

10 March 2020

Our ref: LP-MC

Margery Nicoll
Acting Chief Executive Officer
Law Council of Australia
GPO Box 1989
Canberra ACT 2601By email: 

Dear Ms Nicoll

Paid Parental Leave Amendment (Flexibility Measures) Bill 2020

Thank you for the opportunity to provide comments on the Paid Parental Leave Amendment (Flexibility Measures) Bill 2020 (**Bill**).

The Bill amends the *Paid Parental Leave Amendment (Work Test) Act 2019* to make the Paid Parental Leave (**PPL**) scheme more flexible.

The amendments seek to allow parents to claim two types of PPL:

- *The first type will be an initial period of 12 weeks called the PPL period. The rules relating to this block will be the same as currently apply to the existing 18 week period—except that the period will be reduced in length.*
- *The second type is new and will take place in the person's flexible PPL period. Days during this period are called flexible PPL days. Eligible parents (and other claimants in limited circumstances) will be able to claim PPL for a maximum of 30 days whenever they like during the flexible PPL period, which usually starts after the PPL period ends and finishes when the child turns two.¹*

The reforms form part of the Government's 'Women's Economic Security Package' which are focussed on 'improving women's workforce participation, economic independence and earning potential'.

QLS is generally supportive of the Bill in that it will offer greater flexibility to parents, particularly to self-employed parents, who will be able to access leave at any time during the first 2 years of their children's lives.

¹ Explanatory Memorandum, page 1.

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We submit that employer and community information should be provided as these amendments are implemented so that workers are encouraged to take the full period of available leave and the changes do not inadvertently lead to workers taking only the initial period (perhaps, for example, due to feeling pressured to not utilise the remaining 30 days). "Secondary carers" should also not be deterred from taking leave due to undue administrative complexity in the process. The take up of the flexible PLP should be regularly evaluated to ensure that the policy objectives are being achieved in this regard.

Whilst we support the policy intent of the Bill, we agree with other submitters to this inquiry that more needs to be done to improve Australia's PPL scheme in a broader sense.

In particular:

- The PPL scheme, as a whole, should be reviewed given the last Review report was delivered in 2014 by the Department of Social Services.² In our view, the following issues should form part of any Review:
 - Whether PPL periods should be extended in terms of length and payment amount so that Australia is more in line with OECD averages³;
 - The provision of 'Dad and Partner pay' and how it could be best placed within the overarching PPL scheme to encourage fathers and partners to take time out of the workforce to care for children. This may require reconsideration of the appropriateness of primary and secondary carer distinctions and how the language used can be more inclusive to reflect and respect the diversity of individuals and family units;
 - Provision for superannuation contributions while parents are on PPL to assist in strengthening longer term financial security;
 - How PPL can best be accessed in the context of the evolving characteristics of workforce participation, particularly the gig economy workforce; and
 - The application process, including the requirement for the birth mother to make the initial application and then, when certain criteria are met, transfer the PPL to another parent⁴ and how this impacts the take-up of PPL by all parents, guardians and genders.
- There should be consistent eligibility criteria in both the PPL Scheme and the National Employment Standards (NES) to ensure adequate protection of parents on return to work so as not to disadvantage parents who are eligible and access PPL.

For example, a parent may have worked the requisite 10 out of the last 13 months in order to be eligible to receive PPL, however, having not worked in a role for 12 months, they are not entitled to the protections and entitlements afforded under the

²https://www.dss.gov.au/sites/default/files/documents/06_2014/paid_parental_leave_scheme_review_report.pdf.

³https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf.

⁴ Section 54 of *Paid Parental Leave Act 2010* (Cth).

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NES⁵ (e.g. to take a separate period of up to 12 months of unpaid parental leave). We agree with the submission by the National For Australian Women to the inquiry that the NES should be amended so that it is in line with the eligibility requirements for receipt of PPL.

- The government should be urged to stay committed to delivering the measures it outlined in the Women's Economic Security Package' including⁶:
 - reinstating the Time Use Survey, a contemporary evidence base to measure women's economic security. This is an important tool in understanding the economic value of unpaid work, including care work, a key factor in the workforce participation gap. We note steps are being undertaken in this regard and agree that this is an important initiative that should be maintained⁷; and
 - establishing a Forum on Reducing Barriers to Work. This should include consideration of issues associated with flexible work arrangements including barriers to access and experiences of discrimination on making flexible work requests⁸ including the need, if any, for further legislative protections or measures to be taken.
- Finally, gender discrimination continues to be cited as the largest contributor of the gender pay gap at 39 %.⁹ Women in Australia take up part-time employment at three times the rate of men¹⁰. While this can be a family decision, social norms, 'and factors such as job segmentation and pay', often play a role in constraining choices about work¹¹.

There remains a lack of concrete measures which address the inequitable division of unpaid care work. This requires a broader consideration of measures to drive cultural change to recognise the economic value of caring work and support equitable parenting. Prioritising women's workforce participation, risks masking the range of issues contributing to the gender pay gap and long term economic insecurity.

⁵ All employees in Australia are eligible for unpaid parental leave if they have completed at least 12 months of continuous service with their employer, < <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/minimum-workplace-entitlements/parental-leave-and-related-entitlements#entitlement>>.

⁶ <https://pmc.gov.au/office-women/economic-security/wess>

⁷ <https://www.employment.gov.au/newsroom/how-we-share-unpaid-labour-home-informs-employment-policy>

⁸ Australian Human Rights Commission, 'Supporting Working Parents: Pregnancy and return to work Nation Review, Report, 2014'.

⁹ KPMG 2019, *She's Price(d)less; The economics of the gender pay gap – Summary report*, retrieved 29 September 2019, <https://home.kpmg/content/dam/kpmg/au/pdf/2019/gender-pay-gap-economics-summary-report-2019.pdf> at p 7.

¹⁰ <https://www.wgea.gov.au/sites/default/files/documents/australian-unpaid-care-work-and-the-labour-market.pdf> at p 5.

¹¹ KPMG 2019, *She's Price(d)less; The economics of the gender pay gap – Summary report*, retrieved 29 September 2019, <https://home.kpmg/content/dam/kpmg/au/pdf/2019/gender-pay-gap-economics-summary-report-2019.pdf> at p 11.

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If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Luke Murphy
President