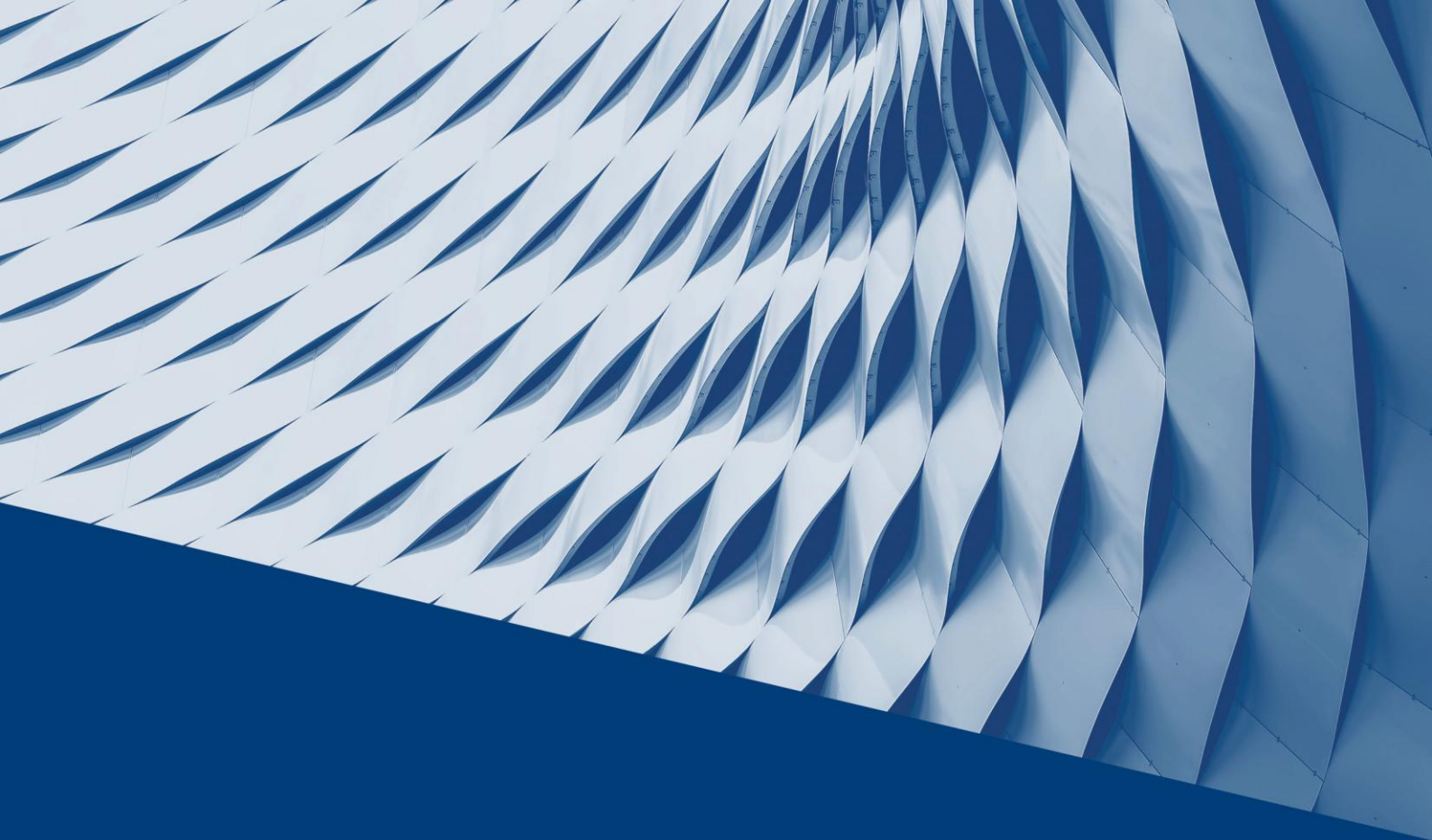




Supplementary Submission on Parental Leave to the National Employment Standards Inquiry

Supplementary Submission by the Australian Council of Trade Unions to the House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training Inquiry into the Operation and Adequacy of the National Employment Standards

