

FEMINIST LAW BULLETIN

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Why a Feminist Law Bulletin?

The Feminist Law Bulletin:

- Identifies when feminist issues arise in policy, legislative proposals, and the practice of law;
- Provides an opportunity for exploration and discussion of some of these issues;
- Enables a general readership to gain an introduction to feminist analysis of the law.

Contents

Paid Parental Leave Bill.....	1
CEDAW Update	2
DPB and Widow's Benefit Reforms.....	3
Election Year: Putting policies to the test..	4
From the Net	4
Human Rights Amendment Act	5
Property (Relationships) Act.....	6
Forthcoming Conferences.....	6

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Paid Parental Leave Bill

For the first time in New Zealand history the Government has introduced legislation for paid parental leave.

NGOs have been campaigning for 14 weeks paid parental leave for many years, in line with International Labour Organisation Standards. However, past governments have maintained reservations to international human rights instruments on paid parental leave and consistently refused to enact specific legislation, saying that it is a matter for individual women to negotiate with their employers.

Over 120 countries offer paid maternity or parental leave, with New Zealand being one of the very few industrialised nations that does not. For example, Spain offers 16 weeks paid maternity leave and Sweden 18 months on 75% of earnings for each parent.

There are strong social and legal arguments in favour of the new law. Discrimination against women in employment is seen as a key driver of the gender pay gap, which has remained fairly static for the last ten years. The lack of paid parental leave and the problems with managing work and family obligations are reflected in women's fluctuating participation in the labour market. Over their lifetime this also means that women earn less than men.

This issue of the Feminist Law Bulletin was edited by Wendy Parker, who can be contacted at wendy.parker@paradise.net.nz

Paid parental leave is seen as vital if women are to maintain their connection to the paid workforce and enhance their career development.

Results of a public opinion poll in 2001 showed that only seven per cent of people were opposed to paid parental leave. Nine out of ten New Zealanders (89 per cent) support some form of funding for paid parental leave. Eighty per cent support either an employer levy or tax funding of paid parental leave from work, with a further nine per cent preferring other options. Opinion on how the leave should be funded was split - 43 per cent thought it should be Government funded and 37 per cent thought an employers' levy should provide the pay while on leave.

The introduction of a taxpayer funded scheme is seen as making the scheme less vulnerable than employer funded schemes, such as Accident Compensation.

Some groups have criticised the Bill because it only applies to some women, not all women who have babies. The Greens and New Zealand First supported the introduction of the Bill. The National Party has said that it will repeal the Bill, if it is passed. The ACT party also opposes the Bill.

What will the Bill actually do?

The Bill proposes a taxpayer funded paid parental leave scheme that would give parents who are wage and salary earners a maximum of \$325 gross (\$256.75 after tax) per week for 12 weeks after the birth of a baby.

Who will be affected?

About 20,000 working women are expected to be affected by the law which will come into effect on 1 July this year. The Bill will also extend to lesbians and same sex partners. To qualify a parent must have been with their employer for an average of 10 hours per week for a full year before the birth or adoption of their baby.

What about unpaid parental leave?

The current entitlements (including up to 12 months leave without pay) will remain unaffected.

Will a woman have to return to work if she takes paid parental leave?

No. Women meeting the eligibility criteria will still be able to take unpaid parental leave. A woman can choose to return to work earlier and she does not have to pay the money back if she does not return to work.

How much will it cost taxpayers?

The Government estimates that it will cost about \$42 million per year.

What about mothers who are self-employed?

The Bill will not apply to self-employed women or women who are not working. However, a review of the scheme is planned after 12 months. Parents who are eligible for the Parental Tax Credit which is available to some people who are self-employed or unemployed.

What happens next?

The Bill has been referred to the Transport and Industrial Relations Select Committee.

Thanks to MAF Rural Bulletin, December 2001 and T Slater, *Investing in our children - the paid parental leave campaign*, Journal of the National Collective of Independent Women's Refuges Inc. October 2001.

Joy Liddicoat

CEDAW Update:

The Government released its draft CEDAW Report in late December last year. The draft report is long (127 pages) and covers a huge range of issues for women. NGOs have until 28 February to make submissions or comments on the draft.

A separate NGO report is being prepared and will be circulated for comments in February 2002. For more information on the NGO report contact Heather Webber at the National Council of Women: ncwnz@ihug.co.nz

DPB and Widows Benefit Reforms: Evaluation

Work-testing for sole parents and people receiving the Widows Benefit was introduced in early 1999. A package of measures introduced then was aimed at increasing workforce participation and reducing time spent on the benefit, resulting in savings for the Government. It was based on the Community Wage concept of reciprocal obligations between the state and beneficiaries and involved the introduction of work-test obligations along with sanctions for non-compliance. Parents with a youngest child aged 0 – 6 are required to attend an annual planning interview to discuss plans to return to work. Those with a youngest child 6 – 13 are subjected to a part-time work-test while those with a youngest child 14 and over are subjected to a full-time work-test.

