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of Australia
The National Voice of Policing

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Australian Human Rights Commission
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SUPPORTING WORKING PARENTS: PREGNANCY AND RETURN TO WORK NATIONAL REVIEW

Thank you for the opportunity to make a submission to the *Supporting Working Parents: Pregnancy and Return to Work National Review*. The Police Federation of Australia (PFA) is the national body representing the professional and industrial interests of Australia's 57,000 police officers, across all jurisdictions and has almost 99% membership density. The PFA is a federally registered organisation under the Fair Work (Registered Organisations) Act 2009.

For many of our members the demands of policing do not bend to the demands of parenting. The fact that approximately 8% of members of the police service across Australia work part time¹ (more than 70% of that figure being women), compared with the 56% of members that have children is an indicator of this. Also participation of women (of sworn female police) in the force is extremely low compared to female participation rates in the Australian labour market at large. The number of sworn women police officers nationally as at 30 June 2013 was just over 16000 or 27%, while the female participation rate in the overall Australian population reported by the Australian Bureau of Statistics for 2012-13 was 65.2%.²

The greater numbers of younger female police officers and the lower incidence of female officers with children indicate that as women start to bear children they tend to leave the police force. The relatively low rate of part time employment in the police force also supports this conclusion.³ According to The Australian Bureau of Statistics the National proportion of women employed part time in the general population for 2012- 2013 was 43.3%.⁴

In Victoria, 3239 (25.2%) of police officers are women. Of the 855 part time employees 697 (81.5%) are female. A large majority (781 or 91.3%) of the part-time group are at the rank of Constable/Senior Constable whilst officers in full-time positions are more spread out across

¹ Australian Bureau of Statistics 2011 Census Data

² Australian Bureau of Statistics ABS 4125.0 - Gender Indicators, Aug 2013

³ Police at Work, Wave 2 p43

⁴ Australian Bureau of Statistics ABS 4125.0 – Gender Indicators, Aug 2013

the ranks.⁵ This indicates that women are still being put in a position to choose between family and career. While figures have been used from Victoria as an example this trend also applies across the other policing jurisdictions.

For policing parents and their employers balancing work and family commitments remains challenging. Whilst Police Industrial Awards and Agreements provide entitlements and protection for members returning to work after parental leave, it is generally viewed that police departments cannot be described as “proactive” in eliminating discrimination. They provide the basics, but do not provide anything more than they have to and that means they would not necessarily accommodate members with parental responsibilities to the degree they should or could.

This submission will be divided into the following 3 sections:

- Pregnancy
- Returning to work after parental leave
- Recommendations

The first 2 sections will describe the prevalence, nature and consequence of the discrimination members of the Police in Australia face working while pregnant and returning to work after parental leave. We have used facts and research from several jurisdictions along with anecdotal accounts. At the end of this submission there is a list of recommendations which the PFA would like to see come out of the *2013 Supporting Working Parents: Pregnancy and Return to Work National Review*.

Pregnancy

In policing the vast majority of the workforce is deployed in frontline operational positions (approximately 85%, with minor variation across jurisdictions), who provide 24/7 service delivery. Frontline operational police are required to meet the physical demands of policing, demonstrate an aptitude to carry firearms and must undertake operational safety tactics and firearms qualification (bi-annually in most jurisdictions). This presents practical challenges for employers (State/Territory governments) in accommodating pregnant employees.

The practical challenges that present working while pregnant are therefore occupation specific, and when making an assessment of the physical capabilities of an employee during or after pregnancy there are restrictions invariably placed on their functionality. This is done by the employees’ medical practitioner in conjunction with the employee and their Officer in Charge. After the assessment is completed a suitable working arrangement and position needs to be found which can present a number of issues relating to work location and the specific employees’ role. For instance, complaints have been raised associated with “meaningful employment”. Members moved from operational policing to non-operational policing often end up doing menial tasks around the station. Pregnant employees are not usually placed into another work area during pregnancy. Transfer to safe duties for a pregnant officer can also be difficult where the officer is located at a small station especially where they are in a remote locality.