ACTU Submission, 15 June 2026
ACTU D. No 44/2026

Contents

About the ACTU	1
Introduction	2
Summary of Recommendations.....	2
Parental Leave	4
1. Abolish the 12-month minimum service period to take unpaid parental leave	4
2. Pay superannuation on all periods of paid and unpaid parental leave	5
3. Parental leave should be available to all workers who need it	6
4. Paid breastfeeding/lactation breaks and appropriate breastfeeding/lactation facilities	6
5. Changes to paid and unpaid no safe job leave	7
6. Ensure accrual of all entitlements during periods of unpaid parental leave.....	9
7. Strengthen rights and protections of working parents and carers.....	9

About the ACTU

The Australian Council of Trade Unions (ACTU) is Australia's peak national body of unions, founded in 1927. Our 37 affiliated unions and trades and labour councils represent nearly 2 million members across all industries and occupations. With this movement, the ACTU has a long and proud history of winning for working people that it continues to build upon.

The ACTU has played the leading role in advocating for, and winning the improvement of working conditions, including on almost every Commonwealth legislative measure concerning employment conditions and trade union regulation. The ACTU has also appeared regularly before the Fair Work Commission and its statutory predecessors, in numerous high-profile test cases, as well as annual national minimum and award wage reviews.

Introduction

The ACTU welcomes the opportunity to make this supplementary submission to the House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training Inquiry into the Operation and Adequacy of the National Employment Standards (NES).

Our supplementary submission, complementing our original submission to this Inquiry,¹ deals with a range of issues relating to parental leave. Parental leave and related entitlements are dealt with in Division 5 of Part 2-2 of the *Fair Work Act 2009* (Cth) (**FW Act**). Paid parental leave is also the subject of specific legislation, the *Paid Parental Leave Act 2010* (Cth) (**PPL Act**), under which the federal Paid Parental Leave Scheme operates.²

Although the NES parental leave provisions were excluded from the scope of this Inquiry, the Terms of Reference indicated that this did not prevent broader consideration of the interaction of these provisions with other NES entitlements.³ On this basis, and because other stakeholders addressed parental leave in their submissions, the ACTU considers it necessary to bring the matters covered in this supplementary submission to the Inquiry's attention.

Summary of Recommendations

Recommendation 1: Repeal s.67 of the FW Act so there is no minimum period of service required to be eligible for unpaid parental leave (removing the requirement that an employee has at least 12 months' continuous service, or regular and systematic employment for at least 12 months for casuals).

Recommendation 2: Superannuation should be paid at the Superannuation Guarantee rate on all periods of paid and unpaid parental leave. This could be done by including additional provisions in Part 2-2, Division 5 of the NES to mandate employer superannuation contributions on paid and unpaid parental leave, complementing the superannuation contributions made by the Australian Taxation Office on the Commonwealth Paid Parental Leave Scheme.

¹ ACTU, *Submission to the National Employment Standards Inquiry*, ACTU D. No 16/2026, 6 March 2026.

² See: [Parental Leave Pay - Services Australia](#).

³ Parliament of Australia, Standing Committee on Employment, Workplace Relations, Skills and Training, [Inquiry into the operation and adequacy of the National Employment Standards](#), Terms of Reference, 27 November 2025.

Recommendation 3: Extend the availability of unpaid parental leave in the NES to fostering arrangements, kinship placements and the placement of children on permanent care orders.

Recommendation 4: Amend the NES to include an entitlement to paid lactation breaks and access to appropriate lactation facilities (e.g. a safe, private and hygienic space) for breastfeeding mothers.

Recommendation 5.1:

Amend s.81A of the FW Act to provide that paid no safe job leave is payable at an employee's full rate of pay, not the base rate of pay.

Recommendation 5.2:

Paid no safe job leave should be available to all employees who need it. Currently, it is available to employees who are entitled to unpaid parental leave (i.e. who have at least 12 months' service), with *unpaid* no safe job leave being available to employees who are not entitled to unpaid parental leave (i.e. they do not have a minimum of 12 months' service). If s.67 is repealed as we propose in Recommendation 1, then unpaid safe job leave in s.82A would no longer have any application and should also be repealed, as those employees would then be eligible for paid no safe job leave under s.81A.

Recommendation 6: Amend the FW Act to recognise periods of unpaid parental leave as active service to ensure the accrual of all entitlements including personal leave, long service leave, annual salary increments, superannuation and payment of public holidays during periods of paid and unpaid parental leave.

