

Modernising Parental Leave: Changes to allow greater access and increased flexibility

Submission to the Ministry of Business, Innovation & Employment

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About the New Zealand Nurses Organisation

NZNO is the leading professional nursing association and union for nurses in Aotearoa New Zealand. NZNO represents over 46,000 nurses, midwives, students, kaimahi hauora and health workers on professional and employment related matters. NZNO is affiliated to the International Council of Nurses and the New Zealand Council of Trade Unions.

NZNO promotes and advocates for professional excellence in nursing by providing leadership, research and education to inspire and progress the profession of nursing. NZNO represents members on employment and industrial matters and negotiates collective employment agreements.

NZNO embraces Te Tiriti o Waitangi and contributes to the improvement of the health status and outcomes of all peoples of Aotearoa New Zealand through influencing health, employment and social policy development enabling quality nursing care provision. NZNO's vision is Freed to care, Proud to nurse.

EXECUTIVE SUMMARY

1. The New Zealand Nurses Organisation (NZNO) welcomes the opportunity to comment on the Ministry's Discussion Document *Modernising Parental Leave: Changes to allow greater access and increased flexibility*.
2. This submission is informed by consultation with all members and staff, including members of colleges and sections, regional councils, Te Rūnanga o Aotearoa, and the NZNO Board; and organisers and industrial and legal advisers, who have extensive experience advising, representing and supporting members about parental leave legal entitlements.
3. NZNO is an affiliate of the New Zealand Council of Trade Unions, and part of the '26 for Babies' campaign. We support their respective submissions.
4. We congratulate the Ministry on this succinct and well written document that scopes with precision and clarity several changes needed to ensure greater flexibility and equity of access to parental leave provisions, within the limited parameters the government has set.
5. We welcome specific recognition and accommodation of Māori cultural practices such as whāngai, as required by te Tiriti o Waitangi and consistent with Aotearoa's (and NZNO's) bicultural constitution.

6. NZNO particularly advocates improving health outcomes for mothers and children by extending the extension of parental leave to 26 weeks to support parents in the first six months of a child's life as outlined in our earlier submission¹ on the private members bill.
7. NZNO endorses the approach of widening the eligibility criteria to ensure that the increasing number of workers in non-standard employment and parenting situations will have fair and equitable access to parental leave.
8. We believe this will increase eligibility for nurses, about half of whom work part-time, midwives, and health care assistants, including those who work for multiple employers, and also enable more women having second or subsequent babies to access parental leave entitlements and stay connected with the workplace.
9. NZNO supports, in general and in principle, provisions that allow greater flexibility and choice as to when and how parental leave is taken to optimise return to work according to individual's child and family circumstances.
10. We also welcome the introduction of 'keeping in touch' days to allow parents and employers to maintain a useful employment relationship.
11. However, we challenge the arbitrary criteria for eligibility for parental leave entitlements, particularly 10 hrs paid employment per week; we question the rationale for, and oppose, having any threshold above the one hour per week that determines employment for statistical purposes.
12. The broadened scope of entitlement cannot disguise the structural discrimination and institutional racism that is inherent in a barrier that perpetuates inequalities by facilitating access to entitlements in a way that effectively privileges one group of workers (higher paid and in standard employment, predominantly Pākehā) above another (lower paid in more precarious and irregular employment, where there is an over-representation of Māori and Pacific peoples)².
13. We draw your attention to the Human Rights Commission 2012 discussion document on addressing structural discrimination in public

¹ [http://www.nzno.org.nz/Portals/0/Files/Documents/Activities/Submissions/2012-10%20Parental%20Leave%20and%20Employment%20Protection%20\(6%20months%20paid%20leave\)%20Amdmt%20Bill%20,%20NZNO.pdf](http://www.nzno.org.nz/Portals/0/Files/Documents/Activities/Submissions/2012-10%20Parental%20Leave%20and%20Employment%20Protection%20(6%20months%20paid%20leave)%20Amdmt%20Bill%20,%20NZNO.pdf)

² Department of Labour (2007) *Parental leave in New Zealand 2005/2006 Evaluation*.

services, *A fair go for all Rite tahi tātou katoa?*³ and note the adverse consequences of, and potential benefits of improving, persistent inequalities.

