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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 time<sup>1</sup> (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%.<sup>2</sup>

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.<sup>3</sup> 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%.<sup>4</sup>

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

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<sup>1</sup> Australian Bureau of Statistics 2011 Census Data

<sup>2</sup> Australian Bureau of Statistics ABS 4125.0 - Gender Indicators, Aug 2013

<sup>3</sup> Police at Work, Wave 2 p43

<sup>4</sup> Australian Bureau of Statistics ABS 4125.0 – Gender Indicators, Aug 2013

the ranks.<sup>5</sup> 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

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<sup>5</sup> 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'.

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### **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.*

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### **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%)<sup>6</sup>.

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 status<sup>7</sup>.

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

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<sup>6</sup> Queensland Police Union of Employees Survey of Part Time Members 2012

<sup>7</sup> 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 children<sup>8</sup>. 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 reason<sup>9</sup>. 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 impracticable<sup>10</sup>.

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'.**

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<sup>8</sup> Police at Work, Wave 4 Report p32

<sup>9</sup> Police at Work, Wave 4 Report p41

<sup>10</sup> 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 children<sup>11</sup>. 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 less<sup>12</sup>, 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.<sup>13</sup>

The fact that approximately 8% of police across Australia work part time<sup>14</sup>, 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 schedule<sup>15</sup>. 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.

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<sup>11</sup> Police Association of NSW, Part Time Survey 2008 p2

<sup>12</sup> Police at Work, Wave 5 Report p13

<sup>13</sup> Police Association of NSW, Part Time Survey 2008 p32

<sup>14</sup> Australian Bureau of Statistics 2011 Census Data

<sup>15</sup> 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**

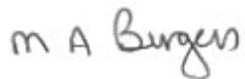
The PFA makes the following recommendations –

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 dark ink, appearing to read 'm A Burgess'.

Mark Burgess  
Chief Executive Officer

## ATTACHMENT A



VICTORIA POLICE

# Pregnancy

## In the Workplace

An Information Guide to assist managers and employees  
meet the needs of pregnancy in the workplace

*Produced by the Human Resource Department*  
September 2008

# Introduction

The Pregnancy in the Workplace Policy and this accompanying Information Guide have been developed to promote a workplace that supports the needs of the employee and is safe and free from unlawful discrimination. The policy and information guide closely model the values held by Victoria Police. They promote:

<i>Respect:</i>	For individual choices; (to have children, to breast feed, to work part-time);
<i>Flexibility:</i>	Through the provision of tailored work arrangements; (alternative work during pregnancy, conversion to part-time, graduated return to work);
<i>Support:</i>	Through the provision of leave options both during and after pregnancy, as well as support options for employees with carer responsibilities;
<i>Professionalism:</i>	Through open, co-operative and transparent decision making;
<i>Leadership:</i>	Through acknowledgement and acceptance of individual needs and differences of our diverse community; and provision of equitable access to opportunities within the workplace;
<i>Integrity</i>	Acting with honesty, respecting the right of fair process and maintaining the confidentiality and respect of those we deal with. Demonstrating moral strength and courage by behaving with honour and impartiality.

By supporting employees with their life choices and as far as reasonably practicable, accommodating individual needs through the provision of flexible workplace practices/arrangements, Victoria Police will be better placed to achieve and maintain a diverse, skilled and motivated workforce capable of delivering "confident policing" services to the community.

## Purpose

This document has been designed to:

- Enhance awareness of employee and management rights and responsibilities/obligations regarding pregnancy in the workplace;
- Enhance awareness and understanding of the underlying principles of the pregnancy policy and flexible return to work options;
- Provide guidance to assist pregnant employees and their managers develop an appropriate work plan for the duration of the pregnancy;
- Enhance awareness and understanding of the legislative requirements underlying the pregnancy policy and associated leave options;
- Provide a quick reference to employer provided and external family support services

**This information guide should be read in conjunction with VPM Instruction 309-23 Pregnancy & Nursing Mothers in the Workplace and 308-8 Parental Leave.**

