

Review of Australia's Paid Parental Leave scheme

Business/Organisation Submission Form

Instructions for completion:

- questions marked with an asterix (*) must be answered
- please save as a Microsoft Word document, other formats will not be accepted
- email your submission to ppl@fahcsia.gov.au
- if you are unable to make your submission by email, you may post a hard copy of your submission to:

Paid Parental Leave review – FaHCSIA
AW3
PO Box 7576
CANBERRA BUSINESS CENTRE ACT 2610

The closing time for submissions is **5pm Friday 31 May 2013.**

Information and resources to help you prepare your submission are available on the website at www.fahcsia.gov.au/PPLreview.

Part A: Confidentiality statement

x I have read and agree to the conditions outlined in the [Privacy Information \(A1\)](#)*

We encourage you to allow your submission to be shared with other members of the public to promote discussion. If you would prefer your submission be treated as confidential please tick the following box:

Please treat my submission as confidential (A2)

Part B: Your name or business/organisation name

B(b)1. Business/organisation name*: Women Lawyers Association of New South Wales Inc

B(b)2. Details of the contact person for this submission*

B(b)3. Title: Ms

First name: Susan

Surname: Price

B(b)4. Email address*: susan.price@au.pwc.com

B(b)5. Phone number: 02 8266 2175

Part C: Information about your business/organisation

C(b)1. Which of the following best describes your business or organisation?

- A private sector "for profit" organisation
- A private sector "not-for-profit" organisation
- A government business or enterprise or commercial statutory authority
- Another government organisation such as a public service department, local council, school or university
- Other type of business/organisation: occupational representative body
- Not sure

C(b)2. Does your business/organisation operate from more than one location?

- Yes
- No
- Not sure

C(b)3. Where is the primary location of your business/organisation?

- NSW
- VIC
- QLD
- WA
- SA
- Tasmania
- NT
- ACT
- National
- International
- Not sure

C(b)4. Please provide a brief description of your business/organisation? (eg. sector, type of products or services, etc.)

Representative body for women lawyers in NSW

C(b)5. Approximately how many people does your business/organisation usually employ (that are paid a wage or salary)?

- Less than 5
- 5 to 19 employees
- 20 to 99 employees
- 100 to 199 employees
- 200 employees or more
- Not sure

C(b)6. Is your business/organisation registered to provide Government-funded Parental Leave Pay to its employees?

- Yes
- No
- Not sure

C(b)7. Does your business/organisation offer its employees any **paid** leave to care for children, funded by your business/organisation, in addition to the Government's Paid Parental Leave scheme?

- Paid maternity leave (for mothers to care for their children after birth)
- Paid paternity leave (for fathers to care for their children after birth)
- Paid primary carer's leave
- No employer-funded paid leave to care for children after birth
- Not sure

C(b)8. If there is any other information you would like to provide about your business/organisation, please do so here:

<Please type your response here>

Part D: Your response to the review questions

Please answer any or all of the questions below. Your answers will be most useful if you include explanations and evidence. We encourage you to use the information and resources provided on the PPL review webpage to help you prepare your submission.

D1. How does the scheme work in practice for parents, including parents' awareness of the scheme and their experience of applying for, and receiving, Parental Leave Pay?

<Please type your response here>

D2. How does the scheme work in practice for employers, including employers' experience of receiving Paid Parental Leave funds and providing Parental Leave Pay to their employees?

Please see the attached response

D3. How much time do mothers and fathers (or other partners) take off work after the birth or adoption of a child – including with the Government's Paid Parental Leave and employer provided leave entitlements including paid and unpaid leave?

<Please type your response here>

D4. What do you think about the availability of other types of leave, including unpaid leave and any paid leave provided by employers, as well as other employer provided benefits?

<Please type your response here>

D5. How do employer-provided leave and other employer entitlements interact with the Government's Paid Parental Leave scheme?

Please see the attached response

D6. What do you think about how the Paid Parental Leave work test operates? The work test is the set of rules about how much a parent must have worked before the birth of the child to be eligible for Parental Leave Pay.

<Please type your response here>

D7. What do you think about the process for fathers and other partners to access payments under the Paid Parental Leave scheme including in the rules that set out how a mother can transfer unused Parental Leave Pay to her partner?

