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**PUBLIC LAW MODELS
FOR THE IMPLEMENTATION OF
PAID PARENTAL LEAVE**

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Appendix One

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The paid leave model chosen must be mandatory, as our current voluntary employer provision model illustrates the inequities of voluntary provision. It must have a labour focus, as paid leave is aimed at resolving the conflict between work and family responsibilities rather than increasing maternal or child health. A social insurance model is a mandatory labour model that provides the most advantageous results for employees, employers and society, and is used extensively overseas. This paper advocates a particular social insurance scheme which extracts contributions from employees, employers, and government. It provides effective, beneficial paid leave aimed at increasing equity between male and female workers, and should be adopted in New Zealand.

The text of this paper (excluding contents page, footnotes, bibliography and annexes) comprises approximately 14,000 words.

Abstract

This paper concerns the search for an appropriate model of paid parental leave for New Zealand. Seven models that employ different rationales and use different public law instruments are examined. My objective is to illustrate that the models are not substitutable alternatives and that careful examination of the effects of each is necessary before the adoption of mandatory paid leave.

The paid leave model chosen must be mandatory, as our current voluntary employer provision model illustrates the inequities of voluntary provision. It must have a labour focus, as paid leave is aimed at resolving the conflict between work and family responsibilities rather than increasing maternal or child health. A social insurance model is a mandatory labour model that provides the most advantageous results for employees, employers and society, and is used extensively overseas. This paper advocates a particular social insurance scheme which requires contributions from employees, employers, and government. It provides effective, beneficial paid leave aimed at increasing equity between male and female workers, and should be adopted in New Zealand.

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I INTRODUCTION

Paid parental leave is a big political issue in New Zealand. For the past twenty five years it has been pushed aside as 'too hard' while other birth and employment issues have been grappled with. At present, a 'voluntary employer provision' model of paid leave is used in New Zealand, as paid leave is left for employees and employers to privately negotiate. As it has become apparent that paid leave is generally inaccessible to employees, and that many people cannot afford to take unpaid leave, pressure has grown for the introduction of mandatory paid leave in New Zealand. Such is the success of the "12 Weeks Paid Parental Leave Campaign" that polls put public support at 63 per cent (with only 29 per cent against),¹ and National, Labour and the Alliance have presented their own legislative solutions.

Two private members' bills have been put forward. Dianne Yates'² bill to amend the Social Security Act 1964 and provide for welfare based payments has been languishing in the ballot box for two years.³ Laila Harre's⁴ Paid Parental Leave Bill, an employer levy system, was introduced early in 1998 but was recently defeated on its second reading.⁵ These bills served to further public debate and pressured the government to introduce their own provisions, the Taxation (Parental Tax Credit) Act 1999.

However parental leave is more than a matter of political expediency. A wave of changes in employment, family and society have forced us to re-evaluate the way work and family are structured. Paid parental leave refers to remunerated or compensated leave from employment after the birth or adoption of a child. The key

¹ G Rasch and K Barnett *Paid Parental Leave: Essential Information and Analysis of Impacts* (Nelson Polytechnic, Nelson, 1998) 6.

² Labour Member for Hamilton East

³ The Paid Parental Leave Bill 1997.

⁴ Alliance List MP; Paid Parental Leave Bill 1998, no 102-1.

⁵ It was defeated 60-58, despite two government supporters crossing the floor - Christine Fletcher, National MP for Epsom, and Ann Batten, Independent MP. Frank Grover of the Christian Heritage Party voted with the government.

objective is reconciling the conflicting demands of work and family life, and so the focus is not the health of the mother (although this is relevant), but bonding and adjusting to a new child.⁶ This means paid leave can be used by either parent. In contrast, maternity or paternity leave is leave available exclusively for the mother or the father. Extended leave refers to the longer period of leave (generally unpaid) available to either parent for the purposes of caring for a young child.

I have identified seven public law options for providing payment. Each impacts differently on society's valuation of paid leave,⁷ and on labour, demographic, gender and race policies. It is necessary for New Zealand to examine closely the effect each potential model will have on these areas before choosing the one which is the most appropriate.

I believe that a social insurance scheme is the most appropriate for New Zealand. In particular, I advocate a model which requires contributions from employees, employers and the government. Such a model would provide for 12 weeks entitlement at 80 per cent of wages (capped at the average male weekly wage), and could be run concurrently with the accident compensation scheme [ACC]⁸ in a grander social insurance scheme. Social insurance is the best model as it recognises that paid leave is an employment right, but allows for the widest range of coverage by requiring that all employees, regardless of hours worked, pay a levy. Joint funding by employees, employers and government maximises the benefits of paid leave and spreads the costs amongst those who gain the benefits.

This paper will explain why a mandatory labour model of paid leave is favoured, and why social insurance best provides this form of paid leave. It will then explore the advantages social insurance offers, which include increased labour participation,

⁶ "Perspectives; Parental Leave" [1997] *International Labour Review* 136, 109 OVID 014466371 [Author and page numbers not given].

⁷ Cass Sunstein *Free Markets and Social Justice* (Oxford University Press, New York, 1997), 17.

⁸ ACC is governed by the Accident Insurance Act 1998.

treating people as individuals, and reduced discrimination. It will also examine the potential problems of such a system, including an increased bureaucracy, cost and race issues. Finally, it will examine the efficiency of social insurance using a law and economic analysis. Throughout, social insurance will be contrasted with the other six models I have identified - voluntary employer payment, mandatory employer payment, general taxation, tax credits, employer levy and disability insurance. To provide a context for the reader, I will begin by briefly stating the case for paid leave.

II JUSTIFICATIONS FOR PAID PARENTAL LEAVE

A Current Climate

Paid parental leave has been pushed into prominence by the changes in work and family that have occurred over the last few decades. The traditional pattern of breadwinner and homemaker is being replaced by dual-earner families, spurred by economic need, contemporary job uncertainties, and women's desire for independence.⁹ At the same time, there is an emphasis on community care for the elderly or sick. Increasingly, the workforce is composed of women and men with responsibilities for both the care and economic support of families who seek a balance between their work and private lives. Traditional organisational structures do not accommodate this;¹⁰

Jobs were designed for full-time working men with full-time wives at home. Although women are overtaking men in the workforce and technology has changed hugely, working patterns are little different.

⁹ Suzan Lewis "Rethinking Employment: An Organisational Culture Change Framework" in Suzan Lewis and Jeremy Lewis (eds) *The Work-Family Challenge: Rethinking Employment* (Sage Publications, London, 1986) 2-3. For a New Zealand context, see Simon Nash *Families and Paid Work: The Legislative Interface and Current Policy Directions in Aotearoa/New Zealand* (Social Policy Research Unit, Palmerston North, 1997) 1-10.

¹⁰ "Perspectives: Parental Leave" above n 3.

Employer organisations are also changing, focusing on greater productivity and a workplace which responds quickly to new technology and fluctuating markets. The rationalisation of workplaces increases flexibility, but at the same time creates uncertainties and reduces employees' ability to manage their personal lives. Lewis argues that a new psychological contract has been established, whereby workers no longer expect jobs for life, but do expect opportunities for self-development, including the opportunity to better balance work and family.¹¹

B Current Law

New Zealand's current leave provisions are increasingly inappropriate in the light of these changes. The Parental Leave and Employment Protection Act 1987 [the PLEP] allows for *unpaid* leave from paid work at the time of the birth or adoption of a child. Mothers receive 14 weeks of maternity leave, and fathers or male partners two weeks, which must be taken in one continuous period.¹² Extended leave for up to 52 weeks is available for either or both partners in one continuous period.¹³ Mothers are also eligible for ten days special leave during pregnancy.¹⁴ Eligibility criteria restrict leave to those who have worked at least ten hours a week for the same employer for at least 12 months.¹⁵ The employee's job is then protected for four weeks and for any further period of leave, except where the employer can prove it is a 'key position' or where redundancy occurs.¹⁶

¹¹ Lewis, above n 9, 2-3. Shell International "Leave Options; Policy" <<http://sww.sonz.shell.co.nz/hr/familywork/leaveoptions.htm>> (last modified 27 August 1999); Miriam Scott "Downsizing Firms Place Extra-Value on Work and Family Programs" (1993) 48 Employee Benefit Plan Rev 28 [OVID 00739412].

¹² Parental Leave and Employment Act 1987 ss 9, 19.

¹³ Parental Leave and Employment Act 1987 ss 26, 27.

¹⁴ Parental Leave and Employment Act 1987 s 15.

¹⁵ Parental Leave and Employment Act 1987 ss 7, 17, 23; and the employee must have resumed work from an earlier parental leave more than 12 months previously (s 6).

¹⁶ Parental Leave and Employment Act 1987 s 4.

The PLEP is inadequate as increasing economic pressure and the reliance on dual incomes mean that unpaid leave is not feasible for many people.¹⁷ The employment position of women causes difficulties as many are in non-standard employment which is excluded by the provisions.¹⁸ The 'key position' and redundancy exemptions have left exploitable loopholes for employers. A 1994 Department of Labour survey indicated knowledge and use of PLEP provisions is low.¹⁹ While 83 per cent of parents qualified for leave, only 66 per cent of eligible women and 43 per cent of eligible men used parental leave.²⁰ If the household income was below \$30,000, both mothers and fathers were less likely to take leave. Workers were also less likely to take parental leave if they were the main household income earner.²¹

C The International Law Framework

The PLEP has also been surpassed by international developments. The 1994 European Community Pregnant Workers Directive required all members to provide universal access to maternity leave at a high rate of payment. Over 135 countries now have mandatory paid parental leave, with the United States (with the exception of five states) and New Zealand the only OECD countries not doing so. There are also many international conventions that support paid leave.

Article 11(2)(b) of the United National Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) binds states to take all appropriate means to introduce maternity leave with pay or with comparable social benefits

¹⁷ Arielle Harman Grill "The Myth of Unpaid Family Leave: Can the United States Implement a Paid Leave Policy Based on the Swedish Model" (1995-6) *Comp L J* 373, 382.

¹⁸ This is explored in section IV (B)(2) of the paper.

¹⁹ quoted in National Advisory Council on the Employment of Women [NACEW] *Report on Parental Leave* (NACEW, Wellington, 1997) 17. ["NACEW Report on Parental Leave"]

²⁰ Under the definition of 'parental leave' in the PLEP, this includes maternity, paternity or extended leave, so most of the men regarded as taking leave in this statistic would have taken less than two weeks leave under the paternity provisions.

²¹ This is supported by United States research. Ministry of Women's Affairs "Paid Parental Leave Bill; Additional Official Advice at the Request of the Social Services Committee" (Wellington, 10 March 1999) 6 ["Additional Official Advice"].

without loss of employment, seniority or social benefits. New Zealand has ratified CEDAW, but has lodged reservations on two issues, including Article 11(2)(b).

The Committee's latest report on New Zealand stated.²²

The Committee expressed its serious concern at the continuing existence of a reservation to Article 11(2)(b) on paid maternity leave. It was concerned that the requirement for women to negotiate maternity leave individually with their employers, rather than being established as a matter of national law and policy, was a disadvantage for New Zealand women. It was also concerned about the constraints for obtaining unpaid maternity leave and the low awareness by women of existing unpaid parental leave rights.

A number of International Labour Organisation (ILO) Conventions also apply. ILO Convention 103 (1952)²³ calls on member nations to provide, by law, 12 weeks maternity leave, with cash benefits from a compulsory insurance scheme or public funds. Payment is to be at two-thirds or more of the woman's earnings and employers are not to be individually liable for these costs. ILO Recommendation No 95 (1952)²⁴ recommends extending the paid leave period to 14 weeks, and paying 100 per cent of the women's previous earnings. 36 States have ratified Convention 103, but New Zealand has not.

ILO Convention 156 (1981)²⁵ is concerned with equal opportunities and equal treatment for male and female employees. It commits signatories to develop community services for working parents and to provide information and education to promote wider understanding of the problems facing workers with family responsibilities. Again, New Zealand has not ratified this convention.

Article 10(2) of the International Covenant on Economic, Social and Cultural Rights provides that special protection be accorded to mothers during a reasonable period before and after birth. During such period working mothers should receive paid leave or leave with adequate social security benefits. New Zealand has ratified this

²²Report of the Committee on the Elimination of All Forms of Discrimination Against Women, 19th Session, (Geneva, 22 June-10 July 1998) CEDAW/C/1998/III/ADD9.

²³C 103 - Convention Concerning Maternity Protection (Revised 1952).

²⁴R 95 - Recommendation Concerning Maternity Protection (1952).

²⁵C 156 - Workers with Family Responsibilities Convention (1981).