There is often resentment amongst colleagues towards women who are pregnant or on parental leave. Those women are often branded as a ‘burden on the roster’ as the period of modified duties and absence on parental leave means that the pregnant employee will not be able to carry out frontline police duties for 20 months on average. The ‘burden’ of

⁵ Victorian Police Annual Report 2012-2013

providing 24/7 service delivery is therefore seen as falling on the remaining police officers on that particular roster.

Victoria Police has developed a policy and information guide (Attachment A) in respect to Pregnancy in the Workplace which is specific to the industry. The policy provides for alternative duties developed in direct consultation between the pregnant employee and local manager based on written advice from the employee's medical practitioner, having regard to the employee's wishes and organisational needs. The provision of alternative duties allows for the employee to remain in their position performing meaningful work. Since the introduction of the policy and the information guide in 2008 the Federation has noticed a marked reduction in complaints from pregnant employees and also managers in respect to arranging alternative safe duties. A further marked improvement in the legislative framework occurred with the introduction of paid 'no safe job' leave under the *Fair Work Act 2009* (FWA), creating an incentive for employers to create flexible solutions to provide meaningful alternative duties during pregnancy.

The Queensland Police Union of Employees (QPUE) was successful in including a new provision to maintain Operational Shift Allowance (OSA) (21%) for pregnant officers who were not able to be accommodated working safe duties and shift work. This has ensured that many women do not suffer a loss of income whilst pregnant.

"It provides that any officer who is in receipt of the OSA for the preceding minimum period of 52 weeks and who can no longer perform full operational shifts due to medical restrictions as a result of pregnancy will continue to receive OSA payments during such restricted duties and will be eligible to receive OSA payments when accessing paid maternity leave" (QPUE).

Prior to the inclusion of this provision pregnant police officers who required a transfer to safe duties were often moved into Monday – Friday non shift positions, the overall impact of this was a significant loss of income due to no longer being in receipt of the OSA both for the duration of the pregnancy and also the period of paid maternity leave.

However in other jurisdictions where penalty rates are paid on a shift by shift basis transfer to a 'safe job' usually results in a significant reduction in take home pay.

One of the practical challenges or issues with the interaction of anti-discrimination, employment and health and safety laws and policies raised by one of our branches is the overlap which makes seeking a redress through various agencies which handle complaints frustratingly slow, disempowering, cumbersome and weighted down with red tape. Further challenges exist when the Service seeks to hide behind OSH legislation to legitimise the adverse treatment of pregnant / PT employees. This was highlighted in the Tess Bell matter (see *Bell v State of Queensland* [2013] QCAT 567) where the QPS expressed a view that there were no 'safe' duties available for her to take up duty at the police station she was allocated to.

Strategies to assist employers with retaining and supporting employees who are pregnant or have taken parental leave need to also include ongoing communication and involvement with the employee who is on leave more than just a responsibility to notify of 'significant changes at the workplace' which is included in several police jurisdictions Awards/Agreements, but a formal 'keep in touch plan' supervised by Human Resources.

Police Federation of Australia Code of Practice for Managing Risks in Policing

The PFA is currently pursuing a Code of Practice for Managing Risks in Policing. This document is at the final draft stage and has clearly used pregnancy and policing as an example in the section 'Assessing risks'.

Examples A3: Assessing risks

Example 3.1: Pregnancy and policing

Risk assessments should consider the different types of people who might be exposed. This example sets out issues that should be considered in risk assessments of risks that are relevant to pregnant police officers.

The particular needs of pregnant police officers must be considered when undertaking strategic and operational risk assessments. Particular issues that may need to be addressed include:

- *Nature of duties – police officers in the later stages of pregnancy may not be medically fit to engage in operations that involve apprehending offenders, manual handling, wearing accoutrement belts or standing for long periods. Pregnant police officers may choose to be allocated to non-operational duties, at no loss of seniority, pay or conditions.*
- *Locations – medical advice may mean that there are particular work locations more suitable for pregnant police officers, e.g. in police stations rather than covert operations.*
- *Shift times and hours of work – medical advice may mean that hours of work and shift rosters need to be modified.*
- *Flexibility to attend medical appointments.*
- *Uniform – once the usual uniform no longer fits, appropriate alternate attire will be needed.*

The pregnant officer should be consulted throughout the risk assessment process and any medical advice received would be a key source of data.