# Table of Contents

<b>DISCRIMINATION AND EQUAL OPPORTUNITY .....</b>	<b>4</b>
<i>Equal Opportunity Act 1995 (Vic) .....</i>	<i>4</i>
<i>Sex Discrimination Act 1984 (Cth).....</i>	<i>4</i>
<i>Promoting a Culture that Respects Diversity.....</i>	<i>4</i>
<b>HEALTH AND SAFETY IN THE WORKPLACE .....</b>	<b>5</b>
<i>Work Risk Assessment.....</i>	<i>6</i>
<b>LEAVE OPTIONS .....</b>	<b>7</b>
<i>Maternity leave options.....</i>	<i>7</i>
<b>KEEPING IN TOUCH .....</b>	<b>8</b>
<b>SUPPORT SERVICES .....</b>	<b>8</b>
<i>Victoria Police Welfare Service.....</i>	<i>8</i>
<i>Victoria Police Clinical Services Branch .....</i>	<i>9</i>
<i>Equity and Conflict Resolution Unit .....</i>	<i>9</i>
<i>The Police Association .....</i>	<i>9</i>
<i>Maternal and Child Health Centres.....</i>	<i>9</i>
<i>Family Support Services.....</i>	<i>10</i>
<i>Family Support and Counselling/Family Resource Centres.....</i>	<i>10</i>
<b>RETURNING TO WORK.....</b>	<b>10</b>
<i>Flexible Return to Work Options.....</i>	<i>10</i>
<i>Personal Leave .....</i>	<i>11</i>
<i>Carer's Rooms.....</i>	<i>11</i>
<i>Childcare Arrangements .....</i>	<i>11</i>

# Discrimination and Equal Opportunity

The *Equal Opportunity Act 1995* (Vic) and *Sex Discrimination Act 1984* (Cth) protect women from discrimination in employment on a number of grounds including pregnancy, potential pregnancy, breastfeeding and parental status.

In accordance with legislation and the organisational values espoused by Victoria Police, pregnant employees have the right to be treated equally and should not be disadvantaged. It is therefore important that employees are aware of their rights while employers are conscious of their obligations so as not to impede on employee's rights and potentially incur prosecution.

## ***Equal Opportunity Act 1995 (Vic)***

The *Equal Opportunity Act 1995* (Vic) maintains that, in relation to work and family responsibilities, it is unlawful to discriminate on the grounds of breastfeeding status, being pregnant or potentially pregnant, physical features and parenting status. It is equally unlawful for the employer to deny or not offer employment, deny access to benefits such as promotion, training or transfer and dismiss or terminate employment.<sup>1</sup>

The *Equal Opportunity Act 1995* provides an exception which may be applicable to pregnant women in certain circumstances. The Act states that an employer may set reasonable terms or requirements of employment, or make reasonable variations to those terms to take into account the reasonable and genuine requirements of employment. For example, when a pregnant employee is undertaking higher duties and where she can no longer perform the requirements of the job and no reasonable adjustment can be made to the job, the employee may no longer be eligible for the upgrading.

Similarly, while Victoria Police is committed to ensuring female applicants are not disadvantaged in initial recruitment; recruitment of pregnant applicants may be deferred until after the pregnancy due to the rigorous requirements of recruit training at the Academy.

## ***Sex Discrimination Act 1984 (Cth)***

The *Sex Discrimination Act 1984* (Cth) precludes unlawful discrimination, either directly or indirectly, against someone on the grounds of pregnancy or potential pregnancy. The Act makes it unlawful for an employer to discriminate against an employee on the grounds of the employee's family responsibilities if:

“(a) the employer treats the employee less favourably than the employer treats, or would treat, a person without family responsibilities in circumstances that are the same or not materially different; and

(b) the less favourable treatment is by reason of:

- (i) the family responsibilities of the employee; or
- (ii) a characteristic that appertains generally to persons with family responsibilities; or
- (iii) a characteristic that is generally imputed to persons with family responsibilities.”<sup>2</sup>

## ***Promoting a Culture that Respects Diversity***

It is also important that managers and employees do not use inappropriate attitudes and behaviours including negative connotations and terminologies associated with pregnancy; these activities can amount to bullying. Managers/Employees should not:

- use negative expressions such as “falling pregnant” or suggestive comments about the pregnant employees situation, ability or looks;

<sup>1</sup> Equal Opportunity Act 1995 (Vic), Section 6

<sup>2</sup> Sex Discrimination Act 1984 (Cth), Section 7A

- make inappropriate comments such as “see what happens when you employ women” or “messing up the roster”;
- make personal comments about the physical changes in a pregnant employees body or insensitive treatment;
- make constant reference to the pregnancy (some of which are sexual). Badgering the employee about whether she is coping or whether they should continue working, when she is leaving and whether she really intends to come back to work can cause distress and often equates to harassment of the pregnant employee. It may also contribute to low workplace morale.

