



australian
nursing federation

Response to draft Productivity Commission report
and recommendations into paid maternity,
paternity and parental leave

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Preliminary comments

The ANF welcomes the report and recommendations of the Productivity Commission and the opportunity to respond to the recommendations. Before commenting on the specific recommendations we would like to commend the Commission and express our support for the principles outlined in the report and underpinning the general approach to the scheme. Specifically that a paid parental leave scheme should facilitate child and maternal health and the well being of families in general; that the scheme improve workforce attachment for women and that time out of the paid workforce be regarded as a normal part of life and work for all parents and carers.

The public/workplace recognition of overlapping roles for working people is long over due. The above objectives we believe are an important step towards promoting the change necessary in workplace culture to enable women and men to achieve a better balance between work and family life and more equitable arrangements at work and in the home.

The ANF supports the Commissions comment that the desired duration of postnatal absence from work would be around six to nine months. On the Commission's calculation, the recommended duration of 18 weeks paid leave will allow approximately 50 percent of women who already have access to other paid maternity leave to achieve the desired six to nine months.¹ However we are concerned that the remaining 50 percent, many of whom will not have access to any private maternity leave arrangements or the financial capacity to co-fund a longer period of leave will not have access to that desirable period of leave.

In relation to nursing, we estimate that the 59 percent of nurses who work in the public and private acute sectors, may have access to paid maternity leave of between 6 to 14 weeks, (subject to eligibility provisions), leaving just over 40% with access to extremely variable or no paid maternity leave arrangements. A recent survey of working nurses on the issue of paid parental leave, (report attached), underlined the significance of financial considerations in decisions to return to work earlier than planned. Sixty-eight percent responded that they returned to work for financial reasons, including the end of paid leave. Over one third of responses indicated this had a detrimental effect on breast feeding and the healthy establishment of family relationships.

¹ Productivity Commission 2008, *Paid Parental Leave: Support for parents with Newborn Children*, Draft Inquiry Report, Canberra. p.2.24

In the current context, the ANF supports the Commission's recommendation of 18 weeks paid parental leave as a good starting point but ultimately would want to see this extended to provide universal access to at least 26 weeks paid leave.

We are also concerned that the status of employees' existing paid parental leave entitlements contained in workplace agreements, policies or awards are not undermined by a statutory scheme. The final report must address this issue to ensure existing entitlements are preserved with provisions under the statutory scheme in addition to existing paid parental leave entitlements.

Comments on the specific recommendations:

Recommendation 2.1

The Australian Government should introduce a statutory paid parental leave scheme that provides:

- *paid leave capped at the adult minimum wage for each week of leave for those covered by adult minimum wages
– but with lower rates — to be set administratively — for juniors and others with hourly wages below the adult minimum*
- *payments to be taxed and included in income for assessment of any welfare benefits*
- *leave benefits for parents having twins or higher multiple births to be equal to those for parents bearing one child, supplemented by a payment equivalent to the new maternity allowance for each additional child (draft recommendation 2.6)*
- *superannuation entitlements calculated on the going wage of the employee or at the relevant capped amount, whichever is the smaller, but – this would only be available for employees who*
 - (a) *have met the Commission's eligibility criteria for paid parental leave under draft recommendation 2.4;*
 - (b) *were entitled to employer superannuation contributions in their jobs before taking paid parental leave; and*
 - (c) *were entitled to unpaid parental leave under the National Employment Standards*
 - *super contributions would be limited to the statutory 9 per cent rate*
 - *subject to its practical feasibility, including consideration of its compliance and administrative costs.*

Statutory scheme

The ANF supports a legislated scheme established under stand alone legislation or the National Employment Standard and must include a provision for dispute settling under the auspice of Fair Work Australia.

Adult minimum wage

The scheme should provide for paid leave at full ordinary wage replacement or the federal minimum wage, which ever is higher.

The entitlement should be the same for all workers regardless of age at either full ordinary wage replacement or minimum wage which ever is higher.

Superannuation

The ANF supports the continuation of employer contributions to superannuation, however the scheme should provide for employers to pay the employee's normal superannuation entitlement, that is, the same percentage of their average earnings, or the federal minimum wage, which ever is higher. Women are already significantly disadvantaged in relation to superannuation due to the prevalence of part time and casual work employment and gaps in paid employment for purposes of maternity leave. Continuing the same superannuation contribution under the paid parental leave scheme will begin to address this inequity. Further, the continuation of employer superannuation contributions should not be subject to the qualification that the employee has worked with the same employer for 12 months. This will lead to further inequity if employees who qualify for paid leave and would normally receive employer contributions do not receive those entitlements whilst on paid parental leave. The payment of the superannuation contribution could be based on the entitlement applicable at the last point of employment or at the point of taking the leave, or the federal minimum wage, which ever is higher.

