



AUSTRALIAN  
WOMEN  
LAWYERS

## Submission to the Senate Community Affairs Legislation Committee inquiry into the Fairer Paid Parental Leave Bill 2016

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## **About us**

Australian Women Lawyers Limited (**AWL**) was established on 9 September 1997, in Melbourne, Victoria. AWL is incorporated under the *Corporations Act 2001* (Cth) and is a company limited by guarantee. AWL is governed by a board of directors comprising representatives from each State and Territory women lawyers association. AWL's Patron is the Chief Justice of the Family Court of Australia, The Hon Diana Bryant AO QC.

The objects of AWL are to:

1. achieve justice and equality for all women;
2. further understanding and support for the legal rights of all women;
3. identify, highlight and eradicate discrimination against women inherent in the legal system and in the community generally;
4. advance equality for women in the legal profession;
5. create and enhance awareness of women's contribution to the practice and development of law; and
6. provide a professional and social network for women lawyers.

## **Introduction**

Since 1997 AWL has provided a professional and social network for women lawyers, promoted the understanding and support of women's legal and human rights by identifying, highlighting and eradicating discrimination against women in the law and in the legal system, and advocated for justice and equality for all women.

AWL welcomes the opportunity to make this submission to the Senate Community Affairs Legislation Committee in relation to the inquiry into the Fairer Paid Parental Leave Bill 2016 (**Bill**). We oppose the primary purpose of this Bill, which prevents parents from accessing benefits from both the government Paid Parental Leave (PPL) scheme and their employer. AWL is particularly concerned about the retrospective application of the legislation.

Australia's parental leave entitlements fall below the average for OECD countries. Examples of PPL schemes from other jurisdictions are examined in this submission.

## **Women face gender inequality in the workplace**

Women face gender inequality in the workplace generally, in particular in terms of the gender pay gap. This affects women's career progression and economic security, which is particularly important when deciding to start a family.

As in the case of many sectors, the reason for the substantial gender pay gap in the legal sector is multi-factorial and is influenced by social factors, discrimination including unconscious bias, and pay negotiation models. However, it is also significantly influenced by the economic sacrifice many women make when taking time out from their career to have children and when they return to work, often on a part-time basis.

While the gender pay gap across sectors is 17.9%<sup>1</sup>, recent Workplace Gender Equality Agency (WGEA) data indicates that for full time employees in Legal Services the gender pay gap is as great as

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<sup>1</sup> Workplace Gender Equality Agency, 'Gender Pay Gap Statistics', September 2015.

34.3%.<sup>2</sup> This discrimination continues as women progress in the legal profession, with the Law Council's 2014 National Attrition and Re-engagement Study (NARS) Report highlighting the multiple forms of gender discrimination experienced by women in the law. The NARS report identified a need for greater transparency, ease of access to information around rights and reasonable expectations in relation to work hours, fee setting, pay and performance, with clarity around expectations with respect to career progression and goals.

### **AWL opposes most of the proposed legislative amendments to the *Paid Parental Leave Act 2010* (Cth)**

AWL strongly opposes any retrospectivity of enactment of this Bill. The proposed changes will affect women who are currently pregnant as they will already have made decisions about their pregnancy. These decisions are very likely to have taken into account the availability of parental leave.

The unfairness of retrospectivity in this Bill extends further than nine months for others, in that employees who have negotiated contracts, enterprise agreements, or other agreements since the operation of this scheme have done so on the basis that this scheme existed, and as such have negotiated entitlements accordingly. It is highly likely that employees would have more vigorously lobbied for increases to parental leave had this scheme not been in place. This would be in line with global trends where parental leave entitlements are steadily increasing. For example, the WGEA survey data in 2009 revealed a 19.3% increase in the employer provision of paid maternity leave in reporting organisations since 2003, from 35.6% to 54.9%.

AWL opposes the amendments which remove the administration of the scheme from employers and replace this with the Department of Human Services. This is because, as noted by the Productivity Commission, in their design of the scheme, having the entitlement received through employers normalises parental leave in the workplace, rather than seeing it as welfare. We also have concerns that this may have flow on effects such as loss of accrual of leave, service, and superannuation in some workplaces where these entitlements may currently exist. It also provides a disincentive for employers to top-up paid parental leave to the employee's full pay equivalent.

AWL supports proposed amendments which allow for a longer break between workdays and the extension of time to make an application to the PPL Scheme.

### **The effect of the current PPL scheme is positive but it could be enhanced**

The health and wellbeing of parents and babies is why many countries and employers offer paid parental leave. The policy allows mothers to recover from the birth and parents to spend time nurturing and bonding with their baby.

The Productivity Commission's recent report found that *'the average desirable duration of postnatal absence from work would be around six to nine months. However, the duration of any paid statutory scheme does not have to be equal to the period of absence that most helps parents and their children.'*<sup>3</sup> The Productivity Commission noted that parents currently use a variety of options, such as employer schemes and accumulated leave, to fund a period of absence from work. The report found that the government scheme's 18 weeks of leave at adequate payment levels would allow more

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<sup>2</sup> Workplace Gender Equality Agency, 'Data Explorer' at <http://data.wgea.gov.au/industries/115> .

<sup>3</sup> Paid Parental Leave: Support for parents with newborn children, Productivity Commission Inquiry Report (2009)

than 90% of parents to take at least 26 weeks of leave without '*undue financial stress*'.<sup>4</sup> This underlines the original intention of the government PPL scheme to complement parents' entitlements from their employers.

