



COMMUNITY AND PUBLIC
SECTOR UNION

SPSF GROUP NSW BRANCH
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In Reply Please Quote

14 September, 2018

Select Committee on Stillbirth Research and Education
The Senate
PO Box 6100
Parliament House
Canberra ACT 2600

By email: stillbirth.sen@aph.gov.au

Dear Chair,

Re: Questions on Notice

Please find the response to our questions on notice.

The CPSU welcomes the outcomes of this important inquiry, and remain available to assist further.

Yours faithfully,

Troy Wright
Branch Assistant Secretary

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The CPSU NSW is the Federal Counterpart of the Public Service Association of NSW. CPSU NSW members are also members of the PSA.

Parliamentary Inquiry Questions on Notice

Stillbirth Research and Education

Question One – Member’s data

CHAIR: On statistics: you've told us you've got 38,000 members across New South Wales; do you have data—and you don't have to provide it now, obviously; you can take it on notice—for the committee in terms of other examples? We've obviously listened very closely to Mr and Mrs Smith's story, but I'm sure there are many others that you represent whose stories you'd probably like us to be aware of as well. Is there further information around that?

Ms Richards: We will have to take that on notice, if you wouldn't mind.

CHAIR: If you'd like to, yes.

Ms Richards: But certainly the conversation is being had with Leanne, and there are things that we're looking at exploring—that information, and some resources and other matters. But, as has been put, this is the beginning, very much, of our journey. So we're in that thought process, but certainly that is one of the things that we would be looking at—statistics.

The PSA/CPSU NSW does not currently have data available on the issue of stillbirth and miscarriage across its membership. Due to the highly personal nature of the issue, it could be that many of the Association's members have lived experienced but have not disclosed it to their union.

The *Perinatal deaths in Australia 2013-2014* report shows that the rate of stillbirth deaths in Australia is 7 per 1,000 births.¹ With females making up 63 per cent of PSA/CPSU NSW's 38,000 members, this statistic indicates that up to 168 of the Association's members have or will experience stillbirth in their lifetime. This figure increases further when you take the experience of fathers into consideration.

The PSA/CPSU NSW considers stillbirth and miscarriage to be issues of great significance and the Association will continue to research and develop improved resources and materials for its members affected by these issues.

¹ <https://www.aihw.gov.au/news-media/media-releases/2018/may/australia-s-stillbirth-rate-remains-steady-while-n>

Question two – Other examples – national and international

Senator RICE: Mr Wright, on the conditions that you've got in the Ausgrid agreement that you want to see in the Fair Work Act, how do they compare? Do other jurisdictions do it better? Are there other countries overseas that you know of that we could be modelling ourselves on?

Mr Wright: That is a question I could only take on notice, but I'm happy to look into that for you and get back to you within the prescribed time. I would be interested in that answer as well. I don't think it's something we've turned our mind to, but we'd happily do that for the committee.

The Association considers the CPSU Ausgrid Enterprise Agreement to be the gold standard in leave conditions for stillbirth and miscarriage in Australia. Consideration is being given to the clause becoming the ACTU clause of choice.

Special Parental Leave in various - Enterprise Agreements (EA) and Awards – Australia

NSW/ACT

EA	Clause	Leave (weeks)	Still birth weeks gestation
Ausgrid	30.8 Cessation of pregnancy – stillbirth and miscarriage	12-20 – six weeks special Leave After 20 Weeks 16 weeks special leave Non- birth parent one All paid leave. Additional leave may be approved Medical certificates must be provided	12-20 weeks After 20 special leave** Non- birth parent one
University of Western Sydney 2017-2021	40.8	Up to 20 paid	Stillborn or dies shortly after birth**
University of Wollongong (General Staff) EA 2014	58.3 Unplanned Cessation of Maternity Leave		Stillborn or the child dies during paid maternity leave, a further 4 weeks of their paid maternity leave shall be able to be taken**
UWS College EA 2013	16.46 Special maternity leave 16.48		Within 28 weeks of expected birth date. Leave can continue for as long as 'she' is not fit for work.
Uni NSW	249	14	
Uni Syd 2018	249	14 weeks	
University of Technology, Sydney Professional Staff Agreement 2014	33.9 Cessation of pregnancy	20 days paid parental leave	
NSW Crown Employees NSW	75. Parental Leave 75.2.3	Available sick leave	Not specified
Australian Catholic University Staff EA	3.9.6 Unplanned Cessation of Parental leave	12 paid up to 14 unpaid	

