



*Submission to the Senate  
Community Affairs Legislation Committee  
on the Paid Parental Leave Amendment  
(Flexibility Measures) Bill 2020*

Date Submitted:	6 March, 2020
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## **INTRODUCTION**

1. The Shop, Distributive and Allied Employee's Association (SDA) is one of Australia's largest trade unions with over 210, 000 members. The majority of these members are women and young people. Approximately 60% of SDA members are women, equating to approximately 126,000 women. The SDA has membership in retail, fast food, warehousing, hairdressing and beauty, pharmacy and modelling.
2. The SDA has a long history of advocating for improved financial support for families and for more family friendly work arrangements, to assist workers in combining caring responsibilities and paid work. We advocated for the introduction of the current paid parental leave scheme and were involved in the Government PPL Implementation Group.
3. The SDA has made various submissions to previous inquiries in relation to past Bills to introduce amendments to the Paid Parental Leave Act.
4. The SDA welcomes the opportunity to make a submission to the Senate Community Affairs Legislation Committee.

## **SUMMARY**

5. The SDA supports the proposed changes to the Paid Parental Leave(PPL) scheme which will provide employees with more flexibility in the way they take the paid parental leave entitlement provided by the government. This greater flexibility will give families the ability to choose how, as parents, they transition back to work following the birth of a child and how they transition their child into different care arrangements.
6. The SDA believes that this type of flexibility will also assist to encourage greater workforce participation of women. It will provide more options for how women

return to work and also enable fathers and partners to play a greater role in the care of the child during that transition.

7. The SDA is also supportive of the proposed consequential changes to extend the time for claimants to take the flexible PPL days up until the child turns 2.
8. Whilst the SDA is supportive of the proposed changes to increase flexibility, we believe there needs to be other legislative changes to support families to practically take advantage of these improved flexibilities. It is also time to consider additional improvements to the government paid parental leave scheme, in line with the original recommendations of the Productivity Commission and international standards.

## **RECOMMENDATIONS:**

### **Introducing a right to flexible work**

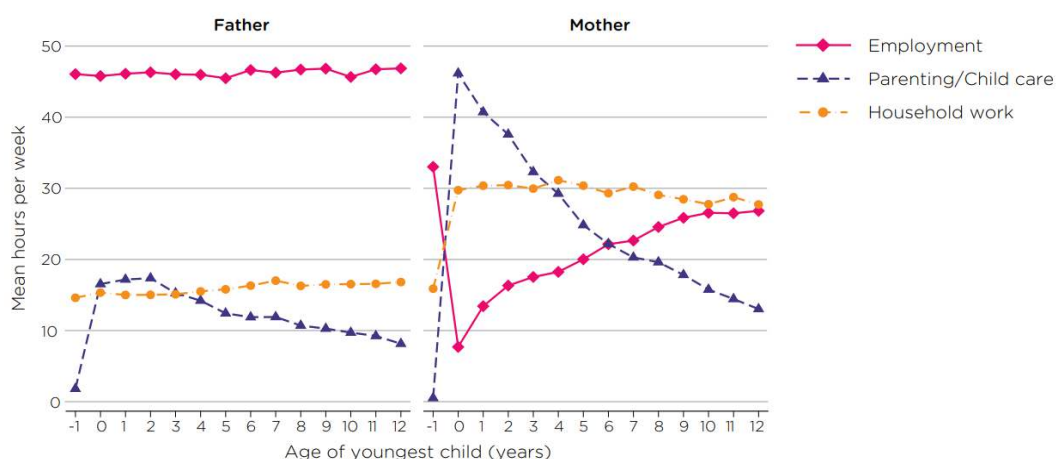
9. The proposal to introduce up to 30 flexible PPL days which can be used by the mother or transferred to another claimant (father/partner) would provide much needed access to a flexible way for families to transition back to work, and to manage the transition of the child into different caring arrangements.
10. This amendment will provide women with greater choice about when they return to work as the access to flexible PPL days will enable them to supplement a more gradual return to work.
11. We also know that *'Removing disincentives for women to enter the paid workforce would increase the size of the Australian economy by about \$25 billion per year'*<sup>1</sup> so this amendment will also have a positive impact on the economy.

