



**National Council of  
Women of New Zealand**

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Wahine O Aotearoa

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**Submission to the Employment Relations Service on the  
ILO Maternity Protection Convention, 2000 – Department of Labour’s  
Assessment of Domestic Legislation Discussion Paper**

**Introduction**

As the umbrella organisation for women’s groups in New Zealand, the National Council of Women of New Zealand (NCWNZ) has been at the forefront in working towards equal pay and conditions of access for women employees and has actively promoted the ratification of ILO 100 Conventions by the NZ Government.

This response has been prepared from the body of NCWNZ existing policy and from responses following study of the document by members of the Board of Management, Members of the Employment Standing Committee and the Parliamentary Watch Committee.

**Background**

We note NZ Government policy to ratify international agreements only when domestic law, policy and practice fully comply with the provisions; and further note that at this stage government agencies have undertaken analysis of legislation only. We note that ratification of the Convention imposes obligation to comply with the provisions and that Recommendations are in the form of guidance only and include details of more practical procedures to implement the provisions of the Convention.

This response follows the structure of the discussion document and includes comment on the Convention, Recommendations and assessment of domestic legislation.

We note that the body of the discussion paper does not always relate to the background text in terms of numbers and headings and both differ from the text of the Convention itself, making precise comment more difficult.

It is with some concern that we learn that of the 8 identified areas, the analysis shows that NZ legislation is unlikely to comply with the convention in 5 of those areas. Notwithstanding the comments about the qualifying criteria of the Parental Leave and Employment Act 1987 (PLEP) affecting compliance with a number of Articles in the Convention, NCWNZ suggests that protection for NZ women and their children has a considerable way to go to reach accepted international standards.

An Urgent Notice of Motion at NCWNZ’s Conference 2000 in October updated NCWNZ policy to support 14 weeks paid parental leave in line with the Convention. Our President, Barbara Glenie, joined Laila Harre, Minister of Women’s Affairs, and Darien Fenton, Vice President of the CTU, in launching the “14 Weeks” campaign on Suffrage Day. The petition was distributed amongst our membership with a background paper outlining NCWNZ policy on Paid Parental Leave.

NCWNZ Conference 2000 also passed a remit in support of women’s rights to paid breastfeeding/expressing of milk breaks during the hours of employment. This was in direct response to ILO 183 Article 9 ensuring that breastfeeding mothers are not disadvantaged in the workplace.





### **Coverage of Parental Leave and Employment Protection Act 1987**

We note that all leave under this Act is unpaid. But to be eligible for parental leave under the Act, the employee must have worked at least 10 hours a week for the last 12 months for the same employer before the expected date of birth. We note that the Committee on the Convention specifically rejected exclusions based on qualifying criteria and that there appears to be a tension between paragraphs 1 and 2 of Article 2 and ask for clarification of this. The scope should be inclusive of all employed women. Article 4, for example, refers only to women “to whom this Convention applies.”

### **Health Protection**

Article 3 of the Convention refers to both pregnant and breastfeeding women. As section 14 of the PLEP Act does not apply to breastfeeding women, we ask how the assessment that NZ legislation is **likely to comply** was arrived at when one group whose health is required to be protected is not covered under NZ legislation, namely breastfeeding women.

Employees, regardless of their status, have a basic right to health and safety protection. Provisions of the PLEP Act 1987 and Health and Safety in Employment Act 1992 undermine the maternal role and could force a woman to resign where the employer is not sympathetic.

Recommendation 6(2). We note the suggested guidance for paid leave and alternative work is not feasible when there is a health risk. NCWNZ strongly affirms the urgent need for PPL to remove a major hindrance to NZ’s compliance with the Convention. Paid maternity grants underpin this Convention and we note with concern that NZ legislation does not provide for paid leave where health risks are present.

### **Maternity Leave**

Article 4 of the Convention provides for maternity leave of not less than 14 weeks. Although paid leave is not referred to, NCW considers that implicit here is the requirement that this leave be paid or remunerated in some way. We have received reports of women working up to delivery to meet financial commitments.

Legislating for paid parental leave will help reduce the structural discrimination women experience in the labour market just because they give birth. Good nurturing from a biological development point of view is crucial. It will ensure that both mother and baby have a healthy chance to bond, that breast feeding routines are established and that parents are not returning to work primarily because of financial constraints.

We note Article 10.2 of the International Covenant on Economic, Social and Cultural Rights 1976: “Special protection accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”

CEDAW Article 11.2(c ) states “To encourage the provision of the necessary supporting social services to enable families to combine family obligations with work responsibilities...”

