
Recommendations

Payments and funding of a scheme

RECOMMENDATION 2.1

The Australian Government's statutory paid parental leave scheme should provide paid parental and paternity leave, with:

- *payment at the going adult federal minimum wage for each week of leave*
- *payments subject to income tax and included as income for assessment of welfare benefits, with the exception of income support payments as defined under section 23 of the Social Security Act 1991 (principally parenting payments, Newstart and the disability support pension)*
- *superannuation entitlements, subject to the implementation approach and conditions specified in recommendation 2.4.*

RECOMMENDATION 2.2

Parents having multiple births, such as twins, should receive a paid parental leave entitlement for one child only and should be entitled to the payment of the baby bonus, subject to its income test, for each additional child.

RECOMMENDATION 2.3

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 a primary carer is on statutory paid parental leave*
- *removing eligibility for the baby bonus for a family using statutory paid parental leave (with the exception of any additional children where there are multiple births).*

RECOMMENDATION 2.4

There is a prima facie case that employers should fund superannuation contributions during the paid parental and paternity leave period, with:

- *superannuation entitlements calculated on the pre-birth (or pre-adoption) wage of the employee who is taking the leave, or at the federal minimum wage, whichever is the smaller*
- *superannuation payments made only to those employees who have (a) qualified for and chosen to take statutory paid parental leave; (b) were entitled to employer superannuation contributions in their jobs before taking leave; and (c) were entitled to unpaid parental leave under the National Employment Standards*
 - *If parental leave is transferred to an eligible partner, the partner may qualify for superannuation contributions, even if the original primary carer did not qualify. Only one parent may receive superannuation contributions for statutory parental leave at any given time.*
- *mandated superannuation contributions under the scheme should be limited to the statutory rate (currently 9 per cent), but with no bar to privately negotiated higher rates.*

The Australian Government should implement these employer contributions following a review of the statutory paid parental leave scheme three years after its inception (recommendation 2.14), subject to consideration of:

- *the outcome of a final Australian Taxation Office ruling on the applicability of the superannuation guarantee to paid parental leave*
- *legal and other administrative issues for government*
- *any significant detrimental effects on business viability at that time or on compliance costs.*

RECOMMENDATION 2.5

The employer should make statutory parental and paternity leave payments directly to employees, with prepayment of each instalment 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. Where such an employee worked with multiple employers, the employer allocated the tax-free threshold for PAYG withholding purposes should act as paymaster.

Legislation and guidelines for the paymaster function should explicitly rule out:

- *any employer obligations for accrued leave entitlements*
- *any impacts on notice periods and severance payments*
- *any impacts on payroll tax or workcover obligations.*

The Australian Government should pay other eligible primary carers directly.

Who would be eligible?

RECOMMENDATION 2.6

The Australian Government should require that, in order to be eligible for the statutory paid parental leave, a parent must have worked:

- *‘continuously’ for at least 10 months (the ‘qualifying’ period) of the 13 months prior to the expected date of the birth or adoption, though not necessarily with the same employer, and*
- *for at least 330 hours in the qualifying period.*

In addition, to be eligible for:

- *statutory paid parental leave, a parent must be the primary carer of the child*
- *statutory paid paternity leave, the father or relevant partner must share in the daily primary care of the child.*

Eligibility should include the self-employed (including employers and contractors), subject to independent assessment that they have met the eligibility criteria.

RECOMMENDATION 2.7

A statutory paid parental leave scheme should cover:

- *the parents of newborn children, including surrogate mothers*
- *mothers of a stillborn baby, where the baby meets the requirement for birth registration*
- *parents of non-familial adoptions of children aged under 16 years old from the time of placement*
- *custodians of surrogate children, subject to its compatibility with an impending uniform framework for surrogacy across Australian jurisdictions*
- *those in special circumstances as determined administratively (recommendation 2.8).*

RECOMMENDATION 2.8

The Australian Government's scheme should allow a non-parental primary carer access to statutory paid parental leave (or the balance left), but only if:

- (i) - there are genuine problems in the parents fulfilling that role, and*
- the relevant primary carer meets the work tests for eligibility, and*
 - the carer has long-term responsibility for the daily primary care of the child, and*
 - the carer is not making use of the carer's leave entitlements under the National Employment Standards if these apply to them*

or

- (ii) the relevant departmental secretary makes an administrative determination on the basis of 'special circumstances'.*

Who gets what?

RECOMMENDATION 2.9

Subject to the eligibility requirements of recommendation 2.6, 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 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*
- fathers or other eligible partners who share in the daily primary care of the child, a two week period of exclusive paternity leave on a 'use it or lose it' basis, even if the mother is not eligible for statutory paid parental leave.*

Duration and timing of leave

RECOMMENDATION 2.10

The Australian Government's statutory paid parental leave scheme should provide a total of 18 weeks of paid parental leave for a primary carer who meets the employment test, subject to the requirement that:

- *the primary carer complete paid parental leave within 12 months after birth (or eligible adoption) as one block in a continuous period of parental care, with the parental care, but not necessarily the statutory paid parental leave, commencing no later than birth*
- *leave would be taken at the full-time rate*
- *only one transfer of paid parental leave would generally be permitted between parents, except in special circumstances to be determined administratively.*

There should be provision for 12 weeks of paid parental leave to a surrogate mother meeting the employment tests.

The scheme should allow:

- *statutory paid parental leave to be taken concurrently with any other leave*
- *parents to take any paid parental leave remaining if their child died*
- *the transfer of any outstanding leave to the partner if the primary carer died.*

The Government should require paternity leave to be completed as one block within 12 months after birth (or eligible adoption). Paternity leave should:

- *be able to be taken at the same time as the primary carer's paid parental leave*
- *not be able to be taken concurrently with other forms of the father's paid leave.*

Other matters

RECOMMENDATION 2.11

The Australian Government should:

- *amend clause 74(4) of the proposed National Employment Standards 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*
- *ensure that unpaid leave entitlements under the proposed National Employment Standards apply to eligible adoptive parents of children aged under 16 years.*

RECOMMENDATION 2.12

In addition to publicly provided information on the workings of a statutory paid parental 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 the net benefits they would receive, and that sets out any obligations by employers.*

RECOMMENDATION 2.13

The Australian Government's statutory 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 scheme will need monitoring and review

RECOMMENDATION 2.14

The Australian Government should undertake:

- *ongoing assessments of the interaction of the statutory paid parental leave scheme with the tax and welfare system and of the extent to which employers have changed their privately negotiated arrangements in response to the statutory scheme*
- *a review of the scheme three years after its inception, including:*
 - *its effectiveness in meeting its main objectives*
 - *assessment of the impacts of the scheme on leave taken by parents, and of any modest changes to the duration of the statutory scheme that may be required*
 - *the viability of implementing mandated superannuation contributions by employers at that time*
 - *the potential for more flexible arrangements, including a capacity for parents to share their statutory parental leave on a part-time basis and to take leave at half-pay for double the period*

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- *whether employer-funded accrued leave or other entitlements should still be outside the scope of the statutory scheme.*

RECOMMENDATION 2.15

To underpin the review proposed in recommendation 2.14, the Commission proposes that the Australian Government should commission or otherwise ensure that surveys are undertaken to assess the impacts of the Government's statutory paid parental leave scheme on parents' behaviours, what happens to existing voluntary schemes, and the health and welfare of parents and children.