Covenant, but the effectiveness of Article 10(2) is limited by Article 2, which requires states to implement the Covenant to the *maximum of their available resources* with a view to achieving full realisation of the rights. The CEDAW Committee has attempted to point out that New Zealand cannot excuse itself by Article 2 if it compares itself to nations at a similar level of development.

D Justifications for Paid Parental Leave

Providing mandatory paid leave is about more than meeting international obligations and achieving a politically expedient result. While paid leave can have many objectives, the benefits of paid leave take on four main strands - equity, health, benefits to employers and social responsibility.

1 Equity

Paid leave increases equity between male and female workers. Taking 'time out' from employment to give birth is the main reason women are off work, and it creates a sizeable gap in overall earnings between men and women.²⁶ American studies have indicated the relative earnings loss experienced by women after childbirth is NZ\$8118, increasing to \$9367 in the second year, and \$4996 in the third year. Women who did not have access to leave but left work for a period experienced an average drop in hourly rates of NZ\$1.18 in the first year after their child's birth, and had an increased probability of becoming unemployed.²⁷ This was not experienced by women who had taken paid leave.²⁸

Parents in employment who cannot negotiate any better conditions may be forced into lower status, insecure, casual and part-time work where there are limited career

²⁶ Ministry of Women's Affairs *Parental Leave Policies; Women and the Labour Market; Comparative Analysis of: New Zealand, Sweden, United Kingdom, United States and Australia* (Ministry of Women's Affairs, Wellington, 1995) 64-65. ["*Parental Leave Policies; Women and the Labour Market*"].

²⁷ *Parental Leave Policies; Women and the Labour Market* above n 26, 64-65. This is supported by British studies which, even after controlling for actual work experience and part-time job status, found that at age 23 women earn 82% of male earnings, but at age 33 mothers' earnings fell to 64% of men's and non mothers earnings rose to 84% of men's. "Additional Information" above n 21, 6.

²⁸ Ministry of Women's Affairs "Briefing to the Government" (Wellington, 1996), quoted in Nash, above n 9, 10.

opportunities. Alternatively, they may leave employment, and be classified as a 'dependent', despite being engaged daily in long hours of productive activities which add value to the economy.

The gap in earnings has further effects, such as increasing the burden of students loans and saving for one's retirement, and perpetuates the idea of women as marginal workers.

In contrast, the main reason that men are off work is injury, which is covered by ACC (and now private health providers), a mandatory social insurance/disability insurance scheme.²⁹ In fact, 70 per cent of all ACC injury payments are to men.³⁰

Paid leave increases equity between women by ensuring that all have the choice to take leave without being penalised because of their financial position. The two groups of women who currently return earliest to work are highly paid 'career' women, and low paid women who cannot afford to remain off work.³¹ Those with high *family* incomes tend to delay their return longer. Hofferth found that in America, "[h]aving access to a flexible spending amount (from which to pay for childcare) and access to liberal leave were associated with returning to work full-time".³² Those who return to work for financial necessity in New Zealand are more likely to be young mothers, and Māori and Pacific Islanders.³³

2 Health

The investment of time paid leave allows has health benefits for babies and parents. Under financial pressure, the caregiver may return to work sooner, and be forced to cease or interrupt breastfeeding. Studies show the importance of the initial

²⁹ I will examine these terms more fully in Part III when the models are outlined.

³⁰ Susan Iverson and Dr Rose Ryan "Submission to the Social Services Select Committee on the Paid Parental Leave Bill 1998" (103) 1.

³¹ Sandra L Hofferth "Effects of Public and Private Policies on Working After Childbirth" (1996) 23 *Work and Family* 378, [OVID 1326096] [Page number not given].

³² Hofferth, above n 31.0

³³ Judith Galtry *Women Work and Breastfeeding in New Zealand; Background Paper* (Victoria University, Wellington, 1998) 8-9. This is supported by United States statistics about Black women. Hofferth, above n 31.

cognitive and interpersonal development period³⁴ and the long-term benefits of breastfeeding for a minimum of 12 weeks, including significantly lower rates of childhood illnesses and death.³⁵ Breastfeeding also has health benefits for mothers.³⁶ Returning to work earlier than desired, combined with the stress of adjusting to a baby and perhaps ceasing breastfeeding, will increase the stress on new parents.³⁷

The inability to gain health benefits by those unable to take leave will perpetuate inequality. Returning to paid employment was the main reason given by Pacific Islands mothers in New Zealand for ceasing breastfeeding in the early weeks and months following delivery.³⁸ Pacific Islands and Māori women are over-represented in low income groups, and their children in low child health statistics.³⁹ Increased child illness and parental stress that may follow returning to work earlier than is desirable will be borne disproportionately by these groups and will reinforce existing patterns of disadvantage.⁴⁰

³⁴ New Zealand College of Midwives "Submission to the Social Services Select Committee on the Paid Parental Leave Bill 1998", 1; Barnardo's "Submission to the Social Services Select Committee on the Paid Parental Leave Bill 1998" (62) 1, quoting Carnegie Foundation *Starting Points: Meeting the Needs of Our Youngest Children* (Carnegie Foundation, New York, 1994) 23.

³⁵ Judith Galtry *Women, Work and Breastfeeding; Report to the Ministry of Women's Affairs on the Conference on Women, Work and Breastfeeding, Manila 1998* (VUW, Wellington, 1998) 10 ["*Women, Work and Breastfeeding*"]. The American Academy of Paediatrics stated in 1997 that research for *developed* countries showed that breastfeeding decreases the incidence of a number of diseases and infections, including bacterial meningitis, and may have protective effects against sudden infant death syndrome, insulin-dependent diabetes mellitus, and allergic diseases. Breastfeeding has also been linked to possible enhancement of cognitive development. "Breastfeeding and the Use of Human Milk" (1997) 100 *Paediatrics* 1035.

³⁶ Judith Galtry "Submission to the Social Services Select Committee on the Paid Parental Leave Bill 1998" (49), 6.

³⁷ National Council of Women "Submission to the Social Services Select Committee on the Paid Parental Leave Bill 1998" (71A), 8.

³⁸ C Essex, P Smale and D Geddis "Breastfeeding Rates in New Zealand in the First Six Months and Reasons for Stopping" *NZ Medical Journal* 108, 355-357 in *Women, Work and Breastfeeding* above n 33, 20.

³⁹ Mana News (Radio New Zealand, 24 September 1999, 6.40am).

⁴⁰ Judith Galtry "Submission to the Social Services Select Committee on the Paid Parental Leave Bill 1998" (49), 5.

3 *Benefits to employers*

Paid leave benefits employers through an increased return to work, decreased retraining costs, improved productivity, and reduced workplace stress.⁴¹ New Zealand companies, such as Shell Services International, have recognised that even where the employer provides paid leave, the cost will almost always be less than that of replacing the employee.⁴² Positive health effects such as reduced stress and lower childhood illness and death will also benefit employers. Galtry presents evidence showing absentee rates are seven times lower among mothers of babies fed on breastmilk than mothers of babies fed on infant formula.⁴³

The European Community have stressed the benefits of retaining parents as employees and also noted that,⁴⁴

...[T]aking leave to enhance family responsibilities may enhance the performance of many employees when they return to work, not only because they feel more committed and less stressed, but because caring for children develops generally applicable skills and qualities.

4 *Social benefits*

Child-rearing is a social good. Paid leave recognises the role of parents in society⁴⁵ and helps reduce the stress on individuals and families. This lowers parental and child health problems, which may encourage the development of healthier, well-adjusted children. Society benefits as a higher rate of return to work by caregivers

⁴¹ NACEW above n 19, 3.

⁴² Shell's analysis showed an approximate savings of \$50,000 for every \$16,000 spent (for 3 months of paid leave at a salary of \$65,000). Shell New Zealand and Shell Services International (NZ) Ltd, *EEO Trust "Work and Family Awards" Entry* (1999) 9, also see The Corporate Leadership Council *Turning the Tide: The Role of Human Resources in Managing Employee Retention* (Corporate Advisory Board, Washington, 1990) 4-5.

⁴³ *Women, Work and Breastfeeding*, above n 33, 12.

⁴⁴ The European Commission 1994 in Dunedin Community Law Centre "Submission to the Social Services Select Committee on the Paid Parental Leave Bill 1998", 4.

⁴⁵ Women's Rights Committee "Report of the Women's Rights Committee" [1975] AJHR I.13,

in turn increases the performance of employees,⁴⁶ reduces government expenditure on welfare,⁴⁷ increases family income and consequent tax take, allows full utilisation of human potential, and reduces the likelihood of benefit dependence and resulting cycles of disadvantage.⁴⁸

III THE MODELS

Paid leave operates in many distinct ways throughout the world, as states seek to achieve different objectives through diverse welfare and employment structures.⁴⁹

I have identified seven 'pure' models which differ in their rationale and their structures. These are: social insurance; general taxation; employer levy; tax credits; voluntary employer provision; mandatory employer provision; and disability insurance. I will briefly outline the features and rationale of each model, and contrast them throughout the remainder of the paper.

A Outlines of the Models

Social insurance, the model I believe most appropriate, involves a payment to a central fund by employers and or employees and the government. The fund may have multiple uses. The rationale is that paid leave is an employment right, important to improve equity between male and female workers, and that people should contribute towards their own welfare. Approximately 72 of the 135 countries that have some form of paid leave, including most of the European Union, use a social insurance model.

In the **general taxation** model, the government provide paid leave out of general revenue. Like social insurance it involves payment from a central fund, but because

⁴⁶ The European Commission 1994 in Dunedin Community Law Centre "Submission to the Social Services Select Committee on the Paid Parental Leave Bill 1998", 4.

⁴⁷ NACEW, above n 19, 4.

⁴⁸ NACEW, above n 19, 4.

⁴⁹ NACEW, above n 19, 4.

being sourced purely from the government it is easier to administer. General taxation treats childrearing as a social good which society should support, rather than as an employment right. General taxation is based on increasing equity for low-income families, recognising social benefits, and agency theory (that on behalf on children, the State provides an incentive for parents to act in their children's best interests).⁵⁰ It is currently used in Australia.⁵¹ Despite the rejection of general taxation by a Government Working Party in 1987,⁵² the Labour Party advocates this model for New Zealand.⁵³

The Alliance promotes an **employer levy** model, which builds a central fund from the contributions of employees. The rationale is that paid leave is an employment right which employers should provide. Employers pay a payroll levy for all employees⁵⁴ to avoid over-burdening small businesses and prevent discrimination in the hiring of women. Employees taking leave will generally be paid by their employer, and the employer can claim this back from the consolidated fund. This is used in France.

Tax credits are supported by National and apply in New Zealand from 1 October through the Taxation (Parental Tax Credit) Act 1999. Overseas, tax credits are generally used in conjunction with other models. Tax cuts aim to increase the net income of a recipient by declaring segments of an individual's income tax free for a specified period. The parental tax credit in New Zealand provides a credit of up to \$150 a week, per child, for eight weeks after birth. It is only available for workers with a family income of less than \$37,450. The rationale is espoused by ACT MP Patricia Schnauer,⁵⁵

⁵⁰ Working Party *Report of the Working Party on Payment for Parental Leave* (Department of Labour, Wellington, 1986) 10.

⁵¹ Australia provides a one-off payment to new parents. State employees and most unionised employees also receive paid leave.

⁵² Working Party, above n 50, 21.

⁵³ Dr Michael Cullen (20 May 1999) 577, NZPD, 16652.

⁵⁴ Under Harre's Paid Parental Leave Bill this would have been \$1.50 -\$1.85 on average per employee.

⁵⁵ (20 May 1999), 577, NZPD, 16652.

The best way to help families in New Zealand is to leave them with more of their own money...I do not think there is any doubt in the world that housewives can spend a family budget better than the Government can.

Voluntary employer provision is New Zealand's current model, and is also used in most of the United States. Paid leave is left for employers and employees to negotiate privately. Proponents argue that mandated leave models interfere with the free operation of the labour market; if the benefits of paid leave outweigh the associated costs, workers and firms will voluntarily agree to its provision.⁵⁶

Mandatory employer provision is intended to solve the coverage problems of voluntary provision by requiring all employers to provide minimum levels of paid leave. The rationale is that employers gain the benefit of retaining employees, thus they, not the government should provide the entitlement. Mandatory payment is required as the market does not have perfect information and the 'positive externalities'⁵⁷ of childcare will not be properly calculated by those negotiating contracts.⁵⁸ In reality, a government may implement this model to meet international or domestic pressure without committing government money. Mandatory employer provision is used in Singapore, Hong Kong, South Korea, Malaysia, Fiji and Indonesia. It is occasionally mixed with other models, such as in Denmark, where the employer pays the first two weeks of the leave and then a pure social insurance model is used.