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<sup>1</sup> Grattan Institute, *Game-changers: Economic reform priorities for Australia*, 2012, page 38

12. The proposed amendment will also provide an important opportunity for fathers and partners to participate more in the care of their child in the early stage of their life.
13. The introduction of flexible PPL days and the ability for mothers to transfer the days to a secondary claimant will remove the financial barrier that men and partners face when deciding to reduce days at work so they can share in the care of their child.
14. Fathers and partners taking more responsibility for the care of their child will also have the positive effect of enabling more women to return to work and reduce the reliance on formal child care settings, especially in the early transition stages.
15. In Australia, we continue to see women performing the lion's share of care and household duties. The below graph taken from the Australian Institute of Family Studies report on Fathers and Work shows that a father's employment changes little following the birth of a child compared to a significant change for women. While a spike occurs in parenting/caring this is relatively brief and household work doesn't register a blip.<sup>2</sup>

Figure 1: Mother and father's time use up to and after the birth of first child



<sup>2</sup> Australian Institute of Family Studies, *Fathers and Work: A statistical overview*, <https://aifs.gov.au/aifs-conference/fathers-and-work>, accessed 4 March 2020.

16. Research has shown that getting fathers to participate in the care of a child in the first 2 years is critical to providing a shift in the sharing of ongoing care and housework. Countries such as Norway and Iceland which provide paid parental leave on a shared basis, and in the case of Norway a use-it-or-lose-it component for fathers, have seen a profound change both at work and home. Women's work participation has increased, and Norway is the second-ranked country in the world by ratio of women's and men's undertaking of unpaid caring and volunteering work. In Norway, women do 39% more unpaid caring and volunteering than men, in Australia women do 80% more than men<sup>3</sup>.
17. The proposed amendment to the Paid Parental Leave Act has the potential to provide a step towards more fathers and partners undertaking care.
18. The AHRC Supporting Working Parents Report which was released in 2014 following their inquiry into pregnancy, parental leave and return to work discrimination in Australian workplaces found that 36% of mothers reported experiencing discrimination in the workplace when returning to work and for half of those it was in relation to requests for flexible work arrangements<sup>4</sup>.
19. The report also found that 27% of fathers were discriminated against and for more than a third of those the discrimination related to flexible work<sup>5</sup>. This is despite the fact that very few men request flexible working arrangements.
20. Discrimination on the grounds of parental and family responsibilities continues to be one of the main reasons for complaints to Federal and State anti-discrimination tribunals. However, complaints still remain low as the current processes around making and resolving complaints make it largely inaccessible for employees.

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<sup>3</sup> Promundo, *State of the World's Fathers: Unlocking the power of men's care*, 2019, p 15.

<sup>4</sup> AHRC, *Headline Prevalence Data: National Review on discrimination related to pregnancy, parental leave and return to work*, April 2014, p 8

<sup>5</sup> *Ibid*, p 14

21. The anti-discrimination framework needs to be strengthened and properly resourced to make complaints in these jurisdictions quicker and easier to access.
22. Creating a right to flexible work would remove the discriminatory way in which requests by employees are currently being dealt with. To ensure that parents have access to the proposed flexible PPL days, a right to flexible work should be legislated.
23. The SDA has also long advocated for improved protections and entitlements for our members when returning to work after parental leave and when managing caring responsibilities. Whilst we have some improved provisions in Enterprise Agreements, the ability of our members to negotiate a change in their hours of work when they are returning from parental leave is extremely difficult and forces many women into roles which are lower than the ones they performed prior to taking leave, or they return on less hours than they want and need financially or are forced to return on a casual and insecure basis.

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*Female Retail Worker Returning to Work in Major Department Store*

*I worked as a full-time visual merchandiser before commencing parental leave. I gave my employer 12 months' notice that I would need to return to work on a part-time basis for 3 days per week. They refused to let me return to my role on less than full-time. I then offered to take a role in a lower classification and offered to work in different stores if that helped them. A week before I was due to return, they still hadn't offered me a role within my availability, which was somewhat restricted because of child-care availability but was still within the days I used to work. In the end I was forced to accept a casual role because of the stress and anxiety of dealing with this for almost a year.*

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24. These difficulties are similarly the case for fathers and partners when seeking a change or reduction in hours to accommodate parenting and caring responsibilities.

