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**SUBMISSION TO SENATE COMMUNITY AFFAIRS LEGISLATION
COMMITTEE INTO THE PAID PARENTAL LEAVE AMENDMENT
(FLEXIBILITY MEASURES) BILL 2020**

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Submitted:	Online
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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.

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.

Overview of submission and response

VWL welcomes the opportunity to make a submission to the Senate Community Affairs Legislation Committee in relation to the Paid Parental Leave Amendment (Flexibility Measures) Bill 2020 (**Bill**). VWL supports government efforts to fund an appropriate duration of postnatal absence from work and the ability to package those entitlements in a way that assists women to return to work following the birth or adoption of a child.

The changes to the paid parental leave scheme (**PPL**) introduced by the Bill are described as being *'aimed at better supporting working mothers and families to access their payment more flexibly'*.¹ This increased flexibility is achieved by dividing the statutory parental leave pay entitlement (**PLP**) into two periods: an initial period, which must be taken as a 12-week block immediately following the birth or adoption of a child; and a second period of a further 6 weeks, which may be used any time before the child turns two years old (**flexible PPL days**). The Bill does not make any changes to the duration of the PPL, which remains capped at 18 weeks in total.

VWL supports the introduction of flexibility measures in accessing the PLP. In many respects, the Bill is consistent with its objectives of improving women's workforce participation, economic independence and earning potential.² VWL endorses those elements of the Bill which:

- introduce flexibility into when parents and caregivers choose to access PLP through the flexible PPL days; and
- enable the flexible PPL days to be transferred between parents and caregivers.

¹ Bill - Second Reading Speech, 6 February 2020:

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F4a263c90-4a15-4591-b1e6-7cd74f566c21%2F0035%22>

² Bill – Explanatory Memorandum, page 1:

https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6486_ems_8ceed27f-2d4a-4934-ace7-b841ffec2a6f/upload_pdf/730098.pdf;fileType=application%2Fpdf



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However, VWL remains concerned about a number of key components of the underlying PPL legislation, namely that:

1. the PPL requires a 'primary caregiver' – a responsibility that is assumed to fall on women;
2. the PPL is only available to birth mothers earning \$150,000 per annum or less; and
3. the duration of 18 weeks (whether taken flexibly or not) is insufficient.

VWL considers that these issues seriously undermine the ability of the Bill to achieve its stated objectives.

VWL supports the introduction of flexibility measures into the PPL

The ability of women to access the PPL in a way that can be appropriately tailored to suit their family and employment circumstances will have positive implications in the legal industry given the high number of female lawyers in Victoria.

As at 1 November 2019, female lawyers (solicitors and barristers) in Victoria outnumbered male lawyers (solicitors and barristers) by 5.33%.³ Despite women making up almost two-thirds of graduate roles in Australian law firms, female lawyers remain significantly underrepresented at the leadership level. According to a survey of 140 law firms across Australia, female solicitors hold just 16% of equity partnership roles and only one third of non-equity partner roles.⁴ VWL considers that this gender disparity stems partly from the obstacles women face in returning to work following their decision to have children. VWL therefore supports the introduction of flexible PPL days which will assist female lawyers return to the workforce and further their ongoing career progression.

VWL considers that the flexibility measures introduced by the Bill are particularly important for female barristers, who as at 1 November 2019, make up less than half the number of male barristers in Victoria.⁵ Female barristers are self-employed and do not have access to employment benefits. As identified in the Second Reading Speech, one objective of the introduction of flexible PLP days is to enable self-employed women and small-business owners to choose to take leave during periods or days that suit their business and personal needs. Introducing flexible working arrangements following the birth or adoption of a child will enable female barristers to take paid work leave at times that suit their work flow and capacity. This flexibility will serve to attract and retain female barristers.

Under the current PPL, mothers or adoptive parents who are eligible for PLP may transfer their entitlement to eligible partners who take on the role of primary carer. However, according to 2017 statistics, only one in 20 men take primary carer leave with mothers making up around 95% of PLP recipients.⁶ The Second Reading Speech provides that *'increasing the flexibility of paid parental leave may encourage greater uptake of Parental Leave Pay by secondary carers, contributing to changing social norms around sharing care and encouraging men to take parental leave'*. VWL encourages all initiatives which promote

³ Victorian Legal Services, Lawyer statistics: https://lsbc.vic.gov.au/?page_id=287

⁴ Pitcher Partners, Legal firm survey (February 2019):

https://www.pitcher.com.au/sites/default/files/downloads/survey_legal_190225_national.pdf

⁵ Victorian Legal Services, Lawyer statistics: https://lsbc.vic.gov.au/?page_id=287

⁶ Australian Bureau of Statistics, Media Release (19 September 2017).