14. Parental leave entitlements are a just recognition that the distinction in employment law between productive and reproductive labour is no longer valid in a labour market that requires female participation⁴.
15. The right to work as stated in Article 23 of the Universal Declaration of Human Rights is universal and parental leave entitlements must be universal.
16. While we are strongly supportive of child-centred parental leave provisions, we are also concerned to protect the leave provisions for all birth mothers for the critical puerperium period (two to six weeks) that is optimal for maternal health.
17. As indicated in our recent submission⁵ on the Ministry's discussion document *Playing by the Rules: strengthening enforcement of employment standards*, NZNO's experience is that there is a significant problem with lack of knowledge and enforcement of employment standards in New Zealand, including parental leave provisions, and that a wide range of employees are disadvantaged by this.
18. Similarly, limited understanding of the importance of parental leave in the context of today's employment and social expectations risks further employment discrimination against women, who earn less and carry more responsibility for childcare than men, the cumulative disadvantages of which are carried into retirement.
19. Demographic trends specific to New Zealand - an aging predominantly Pākehā (New Zealand and other European) population with a younger, more fertile Māori and Pacific population, requiring proportionately more entitlement to parental leave - may also counter the effectiveness of policies aimed at increasing gender, employment and social equity.

³ http://www.hrc.co.nz/wp-content/uploads/2012/08/HRC-Structural-Report_final_webV1.pdf

⁴ Owens, R., Riley, J., Murray, J. (2007). *The Law of Work*, Second Edition. Melbourne: Oxford University Press.p135

⁵ http://www.nzno.org.nz/Portals/0/Files/Documents/Activities/Submissions/2014-07%20Playing%20by%20the%20Rules_NZNO.doc.pdf

20. Such risks need to be directly addressed with new work law and a rigorous public information/ education campaign clarifying the dual benefits and responsibilities of workforce participation if "gender equity in the labour market" is to be increased.
21. NZNO also welcomes the opportunity presented by the discussion document to consider the employment challenges of parenthood in the wider context of current demographic, labour market and social trends of increasing female participation, mobility, and fertility rates.
22. We suggest, for example, consideration of penalties for breaches of the Parental Leave and Employment Protection Act (1987) ("the Act") and /or pregnancy-related workplace discrimination, and more accommodation of flexible hours and parental leave for spouses/partners.
23. The consultation questions are addressed the following discussion on each of the proposals, which we support in general and to which we've added further recommendations to ensure the objective of extending paid parental leave entitlements to more parents is achieved.
24. We also recommend the repeal of section 42(2) (c) of the Act which improperly and unfairly affects the rate of pay for annual leave accrued during parental leave and is difficult to administer.
25. NZNO would be happy to discuss any aspect of this submission with the Ministry.

DISCUSSION

Proposal one: Extending paid parental leave entitlement to less regular or non standard employees and employees who have recently changed jobs or experienced gaps in employment.

26. NZNO welcomes the extended scope which is a realistic and fair recognition that those working for multiple or successive employers, in full, part-time or seasonal work are all employees and as such entitled to paid parental leave. As the discussion document correctly points out, those who are in lower paid and/or non-standard employment are less likely to access parental leave and consequently more likely to leave the labour market⁶.