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*Male retail employee – request to reduce hours to care for child*

*I work for a major retail company on a full-time basis. My partner was returning to her role in the police force on a part-time basis after taking parental leave. I needed to drop my Saturday shift so I could care for our child while my partner was at work because formal child-care options weren't available. My manager laughed at my request and said 'you're the man – shouldn't your job take priority, ask your wife to change her shift'. I had to involve the union to try to negotiate a new roster.*

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25. Almost all employers in retail and fast food have Flexible Working Policies that are designed to support employees to balance work and care. While the policies encourage employees to make applications for flexible working arrangements when they need to, in practice this can only be accessed by agreement with the company. Unfortunately, for many of our members agreement is not provided.

26. Employers cite flexible working arrangements policies in their report to WGEA and use them as a way to demonstrate that they support women and to attract them to their workforce but in reality they do not result in employees achieving the flexibility they need to care for children while maintaining work.

27. Flexible working arrangements policies in retail and fast food are largely reflective of section 65 of the fair work which provides a right for employees to request flexible working arrangements, which employers can refuse on reasonable business grounds.

28. Section 65 of the Act is one of only 2 provisions in the Fair Work Act which the Fair Work Commission has no power to conciliate or arbitrate, the other

provision is a request to extend unpaid parental leave to up to 104 weeks. Both provisions significantly impact women more than men.

29. There is no avenue for an employee to raise a complaint or have the matter reviewed if they are refused the request by their employer on reasonable business grounds.
30. For our members to have access to the flexible PPL days they will need to negotiate a flexible return to work, which is not often achievable, despite the fact most are in workplaces with a broad span of hours. Many of our members are even unable to negotiate a return on less hours within the times they previously worked.
31. Following an application by the ACTU to the Fair Work Commission for a right to flexible work for parents and carers, the Full Bench of the Commission issued a decision noting that there was *'a significant unmet employee need for flexible working arrangements'*, and expressed the provisional view that modern awards should be varied to incorporate a model term to facilitate flexible working arrangements<sup>6</sup>.
32. The Full Bench also made the comment that *'A lack of access to working arrangements that meet employees' needs is associated with substantially higher work-life interference (as measured by the AWALI work-life index). This is so whether a request is made and refused or whether the employee is a 'discontented non-requestor''*<sup>7</sup>. This is in recognition of the fact that many employees want flexible working arrangements but never ask for them because of the cultural norms and discrimination experienced when workers do this.
33. For the proposed increased flexibility to be available to our members they need a right to flexible work, not just a right to request which can be refused by their employer and there are no practical means to dispute this.

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<sup>6</sup> [2018] FWCFB 1692 at [420]

<sup>7</sup> *ibid*



34. Flexible PPL days will not be able to be used in practice if it is contingent on an employee negotiating a flexible working arrangement. The evidence shows that the right to request does not work.
35. The SDA supports the changes, but for this to be available to employees in practice, a right to flexible work for parents and carers needs to be introduced in the Fair Work Act.

### **Removal of primary and secondary carer from the scheme**

36. The Australian Institute of Family Studies (AIFS) reported that *'The use of parental leave by fathers in Australia is very low by global standards. Figures from the Australian Bureau of Statistics (ABS) show that just one in 20 fathers take primary parental leave, with 95% of all primary carers leave taken by mothers (ABS, 2017). A 2014 study by the Human Rights Commission (HRC; 2014) showed that 85% of the fathers and partners surveyed took less than four weeks leave.'*<sup>8</sup>
37. The AIFS report states that one of the reasons or barriers for men in taking parental leave is because *'Australia does not have a nationally legislated 'shared parental leave' approach and, as such, fathers are often labelled as 'secondary carers' - and most organisations provide limited parental leave allowance for secondary carers, if any at all'*<sup>9</sup>.
38. The distinction between primary and secondary carers and the lack of a legislated shared parental leave scheme has also helped to entrench the cultural norms in Australia that women undertake the caring roles while men continue uninterrupted in paid work.