An evaluation of the effectiveness of the reforms reveals only partial success and then at some cost to benefit recipients. Some of the issues raised by the evaluation are discussed here. A summary of the key findings is available at <http://www.dol.govt.nz/Publications/DPBreform.pdf>.

The study used a variety of methods including interviews with benefit recipients, a survey of recipients who had moved into work, process evaluations with DWI Case Managers and an evaluation of the Out of School Care Subsidy (OSCAR).

Although the total number of people receiving the DPB and Widows Benefit fell during the period in question, it was not possible to determine whether the introduction of work-testing, along with other measures such as child care subsidies and active case management techniques, were the sole reason for the drop in numbers. While the reforms were thought to have had some impact, other forces were also at play, such as a decline in the rate of unemployment and a Benefit Fraud campaign.

The success of the reform package is questionable in other ways. For example, for some participants, getting a job did not

necessarily lead to financial gain. Low hourly pay rates and the costs associated with getting and keeping a job (transport, work clothes, childcare costs etc) meant that some recipients were financially worse off than before.

Many jobs were unsatisfactory. A quarter of those studied were working non-standard hours, and just under a quarter held down jobs of a temporary or casual nature. In some areas of the country there was a mismatch of work available with the skills base of the DPB and WB populations. Further compounding the difficulty of holding down paid work were problems experienced with accessing quality affordable childcare.

Even where financial gains were experienced, for some, the cost of working outweighed the benefits due to the tension of managing the competing demands of home and work. Changes in hours, the need to care for sick children or childcare arrangements that fell through made continuing with employment tenuous. Sole parents who returned to the benefit after a time in paid work based their decision on an assessment that their children's well-being - emotionally, socially, educationally and financially - was suffering. Many in work also found they had insufficient income to care for their children.

Administrative deficiencies also left their mark. The creation of WINZ four months before the reforms came into effect meant that the policy was being implemented during a time of institutional turmoil. A particularly disturbing finding was the extent to which benefit recipients were not made aware of the full package of assistance available to them. Case Managers with high caseloads were forced to prioritise, resulting in some groups receiving less help than others. Regional differences meant that policies were also inconsistently applied.

A key part of the package was the introduction of subsidised after-school care, aimed at allowing sole parents to work later. However, a raft of administrative and implementation issues meant that the OSCAR subsidy had a low uptake, by both childcare

providers and by parents attempting to access the subsidy.

As a final note, the DPB and WB populations were found to be highly work-motivated. There was also evidence that sole parents only went on the benefit as a last resort and often after living off savings or low-paid work, or after experiencing redundancy, illness or childcare problems.

You be the judge

- What types of messages about the importance of parenting are conveyed by this policy?
- What other considerations, apart from saving the state money, are important? Are they treated as important by the reforms?
- Did both parties meet their obligations? Why are there no sanctions for the state for failing to meet their obligation to provide assistance?
- Are there implementation issues specific to policies that impact almost exclusively on female caregivers and their children?
- Do you work for a net financial loss?

Election Year: Putting policies to the test

Election year - it seems to roll around fairly quickly and already various political parties are positioning themselves for the months of campaigning that lie ahead.

As with every election, there will be issues of particular relevance to women. Some policies affect women disproportionately as women are the target group, for example women's health policies. Others impact on women in a different way to men, for example, the student loans scheme is experienced differently by women who take longer than men to pay back loans because their earnings are lower or because of childcare commitments. Superannuation policies are differently experienced by women who generally live longer than men and who earn and save less during their working years. Women's

contributions to the ACC scheme are greater than their call on ACC funds.

Each part of an election manifesto should be critically examined for the impact of gender. For example, the following questions could be considered:

- Are the different experiences of men and women considered?
- What assumptions does the policy make?
- Is the policy based on sound evidence?
- Who was consulted in the development phase?
- Who has the most to gain from the policy?
- What will the policy do to improve outcomes for women?
- Does the policy respect difference in a way that does not simply reinforce inequality?

The party itself should have internal mechanisms to ensure the needs and perspectives of women are fully considered – ask to see the policies and processes in place that make this a reality. It should also address issues of political representation for women, through selection policies, the composition of the party list, and a commitment to placing women of merit at the locus of power (i.e. in Cabinet).

All major parties have a website where you can find policy information – usually under the formula www.partyname.org.nz.

In a country this size it is possible to make an impact. At this point in the election cycle parties are at their most responsive to the views of voters – so make yours known.