	Paternity	Three weeks paid up to 14 unpaid	
Macquarie University Professional Staff EA 2015	4.1.50 b Premature birth, Still Birth, Miscarriage or Death of Child 4.1.50 c	14 weeks Person Leave and unpaid authorised absence	Four weeks Prior to 20 weeks
The University of Newcastle Professional Staff EA 2014	62.15 Entitlements (miscarriage , stillborn or life threatening)	Six weeks paid	After 20 weeks or within four weeks**
2013 Wollongong University Centre Ltd Administrative Employees EA	56.3 Unplanned Cessation of Maternity Leave		Stillborn or the child dies during paid maternity leave, a further 4 weeks of their paid maternity leave shall be able to be taken**

Western Sydney Universities currently in bargaining where miscarriage and stillbirth entitlements are being bargained over.

Victoria

Public Service EA	51.13 Special Maternity leave	51.3 check	After 20 weeks paid**
Australian Centre for the Moving Image EA 2012-2015	5.17.4 Personal/Carer's leave and special Maternity leave	Paid and/or unpaid personal/carers leave 14 weeks paid special maternity leave, then unpaid special maternity leave.	First 20 weeks After 20 weeks
AMES Australian Administrative Staff Agreement 2016	37.4 Entitlement to special paid parental leave	Miscarriage 14 weeks paid parental leave. Spouse or De Facto Partner 1 week paid parental leave.	At least 20 weeks
Emergency Service Superannuation Board EA 2016-2019	43.15 Special Parental Leave	Paid/unpaid personal/carers Paid special maternity not exceeding paid parental leave in this EA	First 20 weeks Completion of 20 weeks
Greyhound Racing Victoria EA 2016		Paid/unpaid personal/carers Paid special maternity not exceeding paid	First 20 weeks Completion of 20 weeks

		parental leave in this EA	
Parks Victoria EA 2016	6.13 Special Parental Leave	Paid/unpaid personal/carers Paid special maternity not exceeding paid parental leave in this EA	First 20 weeks Completion of 20 weeks
Parliament of Victoria EA 2016	1.13 Special Parental Leave	Paid/unpaid personal/carers Paid special maternity not exceeding paid parental leave in this EA	First 20 weeks Completion of 20 weeks

WA

Public Service and Government Officers CSA General Agreement 2017	25.6 Payment of Paid Maternity Leave	'entitled to remain on paid maternity leave if the pregnancy results in other than a live child'	
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SA

Flinders University EA 2014-2017	A21.1 Eligibility and entitlement	Six weeks paid and 46 weeks unpaid	Medically defined miscarriage or stillbirth
University of South Australia EA	4.5.22 Paid Maternity Leave on late pregnancy miscarriage or stillbirth	Seven weeks calculated from the date of miscarriage or stillbirth not inclusive of any maternity leave taken for the same pregnancy.	Six weeks leading up to expected birth date.**

Tasmania

University of Tasmania Staff Agreement 2013-2016	55.8 Where pregnancy does not result in the birth of a child	Entitled to paid and unpaid on the same basis as maternity leave (as per this agreement)	Not less than 20 weeks**
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Non CPSU NSW/PSA coverage

Independent Education Union of Australian NSW/ACT Branch (IEUA) EA NSW and ACT Catholic Systemic Schools	38.1 (g) Parental Leave (primary care –giver)	Where employee has commenced paid parental leave & subsequently the pregnancy results in a still birth.	Salary/wages for the period of parental leave taken by the employee.
UTS Student Association 2014 EA	33.9 6.8.2 6.8.3		20 days paid patently leave

*Universities - University agreements have the best provision relating to miscarriage and stillborn leave; also requiring medically definition. Many clauses refer to staff with more than 12 months continuous service.

** Clauses indicate late pregnancy i.e. after 20 weeks.

International

The International Labour Organisation's (ILO) Committee of Experts on the Application of Conventions and Recommendations (CEACR) has stated that postnatal compulsory leave of 6 weeks should be provided to all women in the event of a stillborn child, as a health-related measure.²

According to the ILO, only 12 of 170 countries with maternity benefit policies included specific provision for stillbirths; an average of 11 days leave for mothers and an average of 1 day off for fathers.³

Of those without specific provisions, a number of countries also have protections based on assisting parents via the provision of leave and protection from discrimination based on maternity⁴.

These include:

Denmark	13(1) Right to absence in special cases ⁵	14 weeks for mothers, 2 weeks for fathers	Unspecified in the Consolidation Act 2009; 21 Weeks onwards in the City of City of Copenhagen. ⁶
Iceland	20 The right to payment of a maternity/paternity grant in the event of	8-12 weeks	18-22 weeks

² International Labour Organisation (2014), *Maternity and paternity at work: Law and practice across the world*, Geneva.