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<sup>8</sup> Australian Institute of Family Studies, *Fathers and Parental Leave*, <https://aifs.gov.au/aifs-conference/fathers-and-parental-leave>, accessed 4 March 2020.

<sup>9</sup> *ibid*

39. Many countries are moving away from differentiating access to parental leave on the basis of primary and secondary care recognising that in order to change the cultural gender norms around parenting and caring, all parents should be given the opportunity to share in the care of their child.
40. Where this has happened, countries have seen a significant increase in usage of the leave by fathers and this has had a positive impact not only on their involvement in the care of their children and household duties in the short term but also the long term.
41. Some employers, including in Australia, are also changing their parental leave policies to remove the distinction between primary and secondary carers and instead providing paid leave to all parents. This has resulted in an increase in the number of fathers taking parental leave in those companies and has also had positive impacts on the way in which they balance work and care when they return to work.
42. The SDA recommends that the Committee consider removing the distinction between primary and secondary carer and that the Paid Parental Leave entitlement be available to all parents.

#### **Increasing the amount of PPL available to families**

43. The current scheme, even with the proposed changes will remain one of the worst of all OECD countries. According to a recent report by UNICEF comparing family friendly policies in 41 middle and high income countries, Australia's Paid Parental Leave scheme ranked as second last, with a full rate equivalent of 8 weeks' pay<sup>10</sup>.

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<sup>10</sup> Unicef, Are the world's richest countries family friendly?: Policy in the OECD and EU, Chzhen Y, Gromada A, and Rees G, June 2019

44. The World Health Organisation recommends that newborn children need at least six months with their parent for breastfeeding and bonding and that this is also important for the mental health and wellbeing of mothers.
45. Whilst SDA members working for major employers often have access to employer funded paid parental leave, this is not in any way a universal entitlement and many workers still have access only to the government paid parental leave scheme.
46. The majority of SDA members are low-paid workers and as a result are greatly impacted by any variation in income and therefore highly dependent on paid parental leave for the time they take at the time of birth.
47. Prior to the introduction of the PPL scheme SDA members who had had a baby were surveyed regarding their return to work following the birth of their child. The following shows the percentage who had returned to work after the birth of the baby within the specified time:

		Cumulative
1 week	7%	7%
2 weeks	7%	14%
3 weeks	5%	19%
4 weeks	0%	19%
5 weeks	2%	21%
6 weeks	3%	24%
2 months	2%	26%

48. The results of the survey show that a quarter of members who had a baby returned within 2 months of the birth of their child. When surveyed 85% of SDA members with children said they work due to economic necessity and that this is the driving force behind a woman's decision to return to work after the birth of her child.

49. The Paid Parental Leave Evaluation Final Report found that;

*'The impact of PPL in delaying mothers' return to work was not uniform. Instead, the effect was more substantial amongst mothers for whom PPL was a larger payment relative to their normal earnings, or a more predictable one. Thus, **low income mothers showed a longer delay in return to work** than high income mothers in the first six months of their babies' lives.'*<sup>11</sup>

50. For SDA members any improvement in the PPL scheme will have a significant impact on their ability to take more time off at the time of birth. Low-income workers have less disposable income and a lower savings capacity. This makes it very difficult for families to save a portion of their income to support them through a longer period of parental leave, once the government payment has ceased.

51. The SDA recommends that the government PPL be increased to 26 weeks.

52. The other factor which contributes to the low ranking of Australia's scheme in an international context is the rate at which the payment is made. Using the National Minimum Wage significantly reduces the full rate equivalent. It also results in a reduction in earnings for many women and serves as a disincentive for fathers and partners to share in the care of children because of the financial loss of the difference in earnings and the rate of payment.

53. The SDA recommends that the payment rate for the government paid parental leave scheme be increased to at least average weekly earnings which is more reflective of a worker's actual wage and will mitigate the potential for lost income.