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gender equality, particularly those that operate to change gendered expectations around caring responsibilities. This is particularly relevant to VWL's membership, which is comprised almost entirely of working women, many of whom have children. Accordingly, VWL continues to support the ability of PLP to be transferred between parents and caregivers.

Key concerns with the PPL legislation

VWL considers that the flexibility measures proposed by the Bill are undermined by the fact that the operation of the PPL assumes that it will primarily be accessed by birth mothers as the primary carer. Indeed, the current PPL entrenches this assumption in statute. The objects of the *Paid Parental Leave Act 2010* (Cth) state: *'The object of parental leave pay is to provide financial support to primary carers (mainly birth mothers) of newborn and newly adopted children...'* (emphasis added).⁷ This reinforces gender norms that primary carers are usually always mothers or women. VWL submits that the PPL ought to be available to all parents equally. This would not only provide many men with the opportunity to spend more time with their children but would also contribute to a more equitable society, in which childcare is assumed to be a shared responsibility.

While a birth mother may transfer PLP to their partner if that person is the primary carer, this option only arises if the birth mother herself is eligible to receive the payment. PLP is currently only available to birth mothers earning \$150,000 per annum or less. In circumstances where a woman who earns, for example, \$160,000, wishes to have children with their partner who earns, for example, \$60,000, the family will be ineligible for any PLP. However, in the reverse situation, a birth mother earning \$60,000 is entitled to PLP and is eligible, if she wishes, to transfer part of that entitlement to their partner earning \$160,000. As the peak representative body for women in a profession where women currently outnumber men, and where high salaries are not uncommon, VWL strongly condemns this approach, which may operate to disincentivise women from striving to earn more prior to child birth, and may contribute to the gender pay gap.⁸

Finally, while the Bill allows for increased flexibility in how paid parental leave is taken, it does not increase the duration of parental leave. VWL repeats the concerns it raised in its submission to the Senate Community Affairs Legislation Committee into the Fairer Paid Parental Leave Bill 2016, that Australian paid parental leave entitlements fall behind those offered by other OECD countries.⁹ VWL also has concerns about the rate of compensation under the scheme (a flat rate at the national minimum full-time wage). This policy structure means that the paid parental leave scheme purports to be more of a welfare subsidy for new

⁷ *Paid Parental Leave Act 2010* (Cth) s 3A(1).

⁸ According to the Australian Government Workplace Gender Equality Agency, the current pay gap is 13.9%, being the difference between women's and men's average weekly full-time equivalent earnings expressed as a percentage of men's earnings: <https://wgea.gov.au/data/fact-sheets/australias-gender-pay-gap-statistics>. VWL has prepared a series of fact sheets on Pay Transparency, Calculating the Gender Pay Gap and Addressing the Gender Pay Gap in the Legal Sector which are available at <https://vwl.asn.au/projects/>. VWL has also launched a gender pay gap campaign 'Gender on the Agenda' and conducted a survey which tested when and how women lawyers encounter a pay gap, how it is sustained and what measures have had success in reducing the overall pay gap.

⁹ Victorian Women Lawyers, Submission to Senate Community Affairs Legislation Committee, *Fairer Paid Parental Leave Bill 2016* (2016): <https://vwl.asn.au/wp-content/uploads/2017/03/Paid-Parental-Leave-Bill-2016-submission.pdf>



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parents, rather than economic compensation for foregone income. As identified above, this impacts women lawyers, who tend to be in higher-earning positions and therefore continue to be faced with a dilemma between leaving the workforce and having a child.

Conclusion

An effective PPL must be appropriately structured to give women equal opportunity to participate in the workforce following the birth or adoption of a child. In doing so, the PPL must promote the equal sharing of child care responsibilities with men. While the flexibility measures introduced by the Bill go some way to supporting women's return to the workforce, VWL considers that they do not address the underlying structural impediments which prevent equal workforce participation and the sharing of childcare responsibilities between the genders. The PPL legislation also does not sufficiently protect women's financial security, particularly women in high earning professions such as the legal industry who often must make an economic sacrifice when choosing to have children.

VWL supports efforts by government, business and the community to address paid parental leave. Fundamental to this are efforts across society, particularly by those who are empowered to make real and significant improvements to women's economic position such as employers and government.

VWL welcomes further consultation in its measures to achieve justice and equality for all women.

**Elsbeth McConaghy
& Victoria Muravchenkov**

Co-Chairs, Victorian Women Lawyers Law Reform Committee