

20 January 2023

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Submitted: Online through *My Parliament*

Dear Committee Secretary,

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

1. Women's Legal Services Australia welcomes the opportunity to make a submission to the Senate Standing Committees on Community Affairs, Community Affairs Legislation Committee, to comment on the Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022 (**PPL Amendment Bill**). We give permission for this submission to be published.

About Women's Legal Services Australia

2. Women's Legal Services Australia (**WLSA**) is a national network of 13 specialist women's legal services in each State and Territory across Australia, specifically developed to improve women's lives through specialist legal representation, support, and advocacy.
3. WLSA members provide high quality free legal services, including representation and law reform activities, to support women's safety, access to rights and entitlements, and gender equality. We seek to promote a legal system that is safe, supportive, non-discriminatory, and responsive to the needs of women. Some of our services have operated for over 40 years and some provide specialised employment and discrimination law services.
4. WLSA members have specialist expertise in safety and risk management, maintaining a holistic and trauma-informed legal practice, providing women additional multidisciplinary supports, including social workers, financial counsellors, trauma counsellors, and cultural safety workers, for long-term safety outcomes.
5. WLSA members approach the legal issues facing women and their experience of the legal system within a broader analysis of systemic gender inequality. We are committed to providing individual services whilst also working towards deeper legal and cultural change to redress power imbalances and address violence against women and gender inequality.

Our advocacy focus

6. WLSA and our individual member services work to contribute to policy and law reform discussions to ensure that the law does not entrench gender inequality or gender-based discrimination, or unfairly impact women experiencing violence and relationship breakdowns. We are informed by a feminist framework that recognises the rights of women as central.

7. Our primary concern when considering any proposed legislative amendments is whether the changes promote gender equality and/or make the legal system fairer and safer for both our clients and all victims of violence against women. Our submission reflects this focus.
8. WLSA may use the terms “victim,” “survivor,” and “victim-survivor” interchangeably throughout this submission to refer to women, children and others who have experienced or are experiencing family and domestic violence and abuse in any of its forms. While acknowledging that anyone can experience domestic and family violence and abuse, the research and our members’ experience over more than forty years clearly identifies that domestic and family violence and abuse is predominantly perpetrated by men against women and children. Our language in this submission is gendered to reflect this.

Background

9. On 30 November 2022 the Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022 was introduced into Parliament by the Minister for Social Services, the Hon Amanda Rishworth, MP (the **Minister**).
10. As outlined by the Minister, the bill delivers six key changes from 1 July 2023:
 - i. combining the two existing paid parental leave (**PPL**) payments into a single 20-week scheme
 - ii. reserving a portion of the scheme for each parent to support them both to take time off work after the birth or adoption
 - iii. making it easier for both parents to access the payment by removing the notion of 'primary' and 'secondary' carers
 - iv. expanding access by introducing a \$350,000 family income test, under which people can qualify if they do not meet the \$156,647 individual income test
 - v. increasing flexibility for parents to choose how they take paid parental leave days and transition back to work, and
 - vi. allowing eligible fathers and partners to access the payment irrespective of whether the mother or birth parent meets the income test or residency requirements.
11. On 1 December 2022 the Senate referred the provisions of the Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022 to the Community Affairs Legislation Committee for inquiry and report by 3 March 2023.

Introductory Comments

12. WLSA welcomes the proposed amendments to the *Paid Parental Leave Act 2010* (**PPL Act**) and commends the government's commitment to women's social, economic and gender equality.
13. WLSA supports the PPL Amendment Bill because the changes will make the Scheme more flexible, accessible and supportive of gender equality, women's participation in the workforce



and shared parenting. We also welcome this as the first tranche of reforms, leading up to 26 weeks PPL by 2026, and as a strong signal to employers and workers that caring responsibilities can and should be shared more equally.

14. WLSA urges employers to go beyond the minimum PPL entitlements and do more to support gender equality and shared parental responsibilities.
15. WLSA commends the Government's attempts to addressing some of the issues and removing barriers faced by women when accessing the current PPL scheme, related to women's income and residency status. WLSA supports the proposed amendments to the Objects of the PPL Act and makes several important recommendations in this submission to promote more fully realising these objectives and making the PPL scheme more accessible for all working parents.
16. In summary, our recommendations relate to the PPL scheme eligibility requirements, and promoting the safety and recovery of victim-survivors of family violence.