Recommendation 2.2

The Australian Government should fund the cash component of the paid parental leave scheme, partially offsetting these costs by:

- *removing eligibility for family tax benefit B while parents are on paid parental leave*
- *replacing the baby bonus with another, differently focused payment as set out in draft recommendation 2.6.*

Employers should fund superannuation contributions during the paid parental leave period, but only under the conditions specified in draft recommendation 2.1.

The ANF supports this recommendation subject to the following:

- In relation to the effect on eligibility for family tax benefit B and the maternity allowance, that a provision be included to ensure no-one is worse off overall; and that eligibility for payment of superannuation contributions not require 12 months continuous service with an employer.

Recommendation 2.3

The employer should initially make payments to employees under the statutory parental leave scheme, with subsequent reimbursement by the Australian Government. However, an employer would only act as a paymaster for government where:

- *an employee was also eligible for unpaid parental leave under the National Employment Standards and*
- *a workable method for speedy reimbursement of that employer was feasible*
 - *the Commission's preferred approach is for employers that make at least onthly 'pay as you go' withholding payments to the Australian Taxation ffile to receive reimbursement through those payments, with all other employers exempt from the obligation to act as a paymaster.*

The Australian Government should pay other eligible parents directly, preferably through a non-welfare agency.

The ANF supports the proposed payment method through the PAYE system as a leave entitlement. The system should ensure that payments to eligible parents are in accordance with the usual payment of wages arrangements and that there are no break in payments by employers. We also support a system to ensure the speedy reimbursement by the government to employers making payments.

Recommendation 2.4

The statutory paid parental leave scheme should be available for an employed parent (including the self-employed and contractors):

- *who has worked an average of at least ten hours a week on a continuous basis for 12 months or more prior to the expected birth date of the baby, and*
- *who is also the primary carer of their baby.*

The ANF supports elements of this recommendation, specifically that eligibility criteria include parents in casual or non-permanent employment and the recognition of employment across multiple employers. However, the requirement to work an average of 10 hours a week in a 12 month period will exclude many employees who may, for example, work 1 day a week on a regular basis. This should legitimately be regarded as a genuine attachment to the labour force and enable the employee to qualify for the statutory entitlement. Accordingly, the 10 hours a week should be reduced to 7 hours a week to recognise the 1 day per week working arrangement.

Further, employees who work on a seasonal basis may be disadvantaged by the requirement to be employed “continuously for the last 12 months” because of the nature of their employment. The definition of “continuously” should be defined to allow reasonable breaks as suggested, but should also include a range of examples to suggest what is reasonable including breaks that may occur as a result of the seasonal nature of employment.

We support the Commission’s position that the period of paid parental leave be counted as employment and not break continuity for purposes of qualifying for subsequent paid parental leave. However, the ANF further recommends that the 18 weeks paid leave not break continuity of service for all purposes and count towards service for all purposes including accrual of entitlements such as sick leave and annual leave subject to the employee’s relevant industrial instrument(s).

Recommendation 2.5

The paid parental leave scheme should give:

- *eligible mothers the initial parental leave entitlement, but allow them to transfer the entitlement to eligible partners who take on the role of the primary carer*
- *fathers (and other eligible partners) a two week period of exclusive paternity leave on a ‘use it or lose it’ basis, even if the mother was not eligible for statutory paid parental leave*
- *fathers access to paid parental leave if the mother is not eligible, but only where (a) the fathers meet the employment and primary carer eligibility requirements and (b) there are special circumstances, which would be determined administratively.*

The ability to transfer paid leave to eligible partners who take on the role of primary carer is welcomed as is the provision for a period of concurrent leave for eligible partners. However, the period of concurrent paternity leave should be increased from 2 weeks to 4 weeks to allow a longer period for the involvement of partners in the early stages after the birth or adoption of a child to facilitate the development of family relationships and assist with the many demands on families at this time.

The limit on the number of times parents can switch as primary carers, (just one time), seems overly restrictive and should provide for more flexible arrangements. At the very least there should be provision to allow for more than one switch in special circumstances.

Recommendation 2.6

The existing baby bonus should be replaced with an equivalently-valued, non income tested maternity allowance, payable only to those parents not using statutory paid parental leave (with the exception of multiple births as set out in draft recommendation 2.1).

However, where a parent takes a shortened period of paid parental leave whose value is less than the maternity allowance, the parent would be entitled to a payment equal to the difference.

The ANF supports this recommendation subject to the inclusion of a provision to ensure there can be no disadvantage resulting from such arrangements.