<Please type your response here>

D8. Should superannuation contributions be made on top of Parental Leave Pay, and how should superannuation contributions work?

Please see the attached response

Part E: Further information and attachments

Please include any images, tables, graphs, additional information and/or attachments in this part of the document.

Please see the attached response.

31 May 2013

Submission to the FaHCSIA Paid Parental Leave scheme review

These submissions are made by the Women Lawyers Association of New South Wales Inc (WLANSW) in response to the review of the Paid Parental Leave scheme being conducted by the Department of Families, Housing, Community Services, and Indigenous Affairs (FaHCSIA). In this submission we will refer to that scheme as Parental Leave Pay (PLP)

WLANSW is the peak body representing women lawyers in NSW. WLANSW has been committed to improving the status and working conditions of women lawyers since 1952. It has members (male, female and corporate) throughout NSW. Our members include solicitors, barristers, judicial officers, academics, corporate counsel, lawyers and law students. Members work in private practice, corporations, the public sector, the community legal sector, and at the Bar.

This submission does not necessarily reflect the view or views of all WLANSW members.

A number of issues identified for review are of particular interest to WLANSW members;

- a) the availability and amount of leave and payments provide by employers in relation to the birth or adoption of child, and the interaction of those entitlements with parental leave pay provided under the Act
- b) the administration of the Act
- c) any other matter relevant to the general operation of the Act, and in particular the income test.

Background to women lawyers in NSW

In 2011 the Law Society of New South Wales instituted a Thought Leadership initiative to identify barriers to the progression of women in the legal profession. As part of that initiative, they published a Report¹, which contains a useful snapshot women in the legal profession NSW.

The statistics collected in the report show that

¹ Thought Leadership 2011, Advancement of women the Profession, Report and Recommendations, The Law Society of New South Wales

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- The number of female solicitors has increased much faster than the number of males with the proportion of women approaching 50%
- The proportion of women is greater in the corporate and government segments than private practice
- Female practitioners outnumber males in younger age groups but are greatly outnumbered in the older ages groups
- The proportion of female partners is much lower than the proportions in which females are represented in the general private practice population. However, the overall increase in the proportion of women partners since 2005 indicates a greater increase in new appointments
- Part time work is more common for women than men with one fifth of female respondents reporting they worked part time²

A graphic demonstration of the percentage of women in the profession can be seen in the attached Statistics (Schedule 1) extracted from the Report.³

It follows that there are many young lawyers in the legal profession, of child bearing age, who are potentially eligible to receive PLP, as well as any employer paid scheme their employers may have introduced in this area.

a) the availability and amount of leave and payments provide by employers in relation to the birth or adoption of child, and the interaction of those entitlements with parental leave pay provided under the Act

WLANSW has compiled its own table of publicly available partnership statistics, and employer provided parental leave. That table was first published on the WLANSW web-site in November 2012⁴ and is reproduced in Schedule 2.

It shows that while many of the larger private law firms in the list do offer paid parental leave, coverage is not universal and the level of coverage varies significantly.

Although it is not a snap-shot of the entire profession, it is fair to say that as a general rule, it is more likely that a law firm will provide some paid parental leave as its size increases, with small firms less likely to have any scheme, and large firms more likely. This leaves a significant number of employees with no employer provided parental leave, and only PLP. Barristers will have no employer scheme, unless they pay it to themselves.

It is also not known how these schemes might interact with PLP, and whether they are in addition to, or incorporate PLP, or what conditions they impose before an employee would qualify for the payment.

Some examples of interaction we are aware of are set out below.

² See Note 1 page 6

³ <http://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/461899.pdf>

⁴ http://www.womenlawyersnsw.org.au/sites/default/files/WLANSW_LawFirmComparison_2012_o.pdf

Example 1

One member firm decided to introduce a modest employer paid parental leave scheme to complement PLP. The initial intention was to top up the Government's payment to full replacement wage up to a total employer contribution of a set number of weeks' salary. In the end, it got too confusing for the payroll person to administer, with the PLP being taxable but not superable, while the employer payment was to include superannuation. The employer provided paid parental leave separately to the PLP, and at the end of the PLP period, as managing any interaction was too administratively difficult.