Eligibility requirements:

- i. Amend the qualifying period: Remove the requirement for 13 months of qualifying work, or reduce this to a 6-month qualifying period before being eligible to access paid parental leave;
 - a. Related amendment to the *Fair Work Act 2009* (Cth) (**Fair Work Act**) - amend the National Employment Standards (NES) to remove the 12-month continuous employment requirement for unpaid parental leave.
- ii. Amend the qualifying work definition for the Work Test: Include Family and Domestic violence leave in addition to the other leave types which count as paid work, and included as a permissible break; and
- iii. Amend the Residency Test: Remove the newly arrived residents waiting period and visa restrictions for access to PPL, bringing the PPL scheme into alignment with access to parental leave entitlements under the NES where all workers in Australia are entitled to this leave.

Safety and recovery of victim-survivors of family violence

- a. Ensure the PPL scheme has sufficient flexibility and exclusions to support victim-survivors of family violence.

17. These recommendations are further detailed below.

Recommendations

Eligibility requirements

Qualifying period

18. Under section 33 of the PPL Act (the “work test period”) to be eligible for up to 20 weeks of PPL, an employee must have met the work test for the required time frame, namely 392 days before the birth of the child.
19. WLSA believes the length of this requirement is unnecessary and goes beyond the Objects of the PPL Act, negatively impacts women who are in insecure employment, limits women’s choices about both their career and family, has greater impact on women who are starting their working life, re-entering the workforce after an extended break, or undergoing fertility treatments, and does not reflect the changing nature of work.
20. The impact of this eligibility requirement, and subsequent financial impact of ineligibility to access the PPL scheme, will differ markedly across socioeconomic and demographic groups, with disadvantaged groups most significantly impacted.
21. The operational impact on employers of a parent taking parental leave (paid or unpaid) is largely the same whether the worker has been with their employer for 6, 8 or 12 months. This is further evidenced by the fact that this is not a requirement for a subsequent period of unpaid parental leave after the birth or adoption of a subsequent child with the same employer. The administrative burden for employers is recognised in that they only need to administer PPL for those longer-term employees. There are also non-pregnancy related reasons why an employee may need to have an extended absence from work or may leave employment within the first 6 months.
22. When a woman has a child or adopts a child without having met the work test time frame of 392 days for PPL (which almost always will mean she does not meet the 12-month qualifying period for unpaid parental leave), she will be significantly disadvantaged and may miss out on all the benefits of the PPL scheme (financial, social, family, health and wellbeing etc) through no fault of her own. It is possible that both parents will miss out on paid and unpaid parental leave if they have not worked for at least 12 months. However, in this scenario the Objects of the PPL Act are still relevant, and the intended outcomes would still be realised if the work test eligibility period was shortened to 6 months.
23. Under the Fair Work Act, an employee must have worked for the one employer for 12 months before qualifying for unpaid parental leave. This can lead to a situation where an employee who changes jobs in the 12 months before giving birth is not qualified for unpaid parental leave but does qualify for PPL as they still meet the work test under the PPL Act. Given that it is a biological necessity that women have time to recover from childbirth, and it would be a breach of work health and safety laws to insist on an immediate return to work, our experience is that most employers in that situation allow the employee some time off as unpaid leave to recover before returning to work. In that time the employee receives the PPL monetary benefit but does not have the benefit of the other Fair Work Act parental leave benefits like the return to work guarantee, keep in touch days, and consultation rights.

24. WLSA questions why a woman should have to start a job while not pregnant, or be penalised for doing so, because she has not worked for 12 months before qualifying for unpaid parental leave. Further WLSA questions why she should have to work for 13 months to qualify for PPL. These requirements constrain women's ability to move jobs while pregnant/considering becoming pregnant and disadvantages those in their first job, or who are returning to the workforce after an extended absence who may then give birth in the next 13 months. It makes unpaid and paid parental leave a right to be "earned" by at least one year's service (unpaid leave) or 13 months of work that meets the work test (paid leave).
25. Having long qualifying periods suggests that the standard worker is a non-pregnant employee, and the ability to take this leave is an exception that must be earned. Granting unpaid parental leave rights from day one of employment normalises parental leave. It is then up to an employer to decide if it will employ a pregnant prospective employee (while keeping within the bounds of discrimination laws that provide protection on the basis of pregnancy).
26. We have seen employees undergoing fertility treatment who are reluctant to change jobs given the uncertainty about their future pregnancy status, and others who are taking into account the qualifying period in making decisions about their future employment. This limits employee mobility, further entrenching gender inequities.
27. Consideration should be given to the interaction between unpaid parental leave in the Fair Work Act and paid parental leave under the PPL Act. Consistency in benefits should be the desired goal, whether an employee has changed jobs in the last 12 months prior to giving birth, or not.
28. **Recommendation:** WLSA recommends amending both the work test timeframe in the PPL Act and the qualifying period in the Fair Work Act to remove or reduce the qualifying period for unpaid parental leave and reduce the work test time for paid parental leave to 6 months.
29. Unpaid parental leave pursuant to the Fair Work Act should be treated in the same way as every other leave entitlement (noting that annual leave and personal/carer's leave accrue from the first day of employment with no qualifying period, and the new family and domestic violence leave entitlements are granted in full, at the commencement of employment).
30. The work test for PPL is still relevant to establish the connection between employment and the PPL benefit but should be reduced to a 6-month time frame so as not to disentitle claimants who do not have a longer working history.
31. In applying an intersectional lens, WLSA considers that parents from lower socioeconomic class, those in insecure work, younger workers, those returning to the workforce after an absence, and migrant parents will benefit the most from implementing this recommendation.