Disability insurance is perhaps the most unusual model. It requires the employer or employee to purchase disability insurance that will recompense the worker during parental or sick leave. Two rationales are apparent. One is the non-involvement of government and an emphasis on private provision of welfare.⁵⁹ The second and

⁵⁶ This argument is summarised by: Christopher Ruhm *The Economic Consequences of Parental Leave Mandates in Europe and North America* (National Bureau of Economic Research, Cambridge MA, 1996) 3-4, ["*Economic Consequences of Parental Leave*"]; and Christopher Ruhm and Jacqueline Teague *Parental Leave Policies in Europe and North America* (National Bureau of Economic Research, Cambridge MA, 1995) 5, ["*Parental Leave Policies*"].

⁵⁷ A positive externality arises whenever an individual's actions increase the welfare of another who therefore benefits without contributing anything.

⁵⁸ *The Economic Consequences of Parental Leave* above n 56, 3.

⁵⁹ A key part of US welfare ideology. See Grill, above n 17, 385.

most important stems from a series of US cases, where some feminists sought to have the exclusion of pregnancy from disability insurance declared sex discrimination.⁶⁰ While disability insurance illustrates attempts to gain benefits for women through available means, it also reflects a 'same treatment' model of equality; namely that pregnancy is analogous to other temporary conditions causing work absences, and that specific paid *parental* or *maternal* leave reduces women's opportunities in the workplace.⁶¹ Disability insurance is controversial as pregnancy is equated with illness and disability.

Outwardly, social insurance and disability insurance appear similar - the scheme advocated in this paper would include ACC, and thus have a similar coverage to disability insurance. The main difference is that disability insurance works through private providers who will need to make a profit and recoup marketing costs, and consequently will charge higher premiums. Private providers are also outside the immediate control of government, making standardisation and enforcement of payments more difficult.

Pure insurance based schemes are relatively rare. Five United States states (California, New Jersey, Hawaii, New York and Rhode Island) and Puerto Rico use this. California and Rhode Island are entirely funded by employee contributions and no scheme is sourced entirely from employers.

B A Favoured Model of Social Insurance

These seven models are 'pure' - in reality many countries combine models or operate several simultaneously. I advocate a particular form of social insurance, which would require contributions from employees, employers and the government,

⁶⁰ *Gehuldig v Aiello* (1974) 417 US 484; *General Electric v Gilbert* (1976) 429 US 125; *Newport News Shipbuilding & Dry Dock Co. v EEOC* (1983) 669 US 462. These cases were unsuccessful in the Supreme Court until due to public pressure, Congress passed the Pregnancy Discrimination Act 1978 which defined 'sex' as including pregnancy. Herma Hill Kay "Equality and Difference: The Case of Pregnancy" [1985] *Berkeley Women's L J* 1, 1-10.

⁶¹ This is explored later in the paper. Richard Delgado and Helen Leskovoc "The Politics of Workplace Reforms: Recent Books on Parental Leave and a Father-Daughter Dialogue" (1987-88) 40 *Rut L R* 1031, 1033. There are many arguments against this. See for example Kay, above n 60, 37.

in recognition that these groups share the benefits of mandatory parental leave. Contributions would be made to a central fund, which would also receive ACC levies,⁶² and perhaps superannuation. 12 weeks paid leave entitlement at 80 per cent of wages, capped at the average male weekly wage, would be available to either parent (or another designated caregiver).

1 *Why 12 Weeks?*

12 weeks is the optimum paid leave duration at the present time, for health, economic and political reasons.

It has been suggested that 12 weeks is the minimum time necessary to establish the health benefits of paid leave.⁶³ This is unclear whether this is the case. 12 weeks of paid leave is the minimum duration ILO Convention 103 requires,⁶⁴ although the ILO recommends 14 weeks be provided by states.⁶⁵ However, WHO/UNICEF and the now defunct New Zealand Public Health Commission have recommended a period of six months exclusive breastfeeding to optimise health benefits.⁶⁶

12 weeks may also ensure the maximum economic benefits from paid leave. There is some indication that even where employers pay a levy for every employee (not only women), women 'pay' for intermediate and longer paid leave periods by receiving lower wages. The wage differentials for lengths of paid leave were -1.5 per cent for 14-26 weeks, and -2.9 per cent for 26+ weeks.⁶⁷ The same studies show that where leave is for 13 weeks or less, mandated paid leave actually raises wages (by approximately 1.1%) for women. This is because employers suffer fewer costs from short periods of paid leave (for example, other employees may do the extra work) and employees gain substantial benefits, allowing employment to increase

⁶² This would require ACC to be the monopoly provider of accident insurance again, which Labour has pledged to do if re-elected.

⁶³ Laila Harre, "Paid Parental Leave" Speech at Victoria University, 21 April 1999.

⁶⁴ C 103 - Convention Concerning Maternity Protection (Revised 1952) art 4.

⁶⁵ R 95 - Recommendation Concerning Maternity Protection (1952).

⁶⁶ *Women, Work and Breastfeeding* above n 33, 27.

⁶⁷ *The Economic Consequences of Parental Leave* above n 56, 25.

without negative effects on wages. Longer entitlement provisions are likely to involve more costs for companies, may fail to provide sufficient benefits to workers to compensate this, and could also lead to the depreciation of employees' skills, meaning that wages will decline.⁶⁸

Perhaps the main reason 12 weeks is the preferred duration for paid leave is that it has been accepted by the majority of the New Zealand public.⁶⁹ The "12 Weeks Paid Leave" campaign has spearheaded the issue since 1994, and a 12 week entitlement was vigorously publicised in the debate regarding Harre's bill. Some countries offer paid leave for six months or more, and this may be a more optimal duration, but 12 weeks is consistent with New Zealand's current provisions and is at present, more politically and economically feasible..

IV THE BENEFITS OF A MANDATORY LABOUR MODEL FOR NEW ZEALAND

Social insurance is the most appropriate model for New Zealand for several reasons. First, it recognises that paid leave is an employment right and has a labour rationale. Second, it is a mandatory labour model; and third, of the mandated labour models it provides the greatest societal coverage. In this part of the paper I will illustrate why a mandatory labour model is necessary and the reasons for preferring the social insurance model.

A Employment Right

The seven models broadly divide into those with a labour rationale (that leave is an employment right), and those with a welfare rationale (that the benefits of a parent having time off work with a new baby is a social good). The labour models are social insurance, employer levy, mandatory and voluntary employer provision, and

⁶⁸ *The Economic Consequences of Parental Leave* above n 56, 27.

⁶⁹ In the House debates for the Taxation (Parental Tax Credit) Act 1999, NZ First argued for a 12 month leave entitlement, but no other party support this. Robyn McDonald (NZ First list MP) (20 May 1999) 577, NZPD, 16655.

disability insurance. General taxation and tax credits are welfare orientated. Labour models restrict entitlement to those in the workforce, and maintain this distinction through employment based criteria, for example, requiring employees to meet minimum service criteria. Welfare models offer payment to all people as a right. To make such a payment feasible however, they may use targeting, thresholds, or other entitlement criteria.

Paid leave is an employment rights issue that exists at the convergence of a caregiver's right to paid employment and equal access to the labour market, and a child's right to have adequate care.⁷⁰ The crucial factor of the right to paid employment means paid leave must be seen as a employment right and structured accordingly. The rights approach of welfare is flawed. If welfare models provide paid leave as a right because three months at home is proved to be socially beneficial, there is an anomaly with other socially beneficial behaviours which are not promoted by such incentives, such as exercise. If welfare models promote paid leave because parents *should* take leave, the legislators are attempting to enforce values that many may disagree with.⁷¹

B Entitlement

To be effective, the labour model adopted for paid leave needs to be mandatory. The voluntary employer provision model currently used proves the inequities and ineffectiveness of a voluntary regime. Far from allowing individuals the freedom to negotiate appropriate leave entitlements, leave is under-provided.

⁷⁰ The ILO see the welfare of a child as the key objective of a paid leave scheme, but is careful to point out that caregiving may be fulfilled by either parent, as opposed to child-bearing. This is explored later in section VI (C). International Labour Organisation *Maternity Protection at Work: Revision of the Maternity Protection Convention (1953) Report V(1)* (International Labour Office, Geneva, 1999) 100.

⁷¹ Compare the rights based analysis of work and domestic responsibilities in Shelly Wright "Economic Rights and Social Justice: A Feminist Analysis of Some International Human Rights Conventions" [1992] A Y Int L 241, 249.

As Laila Harre said in the House.⁷²

Others will argue that the market will provide. The market will no more provide universal paid parental leave than it provided equal pay for equal work. It is simple fact - women do not have the market power to get it.

1 Market power

The Employment Contracts Act 1991 has established a system of individualised contracts that require employees to negotiate employment conditions with their employer.⁷³ As is explored later, most New Zealand women are not in work situations that encourage the negotiation of favourable contracts. Women are over-represented in a limited number of occupations which are primarily in hard to organise areas (such as small businesses and part-time work).⁷⁴ When provision is left to the market, employers, acting in their (perceived) economic self-interest, will generally offer paid leave to less replaceable, more highly skilled employees; a limited, elite group of people. They may offer other employees paid leave as a loyalty incentive, in which case it is generally only available after an extremely long time, and at a low level of payment.⁷⁵

Even where women are unionised and paid leave has been part of the industrial relations framework,⁷⁶ unions have had difficulty in ensuring entitlement to even one or two weeks paid leave.⁷⁷ Sometimes, paid leave may be successfully negotiated but presented as 'company policy', rather than an employment contract

⁷² (9 September 1998) 571, NZPD, 11866.

⁷³ Nash, above n 9, 1-3, 27.

⁷⁴ Laura Bennett "Women and Enterprise Bargaining; The Legal and Institutional Framework" in Margaret Thornton *Public and Private: Feminist Legal Debates* (Oxford University Press, Melbourne, 1995) 113-120.

⁷⁵ See for example the contracts of Chapman Tripp Sheffield Young, PriceWaterhouse Coopers and KMPG in Appendix One.

⁷⁶ Paid leave has often been ignored by unions in the past. See "Women and Enterprise Bargaining" above n 74, 142; and see generally F Baldwin and S Wapole *Women, Affirmative Action, and Industrial Democracy* (Australian Government Publishing Service, Canberra, 1987).

⁷⁷ National Distribution Union "Submission to the Social Services Select Committee on the Parental Leave Bill 1998", 5; and Finsec (Financial Sector Union) "Submission to the Social Services Select Committee on the Paid Parental Leave Bill" 1998, 11.

provision, leaving it vulnerable to change by the employer at any stage.⁷⁸ The result is that under voluntary employer provision only a minority of people, 39 per cent, receive *any* length of paid leave, as the table that follows shows. Of these, a number receive only a token payment.

Table One: Current Contract Provisions in New Zealand Under a Voluntary Employer Provision Model

Type of Contract	Payment Available	No Payment	Employees Covered ⁷⁹
All contracts	39%	61%	388,300
Private sector	17%	83%	222,500
Govt. core services	79%	21%	135,200
Govt. trading (SOE)	63%	37%	10,400
Local Govt. - Core	3%	97%	13,300
Local Govt. - Trading	3%	97%	700

As seen here, the majority of payments are in the public sector. For most government departments, the entitlement is a one-off payment equal to six weeks pay, six months after the return to work, although much of the public sector entitlement is being whittled away.⁸⁰ Private sector companies have been introducing paid leave since the mid 1990s, but providers are generally large, national organisations, who offer it to their senior staff.⁸¹ Secretaries and other non-professional staff are often not covered.

⁷⁸ For example the Bank of New Zealand's well-publicised paid leave policy is not an employment contract provision.

⁷⁹ The figures come from an analysis of leave provisions in 3475 contracts (covering 416,000 employees in the private and public sectors) by R Harbridge *Employment Contracts: Bargaining Trends and Employment Law Update 1996/7* (Industrial Relations Centre, VUW, Wellington, 1997) in Rasch and Barnett, above n 1, 21.

⁸⁰ Association of Staff in Tertiary Education "Submission to the Social Services Select Committee on the Paid Parental Leave Bill" (55) 2-3.

⁸¹ For example, Bell Gully allows female senior associates and partners 3 months paid leave, Chapman Tripp allows male and female partners and principals 3 months, and other professional staff 2 weeks to 3 months after two years service, Russell McVeagh offer female lawyers 3 months. See Appendix One.

2 Defining "employee"

Mandatory labour models seek to avoid these inequities by mandating payment for all employees. Social insurance and other labour models provide entitlements to those in the paid workforce and will impose conditions on length of service and hours worked in order to maintain this distinction. In contrast, welfare based schemes will be aimed at all mothers (and sometimes all parents), regardless of employment status.