⁶ Department of Labour (2007) *Parental leave in New Zealand 2005/2006 Evaluation*

27. The adverse consequences are twofold: a loss of skills and productivity in the workplace, and increased vulnerability due to less reliable income in the home.
28. The workforce in aged residential care, for example, comprises mainly low paid, workers without formal qualifications, but whose value is considerably enhanced by skills built up through experience and employer supported education. The safety of residents and the quality of care is to a large extent dependent on the skills and trusted relationships this workforce provides, though as several reports including *Caring Counts*⁷, the Human Rights Commission's report of their inquiry into the aged care workforce reveals, it is an extremely vulnerable workforce.
29. Aged care workers are subject to precarious employment conditions such as unreliable hours of work and heavy workloads which, combined with low pay, forces many to take on second and third jobs to be sure of having sufficient income to live on, with predictably negative consequences for their own health and family lives. In NZNO's experience, health care assistants (HCA) members working in aged care do not access their full parental leave entitlements.
30. While the scope for parental leave entitlements has been broadened, it is not equitable because it does not apply universally to workers, contravening Article 23 of the Universal Declaration of Human Rights.
31. No rationale is given for the eligibility criteria - six months regular employment and 10 hours per week. Both exclude some of the most marginalised workers, including seasonal workers (wool classers for instance only work three months of the year) and those working less than 10 hours, including women working part-time between babies, from accessing parental leave entitlements.
32. Both are discriminatory and, in view of the higher fertility rates and more precarious employment of Māori and Pacific women, likely to exacerbate social and economic disparities.

Ten hour criterion

33. We draw your attention to the threshold that Statistics New Zealand uses to indicate employment - one hour's paid work per week. We strongly recommend that this same threshold apply to apply to parental leave provisions, not only for consistency and fairness, but

⁷ http://www.neon.org.nz/documents/FinalReport2012_web.pdf

also because of the considerable social and economic benefits to be gained.

34. For example, nurses, who represent about five percent of the female workforce, are well educated, qualified and highly trained. It is fiscally prudent to retain their skills in the workforce, both to leverage the investment in their education and training and to be prepared for the increasing health demands of a growing and aging population.
35. There are many health services where skilled nurses are employed on less than 10 hours per week, particularly for weekend and evening work.
36. Family Planning New Zealand (FPNZ), for instance, offers a wide range of specialised sexual health services⁸ including advice and treatment for contraception, fertility, vasectomies, sexually transmissible infections, gynaecological and sexual dysfunction issues, and abortion referrals.
37. It invests considerable resources in training its small, highly specialised staff for its community and school based clinics. There are no substitutes for these specialist nurses, and, since many of the services are time specific - supply of the emergency contraceptive pill, for instance, there can be far reaching consequences if the clinics have to be cancelled because of lack of staff.
38. FPNZ has developed flexible staffing strategies to maximise retention of its predominantly female nursing staff, including employing those engaged in full time childcare, to work one clinic a week (often a weekend clinic), which is well under the 10 hour eligibility threshold.
39. This has enabled FPNZ to continue to offer valued community clinics which would otherwise be unavailable, and enable specialist nurses to maintain their connection to the workforce, and to retain their registration through fulfilment of the minimum clinical hour requirement of four hours per week.
40. There are other specialist health services, and some small District Health Boards (DHBs) serving rural populations, offering good employment flexibility as FPNZ does, because they recognise it is a key retention tool for staff that are very difficult to replace.