Recommendation 7: Ensure workers can access parental leave entitlements, and they are not discriminated against when accessing them or when seeking to return to work, including by:

- Requiring an employer to demonstrate that a redundancy is bona fide, and reasonable accommodations cannot be made, where the redundancy relates to the position of an employee during or returning from a period of parental leave.
- Providing for strict liability and/or increased penalties for dismissal of or adverse action against an employee during or shortly after parental leave.
- Introducing a positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family responsibilities.

Parental Leave

1. Abolish the 12-month minimum service period to take unpaid parental leave

Issue/problem:

Section 67 of the FW Act currently requires that an employee have at least 12 months' continuous service before they are entitled to unpaid parental leave (for casuals, they need to have been employed regularly and systematically for 12 months and have a reasonable expectation of ongoing employment).

This requirement should be repealed. It is arbitrary and unfair for an employee to have to wait 12 months before being able to access unpaid parental leave, and acts as a disincentive for workers to change jobs (and thereby have access to pay increases and promotions). This provision clearly disadvantages women in the workforce, discourages job mobility and reduces opportunities for wage growth.

This requirement is out of step with current approaches to parental leave, including Government-funded paid parental leave, which does not have a service-based requirement (instead it has a work test, requiring that a person has worked at least 330 hours in 10 of the 13 months prior to birth/adoption, an average of 1 day per week, but not necessarily for the same employer⁴). This means that employees with less than 12 months' service cannot access unpaid parental leave while they receive Government-funded paid parental leave, unless their contract of employment or industrial instrument (if any) provides otherwise. This is a bizarre outcome which needs to be amended.

The current NES provisions allow for a worker to fall pregnant 2 months into their employment, give birth at the 11-month mark, but fall 1 month short of being able to take unpaid parental leave.⁵ This obviously leaves the worker in an impossible situation whereby resignation could be the only viable option in order to care for their newborn child.

The right to access unpaid parental leave should be accessible from the commencement of employment. This would assist the NES to better meet the object of the FW Act as amended by the *Fair Work Amendment (Secure Jobs, Better Pay) Act 2022* (Cth), in particular in relation to promoting gender equality (s.3(a)) and providing a fair and relevant safety net (s.3(b)).

⁴ PPL Act, Part 2-3, Division 3.

⁵ As at February 2025, 17% of Australian employees (18% of female and 16% of male employees) had worked less than 12 months for their employer: ABS, *Job Mobility*, Cat. No. 6223.0, February 2025.

The UK Parliament has recently passed legislation to make unpaid parental leave a “day one right”, removing the previously applicable qualifying period.⁶

Recommendation 1: Repeal s.67 of the FW Act so there is no minimum period of service required to be eligible for unpaid parental leave (removing the requirement that an employee has at least 12 months’ continuous service, or regular and systematic employment for at least 12 months for casuals).

2. Pay superannuation on all periods of paid and unpaid parental leave

Issue/problem:

Superannuation is now paid on payments under the Commonwealth Paid Parental Leave Scheme (paid by the ATO direct to the employee’s superannuation fund after the end of financial year, effective from 1 July 2025),⁷ a development that is very much welcomed by the ACTU.

However, there is no legal obligation upon employers to pay superannuation on employer-funded paid parental leave (unlike other forms of paid leave), or on periods of unpaid parental leave, and these payments remain discretionary.

Some employers *choose* to pay superannuation on employer-funded paid parental leave to support parents’ long term financial security, employee retention and help close the superannuation gender gap, and some also choose to pay superannuation on periods of unpaid parental leave.

The absence of any legal obligation, though, is a big factor contributing to the retirement income gap and has lifelong and compounding effects, starkly visible when examining the superannuation balances of men and women. At age 60-64, the median superannuation gap between men and women is 25.7%.⁸

The Queensland Government’s 2024 Public Service Directive, requiring superannuation to be paid for the first 52 weeks of parental leave (paid or unpaid), demonstrates a workable model.⁹

Recommendation 2: Superannuation should be paid at the Superannuation Guarantee rate on all periods of paid and unpaid parental leave. This could be done by including additional provisions

⁶ *Employment Rights Act 2025* (UK), see UK Government: [Paternity Leave and Unpaid Parental Leave](#).