From the net

<http://www.realwomen.co.nz/>
for women of substance

<http://wwwwomen.com>
a search directory for women online

<http://www.un.org/womenwatch>
a UN site containing global women's issues

<http://www.wisewomen.org.nz>

New Zealand networks of self-employed women

<http://www.dia.govt.nz>

The Department of Internal Affairs have revamped their website to cater for people with disabilities

<http://www.womentravel.co.nz/>

information for women travelling New Zealand

<http://www.breast.co.nz/>

website for Breast Health New Zealand including information on breast cancer

<http://www.maori.org.nz>

a site for information on matters Maori, including pages on marae protocol, waiata, forthcoming events and links to te reo Maori sites

Human Rights Amendment Act

The Human Rights Amendment Act passed into law in December 2001. It makes significant changes, many of which remain the same as discussed earlier in the legislative process in *Feminist Law Bulletin*, Issue 4, 2001. To briefly recap, the main changes are:

- The Human Rights Commission and Office of the Race Relations Conciliator will be joined (there will still be a Race Relations Conciliator and a separate unit within the Commission).
- The newly structured Commission will have two primary functions:
 - ❖ To advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society, and
 - ❖ To encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society.
- The Government is now no longer exempt from fully complying with human rights

standards. Only discrimination that can be “demonstrably justified in a free and democratic society” will be permitted.

- Changes are made to the complaints process, which centres on mediated outcomes.
- There is now a separate Office for Human Rights Proceedings which will pursue litigation when mediation has not been successful.
- The Human Rights Review Tribunal (which replaces the Complaints Review Tribunal) can declare that a law is inconsistent with the Human Rights Act and require the responsible Minister to make a Declaration of Inconsistency along with suggestions for remedy to the Government.
- There will be an Equal Employment Opportunities Commissioner tasked with providing leadership on EEO issues.
- The Commission is responsible for the development of the National Plan of Action for human rights in New Zealand.

The changes will be watched with interest, particularly in regard to compliance by government agencies. Also of interest is whether the new structures, including the streamlined complaints process, achieve accessible and effective human rights protection for all.

Parents as Partners, an organisation lobbying for couples to register their partnerships for tax purposes in recognition of the contribution of the at-home parent, has signalled its intention to pursue a complaint under the amended Act. The complaint will assert that the government inconsistently applies the unit of assessment for taxation and benefit purposes, with the effect of precluding one relationship partner from an economic status in their own right. This organisation can be found at www.parentsaspartners.co.nz.

Property (Relationships) Act 1976

Despite the 1976 year tag for this Act, it came into force very recently - on 1 February 2002.

De facto and same-sex relationships existing at this date, or coming into being after it, are now covered by the Act - generally where they are of 3 years duration or longer. The same rules for the division of property now apply to these relationships, as well as to marriages of 3 years or more whether ended by separation or by the death of one of the partners.

The new Act retains the notion of equal property division, and adds new provisions that allow for unequal but equitable division where the division of functions during the relationship makes it likely that one person will have a significantly higher income and standard of living than the other.

Couples who wish to tailor their property division to their own needs, where these are different than what is provided by the Act, should make a property agreement. This can be drawn up by the parties, and a model agreement can be found in the Property (Relationships) Model Form of Agreement Regulations 2001 (2001/77, available in all public libraries). However, each partner must receive independent legal advice for the agreement to be valid under the law. Agreements must be in writing and be formally signed and witnessed.

The Act also gives new rights to surviving partners in de facto and same sex relationships. These provisions that relate to the death of a partner are hugely important but have often been glossed over in the media attention given to pre-nups, palimony and the like.

Surviving partners can now apply for a share of property under the Family Protection Act (previously partners could only respond to the claims of other family members). Where their partner died without making a will, new intestacy provisions now include de facto partners as well as spouses as claimants of a

share of property. Partners may also choose between what they were bequeathed in the will and what they would be entitled to under the Act.

Forthcoming Conferences

7-8 March 2002: Unravelling the Complexities of Family Violence: a Holistic Approach

Coffs Harbour, NSW, Australia.

This conference will examine practical intervention issues and prevention initiatives, as well as background issues and factors contributing to family violence.

Further information: Kirsten Busby
+61 2 6588-2913.

12-13 March 2002: Beyond Tolerance - A National Conference on Racism in Australia

Sydney, NSW, Australia

The Australian Human Rights and Equal Opportunity Commission are hosting a National Conference on Racism which will explore three major themes: the fragility and strengths of Australia's commitment to diversity, reconciliation and equality of opportunity; the forms of discrimination experienced by Indigenous people and people from culturally and linguistically diverse backgrounds, including multiple discriminations; and the priorities for reforms to eliminate racial discrimination from all sectors of Australian society.

Further information: Janis Constable, Race Discrimination Unit, Human Rights and Equal Opportunity Commission, GPO Box 5218, Sydney 1042.

Tel: +61 2 9284 9785. Fax: +61 2 92849849.
janisconstable@humanrights.gov.au
http://www.humanrights.gov.au/racial_discrimination/index.html

28-30 June 2002: Children & Young People: Their environments.

Children's Issues Centre

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