## Health and Safety in the Workplace

Victoria Police has a duty of care to, as far as is reasonably practicable, provide employees with a safe work environment free from unlawful discrimination. Accordingly and due to some aspects of police work, when informed of the pregnancy, the managers together with the employee must undertake a risk assessment of the employees work environment and responsibilities. If risks are identified, action must be taken to remove or mitigate the risk(s) where practicable or develop an alternative work plan in consultation with the employee. Treating pregnant employees differently in this circumstance does not constitute discrimination, rather demonstrates a duty of care.

In order to have an informed discussion with their manager regarding appropriate duties, pregnant employees should first consult their attending medical practitioner regarding their duties and using the Medical Information Pack, identify the risks/hazards or potential dangerous situations that they may be exposed to during their pregnancy. The employee should then schedule a meeting with her manager and based on the attending medical practitioner’s advice, determine suitable duties for them to undertake for the duration of the pregnancy. Decisions regarding work duties must be consistent with the attending medical practitioner’s advice.

It is important to note that significant changes to duties may not always be required. Based on specialist advice from the attending medical practitioner and/or OHS consultant, managers should consider implementing appropriate controls or adjusting elements of the employee’s duties to enable them to continue with their regular duties where possible and appropriate.

Managers who are concerned about the employee’s ability to undertake certain tasks following advice from her attending medical practitioner should consult with the Police Medical Officer *who may request permission from the employee to contact her doctor.*



## Work Risk Assessment

Managers, in consultation with the employee, and based on advice provided by the attending medical practitioner and/or the OHS Consultant, should undertake a risk assessment of the employee's work responsibilities and implement appropriate controls where possible or determine alternative and appropriate duties for the employees.

▪ Physical confrontations	Consider duties that do not involve contact with victims/offenders which may expose the employee to risk of injury through interaction and physical confrontations.
▪ OST Training	<p>OST training involves defensive tactics training which may involve physical exertion and expose the pregnant employee and her unborn child to physical injury.</p> <p>The firearms training exposes the employee to:</p> <ul style="list-style-type: none"> <li>- lead dust and fumes;</li> <li>- loud and sudden noise;</li> <li>- recoil with exposure to shock, vibration and excessive movement; and</li> <li>- increased stress levels.</li> </ul> <p>Pregnant employees wanting to undertake OSTT in order to continue with operational duties must discuss the risks associated with OSTT with their attending medical practitioner and obtain their certification.</p>
▪ Marked Car Travel	Pregnant employees are advised against driving marked police vehicles as they could be required to respond to a potentially dangerous incident or be placed under public pressure to respond. This could particularly pose risks if the employee arrives alone at a potentially dangerous incident
▪ Risks of exposure to hazardous substances, infections or chemicals	<p>Chemical hazards may be toxic to the unborn child. Consider risks associated with:</p> <ul style="list-style-type: none"> <li>- incident management situations involving chemical spills/hazardous material;</li> <li>- clandestine drug laboratories;</li> <li>- traffic enforcement in areas of high traffic concentration;</li> <li>- OC Spray may result in increased heart rate. Pregnant employees should avoid exposure;</li> <li>- Forensic analysts (pharmaceutical products).</li> </ul>
▪ Unmarked Car Travel	Incidents in cars resulting in trauma from the seat belt, steering wheel or dashboard may cause significant injury to an unborn child. During pregnancy, lap seat belts should be worn as tightly as possible. The buckle should be fastened over the hip with the lap section as low as possible on the abdomen.

# Leave Options

Victoria Police provides a range of leave options to assist employees meet their family needs. These include pre-natal leave and both paid and unpaid maternity leave. There are also a range of leave provisions for adoption, special maternity leave for the termination of pregnancy other than the birth of a living child and paternity/partner leave. For details refer to VPM Instruction 308-8 Parental Leave.