⁷ See: [Paid Parental Leave Superannuation Contribution](#) | Australian Taxation Office.

⁸ Based on [ASFA Superannuation Statistics](#), December 2025.

⁹ See: [Paid super on \(paid and unpaid\) parental leave](#) | For government | Queensland Government.

in Part 2-2, Division 5 of the NES to mandate employer superannuation contributions on paid and unpaid parental leave, complementing the superannuation contributions made by the Australian Taxation Office on the Commonwealth Paid Parental Leave Scheme.

3. Parental leave should be available to all workers who need it

Issue/problem:

The entitlement to 12 months' unpaid parental leave under the NES is limited to situations where an employee, or their spouse/de facto partner, gives birth; or where the employee adopts a child under the age of 16; and in either case, the employee has or will have responsibility for the care of the child (FW Act, ss.68, 70).

This does not cover other common situations or recognise the increasing diversity of families, such as fostering, kinship placements, or placement of children on permanent care orders.

Recommendation 3: Extend the availability of unpaid parental leave in the NES to fostering arrangements, kinship placements and the placement of children on permanent care orders.

4. Paid breastfeeding/lactation breaks and appropriate breastfeeding/lactation facilities

Issue/problem:

Breastfeeding and expressing milk are recognised public health priorities and are important to the health and wellbeing of women and children. However, the NES contains no express entitlement to lactation breaks or access to appropriate facilities at work.

Women returning to work from parental leave in Australia consistently report expressing milk in unsafe, unhygienic or degrading conditions, including toilets, cars or storage rooms.¹⁰ Others describe pressure to return to work earlier than planned, loss of shifts, or reduced hours due to breastfeeding needs. This undermines workforce retention and forces women to choose between their health, their child's wellbeing and paid work.

Breastfeeding/lactation breaks would enable a worker to breastfeed, pump and/or express milk at work when needed. These breaks would be of a sufficient length to allow a worker to

¹⁰ Emma Burns and Zoi Triandafilidis, 'Taking the path of least resistance: a qualitative analysis of return to work or study while breastfeeding' (2019) *International Breastfeeding Journal*, reporting that many women returning to work in Australia had to express breast milk in improvised or inadequate spaces due to lack of supportive facilities.

breastfeed their baby or to pump or express milk, and there should be flexibility given to employees in the timing of breaks.

For example, the Queensland Government Work and Breastfeeding Policy¹¹ provides that all Queensland Government employees are entitled to one hour of paid lactation break for every eight hours worked. Whether the lactation break is taken at once or split into separate breaks during the day can be negotiated between the employee and employer.

Appropriate breastfeeding/lactation facilities also need to be provided to workers so they can breastfeed or express milk at work. Facilities need to be private, safe and clean. Access to a bathroom is not suitable as toilet areas are unsanitary.

Appropriate breastfeeding/lactation facilities should include the following:

- A suitable room that cannot be seen into by co-workers or the general public to ensure the worker's privacy, that can be locked from the inside and/or has privacy signage.
- A flat surface such as a small table or countertop for a breast pump to rest.
- Tissues and anti-bacterial wipes to clean the flat surface.
- A comfortable chair(s).
- Electrical outlets for breast pumps.
- Access to a sink for handwashing and to rinse out pump parts with soap and paper towels.
- Access to a microwave for steam cleaning pump pieces.
- Access to a refrigerator for storing breastmilk (e.g. in the staff kitchen).

Recommendation 4: Amend the NES to include an entitlement to paid lactation breaks and access to appropriate lactation facilities (e.g. a safe, private and hygienic space) for breastfeeding mothers.

5. Changes to paid and unpaid no safe job leave

Issue/problem:

Section 81 of the FW Act requires an employer to transfer a pregnant employee to an appropriate safe job, in circumstances where it is inadvisable for that employee to perform their ordinary

¹¹ See Queensland Government: [BREASTFEEDING AND WORK POLICY](#).

duties because of illness/risks arising out of the employee's pregnancy or hazards connected with the role. If an employee is transferred to an appropriate safe job, they must be paid at their full rate of pay for the position they were in prior to the transfer.

Where no appropriate safe job is available, s.81A entitles the employee to paid no safe job leave. This leave entitlement is payable at the employee's base rate of pay for their ordinary hours of work. However, in the ACTU's submission this should be increased to the employee's full rate of pay.