When NZ signed CEDAW in 1984, the Government had a reservation relating to Article 11.2(b) CEDAW which binds States to take all appropriate means to introduce maternity leave with pay or comparable social benefits without loss of employment, seniority, or social benefits. The UN CEDAW Monitoring Committee 1998 has voiced serious concern that the NZ Government continues to register a reservation to paid parental leave and requests that future Government reports urgently address this issue.



Paid maternity leave would seem the only logical conclusion when considered in conjunction with the benefits stated under Article 6 of the Convention, paid leave as required under Recommendation 6(2) and the financial benefits for maternity leave for illness or complications as outlined by Article 5 of the Convention.

In the 1970s, the introduction of a paid parental leave in Sweden had a positive effect on promoting equality of the sexes in the workplace and in the home. We note the Swedish Government has now proposed an extra month of paid parental leave for each child, bringing the total to 13 months in Sweden. *The Dominion*, Friday November 24 2000

### **The Recommendation for Maternity Leave**

Recommendation 1(1) The recommended extension to 18 weeks seems out of reach but 1(2) extension of leave to multiple births is a given. These Recommendations reinforce the gap between the Convention, its vision and the current reality in New Zealand.

Under the PLEP Act 1987 there is a minimum standard of unpaid parental leave or special leave of up to 5 days but there is concern that some employers may use PLEP Act section 41 “key position” to disadvantage employees and replace workers who take parental leave. This conflicts with “good faith” bargaining which underpins the Employment Relations Act 2000.

Recommendation 1(3) Clearly should be both pre and post-natal periods of leave to be taken at the time most beneficial to the employee.

### **Leave in Case of Illness or Complications**

NZ has no specific legislation consistent with Article 5 of the Convention that provides paid leave for pregnancy-related illness though 5 days paid special leave under the Holidays Act 1991 can apply even though it was originally introduced as a “sickness” entitlement. NZ has negotiated paid benefits for all aspects of life except for this basic function of a woman’s life. Members consider that PPL is a legitimate working condition similar to holidays, sick leave and domestic leave.

### **Financial Benefits**

PPL is necessary before Article 6 of the Convention can even be considered. The assistance in relation to financial benefits available under NZ legislation reflects a “begging mentality” rather than a concern for the welfare of mother/child and society. Universal PPL would eliminate the complexity and tenor of piecemeal support through the Social Security Act 1964 and the Social Welfare (Transitional Provisions) Act 1990.

Where paid maternity leave is on a voluntary basis it seems to be reserved for women in well-paid executive positions.

NCW supports the principle that employer should not be individually liable for costs. A payroll levy, the option proposed by the Alliance, would fund 14 weeks paid parental leave but spread the cost across all workplaces so that small firms will pay less than those with say 50 employees. The cost will average \$1.50 per week per employee.

In 1998 Laila Harre’s Member’s Bill was supported by NCWNZ though it did not proceed beyond select committee stage. There was some difference of opinion from our membership as to how the 12 weeks paid parental leave should be funded, though it was generally agreed that joint funding by Government and employers would act as a form of social insurance for the country.

ILO minimum standards have moved on, despite the reluctance of our Government to support even these. NCWNZ has a clear mandate supporting paid parental leave for 14 weeks, endorsed at Conference 2000.



Maternity leave is crucial in maintaining women's links with the labour force and will benefit not only the employer but the country indirectly. Women returning to paid employment overwhelmingly return to their previous employer and where paid maternity leave is granted the return is greater. For example, Glaxo (UK) increased proportion from 50% to 90% saving approximately 100,000 by retaining 30 people. (Arkin, 1994:21)

Laila Harre, Minister of Women's Affairs, described modern workplaces as "family friendly" environments where working parents are encouraged to maintain a healthy balance between their private and professional lives. She quoted Shell as an example of a NZ company where a family friendly philosophy pays dividends. Employees qualify after one year for three months paid parental leave and the company estimates a return of about \$50,000 for every \$16,000 spent.

Those businesses offering equal employment opportunity will recruit and retain talented employees. Ultimately, paid parental leave is a strategy that benefits both employers and employees in balancing work and life and making workplaces family friendly.

Recommendation for financing benefits is supported by NCW. It will mean employers can not discriminate in the employment of women on the grounds that they would cost them more.

