sweden », *Recherches sociologiques et anthropologiques*, 38-2 | 2007, 9-25.

## References

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.

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