To maintain the labour/welfare distinction however, labour models define 'employee' with eligibility criteria. The current PLEP requirements are similar to those used overseas, and are based on ensuring the employer has gained benefits from the worker suitable to justify an unpaid leave period. The PLEP defines an employee as "... any person of any age employed by an employer to do any work for hire or reward, but does not include an independent contractor".⁸² Unpaid leave is only available to employees who have worked for at least ten hours per week for the same employer for more than 12 months, and who have not returned from a prior parental leave period within the last 12 months.

These criteria ignore the reality of women's employment in New Zealand and the effect of the Employment Contracts Act 1991.⁸³ Women are more likely than men to be engaged in non-standard forms of work, and are thus over-represented in the groups excluded - part-timers, new employees and those working several jobs. For example, 37.2 per cent of all women in the labour force are part-time workers compared with 10.6 per cent of men.⁸⁴ 141,000 women will be excluded by the 10

⁸² Parental Leave and Employment Protection Act 1987 s 2.

⁸³ For an analysis of the changes this has brought see Linda Hill and Rosemary Du Pleiss "Tracing the Similarities; Identifying the Differences: Women and the Employment Contracts Act" (1993) 18 NZ J of IR 38, and Ann Else *False Economy* (Tandem Press, North Shore, 1995).

⁸⁴ That is, 16.5% of the total labour force are female part-time workers, compared with 5.9% who are male part-time workers). Household Labour Force Survey (March 1998) quoted in Council of Trade Unions "Submission to the Social Services Select Committee on the Paid Parental Leave Bill 1998" (45) 14.

hour a week criterion,⁸⁵ yet many women have no choice but to work part-time because of care issues.⁸⁶

In addition, women are almost three times more likely than men to have more than one job; 24,500 women compared to 9,900 men in 1996-1997.⁸⁷ As the eligibility criteria count only the hours worked for one employer, these women are excluded. Because eligibility criteria are employer focused, difficulties occur with those who are self-employed or who are contractors, and the PLEP simply excludes these groups.

These figures illustrate that non-standard employment is the reality for many women in New Zealand. These women are less likely to be covered by the common eligibility criteria of mandatory labour models, and less likely to be able to negotiate coverage under voluntary labour models. A government focus on flexibility in labour relations and control by market forces⁸⁸ is increasing this. The result is an iniquitous situation between women who are highly educated and well-placed in the job market and are likely to be offered and to qualify for paid leave, and low-skilled marginalised workers, who will not.

3 *Broadening entitlement*

Social insurance can avoid these problems. By requiring contributions from employees and the government as well as employers, the focus is no longer making leave worthwhile for the employer, but whether individuals have earned coverage, meaning the entitlement net can be spread more widely. As all employees are required to pay a levy, employees are a self-defining group - those who have paid levies for a requisite number of weeks can be easily covered. Problems with

⁸⁵ Council of Trade Unions "Submission to the Social Services Select Committee on the Paid Parental Leave Bill 1998" (45) 21.

⁸⁶ Household Labour Force Survey (1997) in Council of Trade Unions "Submission to the Social Services Select Committee on the Paid Parental Leave Bill 1998" 14; Else, above n 83, 67-68.

⁸⁷ Council of Trade Unions "Submission to the Social Services Select Committee on the Paid Parental Leave Bill 998", 21.

⁸⁸ The development of this in social and employment policy is traced by Simon Nash, above n 9, see especially 1-2.

multiple jobs, contractors, and the self-employed are also avoided. Part-time workers can receive entitlements on a pro rata basis, as occurs with ACC.

Even by with a wide definition of employment, social insurance still excludes many, namely, the 155,000 women at home looking after children. Home-makers provide services which, were it not for the domestic setting, would be compensated in the market. Their exclusion is due to traditional definitions of the labour force which ignore domestic work as it does not produce surplus value (profit) for the market,⁸⁹ and consider reproduction part of nature rather than a productive activity.⁹⁰

The exclusion of these women is a trade-off for a labour-based system. In effect, a universal payment with the broadest entitlement possible is not a realistic option, as budget constraints will require a low payment or targeting, both of which involve problems.

(a) Low payment

When payments are low or token, paid leave becomes 'yuppie welfare'; only capable of being used by those who have other resources available (such as a partner with a moderate to high income) which allow them to undertake childcare for the period themselves. For example, in Canada, all employees⁹¹ having a child are eligible, but payment is only 57 per cent of the individual's average weekly insurable earnings, up to a specified maximum. There is also a two-week stand-down during which there is no payment. For those on low incomes, a payment of 57 per cent will be cursory and will probably not allow them to take the leave, meaning they will have to leave the labour market and receive a government benefit, or return to work early if they can make childcare arrangements.⁹²

⁸⁹ Marilyn Waring *Counting for Nothing: What Men Value and What Women are Worth* (Allen & Unwin, Port Nicholson, 1988) 22.

⁹⁰ For example, payment for surrogate pregnancy is seen as immoral and outlawed in New Zealand and many other OCED countries. See Waring, above n 89, 23-24, 153-158.

⁹¹ Canada's payment to only those in the labour force makes it either a general welfare or social insurance scheme, but the example serves to illustrate the effect of token payments.

⁹² Nash, above n 9. 10.

(b) Targeting

Targeting is the directing of a benefit to a particular group, for example, those who fall between particular income bands. It can be an appropriate way to avoid a token payment, spread resources and ensure meaningful paid leave. However, thresholds are often set so low that many do not benefit and thus the societal objectives of paid leave will be unachievable. The maximum threshold for the Taxation (Parental Tax Credit) Act is less than the average family wage in Auckland and Wellington,⁹³ so only 45 per cent of families (26,000 a year) receive any of the \$150 a week credit. This is still more than the 22,000 families a year assisted under the Paid Parental Leave Bill,⁹⁴ but that payment would have been more substantial.

Targeting allows politicians to argue that the needs of low-income families are already met by existing social welfare benefits. This is common in New Zealand, as the statement by Prime Minister Jenny Shipley at the introduction of Harre's Paid Parental Leave Bill shows;⁹⁵

The fourth issue that I want to put to the House, at a time when we may need to make an economic choice, is whether a country like our own, where there is free maternity care and an extensive childcare system that in the main is targeted, should introduce paid parental leave for women who clearly have significant incomes... There is also a series of measures that take into account low-income families, such as family support, the guaranteed minimum family income, and the independent family tax credit.

Under the guise of targeting, 'universal' welfare payments may then be limited by eligibility criteria. Because welfare models provide payment as a 'right,' drafters may provide payment only to those perceived as deserving of the right. For example, compare these statements from the introduction of the Taxation (Parental Tax Credit) Act, which is available to low income *working* families who are not receiving a benefit, student allowance or ACC:⁹⁶

⁹³ Rt Hon. Michael Cullen (20 May 1999) 577, NZPD, 16652.

⁹⁴ Hon Bill English (National MP for Southland) (20 May 1999) 577, NZPD, 16044.

⁹⁵ Prime Minister, (National MP for Rakaia) (9 September 1998) 571 NZPD, 11868

⁹⁶ Steve Maharey (Labour MP for Palmerston North) (20 May 1999) 577 NZPD, 16646; Hon David Carter (National, Associate Minister of Revenue) (20 May 1999) 577, NZPD 16647.

The Opposition: The Government has got to stop singling out beneficiaries as if their children do not matter. It is only, they say, if we are in the paid workforce that anything can go to those children. Beneficiaries' children also need this kind of cash in their parents' pockets as well, but once against the Government has singled out those people to punish them and not give them anything.

The Government: I proudly support the Taxation (Parental Tax Credit) Bill. It is a tactic aimed specifically at the people who need it. We are talking about Kiwi mums and dads on low to middle incomes. They need the assistance and they are the people this package is directed at.

Thus, despite the 'universal' nature of a welfare payment and its societal objectives, in reality the majority of those having babies may be excluded, with payment going to those meeting the value-based criteria of the drafters.

C *The Benefits of Mandatory Paid Parental Leave*

The mandatory nature of social insurance remedies the inefficiencies and inequities of market provision. Proponents of law and economics view the market as the most efficient resource allocator, and thus argue that mandated paid leave creates inefficiency by limiting the ability of employers and employees to select the optimal salary package.⁹⁷ Firms will suffer efficiency losses if the costs of providing leave exceed the benefits, and will seek to pass this on to consumers.

However, the market may not operate efficiently in this regard without regulation. Those negotiating employment contracts may not adequately value the positive externalities of paid leave, such as increased productivity and gender equity. Inefficiency then results as there will be an underprovision of female labour. Employers will lose experienced workers and be forced to hire and train new employees, the cost of which, as illustrated earlier, is often more than the cost of providing leave.⁹⁸

Mandatory provision may also prevent inefficiencies by avoiding adverse selection.⁹⁹ Workers will have a greater knowledge of their probability of having

⁹⁷ *The Economic Consequences of Parental Leave*, above n 56, 3.

⁹⁸ Illustrated by Shell International New Zealand, even for salaries of \$30,000.

⁹⁹ *Parental Leave Policies* above n 56, 7.

children (and so taking leave) than their employers. Individuals with a high potential of using paid leave will disproportionately be attracted to work for companies providing it,¹⁰⁰ which will increase the costs for those firms. In a competitive labour market, employers will need to compensate by decreasing wages, and thus people with a low probability of taking leave will shun these firms to avoid losing earnings.¹⁰¹ This results in segregation, particularly sex-segregation, in the market. If paid leave is available for all employees, adverse selection will be avoided.

Further, even if these problems are avoided and the market operates efficiently, it is not a perfect instrument. Despite the arguments of some economics scholars,¹⁰² the market will not stop discrimination. Even where retaining female labour or promoting women with childcare responsibilities can be shown to create benefits, some employers will not implement paid leave because the 'perfect information' their decisions rests on consist of irrational stereotypes and value judgements. Delgado argues that stereotypes do not so much operate irrationally in an otherwise sound market, but create a world with irrationality built into it's structure.¹⁰³ They are not irrational individual actions but a market process; "[i]ndividual actions...work in concert eluctably to reinforce the racial status quo. It feels like freedom, like individual choice. Yet the effect is tyranny".¹⁰⁴ Social insurance, as with other mandated models, does not rely on the market to recognise the benefits of paid leave, but pro-actively implements it. It may also, with the help of education campaigns, encourage the acceptance of paid leave as an employment right that provides comparable benefits for the employer.

¹⁰⁰ The provision of paid leave is only one factor in an employment decision, but it may weigh heavily between evenly balanced firms, or for people who are intending to utilise it soon.

¹⁰¹ *Parental Leave Policies in Europe* above n 56, 7.

¹⁰² Criticised by Richard Delgado in "Rodrigo's Second Chronicle: The Economics and Politics of Race" (1992-3) *M Law Rev* 1183, 1196.

¹⁰³ Delgado, above n 102, 1196.

¹⁰⁴ Delgado, above n 102, 1196.

V THE ADVANTAGES OF SOCIAL INSURANCE

A Increased Labour Participation

Social insurance increases women's participation in the workforce by maintaining employees' connection to the labour force, providing a financial incentive to return to work after three months (by finishing the payment) and by providing subsistence so they are not forced to take up a government benefit. Social insurance increases these general effects of most paid leave systems by providing a payment adequate for people to take leave, and by increasing the amount of people able to receive it. In contrast, tax credits, which do not provide actual cash in hand to sustain the caregiver, or a low paid entitlement (such as under general taxation) will force an individual to return to work if childcare is available, or more likely, to drop out of the labour market, and will probably decrease workforce participation by caregivers.¹⁰⁵

Where [social] insurance schemes that rely on specifically allocated financial resources and medical services are generally able to guarantee effective cover, systems based on welfare, when applied to broader sections of the population, can only offer modest benefits.

This is apparent in a comparison of Sweden, five United States states, Australia and the United Kingdom by the Ministry of Women's Affairs in 1995.¹⁰⁶ In Sweden (well-paid social insurance) and the five United States states (well-paid disability insurance) there was good access and entitlement to leave, and only 7 per cent and 12 per cent of women having a baby left the labour force or become unemployed. In the United Kingdom and Australia (at that time the United Kingdom had a low paid social insurance model, and in Australia only some employees were covered) attrition rates from the workforce were 55 per cent and 40 per cent.¹⁰⁷ The comparison illustrates that it is not so much the type of model that increases female labour participation, but the sufficiency of the payment and the breath of coverage.

¹⁰⁵ ILO, above n 70, 78.

¹⁰⁶ *Parental Leave; Women and Labour Markets* above n 26, 19.

¹⁰⁷ *Parental Leave; Women and Labour Markets* above n 26, 53.