The need to provide the PLP as it was received also gave the employer no ability to pay it in a different way, such as part of a scheme to pay half-pay based on replacement income for a longer period than the PLP 18 weeks.

It also led to confusion within the firm's management team over the difference between unpaid parental leave rights under the *Fair Work Act*, the work test under PLP, and the subtle distinction between parental leave and parental leave pay.

Example 2

In another example, a sole practitioner expressed dissatisfaction that his long standing employee had come to ask him about her PLP, which he thought was a payment that she should be claiming directly from Centrelink. He felt she was using this as an opportunity to seek an additional employer paid parental leave benefit from him. He had failed to appreciate that he was no more than a post-box for the PLP payment, and the only requirement on his part was to pass on the funds once received.

Example 3

A large multidisciplinary professional services practice used its external payroll provider service to update its payroll software to accommodate PLP, and that the transition was not difficult, however, it did note that in administering the PLP, there were some practical issues;

- Centrelink reimburses the employer every 6 weeks while the employer pays employees on a monthly/fortnightly basis. This timing difference would be harder for small business to bear.
- The Government pays in arrears while the employer will pay whatever is due at the usual pay cycle of an individual.
- Two limitations is whoever is receiving the payment needs to be on the employer's payroll (i.e. spouses can only receive the payment if they are also an employee) and the payment cannot be extended beyond 18 weeks.

Recommendations:

There should be more information available to employers to explain the interaction between the Fair Work Act unpaid parental leave rules and the PLP scheme.

The distinction between parental leave and parental leave pay needs to be well understood and explained so that employers know how to deal with a situation where a worker may be entitled to, and be receiving PLP, but not actual unpaid parental leave (say because they have worked with another employer in the last 12 months, or been self-employed for part of that time).

Case studies showing how employers could develop their own paid leave schemes to sit with the PLP should be developed and communicated to employers, with as many options illustrated such as – topping up PLP to replacement wages, paying super on PLP and employer paid parental leave, showing how other forms of leave could be utilised as well in the unpaid parental leave period.

Some flexibility should be allowed to employers in paying the PLP provided the employee agrees, so that for example, it could be paid over a longer period than 18 weeks.

c) any other matter relevant to the general operation of the Act

Income test

One aspect of the operation of the Act which WANSW feels is significant for its members is the income test. The concept of an income test was not raised in the initial Productivity Commission report, which proposed a universal scheme provided the work test was met, but an income test was introduced into the Act. While one can speculate as to why (to avoid claims of middle class welfare, and benefits for the well paid, as well as to reduce the costs of the scheme) we believe it undermines the effectiveness of the Scheme for some of our members, and other highly paid women.

Currently a woman is not eligible to receive PLP if her adjusted taxable income was greater than \$150,000 in the financial year prior to the birth. This ignores any other family income that may be earned, or the woman's single or partnered status.

While conceding that there are not many women are in this privileged financial position, a number of women lawyers, and other professionals, are likely to be earning at this level. This is particularly so for women who have worked as lawyers who are over 30 years of age. Publically available salary figures⁵ from Mahlab legal recruiters are set out below, and while they are a guide only, they show that for the average law graduate who starts work at 24, it is entirely conceivable that by 30 she is earning \$150,000 or more.

Major Firms - Sydney

The figures below are drawn from **Survey 2012 Reshaping the Model The Push to Go Global**. For further information on private practice salaries at major, mid and small CBD firms in Sydney and other capital cities please go to [Survey 2012 Reshaping the Model The Push to Go Global](#).⁵

Year	Low	High	Mode
Grad	\$70,000	\$80,000	\$73,000
1	\$78,000	\$94,000	\$79,000
2	\$82,000	\$109,000	\$90,000
3	\$90,000	\$136,000	\$103,500
4	\$100,000	\$140,000	\$119,000

⁵ <http://www.mahlab.com.au/legal-career.asp?id=128&t=private-practice-salaries&cid=32>

5+ not (SA)	\$110,000	\$150,000	\$124,500
SA1	\$140,000	\$165,000	\$146,000
SA2	\$147,000	\$180,000	\$165,000
SA3	\$165,000	\$210,000	\$181,000
SA4	\$180,000	\$235,000	\$190,000
SA5/SpC	\$185,000	\$320,000	\$255,000