### **Medical Benefits**

Article 6 (7) provides that medical benefits must be in accordance with national laws, regulations or practice. We would query Government's initial assessment that NZ legislation is **likely to comply** with the Convention.

Under section 51 of the Health and Disability Services Act, the lead maternity carer does not have to be a doctor. We do not know the effect of the changes under section 51 as we do not have a perinatal data base and cannot monitor care provisions for women.

Recommendation 3 directs that where possible medical benefits covered by the Convention should include care by a General Practitioner. Access to a General Practitioner is now virtually non-existent in some places. We understand there are only 2 practising obstetricians in Wellington.

The directive also includes maintenance in hospital and any necessary medical supplies. In 1997 requested the Minister of Health to stop any further closures of hospitals and reduction of services..." There is a requirement now for patients to provide personal supplies and the short stay in hospital and is not helpful for establishing breastfeeding and bonding between mother and child or to allow the benefit of rest before going home.

Dental care is mentioned under Recommendation 3 and we need clarification as to whether there is a dental benefit in New Zealand for maternity patients as the text of the discussion paper suggests.

Our Council has been lobbying the Governments of New Zealand for improved maternity services since 1924 to ensure the best possible outcomes for mother and baby. (100 Years of Resolution 9.9 pp. 83-86)

NCWNZ called for a National Child Health Strategy in 1998.

"That NCWNZ ask the Ministers of Health, Education, Justice, Social Welfare and Youth Affairs to finalise and implement immediately, a jointly funded national child health strategy which includes



- A central integrated information system to collect, co-ordinate, record and monitor data against established national and international standards in order to assess the overall well-being of our children, this information to be published annually
- A national child tracking register incorporating health and education records, and including an “at risk” register.

### **Employment Protection**

Article 8 (1) is considered to be a good provision but in practice it is not easy for a woman to argue her position where bargaining power is unequal even if the onus rests on the employer to prove reasons for dismissal are unrelated to pregnancy, childbirth or nursing.

Article 8 paragraph 2 again relies on employers offering equal opportunity employment. It puts a woman in a difficult position if she has to expend energy, money and time in ensuring this right is upheld.

The Health and Safety in Employment Act 1992 also puts the onus on the employer to provide a safe working environment but there is no guarantee that a woman will have bargaining power to ensure this.

The Parental Leave and Employment Protection Act 1987 has similar limitations but the Employment Relations Act 2000 “good faith bargaining” frame of reference may go further in implementing a more satisfactory bargaining outcome for individuals. At present parental leave is not automatic. The employer must be given at least three months written notice before the baby is born.

Paid time off work after the birth of a child is a right legislated for by over 120 ILO member countries. The introduction of flexible hours and PPL in the workplace will also give men a greater option of sharing the parenting role where appropriate.

### **Non-Discrimination**

Article 9 is supported by NCW policy but it may be difficult to ensure this is carried out by all employers. We note that The Beijing Platform for Action 1995 states that Governments “adopt and implement laws against discrimination based on sex in the labour market, especially... working conditions;”

The Human Rights Act 1993 section 21, Equal Pay Act 1972 and Employment Relations Act 2000 section 104 prohibit discrimination in employment on the basis of marital /family status or sex and this includes pregnancy and childbirth.

**Breastfeeding Mothers** Article 10 of the Convention is unanimously supported by NCWNZ though there is a clear opinion that individual women must not abuse the privilege.

Historically our policy 9.9.30 - “breastfeeding as their first choice” and 6.4.2 – “family friendly workplaces” have upheld the basic principles of maternity protection espoused in ILO 103 which NZ governments have never ratified.

It is near impossible to establish a satisfactory routine in 2 weeks. The short hospital stay of only hours or half a day is not conducive to mother and child receiving maximum benefit.



The financial need to return to paid work is a recognised reason why women do not continue to breastfeed after around 6 weeks. Unsatisfactory arrangements for child care and the pressure of early return to work all impinge on the health of mother and child and emphasise the crucial need for PPL.

**Periodic Review**

Periodic Review proposed by Article 11 is a good provision, but if the benefit rate were tied to an external factor such as average ordinary time wage or one of the indices used to make wage alterations it could be raised without review.

**Conclusion**

Trudi McNaughton, EEO Trust, indicates that until we acknowledge the social responsibility of meeting the costs of parenting we are unlikely to see any real improvement in the gender pay gap.

NCWNZ supports the underlying ethos of Convention 2000 and would urge the Government to set in place domestic legislation which will ensure the promotion of a healthier philosophy towards supporting the dual contribution of women in the workplace.

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