The same reasoning is applicable here to the payment of personal/carer's leave at the full rate of pay¹² – payment at the employee's base rate of pay means that the employee misses out on overtime or penalty rates, loadings, incentive-based payments or bonuses, allowances and any other separately identifiable amounts (these are all the exclusions from the concept of "base rate of pay" in s.16(1)).

The payment of no safe job leave at an employee's base pay rate contributes to gender inequality and the gender pay gap, given it is largely women who will need to access the entitlement to paid no safe job leave. Making it payable at the full rate of pay would be consistent with the gender equality considerations in s.3 of the FW Act.

Recommendation 5.1:

Amend s.81A of the FW Act to provide that paid no safe job leave is payable at an employee's full rate of pay, not the base rate of pay.

In addition, all employees who need it should have access to paid no safe job leave. Making access to this important entitlement dependent on an employee having 12 months of service contributes to gender inequality and the gender pay gap: it clearly disadvantages women in the workforce, discourages job mobility and reduces opportunities for wage growth. A pregnant woman should not be forced to take unpaid leave and jeopardise her financial security simply because she has not worked for an employer for a required period of time.

Like the entitlement to unpaid parental leave itself (see Recommendation 1 above), the right to paid no safe job leave should be accessible from the commencement of employment.

¹² See ACTU, *Submission to the National Employment Standards Inquiry*, ACTU D. No 16/2026, 6 March 2026, pages 22-23 (including Recommendation 6).

Recommendation 5.2:

Paid no safe job leave should be available to all employees who need it. Currently, it is available to employees who are entitled to unpaid parental leave (i.e. who have at least 12 months' service), with *unpaid* no safe job leave being available to employees who are not entitled to unpaid parental leave (i.e. they do not have a minimum of 12 months' service). If s.67 is repealed as we propose in Recommendation 1, then unpaid safe job leave in s.82A would no longer have any application and should also be repealed, as those employees would then be eligible for paid no safe job leave under s.81A.

6. Ensure accrual of all entitlements during periods of unpaid parental leave

Issue/problem:

Periods of unpaid parental leave do not count as "service" for purposes of accruing leave and other entitlements under the FW Act. Reform is necessary to ensure that parents (and particularly women) are not further disadvantaged when they take unpaid parental leave, and that leave and other entitlements accrue as they would during other periods of paid leave. This would also ensure that return to work for parents (particularly women) is easier and more equitable, and that they have some leave entitlements to access upon return from leave (often personal leave entitlements can be exhausted during pregnancy and annual leave/long service leave is often exhausted in periods of unpaid parental leave, especially if a worker cannot afford to take a period of unpaid leave).

Recommendation 6: Amend the FW Act to recognise periods of unpaid parental leave as active service to ensure the accrual of all entitlements including personal leave, long service leave, annual salary increments, superannuation and payment of public holidays during periods of paid and unpaid parental leave.

7. Strengthen rights and protections of working parents and carers

Issue/problem:

Discrimination against women, particularly in relation to pregnancy, parental and caring responsibilities is pervasive and widespread and despite decades of legislation making it illegal, the level of discrimination remains relatively unchanged.

Workers who are pregnant, on parental leave and returning to work from parental leave are often discriminated against and unfairly targeted, resulting in termination, redundancy, demotion or adverse action. This is despite protections in the FW Act including the return to work guarantee in s.84.

In 2014 the Australian Human Rights Commission (AHRC) released the *Supporting Working Parents: Pregnancy and Return to Work National Review*.¹³ It found that discrimination in the workplace against mothers (who account for most parents accessing parental leave) is pervasive, with one in two reporting experiencing discrimination in the workplace at some point during pregnancy, parental leave or return to work. One in five mothers indicated that they were made redundant, had their position restructured or were dismissed, or that their contract was not renewed because of their pregnancy, their request for or taking of parental leave or because of their family responsibilities, breastfeeding or expressing on return to work.