To assess eligibility based only on the woman's prior income means the following inequities arise in the Scheme;

- Single mothers, or those who are the major breadwinner in the relationship will not qualify for PLP if they earn over the threshold, despite the fact that their absence from the workforce means that there may be no income, or significantly reduced income at the time immediately after the birth.
- Women who have high earning partners are still eligible for PLP as it is assessed on the woman's income only, not any assessment of family or joint income during the woman's absence from work. During the period of parental leave the family may still have an income in excess of \$150,000 per annum.
- It could act as a disincentive for a woman who is pregnant, or knows that she wants to be pregnant, to seek a pay-rise if it would put her over the cap.
- We also believe it further entrenches the view that the cost of having a child is somehow exclusively associated with the mother and her earning capacity, rather than any concept of joint financial responsibility.

We appreciate that this will affect only a very small number of women who currently are not eligible, but many of our members and other professional women will be in that category. Therefore, the payment should be a universal one, irrespective of the woman's income. As the PLP is taxable, women with a higher income will be taxed on those payments at potentially a higher marginal rate, so there is some return on the payment.

This is consistent with the Productivity Commission's initial report, which did not impose an income test. It is also consistent with every employer funded parental leave scheme we have seen, as none impose an income test, rather tend to rely on service based tests only for eligibility.

It is also consistent with the characterisation of PLP as a work-related entitlement, rather than a welfare payment. We do not impose income tests on any other leave payments, yet the same argument could be made that those earning at that level should be able to provide for their own paid holidays and sick leave. If we truly want to entrench the concept of paid parental leave as a work benefit then it should be on the same footing as other entitlements.

Differing eligibility also creates problems for employers in designing and implementing an employer parental leave scheme. If PLP is ignored by an employer parental leave scheme, then it follows that some employees will receive much greater total parental leave benefits than others. If it is factored in, then high income earning employees who are not receiving the PLP may receive a lower total payment. If the employer wants to make sure all employees are on the same footing, then it must design a scheme that caters for both payments. This makes any scheme much more complex, and requires the employer to

assess whether the woman is eligible for PLP or not. Any payment also needs to take account of the baby bonus, which will usually be unknown to the employer.

If an income test is to be imposed, then it should not be based on the income period during the leave, not on a past measure. Any measure based on past income is open to manipulation and currently pregnant women may attempt to manipulate their own income to meet the income test. While this may seem fanciful, we are aware of one instance where a pregnant lawyer negotiated with her employer to defer the payment of a bonus into the following tax year so that she would fall within the income test for PLP.

Recommendations

There should be no income test, PLP should be a universal payment provided the work test is met.

If there is to be an income test, it should not be based on the woman's income in the last tax year prior to the birth, but on an assessment of likely income during the parental leave period.

Superannuation

As a wage replacement, we believe that the payment should attract superannuation, and this should be included on top of the payment. Women generally have substantially less superannuation available on retirement due to their working patterns and wage levels and any measure that assists to redress this should be encouraged.

Childcare and flexible work options

Although it is beyond the scope of this review, WLANSW notes that for many of our members childcare availability and affordability on their return to work, and the ability to access decent flexible work are greater inhibitors to their successful return from parental leave, and any measures the Government can consider to improve either of these is welcome.

Yours sincerely,



Margaret Holz
President



THE LAW SOCIETY OF NSW

THOUGHT LEADERSHIP 2011

Advancement of women in the profession

Statistics on women in the profession

Gender profile of partners and principals in private firms 2010 and 2005

	Male		Female		Total	
	2010	2005	2010	2005	2010	2005
Sole Practitioners	3165 (77.3%)	2774 (79.9%)	929 (22.7%)	696 (20.1%)	4094	3470
2-4 partners	1057 (82.3%)	1180 (87.3%)	228 (17.7%)	171 (12.7%)	1285	1351
5-10 partners	379 (82.9%)	427 (87.1%)	78 (17.1%)	63 (12.9%)	457	490
11-20 partners	170 (81.7%)	174 (87.0%)	38 (18.3%)	26 (13.0%)	208	200
21+ partners	896 (76.7%)	1025 (81.5%)	272 (23.3%)	233 (18.5%)	1168	1258