Police PCBUs must ensure that the police officer's work does not expose her or her unborn child to risks to health and safety, while also maintaining meaningful work. Refusal to objectively assess medical advice in order to provide suitable modified duties and/or hours may be discrimination.

Parental Leave Absence

State funding models need to be modified to better support the changes necessary to accommodate pregnancy and parental leave in the workplace. For instance the Victorian Government's Treasury and Finance Department applies a funding model for Victoria Police based on a head count of police employed at any given time. The simplistic nature of this

model creates systemic issues of discrimination in the workplace towards women who are pregnant or on parental leave.

The model does not take into account the number of police officers that can be deployed to perform frontline operational duties nor does it take into account absences of police officers on parental leave. This results in an inability to fund positions to support remaining operational frontline police and as a consequence, resentment amongst employees towards those who are on restricted duties due to pregnancy or those who are on periods of parental leave. In policing the practice used in other industries of employing parental leave replacements is not available because of the training and currency requirements. However in a large organization the size of Victoria Police the ordinary churn of employees would enable recruitment and training of staff to match the average number of members absent on unpaid parental leave. There is minimal to no cost associated with temporary replacing employees on unpaid parental leave and can be done by changing the funding model.

Returning to work after parental leave

Complaints made to police associations/unions often stem from employee's seeking a reasonable level of flexibility from their employers. While there is a legal obligation for employers to provide access to part time arrangements there still exists within areas of management an attitude that part time employment is both inconvenient and unnecessary and a culture within the police force that believes it is acceptable if an employee chooses to work part time that their career is automatically put on hold.

For instance there is a limited appreciation by employers that from time to time a part time employee working fixed hours/ days may be able to arrange short term child care to attend training or work additional hours to undertake higher duties. As a snapshot of who this mostly affects the average part time officer in the Queensland Police Service is likely to be a women (89%) with on average 10-15 years' service (45%) and ranked Senior Constable (53%)⁶.

Many women and a much lesser degree men who work part time are treated differently within the workplace and miss out on training and development opportunities. Results from the *Police Part Time Workers Survey* conducted by the NSW Police Association showed that out of an overall 674 responses, 507 (75%) police surveyed indicated that by working part time their access to training opportunities, relieving and promotion had been reduced. Over one third, 41% of police surveyed indicated they had suffered from victimisation/bullying from management and or their peers as a result of their part time status⁷.

There have also been reports of part time work being approved but hours and days of work still subject to the needs of the workplace, not the needs of the working parent. There has been one instance where attempts have been made by the employer to limit the quantum of hours a part time employee may be able to work. For example attempting to place all part timers into job share arrangements where there is no capacity to work over 1 FTE. This means if an officer wants to return to work .8FTE they are being told no position exists and they can either work .5 FTE for a 'neat fit' or return FT.

Recent research conducted by Police unions with the University of Sydney demonstrates the impact inflexible working environments can have on those officers who are juggling family responsibilities with part time work. *The Police at Work Report* indicated that 52% of police officers with dependent children stated that they agreed or strongly agreed that work

⁶ Queensland Police Union of Employees Survey of Part Time Members 2012

⁷ Police Association of NSW, Part Time Workers Survey 2008 p2

interfered with their responsibilities outside of work, compared with only 41% of officers without dependent children⁸. In the *Police at Work Report*, 13% of those officers that resigned from the police directly stated that family commitments or an inability to fit working hours around caring responsibilities was the reason they resigned, and a further 36% stated that 'unsatisfactory working arrangements' was the reason⁹. The *Police at Work Report* also found that a large proportion of female officers did not seek promotion in the police force because the conflict with domestic commitments would make performing those higher duties impracticable¹⁰.

Consideration by the employer needs to be given to the member's family situation (two members working shift work or single parent families). Quite often little weight is placed upon the members needs when returning to work and more focus is placed upon the needs of the workplace. Childcare placement and requirements including child care hours must be given due consideration as well as shift hours and days of work.