The report provided examples of common experiences of employees accessing parental leave. Job loss was a common experience, with a respondent to the survey stating: *“I have been made redundant twice – both times it was at different organisations when I was on leave to have a child. I was told there was a restructure both times, however it was only ever my role that was being restructured.”*

Another common experience was lack of communication with employees on parental leave, with a respondent to the survey stating: *“I’ve been off now for eight months and not one phone call, nothing. I’ve since heard from other staff members that my job has been made redundant, but no one’s told me, [no one from] management has told me.”*

The AHRC has not done a follow up study since 2014, but a national study was undertaken in 2025 by Dr Rachael Potter and colleagues at the University of South Australia to better understand the work conditions of pregnant persons, parents on leave, and those who have returned to paid work since the birth or adoption of a child.¹⁴ The 2025 study found that:

- Overall, 89% of respondents reported experiencing work-related self-perceived discrimination, disadvantage and/or bias during pregnancy, 84.7% during parental leave and 91.8% during their return-to-work phase. Analysis revealed high prevalence rates for various forms of self-perceived discrimination, disadvantage and bias pertaining to aspects such as—but not limited to—accessing leave entitlements, breastfeeding facilities, and career progression opportunities.

¹³ Australian Human Rights Commission, (2014) *Supporting Working Parents: Pregnancy and Return to Work National Review – Community Guide*, [SWP Community-Guide 2014.pdf](#).

¹⁴ R. E. Potter et al, ‘National review into work conditions and discrimination for pregnant and parent workers in Australia’ (2025) *Safety Science* 186, [National review into work conditions and discrimination for pregnant and parent workers in Australia](#).

- Collectively, 27.9% of pregnant participants were threatened with redundancy or termination of employment, made redundant or restructured out of a job, had their employment terminated, or did not have their contract renewed.
- For those participants on parental leave, the central issues related to a lack of information about changes in the workplace that were impactful (50.8%) and a lack of communication about the workplace or celebrations (46.9%). During the leave process, some workers reported having their job replaced permanently (22% of females), and also missing out on career advancement opportunities and training (45.2% females, 22.2% males).
- For parents returning to work after the birth of their child, 40.5% received negative or offensive remarks about being viewed as a less committed employee, and 45.1% were provided with fewer opportunities for career advancement and/or promotion. 43.3% of women and 37.5% of men received negative remarks about needing part time or flexible work hours and 12.0% always received negative or offensive remarks about their need to take time off to care for a sick child.

Employees in the kinds of situations outlined above are often unable to obtain alternative employment due to their circumstances, for example:

- A pregnant employee will find it difficult to find new employment as they are about to give birth, and even if they do, they will not be eligible to take unpaid parental leave to access Government-funded paid parental leave (and in some circumstances, employer-funded paid parental leave).
- An employee on parental leave who is terminated or has their position made redundant is left without the full period of any employer-funded paid parental leave and ,again, is unlikely to be able to obtain a new job when they had intended to be on paid leave to care for a baby.
- An employee returning to work following a period of parental leave will also find it difficult to find new employment, particularly if they need to request part-time or flexible working arrangements to enable them to care for their child (as flexible working arrangement requests made pursuant to s.65 of the FW Act are only available to employees who have completed 12 months' service, so would not be available to an employee commencing a new job following parental leave).

The UK provides pregnant employees, employees on maternity leave and new mothers (up to 18 months after the birth) priority for any suitable alternative employment during a redundancy

process.¹⁵ Further, the *Employment Rights Act 2025* (UK) will extend protections (from 2027) to make it unlawful for an employer to dismiss pregnant employees, those on parental leave and new mothers for at least six months after returning to work, except in narrowly defined circumstances.¹⁶ Similar protections could be implemented in the NES provisions or other provisions of the FW Act.

Recommendation 7: Ensure workers can access parental leave entitlements, and they are not discriminated against when accessing them or when seeking to return to work, including by:

- Requiring an employer to demonstrate that a redundancy is bona fide, and reasonable accommodations cannot be made, where the redundancy relates to the position of an employee during or returning from a period of parental leave.
- Providing for strict liability and/or increased penalties for dismissal of or adverse action against an employee during or shortly after parental leave.
- Introducing a positive duty on employers to reasonably accommodate the needs of workers who are pregnant and/or have family responsibilities.

¹⁵ See UK Government: [Pregnant employees' rights - GOV.UK](#).

¹⁶ See UK Department for Business and Trade: [Factsheet: Enhanced dismissal protections for pregnant women and new mothers](#).

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