Qualifying Work

32. Under section 34 of the PPL Act, only certain activities count as qualifying work for the work test. Section 36 also defines a permissible break. Qualifying work includes:
 - paid work on a day when the claimant has worked for at least one hour
 - paid leave on a day, such as sick leave, annual leave and paid maternity leave, for a period of at least one hour.

33. **Recommendation:** WLSA recommends including periods of family and domestic violence leave within the leave categories of qualifying work for the work test, and as a permissible break, so as not to disadvantage victim-survivors of family and domestic violence.

Residency Test

34. Under the NES, employees (other than true casuals) are eligible for up to 12 months unpaid parental leave. As amended by the PPL Amending Bill, the PPL scheme is still only available to Australian workers who meet the residency test. To satisfy this test, the person must be an Australian resident or be in a special class of visa holder. Under section 33A, a newly arrived resident has a waiting period is 104 weeks.
35. **Recommendation:** Consistent with unpaid parental leave under the NES, WLSA recommends making PPL available to all workers in Australia by amending section 33A to remove the two-year waiting period for new residents if they meet the other eligibility requirements of the Work Test.
36. The new residents' waiting period is particularly problematic for victim-survivors of family violence and may contribute to their financial insecurity and worsening mental health. If section 33A is not amended to remove the waiting period for all new residents, there needs to be an exclusion or waiving of the waiting period for new residents (and other visa holders) who are victim-survivors of family violence.

Family violence

37. It is well established by research evidence, and WLSA's collective practice, that pregnancy and the birth of a child are high risk times for women experiencing family violence.
38. The PPL Amendment Bill is silent on how victim-survivors of family violence will be supported under the scheme. WLSA contemplates that the birth parent's circumstances may change because of family violence while accessing benefits under the PPL scheme. For example, a new mother may need to withdraw her consent for her partner to access the PPL scheme, she may also change from being partnered to separated etc.
39. **Recommendation:** The PPL scheme must incorporate sufficient flexibility and exclusions for victim-survivors of family violence, contemplating changing circumstances and ways to support victim-survivors of family violence under the scheme.

Support Employers to Support parents

40. The Government introduced universal paid family and domestic violence leave under the NES to give workers the means to escape violence without risking their financial security. This leave entitlement is available to all employees in Australia, including casuals, with no waiting period and no residency test. As part of the roll-out of this new leave entitlement we are aware that there will be an education campaign and targeted assistance for small businesses to assist them to understand and implement the new entitlement. WLSA recommends a similar approach is taken to the PPL scheme.
41. **Recommendation:** In 2015 the government, through the Office of Prime Minister and Cabinet, funded the Australian Human Rights Commission to work with the whole of Government to



produce resources to support working parents and their employers (<https://supportingworkingparents.humanrights.gov.au/>) These resources need to be updated and should be part of a broader communication campaign to promote the use of parental leave by both parents, and educate the community about any changes. Changing the law on its own will not drive societal change. There needs to be a coordinated campaign with the Fair Work Ombudsman, employer groups, unions, and other key stakeholders, to encourage the take up of parental leave by both parents, and to break down the entrenched mother/caregiver – father/breadwinner paradigm.

WLSA looks forward to making further contributions to policy and law reform discussions to ensure the law does not entrench gender inequality or gender-based discrimination, or negatively impact women experiencing violence and relationship breakdowns.

If you require any further information, please contact Susan Price, Chair of the WLSA Employment and Discrimination Law Committee at

Yours faithfully,

Susan Price
Chair
Employment and Discrimination Law Committee
Women's Legal Services Australia