The law attempts to protect the primary care giver of a child of school age or younger but fails to protect an employee in their capacity to return to their substantive positions. There have been some anecdotal examples where there have been attempts to move officers into less desirable roles and functions. In Queensland's experience in the few instances where the QPUE sought to resolve part time issues through the Queensland Industrial Relations system they did not receive favorable consideration.

From the employers perspective challenges also exist accommodating members returning to work in a part time position. Members may have a level of reluctance to put themselves at risk performing front line police duties and seek to be moved to an alternate position. This is not always able to be accommodated and is dependent on where the officer is stationed, the smaller the centre the less alternative options exist.

Certain commands which may have a higher % of women in the family rearing ages also face greater challenges. This can tend to be the Commands where Police tend to live and choose to work in. The higher % of part timers or set shifts does make it harder on the operational staff and can cause other members to be disgruntled. It also makes it harder to have a part time arrangement which fits the member's needs.

There is also a difficulty with some part time applicants commencing negotiations from a position of not wanting to offer any flexibility around the work hours they may be able to perform (i.e Monday to Friday day work only). This level of inflexibility can frustrate the negotiation process and can result in the police service being less able to accommodate these members.

The PFA agrees that there needs to be an amount of flexibility from both the employer and the employee, within reason. Consistent with the Fair Work Act an employer should only be able to refuse a request for flexible working arrangements on 'reasonable business grounds'.

⁸ Police at Work, Wave 4 Report p32

⁹ Police at Work, Wave 4 Report p41

¹⁰ Police at Work, Wave 4 Report p31

Breast feeding

Most enquires through our police associations/unions associated with breast feeding relate to firearms training. The PFA Code of Practice for Managing Risks in Policing (Draft) outlines the factors that could influence the severity of harm from the exposure to lead on the firearms range including whether police officers are pregnant or breastfeeding. The code also documents clear control measures for this group.

Changes to legislative framework

In Victoria police have the right to request flexible work arrangements, as provided for in section 65 of the Fair Work Act and incorporated into the applicable enterprise agreement. This allows employees the opportunity to challenge a refusal to provide such arrangements where it is considered that the employer does not have “reasonable business grounds”.

Entitlements pertaining to a return to work after parental leave for Victorian police are also provided for under the *Equal Opportunity Act (Vic)* (EOA) According to the EOA “an employer must not, in relation to the work arrangements of an employee, unreasonably refuse to accommodate the responsibilities that the employee has as a parent or carer.”

Victorian Police have expressed a view that there are greater options available for police returning to work from parental leave as a result of changes to the legislative framework. These changes have been influenced largely due to their enforceability through dispute settling procedures provided for in enterprise bargaining.

It is the PFA’s view, the difficulties in returning to work from parental leave are reduced when a legislative framework exists that ensures that the employer is obliged to consider requests and a review mechanism is available when that request is unreasonably refused. Right to request with binding review should be legislated for all workers.

The Victorian Branch of the PFA has actively supported and advocated for members whose requests have been refused. With the assistance of Fair Work Commission (FWC) these matters have been resolved (Attachment B). The resolution of those matters has led to a more reasoned and accommodating approach by the employer.

The dispute which resulted in the attached recommendation arose from proceedings issued off the back of a blanket decision by management to terminate all part-time contracts that had any fixed days and/or times. Management in one police service area formed a view that all employees must be ‘flexible’ to be rostered at any day/time as required. The ability to instantly access conciliation at FWC through the dispute settling procedure provided for in the enterprise agreement meant immediate redress was available for the affected employees. In our view, for anti-discrimination laws to be effective the capacity to seek a remedy in a timely manner is imperative.

There is sometimes resentment amongst management and colleagues towards men and women who are engaged in a flexible work arrangement. The resentment stems from a workplace culture that traditionally has required police officers to be able to be deployed on a 24/7 basis to having to do things differently. Policing is a dynamic environment with demands for police resources changing at short notice. Management are now required when rostering and juggling last minute demands for resources to balance those demands against accommodating flexible working arrangements that provide for set days/shifts.