³ The Lancet Ending Preventable Stillbirths investigator group (2016), 'Stillbirths: economic and psychological consequences', *Lancet*, Vol. 387, pp604-16

⁴ ILO, Maternity protection Resource Package, From Aspiration to Reality for All, Employment Protection and non discrimination <http://mprp.itcilo.org/allegati/en/m9.pdf>

⁵ <https://bm.dk/media/7025/consolidation-act-on-entitlement-to-leave-and-benefits-in-the-event-of-childbirth.pdf>

⁶ <https://international.kk.dk/artikel/am-i-entitled-parental-leave-case-miscarriage>

	a stillbirth or a miscarriage ⁷		
Guinea-Bissau	ILO*	8 weeks	N/A
Uganda	ILO*	8 weeks	N/A
Indonesia	Artcile. 93 – (2)(C) and (4) (e) ⁸	6 weeks	N/A
India	ILO*	6 weeks	Compulsory for all women immediately following the day of their delivery or miscarriage.
South Africa **	Section 25 Amended Basic Conditions of Employment Act ⁹	6 weeks	(4) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
Vietnam **	articles 34 and 35 of the Law on Social Insurance	20-50 days	The longer a female employee is pregnant, the more working days they are allotted to take off. One to three months of pregnancy will guarantee twenty working days off, three to six months is granted forty working days off, and a pregnancy over six months will be fifty working days off. In the case of a miscarriage or termination of pregnancy, women are granted leave as well.

⁷ Ministry of Welfare (2015), *Act on Maternity/Paternity Leave and Parental Leave*, Iceland.

⁸ State Gazette of the Republic of Indonesia (2003), *MANPOWER. Labour. Work Agreement. Employment Relations. Inspection. Termination of Employment. Workers' Institute. Wages. Central Government. Regional Governments.*, Jakarta Indonesia.

⁹ <http://www.labour.gov.za/DOL/legislation/acts/basic-conditions-of-employment/read-online/amended-basic-conditions-of-employment-act-21>

China**10		Varies province to province with following minima 15 days <3months >4months 6 weeks	Furthermore, no less than 15 days of maternity leave shall be offered in cases of abortion after a pregnancy shorter than four months, and no less than six weeks of maternity leave in cases of miscarriage/abortion after a pregnancy longer than four months.
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* Source: Compiled by United Nations Statistics Division based on information from ILO database: MATERNITY LEAVE - Duration of compulsory leave. Last accessed December 2015

**ILO except where indicated

¹⁰ China Briefing, Expecting in China: Employee Maternity Leave and Allowances

April 6, 2017

Question three – PPL

Senator KENEALLY: It is my understanding that the government funded parental leave scheme does cover stillbirth. So it would seem we have an anomaly in the federal legislation and federal schemes as they apply to various workplaces of various people. I don't know if you've had a chance to look at—

Mr Wright: I certainly wasn't aware that it did apply to these circumstances. Does it apply equally?

Senator KENEALLY: That is my understanding, and I base that on work that was done by the Stillbirth Foundation last year, when they did a campaign in an effort to get employers to write into their own HR policies an inclusion for stillbirth. So that might be something our committee as well as the union may want to follow up.

Mr Wright: The anomaly then we'd be primarily interested in is the period of time, if that were the case. We believe that the four weeks unpaid leave in the current act is inadequate, and particularly the requirements to access that leave, with regard to medical certificates and all that sort of stuff, and the difficulty in understanding the provision.

Australia's first national Paid Parental Leave scheme was introduced on 1 January 2011. Under the Paid Parental Leave scheme, eligible working parents can get tax-payer funded pay when they take time off from work to care for a newborn or recently adopted child.

Parents of stillborn child are eligible as per the following requirements:

“What stillborn means

A stillborn baby is one who:

- *has not breathed since delivery, and*
- *has no heartbeat after their birth, and*
- *weighs at least 400 grams at their birth or had a gestation period of at least 20 weeks”¹¹*

They do however, have the same income caps and activity tests as paid parental leave, so may exclude a large proportion of the workforce.

The Fair Work Act 2009 (FWAct) contradicts the federal allowance requiring changes to the national employment standards (NES). Section 77A for example, appears to allow in the instance of a stillbirth the employer to cancel unpaid leave and require the worker to return to work. i.e. the entitlement is removed.

¹¹ Human Services Department Website,
<https://www.humanservices.gov.au/individuals/services/centrelink/stillborn-baby-payment/eligibility-payment-rates/who-can-get-it>