The Department of Social Services review report of the PPL scheme published in June 2014 found that Australia's PPL scheme:

- had a clear effect on delaying mothers return to work up to about 6 months following the birth of their baby;
- increased employers' retention of mothers when they returned to work; is associated with a reduction in mothers' feeling rushed, enhancing their work-life balance due to the additional time and income security provided by PPL;
- is associated with a small improvement in mothers' perceptions of their career prospects on return to work; and
- improved mothers' and babies' health and wellbeing and work-life balance particularly in the case of mothers least likely to have access to employer funded parental leave, and those with least financial security due to precarious employment.<sup>5</sup>

### **Other jurisdictions offer superior examples of PPL schemes**

As mentioned, Australia's parental leave entitlements fall below the average for OECD countries. The report referred to a number of international examples that offer more generous schemes:

- Norway, Finland, Slovenia, Germany, Latvia and the Czech Republic: Approximately 1 year of full pay leave.
- Estonia: Mothers are entitled to 85 weeks of paid leave at the country's average salary.
- Bulgaria: Mothers are entitled to 74 weeks of paid leave at the national average salary or 110 weeks at 67%.
- Hungary: Mothers are entitled to 71 weeks of paid leave at the national average salary.
- Lithuania: Parental leave benefits are paid at 100% of the nation's average salary. Women are entitled to 62 weeks leave (18 fall under maternity leave and 44 as parental leave).<sup>6</sup>

The following table from a Department of Social Services fact sheet on parental leave demonstrates that Australia compares poorly to the UK, Canada and Sweden.<sup>7</sup>

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<sup>4</sup> Paid Parental Leave: Support for parents with newborn children, Productivity Commission Inquiry Report (2009).

<sup>5</sup> Paid Parental Leave scheme – Review Report, Department of Social Services, p 7.

<sup>6</sup> Parental Leave report, OECD Social Policy Division.

<sup>7</sup> International examples of paid parental leave schemes, Department of Social Services Fact Sheet.

	What is the maximum amount of time mothers are entitled to <u>unpaid</u> leave? <sup>8</sup>	What is the maximum amount of time mothers are entitled to <u>paid</u> leave from a national scheme?	What is the payment rate?	What is the maximum weekly amount mothers may receive (approximate)?		Who pays for the parental leave?	Does the employer make the payment?	Can some of the <u>paid</u> leave be transferred to fathers or partners?	Are fathers and partners entitled to post-birth <u>paid</u> leave?
					<i>Australian dollars</i>				
Australia	52 weeks + additional 52 weeks if employer agrees	18 weeks	National Weekly Minimum Wage	\$606 +	\$606 +	Government funded	✓	✓	2 weeks
US	12 weeks	No legislated entitlement							x
UK	52 weeks	39 weeks	90% of mother's average weekly earnings for at least 6 weeks	Not capped for 6 weeks then capped at GBP £137 for remaining 33 weeks	\$211 <i>33wk cap</i>	Government funded	✓	✓	2 weeks
Canada	52 weeks	50 weeks	55% of average insured earnings	CAD \$501	\$497	Employee and employer contributions; shortfalls covered by Government	x	✓	x
NZ	52 weeks	14 weeks	100% of ordinary weekly pay or average weekly earnings	NZD \$475	\$394	Government funded	x	✓	x
Sweden	~77 weeks	~60 weeks	80% of earnings for 47 weeks; remaining 13 weeks at SEK kr1260 a week	SEK kr6545 during first 47 weeks	\$991	Employer contributions; shortfall covered by Government	x	✓	10 days

<sup>8</sup> This includes paid leave period.

## **Case study: Paid Parental Leave and women at the Bar**

This case study highlights the need for a robust and substantial PPL scheme. The aforementioned generous international schemes would mitigate some of the issues faced by women barristers, for example, through a higher payment rate for a longer period of time.

Maintaining a strong Paid Parental Leave scheme is essential for women barristers to maintain their practice and also benefits the community at large by assisting skilled female advocates to remain at the bar. Women barristers are all self-employed and do not have access to any employer-provided parental leave. Women barristers therefore rely entirely on personal savings and the Paid Parental Leave scheme on the birth or adoption of their child.

Women barristers earn much less than their male peers. Ben Phillips, a principal research fellow at the Australian National University's Centre for Social Research and Methods, analysed income records kept by the Australian Tax Office for 350 different occupations. This analysis found that barristers exhibit the largest gender pay gap between men and women than any other occupation at a huge 184%. The average women barrister's salary was found to be \$60 000. The financial strain of women maintaining a practice at the Bar was highlighted in The National Attrition and Re-engagement Study Report published by the Law Council of Australia. Many interviewees who worked as barristers or were considering coming to the bar expressed concern about the financial difficulty of sustaining a career at the Bar. This was particularly linked to the cost of maintaining chambers for women taking maternity leave. A barrister's income is also irregular and often unpredictable, which makes financial planning difficult in the lead up to parenthood.

## **Conclusion**

AWL does not endorse the Bill or the proposed amendments to reduce paid parental leave entitlements. We are especially concerned about the retrospective effect of the scheme that will affect women who are already pregnant and making plans for their maternity leave, as well as those who have negotiated enterprise agreements or contracts while the PPL scheme has been in place.

Parental leave is an important social policy that should not be the focus of Budget cuts. The indicative saving of \$1,179.9 million is not justifiable when it will result in parents spending less time with their newborn children and being under financial stress. AWL believes the title of the Bill, "Fairer" Paid Parental Leave, is a misnomer as it reduces entitlements for parents, placing Australia further behind in this important area of public policy. The PPL scheme was designed to allow parents who received parental leave from their employers to supplement this with the government scheme, annual leave and any other leave entitlements. Framing this issue around the pejorative phrase "double dipping" is disingenuous, and unfairly vilifies parents using the PPL scheme as it was originally intended.