Recommendation 2.7

The statutory paid parental leave scheme should provide a total of 18 weeks of paid leave for parents of a newborn child who meet the employment test, including:

- *a requirement that (a) the period of leave must commence at birth, or after a period of other continuous leave that commences at the birth of the child; (b) must be commenced within six months of birth; (c) leave must be taken in one block; (d) only one transfer of paid parental leave between parents would be permitted and (e) there be no concurrent use of paid parental leave by parents*
- *mothers of a stillborn baby, where the baby meets the requirement for birth registration*
- *parents of non-familial adoptions, regardless of the child's age, from the time of placement*
- *custodians of surrogate children, but subject to its compatibility with an impending uniform framework for surrogacy across Australian jurisdictions, (with provision for 12 weeks of paid parental leave to the surrogate mother).*

*Parents could take any paid parental leave remaining if their baby died.
Any outstanding leave could be transferred to the partner if the primary carer died.*

Paternity leave could be taken concurrently with the mother's paid parental leave but would have to be taken within six months of the birth of the child.

Period of leave

As outlined in the preliminary comments, the ANF welcomes the draft recommendation of 18 weeks paid parental leave but ideally would like to see a statutory period of at least 26 weeks. The evidence, as presented in the Commission's report, suggests a period of around 6 months and longer periods of up to 9 to 12 months, to promote child and maternal health and family welfare and facilitate breastfeeding where possible.

Timing and taking of leave

The ANF does not support the restrictions placed on the timing and taking of leave. It may be necessary to commence leave prior to the birth of the child depending on any number of circumstances. A degree of flexibility should be available to allow access to statutory paid leave if the need arises.

The requirement to commence leave within 6 months of the birth of the child raises a number of practical problems in relation to the interaction with existing paid maternity leave entitlements. Employees who elect to take their existing paid maternity leave entitlement for a longer period at half pay will lose eligibility for the statutory entitlement if their leave extends beyond the first 6 months.

Similarly the requirement to exhaust existing paid maternity leave entitlements before the baby is 6 months old is overly restrictive and should be removed.

Transfer of leave

As stated above the limit on the number of times parents can switch as primary carers, (just one time), is overly restrictive and should provide for more flexible arrangements. At the very least there should be provision to allow for more than one switch in special circumstances.

Other issues

The Commission's report raises other possible options for the taking of leave, for example both parents taking paid parental leave on a part-time basis. The ANF supports such arrangements on the basis that there would be no disadvantage resulting from such arrangements.

Recommendation 2.8

When the National Employment Standards are next subject to revision, the Australian Government should amend:

- *section 21 to require an employee on parental leave to provide six weeks notice for an extension to leave, unless an employer agrees to a shorter period*
- *section 15 to provide job return guarantees to adoptive parents equivalent to natural parents.*

This recommendation is supported.

Recommendation 2.9

In addition to publicly provided information on the workings of a statutory paid leave scheme, the Australian Government should provide:

- *evidence-based advice to employers on how to reduce the disruption burdens associated with increased average durations away from work by carers, with this information especially directed at small business*
- *a web-based calculator that shows which employees would be eligible and sets out any obligations by employers.*

This recommendation is supported.

Recommendation 2.10

A paid parental leave scheme should include:

- *a 'keeping in touch' provision that — subject to employer and employee consent — allows the employee to work up to 10 days while on paid parental leave, where that work strengthens the connection to their workplace*
- *scope for eligible self-employed parents to maintain some oversight of their businesses while on leave.*

The ANF agrees with this recommendation and supports the need for a range of measures to maintain connection with the workplace and assist with the transition back to work. However, it should be subject to the following conditions:

- That it be a voluntary system without undue direct or indirect pressure placed on employees to participate;
- That it is counted as time worked with entitlements accruing normally; and
- That any days worked on this basis extend the time away from work.

Recommendation 2.11

The Australian Government should provide more resources to allow effective support for breastfeeding during the first six months of an infant's life, with a focus on the post-initiation stage.

The ANF agrees with this recommendation. It is consistent with recommendations of the World Health Organisation and the Australian Breastfeeding Association and is an important step towards improving the opportunities and choices for women to continue breastfeeding.

Few workplaces provide constructive support by way of adequate facilities or the breaks necessary for this to occur. Significantly, some 39 percent of respondents to the ANF survey on paid parental leave indicated the duration of paid maternity leave affected their decisions around breastfeeding. Many commented that they could not continue to breast feed when they returned to work.

Recommendation 2.12

The Australian Government should undertake:

- *ongoing assessments of the interaction of the paid parental leave scheme with the tax and welfare system*
- *an evaluation of the administrative aspects of the scheme two years into its life*
- *a comprehensive evaluation of the impacts of the scheme five years into its life.*

The ANF agrees with this recommendation and supports ongoing assessments to ensure there are opportunities to improve the operation of the scheme and review the level of entitlements provided, including an increase in the period of paid parental leave to 26 weeks.