In Victoria, despite the above mentioned positive developments stemming from changes to legislative frameworks, the Force have failed to account for recent changes to the Victorian

Equal Opportunity Act whereby a 'positive duty' has been imposed on employers to take reasonable and proportionate steps to eliminate discrimination, sexual harassment or victimisation. An individual cannot pursue an alleged contravention of this duty to the Commission or to the Victorian Civil and Administrative Tribunal, but a contravention may enable the Commission to investigate potential systemic discrimination.

Despite the introduction of this positive duty, Victoria Police has ceased pro-active education of the workforce to eliminate discrimination, sexual harassment or victimisation by disbanding its Equity and Diversity Unit, reducing resources dedicated to development of policy and complaint resolution. It is still unknown what impact the positive duty will have on any of the public sector employers. Furthermore, it is unclear what the employer has to demonstrate in order to show they have complied with the duty.

Part time Applications

With respect to part time applications there are a number of factors which have been identified by our branches that we believed lead to incidences of discrimination including:

- a. Officer in charge stating they cannot accommodate the part time request so don't bother applying
- b. Significant restrictions of flexibility on the hours of work arrangements
- c. Lack of regard to the logistics associated with attending work and facilitating children's attendance in care
- d. Lack of regard to the impact on the children on having extended days in care and not offering reduced hours in a shift (i.e 6 hours days as opposed to 8 hour shifts)
- e. Increased paperwork for HR management can lead to HR restricting the hours that a Part Timer can work to accommodate current systems of processing
- f. Part timers told they cannot apply for vacant positions due to their part time status unless they will take up the role in a full time capacity.

Indirect discrimination

Whilst the *Sex Discrimination Act (Cth)* binds the Crown, female police officers may still experience indirect discrimination through the application of existing policy and legislation. For example, the investigation of sexual offences and child abuse in Victoria was until recently investigated by police officers attached to Sexual Offences and Child Abuse Units (SOCAU). There was no requirement for qualification as detectives and the majority of the workforce was female. An analysis of workforce data shows that pre transition 75% of employees in SOCAUs were female, while post transition this has declined to 54%. All other crime was tasked to qualified detectives attached to Criminal Investigation Units (CIU). In around 2010 Victoria Police commenced to transition to a new model where sexual offences and child abuse was to be investigated by qualified detectives in Sexual Offences and Crime Investigation Teams (SOCIT). As part of the transition to SOCIT existing SOCAU police officers were given an opportunity to qualify as detectives enabling them to have the same terms and conditions of employment as detectives investigating all other crimes.

Police officers on flexible working arrangements did not want to qualify due to the requirement to attend a 4 week long course at the Police Academy and the hours of work as a detective were not seen as attractive.

On the surface, treating all investigators in the same manner theoretically produces the same outcome and leads to a position of formal equality. However, the imposition of a full time training requirement and the arrangement of hours for investigators resulted in a significant number of police officers not transitioning to SOCITs thus curtailing career advancement and consequently providing those employees with lower remuneration compared to their colleagues.

Inadequate childcare

From our experience, the lack of availability of affordable childcare outside of 'business hours' is a major impediment to parents reintegrating in mainstream policing following parental leave. A survey of NSW Police working part time indicated that 90% of members who change to part time do so in order to care for children¹¹. When you consider this in light of the Police at Work finding that 76% of police are happy with the hours they work, and only 23% want to work less¹², a large proportion of those 90% of members changing to part time do so not because they want to, but because child care services do not enable them to continue full time policing. The same survey indicated that 20% of members surveyed considered resigning as an option other than part time work in order to meet their carers responsibilities.¹³

The fact that approximately 8% of police across Australia work part time¹⁴, compared with the 56% that have children, shows that the demands of policing does not bend to the demands of parenting. Adequate child care needs to be available to allow police to be both parents and police. A NSW Police Childcare Needs Survey highlighted this need with 85% of respondents stating a desire for a childcare service more compatible with their work schedule¹⁵. In 2012 representatives from the Department of Education, Employment and Workplace Relations (DEEWR) and Family Day Care Australia (FDCA) met with the Police Federation (PFA) to discuss the possibility of a partnership to roll out Child Care Flexibility Trial Pilots across a number of states. The commencement of the Child Care Flexibility Trial Pilots in 2013 across the states of New South Wales and Victoria has been a positive step and the PFA would like the Government to continue supporting this type of initiative. (The PFA is also providing a submission to the Productivity Commission Issue Paper on Childcare and Early Learning).