European research by Christopher Ruhm shows that paid leave models raise the employment of mothers with infants by affecting a women's real wage.¹⁰⁸ For example, suppose a caregiver would like to spend five, unpaid, months at home after the birth of her baby. If she is offered three months of paid leave, she will take the shorter, paid leave time and return to work earlier, if the benefits of returning to her previous employer (for example retaining seniority) outweigh the costs of 'losing' two months at home. Ruhm's study of 14 European countries, which almost all offered forms of social insurance showed paid leave increased 'employment to population' [EP] ratios rose by approximately four per cent for all women, and for women of childbearing age of approximately nine per cent.¹⁰⁹

It could be argued that all mandated labour models will have this effect because individuals will increase their labour supply prior to having children in order to meet eligibility criteria.¹¹⁰ However, most of the increased participation in Ruhm's study resulted from increases in the return to work rate after birth.¹¹¹

There are caveats on this. Ruhm's study may overstate the impact of parental leave in increasing employment, as it is difficult to isolate the effects of mandatory leave from other "family-friendly" policies, and there may be other factors (such as a rise in living conditions), which simultaneously encourage women into the labour market and create political pressure for mandated leave.¹¹²

Another important benefit of paid leave is the retention of skilled employees by particular employers. Individual employers benefit from a greater proportion of experienced employees, with their new skills learnt while parenting, institutional knowledge and higher productivity. Labour models have higher rates of return to

¹⁰⁸ *The Economic Consequences of Parental Leave* above n 56, 5-6.

¹⁰⁹ *The Economic Consequences of Parental Leave* above n 56, 30.

¹¹⁰ *The Economic Consequences of Parental Leave* above n 56.

¹¹¹ *The Economic Consequences of Parental Leave* above n 56.

¹¹² "Additional Official Advice" above n 2, 7.

original employers than welfare models, as the bond between the employer and employee is maintained during the leave period.¹¹³

For example, Xerox in England introduced a policy providing a maternity break of four months with the continuation of all terms and conditions, including salary and benefits. The policy increased the rate of return from 20 per cent to 80 per cent and reduced leave absences from nine months to five months duration.¹¹⁴ It also saved 1,838,000 pounds in replacement costs.¹¹⁵

It is possible that a well-paid voluntary employer leave payment, as Xerox offered, will have the largest return to work rate, because the 'good employer' element is highlighted. However return to work rates will only be improved for the employees obtaining leave. Those who are not entitled will have less loyalty and less of a genuine choice about returning to work; their lower return rates will reflect this. In contrast, social insurance allow return to work rates to be higher for the greatest amount of people, and at the same time retain the link between employer and employee, because individuals recognise that their employer and their own employment status contributes to that leave. Again, other leave models will not cover such a wide group of people and will therefore have a lesser effect.

B Treatment as an Individual

The reliance on contributions from all employees allows social insurance to treat contributors equally, and as individuals. Where entitlement is based on family income, alternate family structures may be penalised. For example, the Taxation (Parental Tax Credit) Act measures entitlement by family income. Greatest benefit goes to families where the father works and the mother stays at home. If the mother is the primary caregiver after birth, there is no loss of income and the family can claim the tax credit. Where both parties work, there is the loss of the woman's

¹¹³ Laila Harre, "Paid Parental Leave" Speech at Victoria University, 21 April 1999.

¹¹⁴ *Work and Family File* (EEO Trust), Auckland, New Zealand, March 1999, 4.

¹¹⁵ *Work and Family File* (EEO Trust), Auckland, New Zealand, March 1999, 4.

income and some return from the credit. If the mother is the income earner in the family or is a solo parent and she takes time off after the birth, the family becomes dependent on a government benefit, even if only temporarily, and the parent will not qualify. Laila Harre has said:¹¹⁶

The Bill that the Government is proposing fundamentally misses the point of addressing discrimination in the labour market. It states that the position of an individual woman in the labour market is irrelevant, and that all that is relevant is her family income. So if the woman is ghettoised into low-paid, low-status employment, and she is forced to give up her income as she must when she has a baby, at least for a time, that is irrelevant, because if her bloke is doing OK then she must be doing OK too.

C Men

Social insurance may allow men to benefit from paid leave more than other models do. Strong peer pressure exists against men taking parental leave. A genuine choice about who will be the primary caregiver, or how parental leave will be shared can be prevented by gender specific legislation and traditional social values. Men thus miss out, as a rule, on the bonding relationship with their child that the principal caregiver enjoys, and are seen as less competent at looking after children.¹¹⁷

Social insurance can be drafted in a gender neutral way that does not assume the mother is the primary caregiver. Because of the government's involvement, and the contribution by all employees, the government has a part in ensuring the fund's effective utilisation by all parents. Education campaigns run by the Swedish government have significantly increased the number of Swedish fathers taking leave,¹¹⁸ and such a campaign could be successful in New Zealand.

There are several financial reasons why a social insurance model provides the greatest benefits for men. First, it will not be a universal payment that must be targeted or lowly paid. This avoids the concern of the International Labour

¹¹⁶(20 May 1999), 577, NZPD, 16648.

¹¹⁷Martin H Malin [1993] "Fathers and Parental Leave" *Tex L Rev* 1047, 1056.

¹¹⁸*Parental Leave Policies; Women and the Labour Market* above n 26, 56.

Organisation, which warned that low, flat-rate parental leave is viable for only upper middle class, two parent families.¹¹⁹

In the majority of cases, fathers take parental leave only when a relatively high level of compensation for loss of earnings exists. Taking into account that occupational and wage structures still tend to favour men, the loss of the father's income places a heavier burden on the family, making it difficult to cope.

In this way, paid leave will maintain, rather than decrease gender inequities in the market. Social insurance, by using an income related, decent payment, will avoid this.

Further, receiving an adequate payment reduces financial stress on both partners, and the extra labour participation this often entails. Overseas studies have shown that where the loss from the female caregiver's wage is substantial, their male partners often have to increase their time in the labour market, with consequently less time available for the family and the new child. Fathers of young children are far more likely to work overtime or moonlight than similarly situated men without young children.¹²⁰ A comparison of fathers under Britain's low paid social insurance with those under France's highly paid general taxation and tax credits shows that:¹²¹

Perhaps to make up for their wives lost wage, more than 75% of British men with children under age 10 work more than 40 hours a week, and nearly 1/3 work more than 50 - nowhere else in the EC is the difference between mothers and fathers hours so great. Not surprisingly, fathers hours in France are among the shortest; just under 1/2 work less than 40 hours a week. Who says childcare is just a women's issue?

D *Lessens Discrimination*

When employers shoulder the total cost of leave, such as under mandatory employer provision, women, as the main users of paid leave, become more expensive to hire.

¹¹⁹ ILO, above n 70, 104

¹²⁰ Malin, above n 117, 1066.

¹²¹ Ann Crittenden "Work-Family Solutions; Why French Women are Ahead" (1995) 20 Working Women 12. [OVID 01078550]

Discriminatory hiring practises may result. Social insurance, disability insurance, and employer levies minimise discrimination as levies are paid on all employees.¹²²

This means that in the first instance, the cost of hiring a women or a man in relation to paid leave is the same.

Under social insurance, (and disability insurance and employer levy models), employees will still face an extra cost in hiring women due to the compliance costs involved when workers take paid leave. These are unlikely to be large enough to encourage employers not to hire women, as they are outweighed by the costs of losing the benefits of women workers, and the potential penalties for breaching anti-discrimination legislation.

Discrimination against women is unlikely to result from voluntary employer provision, as employers will simply refuse to provide leave if it is not in their interests. In the welfare models, as the costs of paid leave are not borne by the employer, demand for women's labour will remain unchanged, assuming that the (possibly) higher taxes funding paid leave do not force employers to cut their labour force.¹²³ However, if unemployment does result, marginal employees, a group that women are over-represented in, will suffer the most.¹²⁴

There are still labour costs involved in social insurance. First, the increased female labour participation rate will impact on the labour rates of other groups used to fill those jobs and vice versa.¹²⁵ Dowd states that racial minorities will be negatively affected for this reason.¹²⁶ A Ministry of Women's Affairs states the Department of Labour have predicted that:¹²⁷

Based on international experience and models for assessing impacts from increases in the costs of labour, it has been estimated that imposition of an employer levy of 0.21%-

¹²² As the Maternity Protection Convention (Revised 1952) art 4 requires.

¹²³ *The Economic Consequences of Parental Leave* above 56, 7-8.

¹²⁴ Nancy Dowd "Envisioning Work And Family; A Critical Perspective on International Models" [1989] Harv J Legis 311, 346.

¹²⁵ Dowd, above n 123, 346-347.

¹²⁶ Dowd, above n 123, 346.

¹²⁷ "Additional Official Advice", above n 21, 4.

0.28% may result in a loss of 700-950 jobs across the labour market, with 600-800 of those jobs being concentrated among women.

The Ministry itself does not appear to support this, and goes on to state:¹²⁸

Given that over 90% of employers would, on average be expected to face annual costs of less than \$750 in levies, this cost *alone* would be unlikely to have a significant impact on decisions to employ more staff (or reduce staff) for many of those firms.

Even if the Department of Labour is correct, job losses will not be as great under social insurance, which will have smaller levies for employers. If unemployment does occur under social insurance, paid leave, as an employment benefit, must be seen in the same way as the minimum wage - possibly likely to cause job losses, but necessary for the protection of the vast majority of workers.

E Those Benefiting Share the Burden

One of the greatest advantage of the particular social insurance this paper advocates is that those gaining the greatest benefits share the costs. The social insurance scheme should be funded by contributions from employees, employers, and the government. Although proportioning contributions is outside the scope of this paper, it is posited that the greater amount should be paid by employees and employers, (relatively) equally, with the government making a smaller contribution aimed at administrative costs and in recognition of the societal benefits of paid leave.

I The government and society

Society will bear the financial costs of paid leave most directly under general taxation and tax credit models. Tax credits cost relatively less - \$29 million per year is forecast under the Taxation (Parental Tax Credit) Act for eight weeks entitlement

¹²⁸ "Additional Official Advice", above n 21, 4.

(remembering that only 45 per cent of those having children are covered).¹²⁹ Labour's general taxation policy is rumoured to be budgeted at approximately \$50 million for eight weeks entitlement (this would also probably be targeted). The government's contribution under social insurance will be somewhere between these.

While the costs of an employer funded model (such as a levy, or mandatory employer provision) rest solely with an employer, society will contribute through enforcement and administration costs, or when employers seek to recover costs. While these will be small, society cannot assume that by avoiding direct contributions to paid leave it will not suffer financial costs in some form.

Paid leave has the potential to provide the government with substantial social welfare savings by reducing the demand for more long term social welfare benefits and decreasing health costs.¹³⁰ Social insurance increases this saving by wide entitlements. A well-paid general taxation scheme would probably have the most benefit however, because the government can target payment to those who would not otherwise be on a benefit and who have the greatest need. Labour models do not easily allow such focussing as provision is not as directly under the control of the government. This means general taxation, properly managed, could get the greatest results for the least financial outlay.

Further, in the long term, social insurance will increase the government tax take; by increasing the return to work rates and paying a higher level of payment than many other models, it increases family income.

However, leaving matters so directly to the government does have risk as paid leave may become a macroeconomic tool. Countries tend to expand parental leave during profitable years, and reduce it during recessions.¹³¹ Models directly under government control, such as general taxation, have the greatest risk of this, but

¹²⁹ Sir Williams Birch (National) (20 May 1999), 577, NZPD, 15588; "Paying for Parenthood" The Dominion, Wellington, New Zealand, 14 April 1999, 11.

¹³⁰ NACEW, above n 19, 4.

¹³¹ "Parental Leave in Europe" (1995) 26 EIRR 14 [OVID 01193733] [Author not given]

government's overseas have shown they are not immune to tinkering with social insurance where there is a government will or political pressure to reduce business costs. Similarly, employers may fluctuate voluntary employer provision depending on business circumstances.

2 *Employers*

As stated earlier, employers gain sizeable benefits through paid leave, but many either do not realise this at present or feel unable to offer paid leave due to the initial cash outlay. Social insurance, as a mandatory model, overcomes the first problem, and deals with the second by dispersing the costs over all employers.

Using a general levy enables the cost to employers to be kept low. Levies are predicted to be \$1.50-\$1.85 a week per employee under an employer levy model.¹³² Under disability insurance this will be higher to account for profit margins and the extra costs of several providers, including advertising. Social insurance will have a lower levy for employers than either of these because employees and government will share in the costs.

3 *Employees*

Employees benefit from social insurance, because as long as they meet the low eligibility criteria, they are guaranteed paid leave for a set time, at a reasonable percentage of their wages. Those who were not eligible or were unable to negotiate paid leave earlier gain a genuine choice about whether to stay at home temporarily, supported by this payment, and gain the health and other benefits that paid leave can offer.

