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

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About us

Victorian Women Lawyers (**VWL**) is a voluntary association that promotes and protects the interests of women in the legal profession. Formed in 1996, VWL now has over 800 members. VWL provides a network for information exchange, social interaction and continuing education and reform within the legal profession and broader community. VWL has undertaken research into work practices affecting women in the legal profession and provides protocols and training to effect positive change.

Since 1996, VWL has advocated for the equal representation of women and 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 achieving justice and equality for all women.

Details of our publications and submissions are available at www.vwl.asn.au under the 'Publications' tab.

Fairer Paid Parental Leave Bill - key concerns

VWL wishes to express its concerns with respect to a number of the proposed changes to Paid Parental Leave (**PPL**) scheme as set out in the Fairer Paid Parental Leave Bill 2016 (**Bill**).

VWL is particularly concerned about the effect and ramifications of the Bill on the original goal of PPL, namely, allowing parents to package various entitlements to fund an appropriate duration of postnatal absence from work. VWL considers that the Bill has the capacity to act as an impediment to the ability of employees to access fair parental leave entitlements. Further, VWL is concerned that a number of the proposed changes may operate as a disincentive to employers maintaining or increasing paid parental leave entitlements independent to the statutory scheme.

The importance of paid parental leave

The importance of PPL is well documented.¹ PPL encourages women to take leave after the birth of a child, to improve health outcomes, whilst also increasing their chance of returning to the workforce.

Optimum duration of leave

In 2009, the Productivity Commission recommended that the average desirable duration of postnatal absence from work would be around six to nine months.² However, the Commission noted that the duration of a paid statutory scheme did not have to be equal to the period of absence, with one reason given that parents can use many options including access to privately negotiated paid maternity schemes and past accumulated leave to fund a period of leave from work.³ That is, it was recommended that the statutory scheme, when

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

² Ibid XVIII.

³ Ibid 2.45.

supplemented by a person's private arrangements, should achieve an optimal duration of absence from work which provides significant parental and child welfare benefits.

It is clear that the existing scheme was designed as a 'safety net' for parents with little or no existing entitlements to paid parental leave. However, it appears to have been well understood at the time of implementing the scheme that the 18 weeks provided by the statutory scheme was not sufficient and should ideally be used in conjunction with other entitlements to provide an appropriate period of absence from work following the birth of a child.

As has been reported by various sources⁴, Australia's current PPL scheme is already one of the least generous in the Organisation for Economic Co-operation and Development (OECD) countries. In view of this, to further reduce the entitlements provided under the scheme for the primary benefit of cost-cutting would be a disappointing step.

Paid parental leave in the legal sector

Women lawyers are one professional group likely to be affected by the Bill, as they fall within the scope of a higher income profession where paid parental leave entitlements are increasingly common.⁵

Whilst some women lawyers may receive PPL from their employers, a legislative framework for PPL is essential in the legal sector. CEO of InfoTrack, Stephen Wood, commented on a survey of legal professionals conducted in 2014 to the Australasian Lawyer as follows:

*'I have no doubt that some firms have in place the policies, practices and mind-set to promote talented women, but whatever the reality - the perception is strong that taking parental leave is the kiss of death for women aspiring to partnership.'*⁶

Without a statutory entitlement to 18 weeks' paid parental leave, the perception that Wood refers to may result in an expectation for women to hasten a return to work in order to pursue not only partnerships but promotions more generally.

Analysis of the Fairer Paid Parental Leave Bill 2016

The PPL scheme was always intended to be a workplace entitlement, as opposed to a welfare benefit.⁷ Characterising high income parents as 'double dippers' is disappointing, as it fails to recognise the original intentions of the PPL scheme and the realities faced by many working families.

In the Second Reading Speech for the Bill, Mr Christian Porter MP stated that it was not expected that the proposed reduction in entitlements would have a negative impact on the ability of higher income mothers to take time away from work following a baby.⁸ The

⁴ Ibid 5.7.

⁵ Ibid 3.16

⁶ Sophie Schroder, *Parental Leave 'kiss of death' for female lawyers*, 1 October 2014, Australasian Lawyer, <http://www.australasianlawyer.com.au/news/parental-leave-kiss-of-death-for-female-lawyers-192511.aspx>.

⁷ Productivity Commission, above n 1, 8.35.

⁸ Commonwealth, *Parliamentary Debates*, House of Representatives, 20 October 2016, 2686, (Christian Porter, Minister for Social Services).



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evidence given to support this proposition was the findings contained in the Department of Social Services (DSS) Review that the impact of PPL on extending the amount of leave was more pronounced in lower income groups.⁹

However, it does not automatically follow that reducing statutory entitlements for high income parents would not have an impact on their ability to take time away from work. The DSS Review also identified, through in-depth interviews with mothers, that *'women took as much paid leave as they possibly could after childbirth, regardless of education, professional or occupational status, income, or attitudes and most women who had returned to work at the time of interview would have taken longer had this been financially possible.'*¹⁰

A personal example provided by one VWL member illustrates this:

'As a lawyer I appreciate that I make a relatively good income and I am fortunate that my employer offers 18 weeks paid leave. However, I am the higher earner in my relationship. When I take maternity leave next year we will only be able to afford for me to take off the amount of time I receive in any paid leave. I would ideally like to take six months and not worry about juggling a new baby, sleep deprivation and a demanding job if I have to return after only three months.'

Further, VWL opposes the potential for any retrospective enactment of the Bill. This would affect those parents who have already considered and decided upon a course of action after pregnancy, and who are likely depending on existing statutory parental leave entitlements. The retrospective element would also affect those parents who have accepted jobs and entered into contracts based on their knowledge that the scheme was available to them.

VWL does not endorse the Bill

VWL does not endorse the Bill. In particular, VWL does not support the following:

1. proposed amendments to reduce current paid parental leave entitlements; and
2. the potential retrospective implementation of the Bill.

The Bill claims to make the scheme 'fairer' but seeks to do so by reducing entitlements in a scheme that already sees Australia falling behind other countries, such as the United Kingdom, Canada and Sweden.¹¹ In our view, true 'fairness' would see women receiving an adequate duration of leave at an adequate level of pay to achieve the many documented benefits of paid maternity leave,¹² without disadvantaging parents who seek to use a scheme in the manner in which it was originally intended.

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⁹ Department of Social Services, 'Paid Parental Leave scheme: Review Report' June 2014, 41.

¹⁰ Ibid 40.

¹¹ International examples of paid parental leave schemes, Department of Social Services Fact Sheet.

¹² Productivity Commission, above n 1, 7.15.