Women barristers in 2010 and 2005 (holders of NSW practising certificate)

	Male		Female		Total	
	2010	2005	2010	2005	2010	2005
All PC holders	1750 (81.2%)	1853 (85.2%)	404 (18.8%)	323 (14.8%)	2154	2176
SC or QC	315 (93.5%)	309 (96.0%)	22 (6.5%)	13 (4.0%)	337	322
Junior barristers	1435 (79.0%)	1544 (83.3%)	382 (21.0%)	310 (16.7%)	1817	1854

Source: New South Wales Bar Association Annual Reports

Estimated income of solicitors in 2010

	1 year		1-5 years		6-10 years		11-15 years		16-30 years		30+ years		All	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Estimated mean income	\$62,100	\$57,100	\$88,600	\$77,000	\$121,100	\$108,800	\$148,300	\$122,500	\$156,100	\$130,500	\$137,900	\$106,600	\$130,900	\$101,300

Note: Estimated income is for respondents working full time in private practice





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Advancement of women in the profession

Statistics on women in the profession

Women solicitors 1988–2010

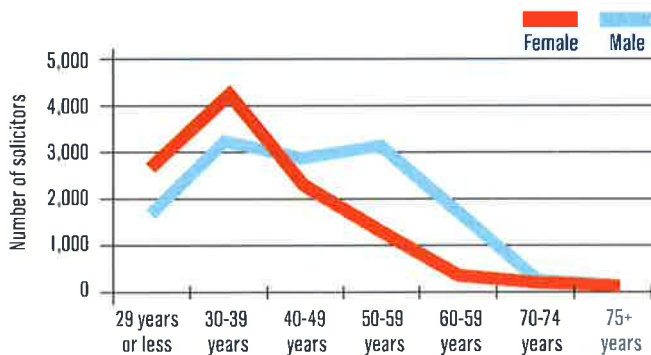
There has been a 451.5% increase in women solicitors since 1988

Year	Male	Female	Total
2010	12,845 (54.1%)	10,915 (45.9%)	23,760
2008	12,260 (55.5%)	9,845 (44.5%)	22,105
2003	11,112 (61.4%)	6,980 (38.6%)	18,092
1998	9,414 (67.9%)	4,457 (32.1%)	13,871
1993	8,859 (74.1%)	3,098 (25.9%)	11,957
1988	7,829 (79.8%)	1,979 (20.2%)	9,808

Years since admission in 2010

	Male	Female	Total
< 1 year	993 (40.8%)	1,442 (59.2%)	2,435
1-5 years	2,024 (40.1%)	3,020 (59.9%)	5,044
6-10 years	2,266 (45.6%)	2,700 (54.4%)	4,966
11-14 years	1,344 (51.7%)	1,256 (48.3%)	2,600
15+ years	6,218 (71.3%)	2,498 (28.7%)	8,716
Total	12,845 (54.1%)	10,916 (45.9%)	23,761

Age profile of solicitors in 2010



Gender of solicitors by employment sector in 2010

Sector	Male	Female	Total
Private	9,815 (58.9%)	6,857 (41.1%)	16,672
Government	1,015 (36.8%)	1,745 (63.2%)	2,760
Corporate	2,014 (46.5%)	2,313 (53.5%)	4,327
No response	1	0	1
Total	12,845 (54.1%)	10,916 (45.9%)	23,760

Part time working by solicitors in 2010

	Male	Female	All solicitors reporting part time working
Total number reporting part time working	428 (34.4%)	812 (65.3%)	1,243
Mean hours worked	19.99	25.66	23.90

Note: Total does not reflect totals of males and females as gender not stated in some cases.