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<sup>11</sup> The University of Queensland, Institute for Social Science Research, PPL Evaluation: Final Report, November 2014, p 98-99

## **Superannuation on the government Paid Parental Leave**

54. Despite a lifetime of work – paid employment and unpaid caring – 90% of women will retire with inadequate superannuation<sup>12</sup> and with on average 47% less superannuation than men.<sup>13</sup> Women aged 60 are at much greater risk of retiring into poverty with 34 per cent of single women in Australia living below the poverty line.<sup>14</sup> One in three women don't even have a superannuation account.<sup>15</sup>
55. One of the main reasons women don't accumulate the same superannuation savings as men is because the role of carer which is predominately undertaken by women results in periods outside of paid work, periods of part-time or casual employment and working in lower paid positions to accommodate caring responsibilities.
56. Not receiving superannuation guarantee during periods out of the workforce, such as while on paid and unpaid parental leave has a significant impact on the superannuation balances of women over their lifetime. Not only do they lose the contribution during that time but the interest that is earned over the work lifecycle on that amount.
57. We recently took members to Parliament House in Canberra to visit members of parliament to talk about the discriminatory impact this and other features of our superannuation system have on women. One of our members, who has two children, has worked for the same period as her partner and on the same level of income but as a result of the time she has taken for parental leave has approximately \$60,000 less in superannuation savings as her husband, because she has taken time out of paid work to care for their children.

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<sup>12</sup> ANZ, *ANZ Women's Report: Barriers to Achieving Financial Gender Equity*, July 2015, p 64

<sup>13</sup> ISA, *Closing the gender superannuation gap*. Online (accessed on 09/07/2019 at <https://www.industrysuper.com/campaigns/closing-the-gender-superannuation-gap/>)

<sup>14</sup> Unpublished Household, Income and Labour Dynamics in Australia (HILDA) Survey Data 2017, quoted in Heath, N. "Aged over 60 and female? Here's why you might be at risk of poverty" in *Voices* (4 Oct 2019) SBS: Online (accessed on 17/01/2020 at <https://www.sbs.com.au/topics/voices/culture/article/2017/11/24/aged-over-60-and-female-heres-why-you-might-be-risk-poverty>)

<sup>15</sup> Clare, R. *Better Retirement Outcomes: a snapshot of account balances in Australia* (July 2019) ASFA: Sydney (accessed on 17/01/2020 at <https://www.superannuation.asn.au/policy/reports>)

58. The Productivity Commission considered the issue of the payment of superannuation contributions by employers while employees were on statutory PPL. The Commission supported such payments on the grounds that PLP 'is a work-based benefit ... and that a period of caring for children while employed is a normal feature of employment'.<sup>16</sup>
59. However, at the time the Commission said that '*given the current global financial crisis and the uncertainties for employees associated with the proposed new scheme, the Commission recommended that the introduction of payment of superannuation contributions by employers be delayed for three years*'.<sup>17</sup>
60. It is now 10 years since the Paid Parental Leave Act was introduced and we still do not have superannuation on PPL.
61. An inquiry has been conducted by the Senate Economics References Committee into economic security for women in retirement in recognition of the 18.8% gender pay gap and the 46.6% gender gap in retirement savings and the over representation of women living in poverty in retirement. The final report was bipartisan with very minor dissenting comments and none in relation to PPL.
62. In its final report, '*The committee recommends that the superannuation guarantee should be paid on the Commonwealth Paid Parental Leave*'.<sup>18</sup>
63. The SDA recommends that as per the Productivity Commission and Senate Economics References Committee recommended, superannuation should be paid on the government paid parental leave scheme.

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<sup>16</sup> Productivity Commission, *Paid Parental Leave: Support for Parents with Newborn Children*, 2009, 2.6

<sup>17</sup> *Ibid*, 2.14

<sup>18</sup> Senate Economics References Committee, *A husband is not a Retirement Plan: Achieving economic security for women in retirement*, April 2016

64. The SDA has also successfully bargained and advocated for superannuation to be paid on employer provided parental leave – both paid and unpaid. The SG must be extended to payment of superannuation on both paid and unpaid parental leave for up to 12 months to reduce the gender gap in retirement savings.

65. Women are fed up with the lack of meaningful action on the issues that impact on their ability to work and care and the long-term compounding impact this has on their economic and personal well-being. Governments must act now to address the inequality of outcomes for women.