⁸ http://www.familyplanning.org.nz/our_clinics/clinic_services

41. Conversely, most large, urban-centred DHBs have inflexible 'hours of work' policies, including high minimum hours per week (0.7) and mandatory rostered and rotating shift requirements.
42. The individual, organisational, social, health and economic benefits of flexible working policies that allow people to choose the hours of work that suit their particular family circumstances are significant. However, as the above example suggests, they can be gained at the expense of the individual loss of parental leave entitlements which are predicated on the rights (and expectations) of workers access to work, and diminished by the ten hour barrier.
43. It is more common for women to access parental leave entitlements with their first child because they are more likely to be in full time employment. The right to work and access parental leave entitlements should not diminish with subsequent pregnancies; barriers restricting eligibility should be removed.
44. Parental leave entitlements incentivise continued attachment to the workforce. Nurses who cannot work ten hours because of family commitments may have difficulty maintaining their registration. That makes it less likely that they will return to nursing, because there are limited Registered Nurse (RN) Return to Nursing programmes and they are generally prohibitively expensive (Unitec fees⁹, for instance, are \$4,900) for people with young families, still paying off student debt (RN study fees¹⁰ alone average \$21,000).
45. Removing the ten hour barrier to parental leave entitlements would also remove the structural discrimination it perpetuates since higher paid regular employees would no longer be privileged above their more disadvantaged colleagues.
46. We believe the effect would be to improve flexibility and retention in the workforce, lower recruitment and retraining costs, reduce inequalities and improve health outcomes for families.
47. NZNO would support the use of tax information to verify employment information for paid parental leave purposes.
48. NZNO sees no advantage with the Australian model which is similarly flawed in the discriminatory threshold it sets, and entails the same

⁹ <http://www.unitec.ac.nz/career-and-study-options/nursing/registered-nurse-return-to-nursing?gclid=CJes4o-epcACFdd5vQodHrYArA>

¹⁰ <http://www.studylink.govt.nz/financing-study/the-cost-of-student-life-the-big-picture/how-much-could-my-course-cost.html>

bureaucratic 'accounting' when parental leave entitlements are part of the universal right to work.

Awareness and enforcement of parental leave entitlements

49. The government must take into account the need to communicate parental leave entitlements to employers and employees to ensure uptake and, particularly the fulfilment of obligations for job retention.
50. Although the legal test for a "key position" is ostensibly high, in actual practice employers, sometimes unwittingly, apply it to all sorts of jobs for which it is clearly not intended, for example HCAs.
51. NZNO frequently finds, and acts, for members who have been told that because they have a key position in the organisation their job will not be held for the parental leave term. Almost invariably, members do not want to push the issue with employers for fear that they will be penalised when they do want to return to work.
52. The Ministry's parental leave guide¹¹ needs to do more than assert that "in practice very few jobs are key positions"; it should provide clear guidance to employers and employees as to what constitutes a "key position" for the purposes of exempting employers from parental leave obligations.
53. Information about parental leave entitlements should also be available from relevant sources such as through lead maternity carers, Plunket, adoption agencies etc.
54. There should be also clear and significant consequences for breaches of parental leave entitlements such as those repealed in 1991.
55. NZNO recommends that penalty provisions are reintroduced at a level that effectively deters breaches of the Act.

Proposal Two: Recognising diverse family arrangements

56. NZNO welcomes the proposed changes to parental leave payments and provisions that recognise the diversity of family structures and relationships, and Māori practices such as whāngai.

¹¹ <http://www.dol.govt.nz/er/holidaysandleave/parentalleave/Parental-Leave-Guide.pdf>

57. We support the increased flexibility that a broadly defined 'primary carer' allows to ensure the focus is on the child regardless of biological, circumstantial, cultural or other considerations.
58. This is likely to facilitate fairer access to parental leave entitlements and increased transparency, which is generally in everyone's interest, particularly the child's.
59. We assume that appropriate processes and safeguards, for example whānau and family group conferences, will be developed to give assurance of the authenticity of primary carer status.
60. We suggest that further discussion may be needed around the definition of the primary carer as having "primary responsibility for the day-to-day care of the child on an ongoing or permanent basis".
61. While "day-to-day care" encompasses more than the Australian criterion of meeting the child's "physical needs", we believe that the primary care of children also requires meeting their emotional, developmental, social and spiritual needs and providing a nurturing environment¹².
62. We note that there have been some instances of dispute around the start of conflict around the start of parental leave especially where there is a health issue involved (pregnancy is exempt from sick leave), and/or the employee has been instructed to undertake light duties near the end of pregnancy. Some guidance in these circumstances would be useful.
63. We note that there is an overlap between period of birth and primary care and there possibly needs to be some clarification for biological/adoptive/surrogate mothers.
64. While we are strongly supportive of child-centred parental leave provisions, we are also concerned to protect the leave provisions for all birth mothers for the critical puerperium period (two to six weeks) that is optimal for maternal health.
65. We submit that two weeks' unpaid partners/spouse leave be extended to four weeks. We have assumed that the new proposed eligibility criteria would also apply to primary carers.