Paid Parental leave scheme (PPL)

The current Paid Parental leave Scheme (The Coalition's proposed scheme has not yet been legislated) is one significant factor in the retention of parents in the labour market. In addition to the 18 weeks Paid Parental Leave (PPL), Police in Victoria have 14 weeks of paid PPL provided through an enterprise agreement. Paid Parental Leave provisions across other policing jurisdictions generally are in line with those of the public sector.

¹¹ Police Association of NSW, Part Time Survey 2008 p2

¹² Police at Work, Wave 5 Report p13

¹³ Police Association of NSW, Part Time Survey 2008 p32

¹⁴ Australian Bureau of Statistics 2011 Census Data

¹⁵ NSW Police Child Care Needs Survey

As a direct result of the PPL Scheme the Police Association of Victoria has seen evidence of an increase in the length of time taken off by members after childbirth. Coupled with other leave arrangements including 14 weeks paid PPL under the enterprise agreement it has allowed “most infants to be exclusively cared for by a parent for the first six months of life”.

The PFA supports PPL counting as service for the purposes of eligibility for PPL. We have seen birth spacing resulting in ineligibility for PPL as the member did not meet the 10 months work test. Under Victoria’s enterprise agreement parental leave (whether paid or unpaid) is not a break in service for the purposes of 14 weeks paid PPL. We believe PPL legislation should be amended to ensure that both paid and unpaid parental leave count as service for the purposes of PPL.

In Victoria the first 52 weeks of parental leave (whether paid or unpaid) counts as service for the purposes of personal leave accrual. Paid parental leave and any paid leave taken in conjunction (whether at full or half pay) counts as service for all other leave accrual. The PFA supports the extension of this to other workers and note that it will result in minimal cost to Victoria Police.

Superannuation

Police in Victoria are members of a defined benefit superannuation scheme. The rules were amended in 2010 to provide recognition of parental leave (whether paid or unpaid) as contributory service. Northern Territory also has a generous provision in their Certified Agreement which allows superannuation payments for 6 months whether paid or unpaid parental leave is taken. We note the evidence that women have lower superannuation balances largely because of interrupted employment. PFA supports the continued employer superannuation contributions to employees whilst they are on paid or unpaid parental leave.

Recommendations

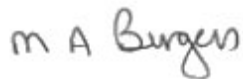
The PFA makes the following recommendations –

1. Right to request with binding review should be legislated for all workers.
It is the PFA’s view that the difficulties in returning to work from parental leave are reduced when a legislative framework exists that ensures that the employer is obliged to consider requests and an expedient review mechanism is available when that request is unreasonably refused.
2. Improved and transparent systems of Annual Reporting conducted by Police jurisdictions (particularly concerning police numbers by gender and employment type ie part time employees using FTE reporting)
3. Greater access to a more flexible, affordable and accessible model of childcare which recognises the unique working patterns of police officers including the continued support of the Flexible Childcare Pilots.
4. Continued support for a dedicated Work Health and Safety Code of Practice for Police
5. Effective all-encompassing policies and procedures across all Police jurisdictions to ensure that employers reasonably accommodate and recognise the need for greater flexibility within the workplace for employees who are pregnant or those returning to work after parental leave and with carers responsibilities

6. Improved management practices in dealing with requests for part time work including support for employees to overcome the fear of intimidation or jeopardising their career
7. The PFA supports Paid Parental Leave counting as service for the purposes of eligibility for PPL.
8. Continued employer superannuation contributions whilst an employee is on paid or unpaid parental leave

The PFA would be happy to provide further information to the Review if that would be required.

Sincerely yours

A handwritten signature in black ink that reads "m A Burgess". The signature is written in a cursive, lowercase style.

Mark Burgess
Chief Executive Officer