(six months
to June
2012)

Firm	Total number of partners	Female partners	Women as a % of partners	Number of equity partners	Female equity partners	Women as a % of equity partners	Paid parental leave (weeks)	Extras
Gilbert + Tobin	66	24	36.3	60	21	35.1	18	EOCFW
TressCox	35	11	31.8	20	1	4	Up to 20	WLANSW corp membership (joined 11/7/08) WLANSW corp membership (joined 3/6/08)
Lander & Rogers	53	17	31.1	41	10	24.4	16	EOCFW; WLANSW corp membership (joined 13/8/07)
Holding Redlich	58	17	28.7	17	6	34.5		
Hall & Wilcox	33	9	28.3	17	6	34.5		
Henry Davis York	53	15	28.1			28.1	12	EOCFW, WLANSW corp membership (joined 22/6/11)
Ashurst Australia	188	47	25	133	27	20.3	18	EOCFW, WLANSW corp membership (joined 25/8/08)
Hopgoodganim Lawyers	26	6	24.2	19	2	10.5		
Maddocks	63	15	24.1				12	EOCFW, WLANSW corp member (joined 27/7/2012)
King & Wood Mallesons	156	37	23.6	156	37	23.6	18	EOCFW, WLANSW corp membership (joined 5/8/08)
Herbert Smith Freehills	191	44	23.3	191	45	23.3	18	EOCFW, WLANSW corp membership (joined 6/6/11)
Griffith Hack	33	8	23.3	21	4	18.3		
Hunt & Hunt	59	14	23.2	28	5	17.9	12	WLANSW corp membership (joined 24/9/09)
Norton Rose	143	31	21.5	85	9	10.6	18	EOCFW
Gadens	135	29	21.4	65	10	15.4	0-14	
DLA Piper	111	23	20.9	111	23	20.9	14	WLANSW corp membership (joined 6/9/10)
Minter Ellison Legal Group	285	59	20.6	204	33	16.4	14	EOCFW
Jackson McDonald	28	6	19.9	17	0	0		
Clayton Utz	198	39	19.8	162	25	15.6	18	WLANSW corp membership (joined 28/9/07) EOCFW
Corrs Chambers Westgarth	122	24	19.4	84	12	13.8	18	EOCFW
Kennedy Strang Legal Group	68	13	19.1	42	5	11.9		
Piper Alderman	52	10	19	29	1	3.4		
Sparke Helmore	53	10	18.6	30	5	16.7	14	
Moray & Agnew	65	12	18.5	27	2	7.4	12	
Arnold Bloch Leibler	38	7	18.4	26	3	11.5		
Curwoods Lawyers	11	2	18.2	6	0	0		
HWL Ebsworth	146	26	17.8	90	15	16.7	18	
Middletons	67	11	17			17		WLANSW corp membership (joined 14/8/08) EOCFW

Herbert Geer	42	7	16.9	19	1	4.3	
Squire Sanders Australia	12	2	16.7	10	0	0	
Alens Arthur Robinson	176	29	16.2	170	29	16.8	EOCFW
Colin Biggers & Paisley	36	6	15.7	14	0	0	WLANSW corp membership (joined 13/7/12) EOCFW
Wolton & Kearney	13	2	15.4	8	2	25	
Baker & McKenzie	91	14	15.3	49	5	10.2	EOCFW
Cooper Grace & Ward	23	3	14.5	16	1	3.8	EOCFW
M+K Lawyers	53	8	14.2				
McCullough Robertson	50	7	14	36	5	13.9	EOCFW
Dibbs Barker	45	6	13.3	44	6	13.6	WLANSW corp membership (joined 25/8/08)
Thomsons Lawyers	58	7	12.1	48	6	12.5	
Mills Oakley Lawyers	36	4	11.1	13	0	0	
Lavan Legal	21	2	9.5				

Footnotes:

1. Information in columns 1 to 6 taken from the Australian's Partnership Survey, conducted by Beaton and published in the Australian on Friday 6 July 2012
2. Information in column 7 from ALB Issue 10.4 May 2012, Women in Law, page 15.
3. Information in column 8 from 2012 EOWA Employer of Choice for Women results, and Women Lawyers Association of NSW records.
4. Shading in column 3 represents those firms who are above the average for the gender profile of partners in private firms based on 2010 data as reported in the Thought Leadership 2011 Advancement of women in the profession, Law Society of New South Wales Report, page 9
5. An empty box means no data is available for that category
6. EOCFW means Employer of Choice for Women as determined by the Equal opportunity for Women in the Workplace Agency