While those previously unable to access paid leave gain the greatest benefit from a mandatory system, employees who already receive paid leave also benefit.

¹³² Rasch and Barnett, above n 1, 17.

Negotiating paid leave in a competitive job market such as New Zealand can lead to a prisoner's dilemma.¹³³ Malin argues employees seek wage increases not only to increase their absolute earning powers, but also to improve their status in comparison to others. An employee who values paid leave, offered the choice between X dollars without leave, and X-Y dollars with leave, will take the latter option where the wage lost is less to the employee than the value of the leave. Salary also buys relative standing compared to others, and if the worker is more concerned with this than paid leave, they will opt for the higher salary and hope other workers take the lower salary and paid leave. This leaves the worker with more money and thus more standing.

However, if all workers are rational, all will take this option, leaving them with higher incomes but no gain in relative income and standing. If workers collude to opt for lesser pay with leave, all retain social standing and gain the preferred package, but each has a strong incentive to cheat on the agreement to achieve greater relative income. More obviously, individuals may not receive the agreement of other workers, some of whom may be childless and not desire leave. To retain relative standing, this would force the worker to opt for higher pay without leave. Employer flexibility under the Employment Contracts Act 1991 allows the employer to 'divide and rule' employees using this dilemma, to prevent agreements between employees, and to force contracts on individuals.¹³⁴

While Malin's argument represents a stereotypical model of value¹³⁵ and workers' priorities, it is true that bargaining penalises employees who value family commitments and seek recognition of this in their contracts.¹³⁶ It will be most often women seeking to negotiate for paid leave in their employment contract, and where this is agreed to, it may be at the expense of other terms and conditions, as

¹³³ Malin, above n 117, 1070.

¹³⁴ The Employment Contracts Act 1991 takes a one-sided view of flexibility in work conditions, focusing on employer flexibility (for example to cut staff and conditions and retain a 'reserve army' of casual workers for short-term benefit). Else, above n 83, 135.

¹³⁵ Marilyn Waring offers a useful critique of "value" in traditional economics, above n 89, 18-20.

¹³⁶ Nash, above n 9, 2.

employers will resist paying employees more than their "perceived value".¹³⁷ By legislating mandatory paid leave and requiring contributions from employers, social insurance avoids this, and employers and employees remain free to negotiate extra entitlements.¹³⁸

While it is true that current employment law does not actually restrict employees from negotiating satisfactory conditions, neither does it require that family considerations be taken into account. Instead, a focus on procedural equity in bargaining has often had the effect of unfairly penalising employees who have competing priorities outside the workplace, and who sometimes cannot give their absolute attention to their employment commitments. Those wider demands are not recognised or allowed for in legislation, despite their impact on employment, because they are seen as part of the private lives of employees, and therefore, are not the state's responsibility.

The biggest difficulty with requiring employees to contribute is that not all will benefit. There are many employees who will never have children, or are past childbearing age, and under social insurance they share the burden with those who gain the benefits. There could be a backlash from groups against the introduction of such a model, or towards their co-workers who take paid leave. Subsidisation is a problem with all the models where the cost is dispersed, leaving only the mandatory and voluntary employer provision models where non-beneficiaries do not pay. By combining paid leave with ACC this problem is tempered as all contributors are likely to have use of one of the systems.

The benefits of a social insurance model can be seen to have many facets. Increasing the female labour participation rate, treating people as individuals, and reducing discrimination against men all reflect the goals of paid leave, namely to address the work-family conflict and provide for gender equity. Spreading the costs among employees, employers and government recognises that these groups share the benefits of paid leave, and maximises the advantages of social insurance.

¹³⁷ "Additional Official Advice" above n 21, 3-4.

¹³⁸ Nash, above n 9, 2.

VI THE POTENTIAL DISADVANTAGES OF SOCIAL INSURANCE

While social insurance is the most appropriate model for New Zealand, it has several potential disadvantages, which, if prepared for, may be avoided.

A Bureaucracy

A national social insurance scheme that receives payments from three sources will necessarily need a strong administrative structure. Any such system runs the risk of becoming an inefficient bureaucracy. This problem is not unavoidable, and is due to regulatory capture rather than the model itself. Left to private providers, there may actually be more bureaucracy than under social insurance, as the government will need to use enforcement mechanisms to ensure that payments are made. Otherwise, the collapse of an insurance provider, or the failure of an employee to pay premiums could reduce the efficacy of the scheme. Further, private providers will presumably attempt to differentiate their paid leave packages. This may create flexibility and competition, but it could result in different qualities of paid leave being made available for those who can afford higher premiums, or show that they are unlikely to access the leave, and those who cannot. This will replicate the inequities of voluntary employer provision explored earlier.

To avoid bureaucracy lessons may be learnt from the many international social insurance models (remembering that these may operate in different welfare systems), and our ACC system. The complex regulatory problems of ACC centre on difficulties in assessment, lump sum and long-term payments. The administration of paid leave will not be as complicated as ACC. Paid leave will be for a defined duration at a set percentage of wages and will not require discretion in entitlement. If compulsory ACC is re-introduced, as Labour is pledging to do, scope exists to integrate ACC and paid leave under social insurance. This would allow substantial savings and the rationalisation of structures.

B *Compliance Costs*

Compliance costs for businesses will be part of any model, with the exception of tax credits and general taxation. Administration costs for social insurance include bank charges, record keeping, and potentially, collection costs, which in previous years ACC charged approximately \$27 million a year for.¹³⁹ By merging ACC and paid leave, social insurance would rationalise these charges. For small businesses, the initial payment of the leave can cause cash-flow problems. These, and the compliance costs, could be dealt with by recompensing small employers at 104 per cent of their costs, and large employers at 92 per cent, from the central fund as occurs in Britain.¹⁴⁰

C *Perpetuates Stereotypes*

1 Same or special treatment?

Social insurance treads a fine line between minimising discrimination against female employees and recognising the uniqueness of pregnancy. There is debate regarding how paid leave should approach the support required by women after pregnancy. Same treatment, used by disability insurance, argues that pregnancy is analogous with other temporary illnesses that cause workplace absences.¹⁴¹ Special treatment, utilised by the other paid leave models, advocates the uniqueness of pregnancy requires it to be covered by a separate paid leave entitlement.¹⁴² The debate between same treatment or special treatment becomes a conflict between gender neutral policies that recognise men but may not cater adequately for women, and special treatment policies that may reinforce gender roles and perpetuate public/private sphere distinctions.¹⁴³

¹³⁹ New Zealand Employers Federation "Submission to the Social Services Select Committee on the Paid Parental Leave Bill 1998" 2.

¹⁴⁰ *Parental Leave; Women and Labour Markets* above n 26, 32.

¹⁴¹ Wendy Williams "Equality's Riddle, Pregnancy and the Equal Treatment/Special Treatment Debate" (1984-1985) *NYU Rev L & Soc Change* 325, 326, in Lucinda Finley "Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate" (1986) 86 *Colum L Rev* 1118, 1145.

¹⁴² Kay, above n 60, 28.

¹⁴³ Finley, above n 141, 1118-1119.

Disability insurance employs a 'equality as same treatment' ideology that fits with our legal systems' classical liberal equality ideal.¹⁴⁴ Such a model works well for gaining access to traditionally male prerogatives within the public sphere, or when the goal is the assimilation of women into male institutions but these are not the aims of paid leave. Paid leave is focussed not on allowing women into the workforce (as they are already there) or accepting a male model of employment rights, but on developing an employment situation that allows both men and women to balance work and family.¹⁴⁵

Social insurance and other mandatory schemes almost always implement special treatment for women, although they may be written in a gender neutral way.¹⁴⁶ Inbuilt assumptions about the roles of men and women are reflected in different provisions for each gender. For example, as with many overseas countries, our PLEP assumes that the principal caregiver is the mother, and the transfer of leave entitlements to her partner is at her request, on meeting stricter eligibility provisions.¹⁴⁷ The Paid Parental Leave Bill would have perpetuated this.¹⁴⁸

Both same treatment and special treatment have serious problems. By requiring same treatment, disability insurance pushes people into existing, often inappropriate, niches, rather than examining the structural issues of work and family conflict. By redefining pregnancy as a disability, disability insurance frees employers from considering other employment/parenthood issues, such as nursing facilities or leave to care for sick children.

Special treatment may recognise the uniqueness of pregnancy and the role of a caregiver (of either gender) but it can also reinforce the presumption that the mother

¹⁴⁴ Finley, above n 141, 1142.

¹⁴⁵ "Perspectives" above n 6.

¹⁴⁶ Sally J Kenny "Pregnancy Discrimination; Toward Substantive Equality" [1995] *Wisc Wom LJ* 357, 359.

¹⁴⁷ Parental Leave and Employment Protection Act 1987 s 27.

¹⁴⁸ The Bill of Rights compliance report on the Paid Parental Leave Bill by the Ministry of Justice believes that this is not discrimination on the grounds of sex because it is a simple acknowledgment that a newborn infant is physically dependent on its mother and so arrangements for care must be with the consent of the mother. Ministry of Justice "File Note: Paid Parental Leave Bill" 3 March 1998, 2.

is the natural principal caregiver who should take time off after the birth.¹⁴⁹ This perpetuates the idea of women as marginal workers who are less reliable, less permanent, and therefore do not need the same benefits as other workers.¹⁵⁰ Some employers may find this perception reinforced by their own experiences. In New Zealand, as in all parental leave systems, women take the majority of parental leave,¹⁵¹ with only a small number of men taking parental leave, although 43 per cent take some form of paternity leave.¹⁵² Even in Sweden, where parental leave by men is the highest in the world as a result of sex-specific parental leaves and massive education programmes,¹⁵³ the amount of men taking parental leave is only 25 per cent.¹⁵⁴

To avoid the choice between a gender-neutral same treatment model that may not adequately recognise women, and a special treatment model that reinforces traditional roles and discriminates against men, an 'anti-subordination' analysis may be applied.

Anti-subordination theory is used to analyse power relations in society.¹⁵⁵ An anti-subordination analysis highlights that the structures of domestic and working life provide barriers to women's full participation in the workplace,¹⁵⁶ removing effective choice from women and diminishing their ability to control their lives. Social insurance, as with other leave models, simply accepts this. Anti-subordination theory focuses on the difference between child-bearing, and child-rearing. It is obvious that women who have children must take at least some time

¹⁴⁹ Finley above n 141, 1129-1140.

¹⁵⁰ David Bergquist "Who's Bringing Up Baby?: The Need for a National Uniform Parental Law Policy" [1988] *Law and Ineq J* 227, 234.

¹⁵¹ *Parental Leave; Women and the Labour Market* above n 26, 67.

¹⁵² NACEW, above n 19, 17.

¹⁵³ Malin, above n 117, 1067. Parental leave in Sweden is for 12 months, a month of which is reserved exclusively for the father, and a mother for the mother. The rest may be divided between the parents.

¹⁵⁴ *Parental Leave; Women and the Labour Market* above n 26, 56. Although 50% of Swedish men take their 1 month of exclusive male parental leave. "Parental Leave in Europe" [1995] *EIRR* 14, [OVID 01193733] [Author not given].

¹⁵⁵ Ruth Colker "The Anti-Subordination Principle: Applications" [1987] *Wis Wom L J* 59, 60-64.

¹⁵⁶ Finley, above n 141, 1118.

away from paid work after birth, whereas fathers or other partners may choose to do so, but this is not the case for child-raising.¹⁵⁷

While it is ordained by nature that only women can bear children, there is nothing natural about the fact that in many societies women are expected to bear the responsibility of raising children alone. Women engaged in wage employment in particular face the difficult burden of fulfilling their dual role of mother and worker.

This is perpetuated as organisational culture remains based around traditional male lifestyles,¹⁵⁸ in particular the assumption that workers have no domestic responsibilities and sufficient domestic support systems. Attempts by men to reprioritise their commitments are frowned on, and women are expected to compete in the labour market on men's terms.¹⁵⁹ An anti-subordination approach to paid leave would seek substantive changes to how society values and treats caregiving and attempt to make organisations more amenable to family commitments.

2 *Short term advantage, long term disadvantage?*

Social insurance may offer substantial short term advances but in the long term hamper women's employment status. Some have argued that paid leave is simply used as a pressure valve on the labour market, keeping male bias within the system, but relieving pressure for change from within.¹⁶⁰ Delgado and Leskovoc argue there may be honourable intentions behind leave models, but that men will not feel compelled or secure enough to take leave, and women will be encouraged to assume parental duties, often by being pressured to leave their jobs.¹⁶¹

Social insurance could work in this way, as to access the payment, caregivers are required to temporarily remove themselves from the labour market. As social insurance provides payment without requiring a return to work, it allows pressure to

¹⁵⁷ National Union of Eritrean Workers *General Conditions of Eritrean Women Factory Workers* (Addis Ababa, 1995) 3-4, quoted in ILO, above n 70, 100.