## Maternity leave options

Employees can substitute a component of the unpaid leave portion of their maternity leave by other accrued leave entitlements in order to extend their period of paid leave. For example, employees may take but is not limited to:

weeks	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32	34	36	38	40	42	44	46	48	50	52	54					
52 Weeks Maternity Leave																																
	6 wks PML			8 wks PML			38 wks unpaid maternity leave																									
	*	4 wks PML		10 wks PML			38 wks unpaid maternity leave																									
	6 wks PML			8 wks PML			6 wks recreation leave		32 wks unpaid maternity leave																							
	6 wks PML			8 wks PML at half pay (16 weeks in total)										30 wks unpaid maternity leave																		
	6 wks PML			8 wks PML			8 wks recreation leave at half pay (16 wks in total)										22 wks unpaid maternity leave															
	6 wks PML			8 wks PML at half pay (16 weeks in total)										5 wks recreation leave at half pay (10 wks in total)					10 wks unpaid maternity leave													
	6 wks PML			8 wks PML			6 wks recreation leave at half pay (12 wks in total)																									
2 wks annual leave	6 wks PML			8 wks PML			6 wks recreation leave		32 wks unpaid maternity leave																							
	6 wks PML			8 wks PML			38 wks unpaid maternity leave																						Leave without pay			

\* continued to work with medical certificate

PML = Paid Maternity Leave

# Keeping in Touch

Keeping in touch with employees while on extended periods of leave is an important practice that is encouraged for the benefit of both employees and their managers.

For the employee, keeping in touch can ease the stress of transitioning back to work by reinforcing to them that they are valued and that Victoria Police is positively supporting them while on leave and in their return to work. It can further assist to ease any anxiety they may have as they remain informed of any changes to their workplace.

For the manager, keeping in touch and providing support may encourage employees to return to work earlier than where this support is not provided. Supporting employees to keep their skills and organisational knowledge current through access to information such as planning days, training opportunities or the Chief Commissioner's Instructions may assist them to reintegrate back into the workplace quicker and thereby increase productivity when they return to work.

It is therefore important that managers and their employees discuss options for keeping in touch before the employee commences maternity leave. These arrangements can be informal or by accessing the Keep-in-Touch Program.

## Support Services

Individuals who experience difficulty coping with any aspect of bringing a new baby home need to remember that they are not alone. There are a range of formal and informal support services that are available to provide assistance. The most crucial point is that employees talk about their concerns, problems or any anxiety they may be feeling and not hesitate in accepting assistance when it is offered.

Employees who experience difficulties are encouraged to:

- talk to their partner and their family and not be afraid or embarrassed to seek advice or assistance;
- join a playgroup. This enables individuals to meet other parents with young children and provide the opportunity to talk about common experiences and gain emotional support from these parents;
- talk to the local Maternal and Child Health Centre nurse. They will provide advice on a wide range of topics, including controlled crying, or provide referral to specialist service providers if need be;
- talk to their doctor;
- call their local council to find out about the support services that they may be able to access through the council;
- call Parentline, a telephone support service for parents available 10am to 10pm on 13 22 89;
- call the Maternal and Child Health Line, a 24-hour telephone service on 13 22 29; or
- contact one of the Victoria Police Employee Support and Welfare Services.

### ***Victoria Police Welfare Service***

The Employee Support & Welfare Services Unit provides confidential information, support, advice and referral services for all employees including sworn, public service employees, protective services officers, reservists, recruits and their immediate families.

**Contact:**

Employee Support & Welfare  
Level 2, 128 Jolimont Rd  
East Melbourne  
Phone: 9301 6900  
Fax: 9301 6902

## ***Victoria Police Clinical Services Branch***

Experienced psychologists and social workers are available to provide confidential consultation and counselling services to all Victoria Police employees and their immediate families. Counsellors have a wide variety of experience and a good understanding of the organisation and can also assist with referrals to appropriate external support services.

**Contact:**

Clinical Services Branch  
Level 2, 128 Jolimont Rd  
East Melbourne  
Phone: 9301 6900 (24 hours)  
Fax: 9301 6902

## ***Equity and Conflict Resolution Unit***

The Equity and Conflict Resolution Unit (ECRU) provides confidential services to all Victoria Police employees on issues relating to:

- Discrimination
- Sexual harassment
- Bullying
- Workplace conflict
- Victimisation and
- Liability

ECRU's services include: information and advice, case management, assisting issue resolution, providing expert consultancy services, facilitating training and coordinating responses to EOCV and HREOC on behalf of Victoria Police.