¹² See NZNO's Priorities for Health
[http://www.nzno.org.nz/get_involved/campaigns/election_2014/nursing_matters#Priorities for health](http://www.nzno.org.nz/get_involved/campaigns/election_2014/nursing_matters#Priorities%20for%20health)

Proposal three: Enabling employees to work limited days (keeping in touch days) during the paid parental leave period.

- 66. This is a worthwhile innovation which will make it easier for those on parental leave to keep in touch with the workforce and maintain employment relationships, education and skills.
- 67. Keeping up with medical advances and new technologies is a constant challenge in many areas of nursing, while maintaining established and trusted relationships in others is also important; this proposal will help in both instances.
- 68. There are risks however, in particular, the potential for the days to be used to pressure employees to return to work early or to cover workforce gaps. This is already occurring on a daily basis as nurses, midwives and HCAs work extended shifts, are unable to access education or take annual leave when they want.
- 69. There must be very stringent safeguards to ensure that employees are not pressured to use their 'keeping in touch' days; legislation must be explicit that such days cannot be used to cover shortages due to sick or annual leave.
- 70. Anecdotally, NZNO has heard from members that some employers in the United Kingdom pay a lower rate of pay for these days; this should be also explicitly vetoed.
- 71. NZNO also recommends extending the proposal to include a limited number of 'keeping in touch' days during the period of unpaid parental leave (limited to one day per month to ensure employees on unpaid parental leave are not regarded as relief or temporary workers). This is consistent with similar parental leave entitlements in comparable countries.

Proposal four: Enabling employees to take the unpaid parental leave part-time and flexibly.

- 72. This is another positive proposal which should make it easier for employees to return to work under flexible arrangements to suit the needs of families for the relatively short period of parental leave in a person's working life. It is likely, given the fact that many women return to work from parental leave earlier than they would wish and for longer hours, that this will lead to an earlier and more gradual return to work period.
- 73. However, we are not optimistic. Despite legislation enabling flexible working arrangements (Part 69AA, Employment Relations Act 2000), they have not been widely embraced in the health sector, with the largest employers, DHBs, showing a tendency to reduce the limited flexibility there was (and lose staff in the process).

74. Examples include mandatory 24/7 shift rotation, a minimum 0.7 FTE specification and no split shifts, all of which significantly limit opportunities for people with families to stay connected to the health workforce.
75. Nurses who used to work two four hour shifts, for example, are no longer able to, and must choose either to leave or to work more hours at less family friendly times.
76. The risks are clear: they may never return to nursing, or put themselves and their families under stress. In the workplace, it sets off a cycle of overwork as their colleagues are often the ones called upon to make up the staffing shortfall; inadequate staffing has well established and clearly defined negative consequences for patient safety and the quality of healthcare.
77. As NZNO has pointed out elsewhere¹³ such poor and inflexible working arrangements are significant factor in our continuing dependence on overseas recruitment of health professionals.
78. In this context we also note that very few DHBs have childcare facilities for their staff or even aspire to establishing a family friendly environment for staff, in spite of the tens of thousands of female health workers employed.
79. Clearly more forceful measures, and education, are required to improve employers' understanding and management of a modern diverse workforce to maximise the social and economic benefits of full participation.
80. We recommend that the request for flexible working arrangements should be 'not unreasonably withheld' rather negotiated 'by mutual agreement' to help women negotiate around reduced hours and flexible working arrangements.
81. We also recommend that the right to flexible work is incorporated into the Parental Leave and Employment Protection Act 1987 with the added provision that refusal by the employer to make changes to work arrangements following parental leave be "not unreasonably withheld".
82. The period of unpaid parental leave must be extended by the number of days worked and employees must give sufficient notice of their intended return to work arrangements.