¹⁵⁸ Lewis, above n 9, 7.

¹⁵⁹ Frances Baldwin and Sue Walpole *Women, Affirmative Action and Industrial Democracy* (Australian Government Publishing Service, Canberra, 1986) 1.

¹⁶⁰ Delgado and Leskovoc, above n 61, 1045.

¹⁶¹ Delgado and Leskovoc, above n 61, 1045.

be exerted on caregivers by employers and society to remain at home. This has led Evans and Pupo to warn that the underlying premise of paid leave is promoting the mother as the superior caregiver over any other form of childcare, and believe that mandatory paid leave will "further privatis[e] childcare".¹⁶² The other leave models, with the exception of tax credits and voluntary employer provision, have the same problems.

While social insurance may reinforce stereotypes and presumptions about gender, there is no reason it necessarily will be used to control the labour participation of women. As shown earlier, social insurance will more probably increase female labour participation. To the extent that Delgado and Leskovic's criticism applies, it does so to all paid leave models, with the exception of tax credits and possibly some general taxation entitlements, which allow payment even where the caregiver remains working. However, tax credits in New Zealand support traditional breadwinner/homemaker roles. Thus the discriminatory effects of paid leave are perhaps not a mark against the social insurance model but a warning that mandatory paid leave is not a panacea for gender equity issues.

It is more of a concern that social insurance perpetuates the 'mommy track' by requiring time off to receive the leave payment, and through the continued attitudes regarding women's domestic responsibilities. The 'mommy track' describes the position of women who take-up flexible arrangements when returning to work after childbirth, but then find their career progress stunted, with lower promotion, pay or benefit opportunities, as they are not seen as able to carry a 'full load'.¹⁶³ The existence of paid leave then obscures the problem, as people may feel the issue (the work/family conflict) has been addressed. Delgado analogises this with the introduction in the United States of 'neutral' civil rights laws. He argues that by appearing to deal with the surface problem, these laws enabled the rest of society to

¹⁶² Patricia Evans and Nadine Pupo "Parental Leave: Assessing Women's Interests" [1992] *Can J of Women and the L* 402, 415

¹⁶³ Mary Ann Mason "Equal Rights Fails American Mothers: The Limitations of an Equal Rights Strategy in Family Law and the Workplace" [1991] *Int J L Fam* 211, 225; Hofferth, above n 31.

blame Blacks' laziness or lack of intelligence for their failure to progress in a society now 'purged' of racism.¹⁶⁴

Again, this is a problem for all mandatory labour models rather than social insurance in particular. If this argument were followed to its logical conclusion, no mandatory paid leave model could be adopted unless by radically changing structures, it solved the work-family conflict and provided gender equity. As this appears highly unlikely in the short term, measures that do promote benefits for society, while moving towards the larger goal, should be adopted. Social insurance is the best model for this first step.

Having said this, employment discrimination can be result from social insurance if it is not handled correctly.¹⁶⁵

Without some more pro-active [legislative] protection, the forms of work which best suit employees with family and community commitments will remain those with the lowest status and remuneration, and concentrated within a narrow band of industries.
[internal references omitted]

For example, internationally Sweden has the most extensive paid leave system, with corresponding high participation and return to work rates. Yet occupation sex-segregation in Sweden is high. The perception that women will take long leave, and the reinforcement of gender stereotypes that may occur under paid leave encourages the diversion of women into easily replaceable, female-dominated industries.¹⁶⁶ Again, this is potentially a problem for all forms of paid leave that allow women to take time off work.

Perhaps the best way to avoid this is tax credits, as individual employers are not involved at all in an employee's application. The entitlement does not require the individual to stop work, and consequently, tax credits can be written in a completely

¹⁶⁴ Delgado and Leskovoc, above n 61, 1049.

¹⁶⁵ This quote is from Nash, above n 9, 3. Nash was not referring specifically to the use of a social insurance model but the wider family-work conflict.

¹⁶⁶ NACEW, above n 19, 7, warns that paid leave could mean employers channel women into jobs with lower replacement costs.

gender neutral way. Social insurance can also minimise this problem by making the central fund cover more than just paid leave. In New Zealand, a natural progression would be for social insurance to cover both ACC and paid leave. This would lessen the negative gender perception involved in taking leave. Education programmes urging both parents to share the leave would increase this, as would employee contributions, which encourage men and women to think of paid leave as a right they have earned by their contribution and their service (rather than purely from the largesse of the employer or the government).¹⁶⁷

D Family Values

Social insurance, as a mandated model and one to which the government contributes, is open to state manipulation and the promotion of 'family values'. For example, in all the leave legislation and proposed legislation in New Zealand, leave has only been available to the mother and her married or de facto spouse. The legislative language used prevents spousal entitlements being assessed by a same-sex partner, or a father not living with the mother at the time of the birth.¹⁶⁸ This breaches the spirit and the intent of the Human Rights Act.¹⁶⁹ Specifically, commentators overseas have warned of the ability of leave legislation to exclude teenage mothers by family orientated leave legislation.¹⁷⁰ While the government is very likely to implement majority values through social insurance, this is more of a threat with the welfare models, because their goal is to encourage socially beneficial behaviour and strong views may be held about who this behaviour should be encouraged in.

¹⁶⁷ Grill, above n 17, 391.

¹⁶⁸ Parental Leave and Employment Protection Act 1987 s 2; Paid Parental Leave Bill 1998 cl 17.

¹⁶⁹ Human Rights Commissioner "Submission to the Social Services Select Committee on the Paid Parental Leave Bill 1998" (84a), 1.

¹⁷⁰ This can also be done overtly, for example unwed female teachers in Trinidad and Tobago are excluded from any maternity protection rights (including paid leave and job protection). ILO above n 70, 8.

In particular, some states have used both social insurance entitlement and welfare models to increase fertility levels.¹⁷¹ Because social insurance is labour based and is self-defining by paying contributions, it is less open to such objectives. By implementing a simple payment for a set number of weeks at a proportion of wages, rather than for example, increasing payment for each birth, the social insurance model is not easily biased towards large families as is common under tax credits and general taxation models.

In fact, social insurance and other labour models can penalise higher fertility. The use of employment criteria may penalise short gaps between births, and multiple births may be inadequately met where entitlement is not increased for multiple births.¹⁷² Tax credits and general taxation payments can easily avoid this, and some European countries have amended their social insurance criteria to compensate for it. For example, France requires two years of work in the preceding five years to be entitled to a flat rate payment from the second child on, or two years of work in the last 10 years for the third child on.¹⁷³ In Iceland, cash benefits are paid for one additional month per child beyond the six months paid leave provided for single child birth.¹⁷⁴ While these alterations may make the scheme administratively more complex, they show that the problems are not insurmountable.

E Race Issues

Where social insurance has been implemented overseas, it is largely essentialist. Women and families are viewed as undifferentiated categories, and the effects of race and class are generally ignored. They are considered only on the fringes, for example in targeting issues.¹⁷⁵ As a government mandated model, social insurance has a large propensity to reflect the values of the majority culture. For social

¹⁷¹ Increasing fertility is an objective of paid leave in France and Quebec but appears to influence the spacing of births rather than the birth rate. Maureen Baker "Family and Population Policy in Quebec; Implications for Women" [1994] CJWL 116, 121.

¹⁷² As in presently the case under the PLEP and would occur under the Paid Parental Leave Bill.

¹⁷³ "12 Weeks Paid Parental Leave Campaign" Information Kit, Sheet 6.

¹⁷⁴ ILO, above n 70, 69.

¹⁷⁵ Dowd, above n 123, 340.

insurance to be successfully implemented in New Zealand, racial and cultural differences must be examined, for the model must not cater simply for the majority culture.

First, the most fundamental difference may be in fertility. Māori and Pacific Islands women, due to their higher fertility rates (3.32 live births per 1000 Māori women, and higher for some Pacific Islands groups compared to 1.97 for all women) may be expected to access paid leave more often than others.¹⁷⁶ Yet as the Ministry of Women's Affairs points out, other demographic and employment factors will lower their eligibility under employment criteria. For example, Māori and Pacific Islands women generally have children at a lower age than other women,¹⁷⁷ so are less likely to be entitled under paid leave models that require years of service before paid leave can be taken, or that restrict short periods between births.¹⁷⁸

Second, Māori and Pacific Islanders are likely to be over-represented in the marginalised, low-skilled workers in an economy, the groups less likely to be able to negotiate paid leave, and more likely to be excluded by employment criteria.¹⁷⁹ By mandating coverage and covering part-time and seasonal workers, social insurance will benefit Māori and Pacific Islanders more than other labour models. However, as a higher proportion of these groups are unemployed, welfare models that concentrate resources on those with low incomes and are not as open to 'middle class capture' may be of greatest benefit, particularly as social insurance covers only those in the labour force.¹⁸⁰

¹⁷⁶ "Additional Official Information", above n 21, 5.

¹⁷⁷ The peak childbearing age for Māori women is 20-24, compared to 25-29, and their teenage fertility rate is twice as high as for the general population. Ministry of Women's Affairs "Maternity Leave/Birth Payments in New Zealand; Advice to the Minister" (Wellington, 21 February 1996) 3 ["Advice to the Minister"]. Paul Callister and Judith Galtry *Parental Leave in New Zealand: Is it Meeting the Needs of Employees, Employers, and Childcare?* (Paul Callister and Associates, Wellington, 1996) 14.

¹⁷⁸ For example the Ministry of Women's Affairs estimated that 59% of Māori and 60% of Pacific Islands women would meet the eligibility criteria of Harre's Paid Parental Leave Bill, compared to 64% of Pakeha women. "Additional Official Information" above n 21, 5.0

¹⁷⁹ Race Relations Conciliator "Submission to the Social Services Select Committee on the Paid Parental Leave Bill 1998" (115) 3.

¹⁸⁰ Callister and Galtry, above n 177, 14.

Welfare models will not have this effect when as under the Taxation (Parental Tax Credit) Act, they define a person's entitlement by their partner's employment status. Māori and Pacific Islands families are most likely to be single-parent households, or households relying on a female income earner.¹⁸¹ Thus the use of eligibility criteria in welfare models can also disadvantage these groups.

Third, the biggest danger with social insurance and other mandated leave models is that they may fail to provide for cultural arrangements. The Race Relations Conciliator has criticised the PLEP and Harre's Paid Parental Leave Bill for only allowing transferability of paid leave to a spouse.¹⁸² Customary or informal adoptions (whangai) are ignored.¹⁸³ 80 per cent of all Māori births in 1995 were classified as ex-nuptial.¹⁸⁴ This means a higher proportion of Māori mothers may need to arrange for alternative care, and flexible provisions that recognise less conventional parenting patterns would assist in this. Under the mandated models currently proposed in New Zealand, a Māori parent would be unable to share the paid parental leave and job protection with the person who will be the primary care giver for the child, whether it is a member of her own or her spouse's extended family or otherwise. Voluntary employer provision allows individuals the flexibility to negotiate leave packages that most suit them, instead of mandating the views of the majority for administrative simplicity or ignorance. However the lower average employment power of Māori and Pacific Islands workers means this is not a viable alternative.

There is nothing to prevent a social insurance model from addressing these issues. As a labour model, it excludes those not in the labour force, but the net is cast widely over employees. Flexible time scales for amassing contributions may

¹⁸¹ Unemployment rates for Māori and Pacific Islands men with pre-school age children are twice the national average. "Advice to the Minister" above n 177, 3.

¹⁸² Race Relations Conciliator, above n 179, 3.

¹⁸³ Dame Joan Metge and Donna Durie-Hall "Kua Tutu te Puehu; Kia Mau" in M Henaghan and B Atkin *Family Law Policy in New Zealand* (Auckland, Oxford University Press, 1992) 70-73.

¹⁸⁴ Department of Statistics *New Zealand Official Yearbook 1997* (GP Publications, Wellington, 1997), 116.

counter the problems of a higher fertility rate, although younger mothers who have not spent a sustained period in the workforce will continue to have difficulties meeting criteria. Because all employees contribute to paid leave, all, not simply the birth parent, have a right to have the leave transferred to them if the parents desire, and the social insurance legislation can provide for this.