**Contact:**

ECRU  
Ground Floor, 128 Jolimont Rd  
East Melbourne  
Phone: 9301 6971.

## ***The Police Association***

The Police Association (TPA) provides a range of services to sworn employees including welfare support. TPA can be contact on 9495 6899.

## ***Maternal and Child Health Centres***

Maternal and Child Health centres are run by nurses who have qualifications and experience in general nursing, midwifery and maternal and child health. The nurse at the local centre will be able to provide

information regarding maternal wellbeing, parenting, growth and development of children, child behaviour, immunisation, family health, nutrition, sleep and settling and safety and accident prevention. The service aims to assist families with children aged 0 to 6.

## ***Family Support Services***

There are a wide range of family support service providers that can assist families' experiencing difficulties with their children. These services are usually staffed by maternal and child health nurses, preschool mother craft nurses and child psychologists. A doctor's referral is generally not required.

Individuals interested in accessing these services should speak to their attending medical practitioner or Maternal and Child Health nurse to find the nearest and most appropriate service that meets their needs.

The Childcare Kit may also provide as a valuable resource.

## ***Post and Antenatal Depression Association***

The Post and Antenatal Depression Association (PANDA) is a Victorian self-help organisation that provides confidential information, support and referral to anyone affected by post and antenatal depression, including partners and extended family members. PANDA provides

- telephone support and information, provided by staff and trained volunteers;
- resources and information on antenatal and postnatal depression and postpartum psychosis;
- information and referral details for supports and services in your area; and
- information, education and training seminars for professionals and the community.

## ***Family Support and Counselling/Family Resource Centres***

Many Local Councils provide support and assistance to families who are experiencing difficulties that compromise their well-being. These services may be provided individually or through group activities and may be in partnership with other services in the community. Services may include:

- parent education;
- individual and family counselling;
- referrals to other services such as health, legal advice, housing and financial counselling; and
- assistance for parents and family members regarding child behaviour, relationships and social support.

# **Returning to Work**

## ***Flexible Return to Work Options***

Victoria Police provides a range of policies to support employees achieve a balance between their work and family/life responsibilities. These policies provide options such as part-time employment, and purchased leave (i.e. 50/52 for sworn employees and up to 44/52 for VPS employees). Sworn employees will also have the opportunity to undertake Supplementary Duties, during the unpaid portion of their parental leave, to maintain current practical experience. It is expected Supplementary Duties will be available in late 2008.

Managers and employees should carefully consider the available policies to identify the most suitable arrangement and ensure they have an understanding of the case for flexible work, the underlying principles of these policies and the legislative framework that guides them so they can make informed decisions in relation to requirements for flexibility. (For further information refer to the Victoria Police Manual).

For policy advice relating to flexible return to work options please contact Employee Relations, Human Resource Department on 9247 5846.

## ***Personal Leave***

Employees who are unable to attend work because of personal illness or carer responsibilities may utilise personal leave in accordance with the provisions of VPM Instruction 308-2 Personal leave.

## ***Carer's Rooms***

Victoria Police provides carer's rooms in two locations: Victoria Police Centre, and the Crime Department headquarters at St Kilda Road.

These rooms provide facilities to enable employees to continue to work and care for children in the workplace if, for example, a child is recovering from a non-contagious illness or is not at school due to a curriculum day or the usual care arrangements have fallen through.

The carer's rooms can also be used by nursing mothers to express milk or breastfeed their child if a family member brings the child to the workplace for this purpose.

To book a carer's room you must first have approval from your supervisor.

## ***Childcare Arrangements***

Employees who plan to return to work following a period of maternity leave should consider their childcare requirements for their return to work. Employees are encouraged to place their name on waiting lists as soon as they know they are pregnant or where this is not possible, as soon as their baby is born. There are very long waiting lists for child care services, with two-year waiting periods not uncommon.

The Childcare Information Kit is a resource that aims to assist employees with childcare responsibilities, to help them better manage their work/life balance.