¹³ See for instance

http://www.nzno.org.nz/Portals/0/Files/Documents/Activities/Submissions/2014-04%20Empl_%20Accred._ccdhb_NZNO.pdf

Proposal Five: Providing extended leave to parents who have been with their employers for at least six months (but less than 12)

- 83. NZNO supports this proposal. The extension of unpaid leave on a pro rata basis according to length of service would be an equitable method for extending parental leave to those parents who have worked less than 12 months.
- 84. With modern payroll and accounting systems we do not foresee any difficulty with calculating the right amount and therefore see no need for the alternative option.

Section 42 (2)

- 85. This section of the Parental Leave and Employment Protection Act (1987) is anomalous, difficult to administer, and unfair.
- 86. It affects the rate of pay for annual leave accrued during parental leave which is calculated on the earnings from the twelve months immediately preceding when the annual leave is taken.
- 87. It thus disadvantages those who take annual leave in the first year following their return to work, particularly those taking annual leave soon after their return to work.
- 88. It is widely misunderstood and causes considerable friction and resentment in the workplace. There is no justification for any part of the parental leave entitlements to be paid at anything other than usual rate.
- 89. We recommend the repeal of this section.

CONCLUSION

- 90. Parental leave entitlements are necessary in a labour market that requires and benefits from women's reproductive labour and that of primary carers for children.
- 91. As with other standards of employment they must be universal with appropriate penalties for breaches.
- 92. We believe significant education and information for both employers and employees is needed to ensure parental leave entitlements work as they should to optimise social and economic wellbeing, without compromising the care of children - the most vulnerable as well as the most potentially productive members of society.
- 93. NZNO **supports** proposed changes to parental leave entitlements in general because they are a significant improvement on the current level of participation and equity and recognise diverse families and workers in non-standard employment.
- 94. However, there are further changes needed to remove the structural discrimination implicit in the six month and 10 hour per week eligibility criteria. They are an access barrier to entitlements which continues to

disadvantage vulnerable workers, disproportionately represented by Māori and Pacific women, and to families with more than one child.

95. The younger age profile and higher fertility rates of Māori and Pacific women means they are particularly disadvantaged as they are the workforce group most likely to require access to parental leave entitlements, but also most likely not to be eligible for them.
96. It also means that employers of the most vulnerable are also less likely to have to consider parental leave.
97. Other more relevant criteria in this context would be the one hour's paid employment per week that is the minimum used to determine being employed for statistical purposes, according to Statistics New Zealand or the hours needed to maintain professional registration or licensing, for example the minimum requirement of four clinical hours per week for nurses.
98. Accordingly we **recommend** that you:
 - **extend** parental leave entitlements to 26 weeks
 - **reduce** the six month and 10 hour per week barriers to ineligibility, to ensure all working women and primary caregivers have access to parental leave entitlements;
 - **reintroduce** penalty provisions to deter breaches of the Act;
 - **extend** flexible hours and parental leave for partners;
 - **ensure** that requests for flexible working arrangements should be "not unreasonably withheld" rather negotiated ("by mutual agreement");
 - ensure 'keeping in touch' days cannot be used for sick leave or to cover staff shortages;
 - **extend** 'keeping in touch' days during the period of unpaid parental leave (limited to one day per month to ensure employees on unpaid parental leave are not regarded as relief or temporary workers);
 - **explore**, extend and integrate sources of public information and education on parental leave entitlements, including what constitutes a 'key position' for the purpose of the Act; and
 - **repeal** s 42(2) of the Parental Leave and Employment Act (1987).

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