F A Law and Economics Perspective on Social Insurance

1 Criticisms of social insurance

Law and economics favours voluntary provision. Social insurance, as with other government regulation, produces inefficiencies through bureaucracy, inflation¹⁸⁵ and by forcing individuals to take actions that as 'rational efficiency maximisers' they would not otherwise. Sunstein argues that redistribution by regulation, as social insurance attempts, is likely to hurt those it is aiming to help,¹⁸⁶ as the inefficiencies created can cause unemployment and make women less competitive in the labour market. Further, he argues that it cannot be assumed that regulation will directly transfer resources to new parents.¹⁸⁷

However, leaving resource allocation to the market is also inefficient. The market works best when it is dealing with consumption goods, for example, what type of car to produce or buy.¹⁸⁸ Entitlements like the right to vote, or to paid leave are not market commodities and cannot be adequately valued in the market. When the market cannot adequately value an entitlement, its ability to make rational decisions based on a cost/benefit analysis is impaired and inefficiencies will result from any attempts to do so. Parental child-rearing, the 'commodity' in paid leave, is considered to have no economic value¹⁸⁹ so the market will fail to correctly

¹⁸⁵ David Haase "Evaluating the Desirability of Federally Mandated Parental Leave" [1988] *Fam L Q*, 356.

¹⁸⁶ Sunstein, above n 7, 330.

¹⁸⁷ Sunstein, above n 7, 330.

¹⁸⁸ Sunstein, above n 7, 6.

¹⁸⁹ Waring, above n 89, 22.

compensate employees through paid leave. To ensure a suitable provision of paid leave, the government must intervene.

Law and economists argue that where the government wishes to remedy a perceived inefficiency or encourage certain behaviour it should use incentives, such as tax credits, rather than regulation, and allow the market to react directly to these.¹⁹⁰ For example, people who receive the tax credits can decide whether to use these for childcare and return to work, or to undertake that care themselves, supported partially by the tax credit. Law and economists recognise that tax credits are not effective where they have regressive effects, or if the desired behaviour is a 'national moral commitment' which cannot be decentralised.¹⁹¹ In the case of paid leave, both of these conditions are fulfilled. Tax credits have a regressive effect unless targeted, as those on higher incomes gain the greatest benefit because they are left with the greater proportion of disposable income. Second, social insurance views paid leave as an employment right similar to the minimum wage requirement - a 'national moral commitment' necessary for equity and health. Thus again, direct government action, is necessary.

2 *In support of social insurance*

Law and economics arguments can support social insurance; for example by perceiving social insurance as a savings scheme or insurance, or as necessary to lessen inefficient behaviour such as free-riding or private charity.

Social insurance can be conceptualised as a savings fund to which employees contribute.¹⁹² People pay levies while working and gain the benefit on having a child. The greatest benefit goes to those on whom the heaviest burden falls - for example, a family with more children benefit the most (subject to entitlement criteria), but those children will contribute more when they are older. This

¹⁹⁰ Sunstein, above n 7, 282.

¹⁹¹ Sunstein, above n 7, 342.

¹⁹² Richard Posner *Law and Economics; An Introduction* (4 ed, Little, Brown and Co, Boston, 1992) 506.

argument is valid, but not completely correct for the model this paper advocates, as both employees and employers contribute. However, if the value of paid leave to employers and society is recognised, the social insurance can be perceived as a savings account for them also as the fund receives their payments for the benefits that they will gain in the future.

Social insurance and disability insurance can also be seen as insurance against impoverishment following pregnancy.¹⁹³ Even middle and high income earners will have fixed costs (such as mortgage repayments) such that the loss of income during unpaid leave may cause financial stress. It is necessary for such insurance to be mandatory as it is not possible to insure against poverty voluntarily. Comprehensive poverty insurance is unavailable because it is a 'moral hazard' (it would encourage people not to work) and because of adverse selection.¹⁹⁴ Adverse selection means only those likely to have children will desire the insurance, raising the premiums, and thus makes it unattractive to those unlikely to have children or who have other resources available. This raises the premiums still higher, possibly making it unaffordable to those in need.¹⁹⁵ Again, social insurance is preferable to disability insurance because the non-profit nature of the scheme produces generally lower premiums than private providers who can be sure that the policy will be redeemed.

The mandatory nature of social insurance can be seen as an economically legitimate way to prevent free rider behaviour.¹⁹⁶ The reliance of (traditionally) men and employers on the unpaid labour of women for childcare is free-riding.¹⁹⁷ By mandating payment from all those who gain benefits of this labour, social insurance ensures compensation to working caregivers. However, if unpaid childcare is free rider behaviour then social insurance should compensate all principal caregivers,

¹⁹³ Posner, above n 192, 510.

¹⁹⁴ Posner, above n 192, 510.

¹⁹⁵ Posner, above n 192, 510.

¹⁹⁶ Posner, above n 192, 509.

¹⁹⁷ Posner refers to it as a specialisation of labour, and states the key component for the production and consumption ability of a family is the unpaid work of (traditionally) the wife, as her work allows the maximisation of the household's total real income by enabling husband and wife to specialise in complementary activities. Posner, above n 192 139-140

regardless of their employment status. Society must also believe that time at home with a child is a social good to be encouraged, and if this is the case, it seems anomalous to stop after only eight or twelve weeks. More correctly, this is not true free rider behaviour by all men and employers as the parent that remains in paid work contributes through the need to support the caregiver and child.

Mandatory paid leave models prevent inefficiency by reducing the need for private charities, which law and economists consider an inefficient way to meet demand.¹⁹⁸

There is anecdotal evidence to show that insufficient or non-provision of paid leave presently results in the use of private charity, for example from relatives and food banks.¹⁹⁹ A social insurance model will have the greatest effect in reducing this, as it provides the greatest coverage (to those not already on welfare), at a reasonable level, thus, hopefully reducing the demand for private charity of new parents.

While law and economics arguments can be used in support of social insurance and active government involvement, this does not mean a social insurance model is economically efficient. Economic arguments may be found favouring a centralised system, but the government still lacks competition and the need to maximise profits and thus may not operate a cost-effective system. Disability insurance, by working through private providers, may provide this competition, but as illustrated earlier, there are many problems with private provision. Potential economic accountability by the government is reduced as the task of compensating time off is inherently difficult and may defy any cost-effective models. In the government's defence, law and economics is only one part of the paid leave analysis, and to define a paid leave system purely on economic criteria would fail to achieve many of the social objectives of the system.

¹⁹⁸ Posner, above 192, n 509-510.

¹⁹⁹ "Parents Under Pressure" *The Dominion* Wellington, New Zealand 15 April 1999, 9.

VII CONCLUSION

Social insurance, when properly implemented, is the most appropriate paid leave system for New Zealand. As a labour model, it tackles the crucial paid leave objective of reconciling work and family. By its mandatory nature and wide definition of employment, it decreases the equity problems of other labour models. The advantages of social insurance are that it increases labour force participation, treats participants as individuals, lessens discrimination, and spreads the costs among those who benefit. Social insurance has potential disadvantages, including increasing bureaucracy, compliance costs, the perpetuation of stereotypes, and ignoring racial and cultural differences. The effects of these can be lessened or avoided by learning from international and domestic experiences of centralised systems, and such disadvantages are clearly outweighed by the advantages of the social insurance model.

The problem remains that social insurance is only one step towards accommodating work and family and recognising the changes that have occurred in our society. It cannot work to 'cut the head off the revolution' and obscure the need for further changes.²⁰⁰

Whether readers agree that my preference for a social insurance model is warranted is secondary to my aims. The most important point to note is that the seven models outlined here are not substitutable alternatives. All have hugely different effects and cannot be used interchangeably for political point-scoring. The many complex issues involved in paid leave should not prevent an analysis that takes in the wider picture. Paid leave has been postponed for twenty years as politicians and committees wait for the 'right time'.²⁰¹ It is now time for paid leave to be

²⁰⁰ Such as better childcare assistance and facilities. Evans and Pupo above n 162, 417.

²⁰¹ Support for paid parental leave has been expressed by: the Women's Rights Committee "Report on Women's Rights" [1975] AJHR 32; NACEW *Report to the Minister of Labour* (1977) 3; Report of the Royal Commission on Contraception, Sterilisation and Abortion (1977) 195; Anne Hercus in the debate on the Maternity Leave and Employment Protection Act 1980, (2 December 1980) 436, NZPD 5518 [that paid leave was a important principle which cannot be afforded at present]; Marilyn Waring

addressed, not to win votes, but because a modern labour force deserves and requires it.

in the same debate (2 December 1980) 436, NZPD 5515 [supports paid leave, but it is too early and the public are unlikely to accept it]; The Labour Party Manifesto (1984) ["to investigate paid leave"]; Working Party *Report of the Working Party on Payment for Parental Leave* (Department of Labour, Wellington, 1986) [arguments supported paid leave but at the present time the costs were substantial and it was ahead of existing awards]; and The Royal Commission on Social Policy (1988) 589-590 [acknowledge the value of paid leave but are not prepared to recommend it at present because of financial constraints].

APPENDIX ONE

The following are examples of paid leave entitlements from employment contracts in New Zealand. Note that these are not a cross section of contracts, but a selection from the minority of contracts that contain such provisions.

	Introduced	Women/men	Length of paid leave/ payment	Eligibility criteria	Other details
erbury	(1970s) 1995	Both	6 weeks		Paid at start of leave, except for male general staff who are paid 6 months after return to work
	1970s	Academic staff: both General staff: women	6 weeks 1 month	Must be member of collective contract Must be member of collective contract	Paid whether return or not Paid on return to work
land	1970s	Both	6 weeks		Paid on return to work
	Pre 1990s	Both	6 weeks		Pro rata payment if take less than 6 weeks leave. Partners not eligible if work in public sector and receive payment, but are if work in private sector
	Pre 1990s	Both	6 weeks		Payment 6 months after return to work
ch	(Pre 1990s) 1998	Women Men	6 weeks 2 weeks		Paid at time of birth/assuming care of adopted child
Environment	Pre 1990s	Both	6 weeks		Payment 6 months after return to work
	Pre 1990s	Both	6 weeks	Must take at least 6 weeks leave	Payment 6 months after return to work
	Pre 1990s	Women	6 weeks	Pro rata basis if less than 6 weeks leave taken	Payment 6 months after return to work. If move to part time work on return, payment is still at full time rate
	Pre 1990s	Women	6 weeks	Must take a minimum of 6 weeks leave	Payment made 6 months after return to work
and	Pre 1990s	Both	6 weeks	Service of more than 1 year	Paid at start of leave. Pro rata if less than 6 weeks taken
Zealand	Pre 1990s	Both	2 weeks		Payment 6 months after return to work
onic	Early 1990s	Women	6 weeks	Determined on case by case basis	Maternity grant for some staff. Varies when paid.
	1995	Both	2 weeks	1 years service, 3 months on leave	1 week paid at end of each leave
	Mid 1990s	Both	2 weeks	Must take more than 13 weeks leave	1 week paid on leaving and the other 2 weeks after return to work
	Mid 1990s	Women	2 weeks	Must take 13 weeks leave	1 week paid at beginning and the other 2 weeks after return to work



Organisation	Introduced	Women/men	Length of paid leave/payment	Eligibility criteria	Other details
Paykel	1996	Both	2 weeks		40 hours each at beginning and during first year of return
Police Force	1996	Both	42 days		Paid 6 months after return to work
	1996	Women	3 months		Full pay if 2 years service; 60 per cent if 18 months service and 30 per cent if 12 months service
Services	199?	Women Men?	Up to 3 months	Higher level staff	Must take 3-6 months leave; if longer may not be paid
	1997	Both	1 week	All employees	
New Zealand	1998	Both	6 weeks	All employees eligible for parental leave under the Act	
Buddle Weir	1998	Women	3 months	Senior associates	Contact with office and key clients required, optional fax/modem and PC at home, ability to return part time
Tripp Sheffield	1998	Both	3 months	Partners/principals: 3 months Professional staff: 2 weeks to 3 months after 2 years service General staff: 1 week after 1 year, 2 weeks after 2 years	
McVeagh McKenzie and Co	1998	Women	3 months	Lawyers (previously available to partners)	Also short notice nanny service
WZ Limited	1998	Both	3 months		Paid on employee's return to work
Assurance	1998	Both	1 month		Bonus paid 3 months after return to normal hours
	1998	Both	4 weeks	3 years continuous service	Paid 6 months after return. Can choose 4 weeks leave or lump sum. Also have one weeks paternity leave
	1999	Both	6 weeks	10 hours or more per week for 12 months	Lump sum paid 3 months after return to work
Act	1999	Both	6 weeks	10 hours or more per week for 12 months	Lump sum paid 3 months after return to work
HouseCoopers	1999	Women	Full pay for 3 months or half pay for 6 months	7 years service, intention to return to work	

Where there are two dates, the one in brackets indicates the original policy and the second date indicates the policy was updated at that time. Question marks indicate the organisation could not provide the information requested.

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