The kit contains information on selecting childcare, screening prospective carers, financial assistance and fees, shiftwork issues, and more. It also includes a directory of childcare agencies and other resources and services, as well as checklists to help with planning.

Local councils also provide information on available children's services.

Victoria Police also has provisions for reimbursing childcare expenses where an employee is required to unexpectedly perform duties in response to an emergency situation and there is no pre-existing child care arrangement. Employees in these circumstances are entitled to be reimbursed for incurred child care expenses to a maximum of \$62.00 per day. To be eligible for payment evidence of costs must be provided from a registered child care provider.

# ATTACHMENT B



## Copy of Document Filed

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**Title of Matter:** Police Federation of Australia v Victoria Police/Chief Commissioner of Police

**Section:** s.739—Application to deal with a dispute

**Subject:** Alleged dispute concerning Flexible Working Arrangements

**Matter Number:** C2012/3628

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In relation to the above matter, please find attached for your information a copy of the document which has been issued by Fair Work Australia.

### Inquiries:

Any inquiries relating to this notice are to be directed to Cathy Bartlett  
Phone: (03) 8661 7738, email: [chambers.smith.dp@fwa.gov.au](mailto:chambers.smith.dp@fwa.gov.au), Fax: (03) 9655 0401.

**29 OCTOBER 2012**

### To:

Notified:	Address/fax no.:
Mr Nerio Baldini Police Federation of Australia-Victoria Police Branch	(03) 9495 6933 <a href="mailto:general@tpav.org.au">general@tpav.org.au</a>
Secretary National Police Federation of Australia	(02) 6239 8999 <a href="mailto:pfa@pfa.org.au">pfa@pfa.org.au</a>
Ms Liz Cheligoy Victoria Police/Chief Commissioner of Police	(03) 9247 6620 <a href="mailto:liz.cheligoy@police.vic.gov.au">liz.cheligoy@police.vic.gov.au</a>



FAIR WORK  
AUSTRALIA

# RECOMMENDATION

*Fair Work Act 2009*

s.739—Application to deal with a dispute

**Police Federation of Australia**

**v**

**Victoria Police/Chief Commissioner of Police**

(C2012/3628)

DEPUTY PRESIDENT SMITH

MELBOURNE, 29 OCTOBER 2012

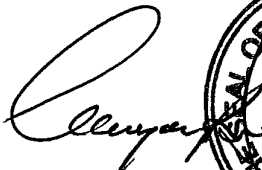

*Part-time work and child care arrangements—agreement.*

**[1]** The following principles form the basis of an agreement reached by the parties arising from conciliation.

1. Nothing in this agreement alters any of the provisions in the *Victoria Police Force Enterprise Agreement 2011* [AE889678].
2. The parties acknowledge that child care arrangements can be informal or formal. Agreement should be reached between the employee and the employer on the most appropriate rostering pattern that meets both the employee and employer needs. The employer can only refuse to reach agreement in accordance with the *Victoria Police Force Enterprise Agreement 2011* and relevant statutory provisions.
3. As far as possible, part time agreements must allow employees to utilise their child care arrangements. Where those arrangements require fixed shifts, the employee's shifts will be set in accordance with these requirements. Fixed shifts can also be agreed where those shifts provide a balance between the child care arrangements and the requirements of the work unit. Employees can be asked to change shifts as provided in paragraph 6 below.
4. Where child care arrangements allow some flexibility, part time agreements may reflect the parameters of the employee's availability. The employer and employee will discuss the timing of the shifts to ensure that the work unit needs are met and that there is a balance between child care arrangements and the work unit requirements.
5. Employees in SMR Division 3 whose current agreements include fixed shifts are not required to vary those arrangements other than in accordance with these principles. Any future proposal to alter current arrangements that include fixed shifts in other areas will be managed in accordance with these principles.



6. Where employees can move their shifts in circumstances where child care arrangements can be made for a proposed alternative shift, they should be as flexible as reasonably possible and should change their shift as they are able. It is acknowledged that advance notice will assist employees in making alternative arrangements.
7. Employees who have signed new agreements as a result of an approach by the employer (including employees in SMR Division 3) are able to raise their former agreements at the local level in the first instance. Victoria Police will consider any such approach.

  
  
DEPUTY PRESIDENT